

**ANALYSE STATISTIQUE DES DEMANDES DÉPOSÉES EN 2008 EN APPLICATION DE  
LA CONVENTION DE LA HAYE DU 25 OCTOBRE 1980 SUR LES ASPECTS CIVILS  
DE L'ENLÈVEMENT INTERNATIONAL D'ENFANTS**

**PARTIE III – RAPPORTS NATIONAUX**

*établie par le Professeur Nigel Lowe, Faculté de droit de l'Université de Cardiff*

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**A STATISTICAL ANALYSIS OF APPLICATIONS MADE IN 2008 UNDER THE  
HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS  
OF INTERNATIONAL CHILD ABDUCTION**

**PART III – NATIONAL REPORTS**

*drawn up by Professor Nigel Lowe, Cardiff University Law School*

*Document préliminaire No 8 C de mai 2011 à l'intention de la  
Commission spéciale de juin 2011 sur le fonctionnement pratique de la  
Convention Enlèvement d'enfants de 1980 et de la  
Convention Protection des enfants de 1996*

*Preliminary Document No 8 C of May 2011 for the attention of the  
Special Commission of June 2011 on the practical operation of the  
1980 Hague Child Abduction Convention and the  
1996 Hague Child Protection Convention*

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Available in English only, except when stated otherwise

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## AUSTRALIA

### I. Overall Summary

In 2008 Australia received 75 return applications and 16 access applications. This amounted to a 74% increase in the number of return applications and a 16% decrease in access applications from those received in 2003. In total the Australian Central Authority dealt with 202 incoming and outgoing applications in 2008 which is a 21% increase on the 167 in 2003.

The overall rate of return in the 75 return applications was 51% compared with 46% globally. This can be compared with the 2003 return rate of 42% and 52% in 1999. Proportionately more applications were rejected by the Central Authority or judicially refused compared with the global figures but proportionately fewer applications received by Australia were pending or withdrawn.

A judicial return took 125 days to conclude and a judicial refusal 202 days compared with the global averages of 166 days and 286 days respectively.

With regard to access applications, access was agreed or ordered in 38% of applications compared with 22% globally. A high proportion of access applications received by Australia were refused by the Central Authority, 38%, compared with the global average of 13%.

### II. The number of applications received and sent in 2008

|                 | <b>1999</b> | <b>2003</b> | <b>2008</b> |
|-----------------|-------------|-------------|-------------|
| Incoming Return | 64          | 43          | <b>75</b>   |
| Incoming Access | 14          | 19          | <b>16</b>   |
| Outgoing Return | 81          | 91          | <b>91</b>   |
| Outgoing Access | 13          | 14          | <b>20</b>   |

Australia has designated Central Authorities in each of its States and mainland Territories. There is also a Commonwealth Central Authority and all applications initially go to this body. According to the Commonwealth Central Authority for Australia, they received 91 applications in total comprising 75 incoming return and 16 incoming access applications. This is a 47% increase on the 62 incoming applications received in 2003 and a 17% increase on the 78 applications received in 1999.

The ratio of return to access in 2008 was 82% to 18%, respectively. This can be compared with 69% to 31% in 2003 and 82% to 18% in 1999.

In addition, the Central Authority made 111 outgoing applications comprising 91 return and 20 access applications. This is a 5% increase on the 105 outgoing cases in 2003 and a 18% increase on the 94 in 1999.

In total, the Central Authority dealt with 202 incoming and outgoing applications. A 21% increase from 167 applications handled in 2003 and a 17% increase from 172 applications in 1999.

### III. Incoming Return Applications

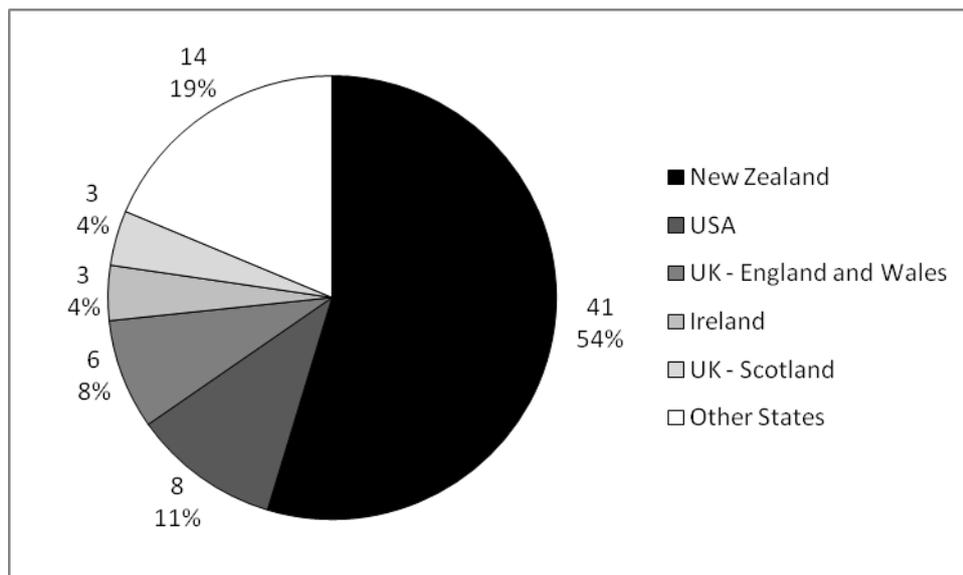
#### 1. The Contracting States which made the application

In 2008 Australia received applications from 16 different Central Authorities – compared with 13 requesting States in 2003 and 14 in 1999. As in past surveys, Australia received a high number of applications from New Zealand, 41 applications, compared with 15 in 2003 and 22 in 1999. The second highest number came from the USA (8 compared with 15 in 2003 and 11 in 1999) and UK- England and Wales (6 compared with 3 in 2003 and 14 in 1999).

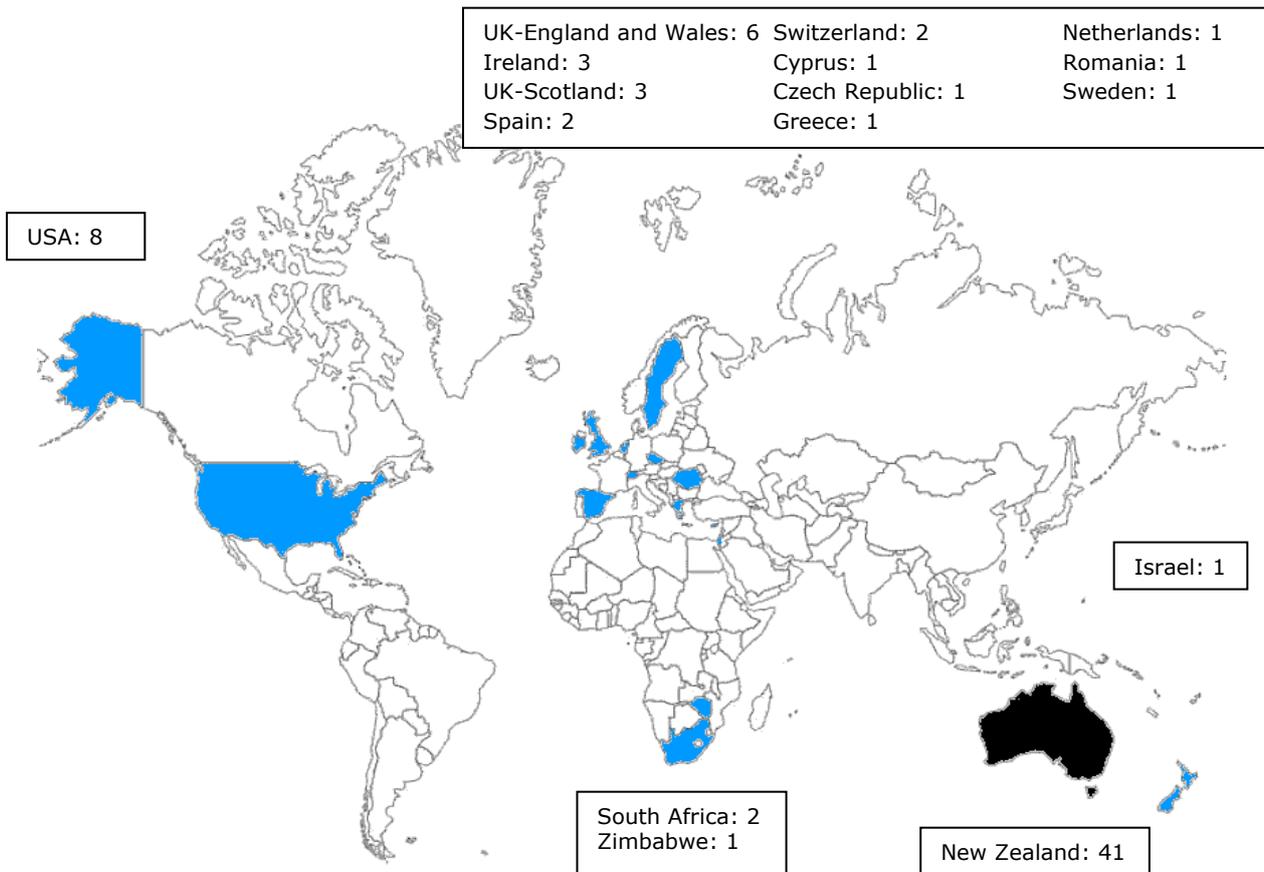
#### The Contracting States which made the most applications to Australia

|                        | 1999      | 2003      | 2008      |
|------------------------|-----------|-----------|-----------|
| New Zealand            | 22 (34%)  | 15 (35%)  | 41 (55%)  |
| USA                    | 11 (17%)  | 15 (35%)  | 8 (11%)   |
| UK - England and Wales | 14 (22%)  | 3 (7%)    | 6 (8%)    |
| Ireland                | 1 (2%)    | 0 (0%)    | 3 (4%)    |
| UK - Scotland          | 1 (2%)    | 0 (0%)    | 3 (4%)    |
| South Africa           | 1 (2%)    | 1 (2%)    | 2 (3%)    |
| Spain                  | 0 (0%)    | 0 (0%)    | 2 (3%)    |
| Switzerland            | 0 (0%)    | 0 (0%)    | 2 (3%)    |
| Other States           | 14 (22%)  | 9 (20%)   | 8 (11%)   |
| <b>Total</b>           | <b>64</b> | <b>43</b> | <b>75</b> |

#### The Requesting States for Return Applications Received by Australia in 2008



## Map of Contracting States which made return applications to Australia in 2008



## 2. The Taking Person

In 2008 a large majority of the taking persons were mothers (67%). The remaining 33% comprised 27% fathers and 6% grandparents (2 applications where one grandparent was the taking person and 3 applications where two grandparents were joint taking persons). This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

In past surveys taking persons coming to Australia have been mostly mothers, making up 81% of taking persons in 2003 and 70% in 1999<sup>1</sup>.

## 3. The status of the taking person as carer in relation to the child

In 36 applications the taking person was the primary carer of the child (68%) and in 17 applications the taking person was not a primary carer (32%).

91% of taking mothers were the primary carer of the child (32 out of 35 applications), compared with 25% of taking fathers (4 out of 16 applications).

<sup>1</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication. In 1999, 64% of taking persons in applications received by Canada were female and so probably mothers.

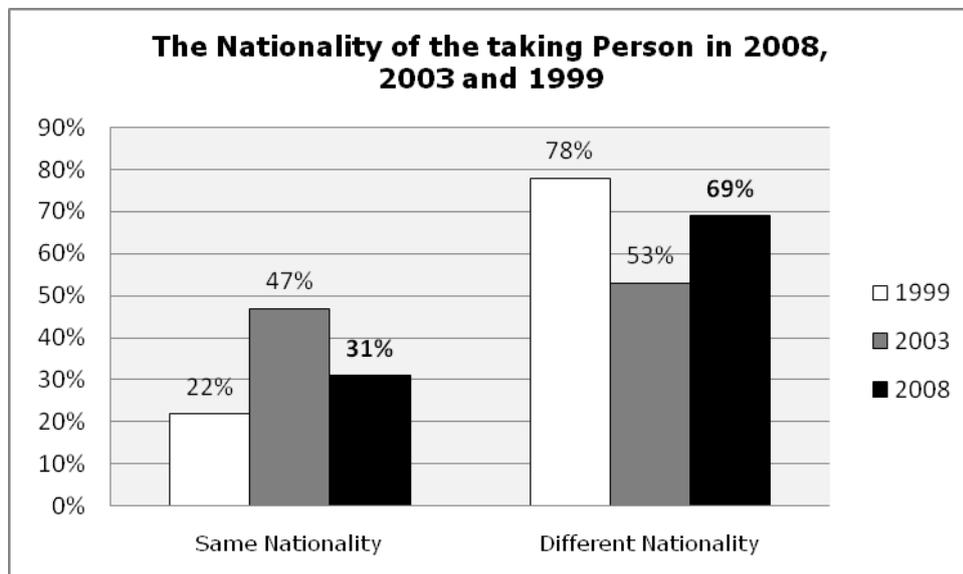
Globally, 72% of taking persons were the primary or joint primary carer of the child. This rose to 88% where the taking person was the mother and 36% where it was the father.

#### 4. The nationality of the taking person

In 2008, 31% of applications received involved a taking person who was an Australian citizen (including 2 taking persons with dual nationality). This is a low proportion compared with the global 51% of taking persons who went to a state of which they were a national.

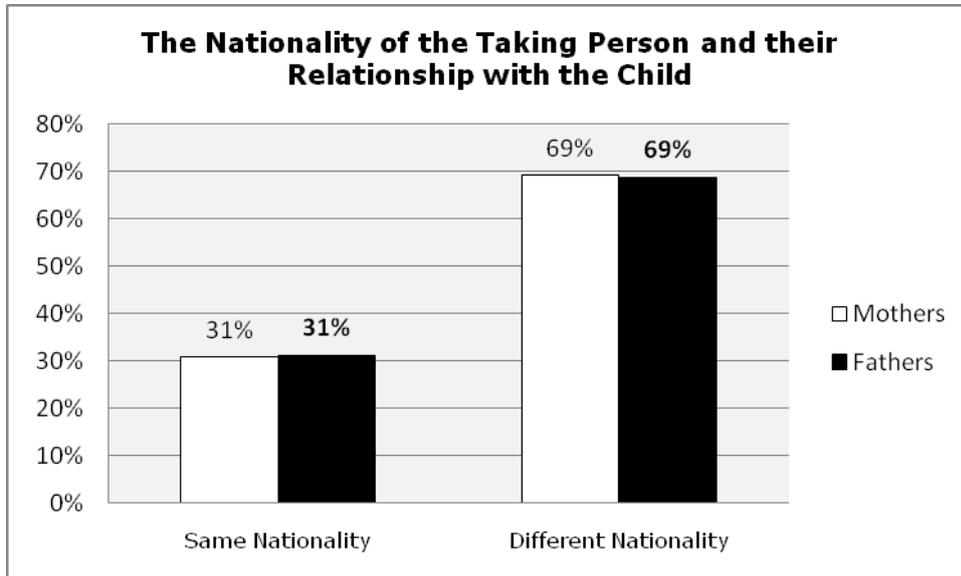
In 2003, 47% of taking persons were Australian citizens and in 1999, 22%. These proportions can be compared with the global averages of 55% in 2003 and 52% in 1999.

The chart below compares the 2008 findings on nationality with the 2003 and 1999 surveys. In 2008 proportionately fewer taking persons were Australian nationals than in 2003 (31% compared with 47%) but proportionately more than in 1999 (31% compared with 22%).



## 5. The relationship and nationality of the taking person combined

The graph below shows that, in 2008, exactly the same proportion of taking mothers and of taking fathers were Australian nationals.



31% of both taking mothers and taking fathers were Australian nationals. Globally, 53% of taking mothers were found to have the same nationality as the requested state and 48% of fathers.

In 2003, 52% of taking mothers and 20% of taking fathers were Australian citizens. In 1999, 20% of female taking persons had Australian citizenship and 28% of males.

## 6. The children

In 2008, 98 children were involved in the 75 applications making an average of 1.31 children per application compared with the global average of 1.38 children. In 2003 an average of 1.27 children were involved in each application to Australia and, in 1999, an average of 1.50 children.

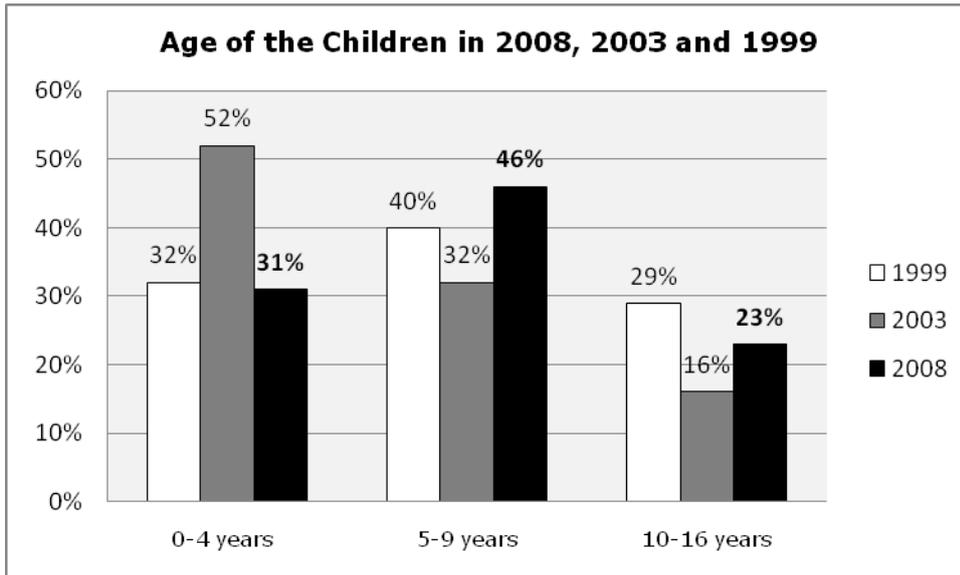
72% of applications received were for the return of a single child, compared with the global average of 69%. This is a decrease from 76% of applications to Australia in 2003 but an increase from 53% in 1999.

## 7. The age of the children<sup>2</sup>

The average child involved in a return application to Australia was 6.8 years compared with the global average of 6.4 years.

In 2003 the average child involved was 5.2 years. In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. The finding in 2008 are closer to those of 1999 than 2003 with proportionately fewer children aged between 0-4 years, more between 5-9 years and more between 10-16 years (although fewer than in 1999).

<sup>2</sup> This information was not available for one application.



### 8. The gender of the children

In 2008, 48% of the children involved were female and 52% male. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003, 40% of the children taken to Australia were female and 60% male and, in 1999, 51% were female and 49% male.

### 9. The overall outcomes

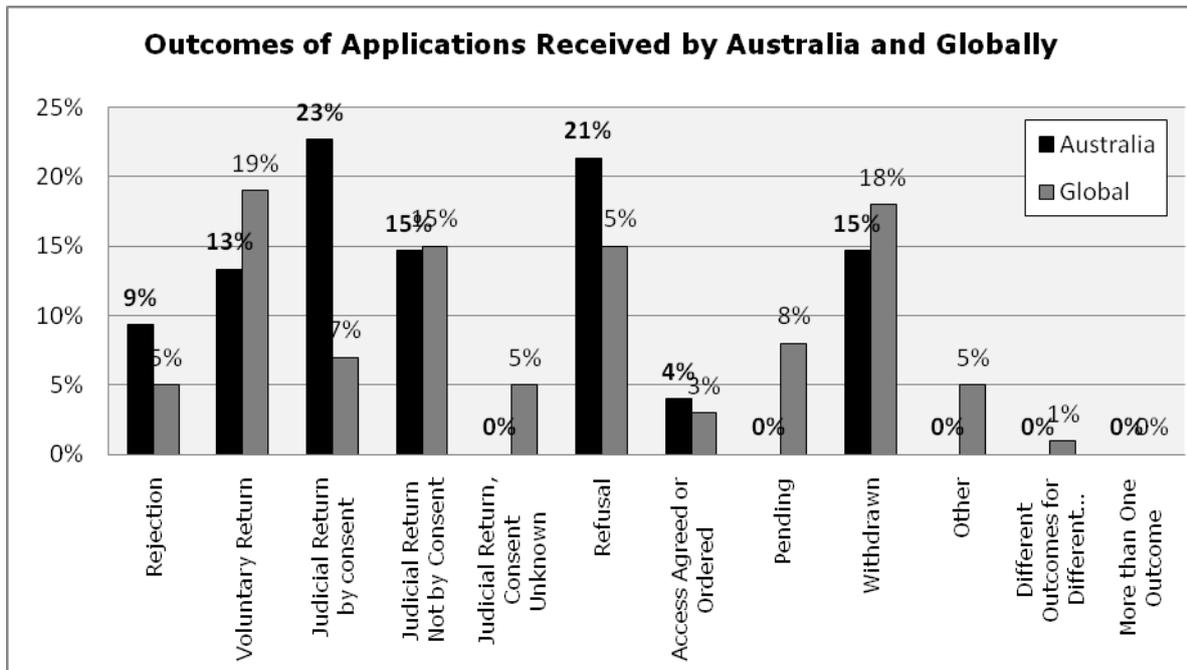
The table below shows all the outcomes of return applications received by Australia in 2008 compared with the global findings.

|   | <b>Australia</b> | <b>Global</b> |
|---|------------------|---------------|
| Rejection                                 | 7 (9%)           | 5%            |
| Voluntary Return                          | 10 (13%)         | 19%           |
| Judicial Return by consent                | 17 (23%)         | 7%            |
| Judicial Return Not by Consent            | 11 (15%)         | 15%           |
| Judicial Return, Consent Unknown          | 0 (0%)           | 5%            |
| Refusal                                   | 16 (21%)         | 15%           |
| Access Agreed or Ordered                  | 3 (4%)           | 3%            |
| Pending                                   | 0 (0%)           | 8%            |
| Withdrawn                                 | 11 (15%)         | 18%           |
| Other                                     | 0 (0%)           | 5%            |
| Different Outcomes for Different Children | 0 (0%)           | 1%            |
| More than One Outcome                     | 0 (0%)           | <1%           |

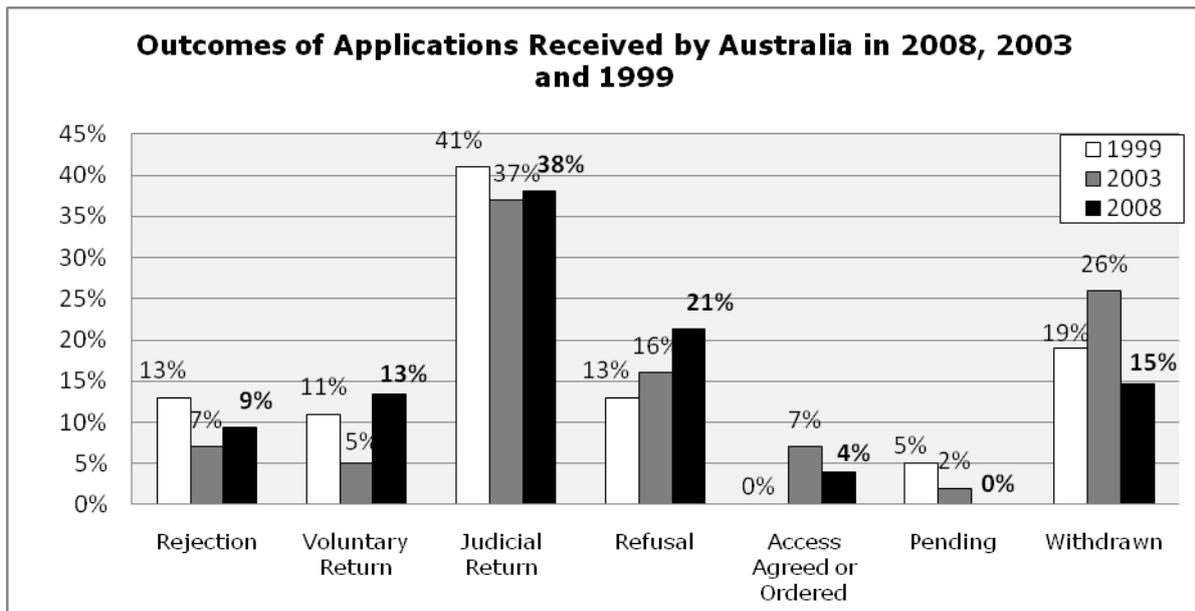
The graph below shows more clearly how the results in applications received by Australia compare to those globally. In 2008, 51% of applications received by Australia ended with a return compared with the global judicial return rate of 46%. This 51% judicial return rate can be broken down into 13% voluntary returns (compared with 19% globally), 23% judicial returns by consent order (7% globally) and 15% judicial returns without consent (15% globally with an additional 5% of applications ending with a

judicial return but where the consent of the parties unknown). Access was also agreed in 3 applications (4%) compared to 3% globally.

The Australian Central Authority rejected proportionately more applications (9%) than the global average of 5% and proportionately more applications were judicially refused (21%) compared with the global average of 15%. No applications were still pending at the cut off date of 30<sup>th</sup> July 2010 compared with the global average of 8% and a lower proportion of applications were withdrawn (15% compared with 18% globally).



The graph below compares the outcomes of applications received by Australia in 2008 to those in 2003 and 1999.



The overall return rate of 51% in 2008 increased from 42% in 2003 and is now closer to the overall return rate of 52% in 1999. The proportion of voluntary returns has increased (to 13% in 2008, from 5% in 2003 and 11% in 1999) and judicial returns have decreased to 38% from 41% in 1999, but are higher than the 37% in 2003.

The proportion of applications rejected by the Central Authority has decreased to 9% in 2008, from 13% in 1999 but is higher than 7% in 2003. The rate of judicial refusals has increased steadily from 13% in 1999, to 16% in 2003 and 21% in 2008. No applications were pending in 2008 compared with 2% in 2003 and 5% in 1999 and a lower proportion of applications were withdrawn, 15%, compared with 26% in 2003 and 19% in 1999.

## **10. The reasons for rejection**

In 2008, 7 applications were rejected by the Australian Central Authority compared with 3 in 2003 and 8 in 1999. In 2008, 3 applications were rejected because the applicant had no rights of custody and 4 for 'other' reasons. These 'other' reasons comprised 2 applications where the removal was not wrongful, 1 where the taking person had a court order allowing them to relocate with the child and 1 where the children were on an access visit in the requesting State at the time the application was made and the applicant was already involved in domestic family law proceedings in Australia.

In 2003, 3 applications were rejected: 1 because the child was located in another State, 1 because the applicant had no rights of custody and 1 based on Article 27. In 1999, 2 applications were rejected because the child was located in another State, 2 because the child could not be located, 2 because the applicant had no rights of custody and 2 for 'other' reasons (1 based on Article 27 and one for unspecified reasons).

## **11. The reasons for judicial refusal**

Out of the 44 applications that were decided in court, 16 (36%) were refused compared with 33% globally. In 2003, 30% of the applications that went to court were judicially refused and, in 1999, 24%.

Of the 15 applications where information on the reasons for refusal was available, 3 were decided for more than one reason making a combined total of 18 reasons for refusal.

The most common reason for refusal was Article 13(1) a) acquiescence (28% of reasons compared with 5% globally) followed by Article 13(1) b) (22% compared with 27% globally) and a finding that the child was not habitually resident in the requesting State (22% compared with 15%).

Proportionately more refusals were based on a finding that the applicant had no rights of custody (11% compared with 8% globally) and exactly the same proportions were based on the child's objections (17%). No applications received by Australia were refused based on: Article 12; Article 13(1) a) no rights of custody or consent; or Article 20.

**The Reasons for Refusal in Applications Received  
by Australia and Globally in 2008**

|   | Australia |             | Global      |
|---|-----------|-------------|-------------|
|   | Frequency | Percentage  |             |
| Child Not Habitually Resident in Requesting State | 4         | 22%         | 15%         |
| Applicant had no rights of custody                | 2         | 11%         | 8%          |
| Art 12  | 0         | 0%          | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 0         | 0%          | 7%          |
| Art 13(1) a) Consent                              | 0         | 0%          | 5%          |
| Art 13(1) a) Acquiescence                         | 5         | 28%         | 5%          |
| Art 13(1) b)                                      | 4         | 22%         | 27%         |
| Child's Objections                                | 3         | 17%         | 17%         |
| Art 20  | 0         | 0%          | 1%          |
| Other   | 0         | 0%          | 2%          |
| <b>Total</b>                                      | <b>18</b> | <b>100%</b> | <b>100%</b> |

In 2003, 7 applications were judicially refused and 8 in 1999. In all 3 surveys Article 13(1) a) acquiescence has been a common reason for refusal (43%, 3 applications, in 2003 and 20%, 2 applications, in 1999).

In 2003, the remaining 4 refusals were based on: the child not being habitually resident in the requesting State; Article 12; and 2 refusals based on Article 13(1) b).

In 1999, 3 applications were refused because the child was not habitually resident in the requesting State, 2 based on Article 12, 2 based on Article 13(1) a) consent and 1 based on Article 13(1) b).

## **12. The reasons for judicial refusal and the taking person**

Of the 16 applications refused, 8 involved taking mothers, 6 involved taking fathers and 2 involved grandparents.

Where the taking person was the mother, the most common reason for refusal was a finding that the child was not habitually resident in the requesting State (33%, 3 applications) followed by Article 13(1) b) (22%, 2 applications) and the applicant having no rights of custody (22%, 2 applications). Where the taking person was the father the most common reason for refusal was based on Article 13(1) a) acquiescence (50%, 4 applications) followed by the child's objections (25%, 2 applications).

In 2003 all refused applications involved taking mothers and in 1999 50% were male and 50% female.

## **13. Timing**

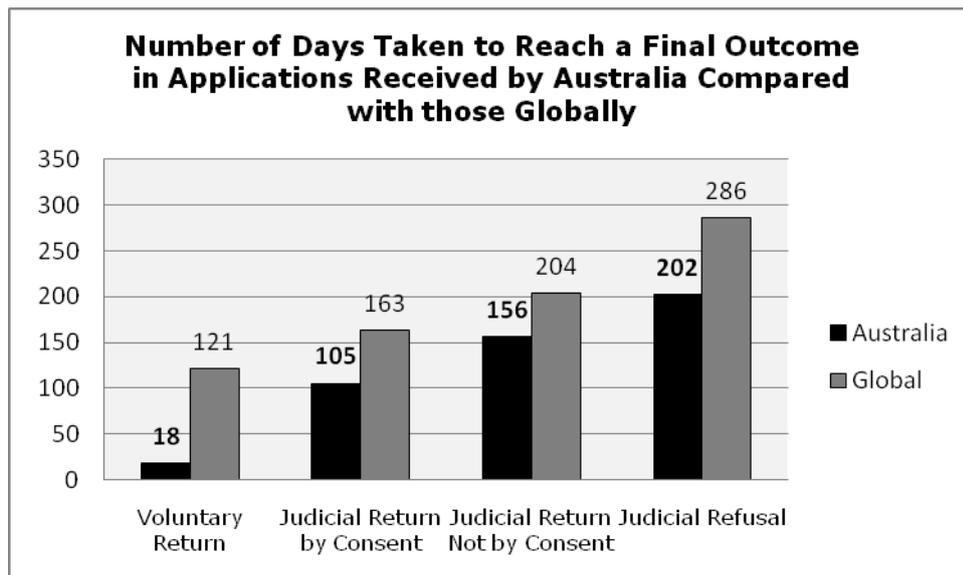
Overall, the average time taken to reach a final settlement in the return applications received by Australia was 140 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, voluntary returns were generally resolved particularly quickly, in an average on 18 days, whereas judicial returns without consent took 202 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Australia.

### The Number of Days Taken to Reach an Outcome

|                 | <b>Voluntary Return</b> | <b>Judicial Return by Consent Order</b> | <b>Judicial Return Not by Consent</b> | <b>Judicial Refusal</b> |
|-----------------|-------------------------|---|---------------------------------------|-------------------------|
| Mean            | 18                      | 105                                     | 156                                   | 202                     |
| Median          | 13                      | 87                                      | 120                                   | 161                     |
| Minimum         | 1                       | 33                                      | 44                                    | 53                      |
| Maximum         | 57                      | 300                                     | 546                                   | 518                     |
| Number of Cases | 10                      | 17                                      | 11                                    | 16                      |

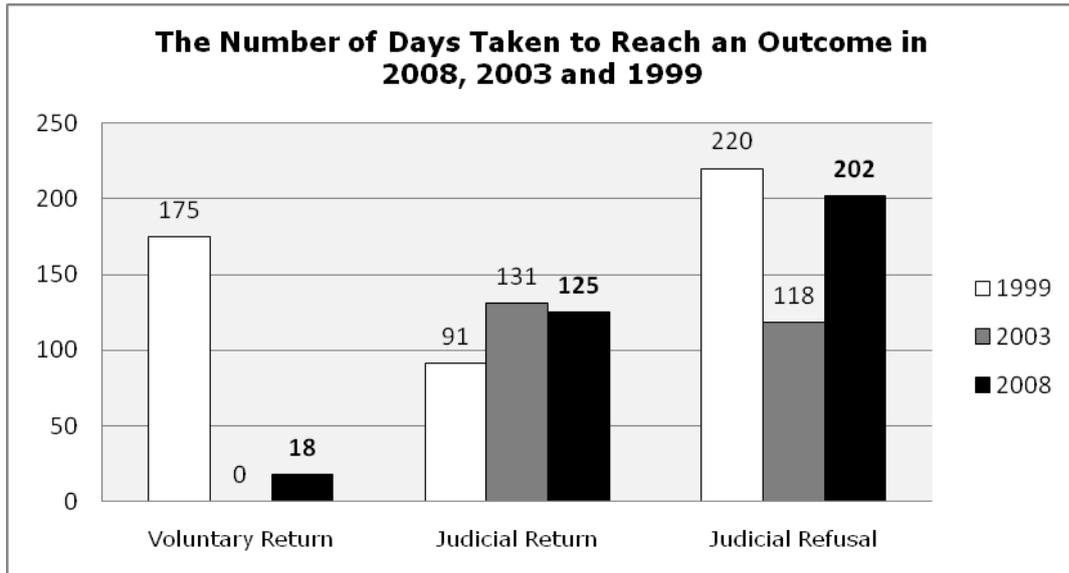
The table above and graph below show that, in Australia, applications were resolved more quickly with voluntary returns taking only 18 days on average compared with 121 days globally, judicial returns by consent order being reached in 105 days compared with 163 days globally and judicial returns without consent in 156 days compared with 204 days globally. Overall, a judicial return took 125 days to conclude in Australia compared with 166 days globally<sup>3</sup>. Judicial refusals took an average of 202 days to conclude in Australia compared with 286 globally.



Additionally, 3 applications ended in an order for access. One took 88 days to conclude, one 92 days and one 495 days. Compared with an average of 154 days globally. In 2003 it took 166 days to conclude an access order in Australia.

The graph below compares the timings of applications received by Australia in 2008 with those in 2003 and 1999. Information regarding the timing of voluntary returns was unavailable in 2003. In 2008 voluntary returns were resolved significantly faster than in 1999. Judicial returns were resolved more quickly than in 2003 but took longer than in 1999. Judicial refusals took longer in 2008 than in 2003 but were resolved more quickly than in 1999.

<sup>3</sup> This figure includes the 5% of applications globally which ended with a judicial return but where the consent of the parties was not known.



### Time taken to send application to court

In 2008 the length of time that the Central Authority held the application was recorded for the first time. In Australia it took an average of 35 days before the application was sent to court and the court then took an average 128 days to conclude it<sup>4</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### Appeals

In 2008, 44 return applications went to court and only 1 of these decisions (2%) was appealed, significantly lower than the global average of 28%. The average time taken to reach a first instance decision in Australia was 137 days compared with 207 days to finalise the case that was appealed. The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

<sup>4</sup> These figures are based on 53 applications where the date sent to court was recorded and 49 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

#### IV. Incoming access applications

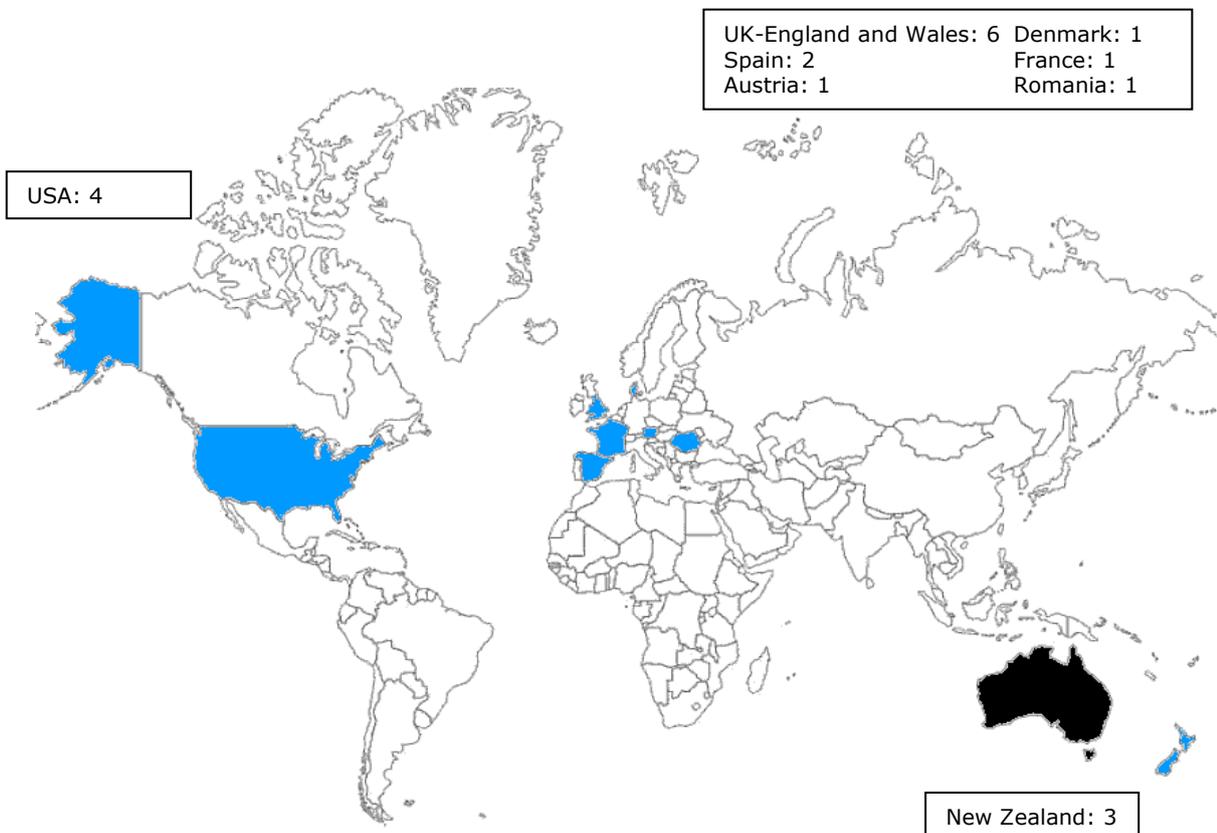
##### 1. The Contracting States which made the application

The most access applications received from a single State came from the UK – England and Wales, 6 applications, followed by New Zealand, 3 applications, and Spain, 2 applications.

##### The Contracting States which made Access Applications to Australia in 2008 Compared with 2003 and 1999

|                        | 1999      | 2003      | 2008           |
|------------------------|-----------|-----------|----------------|
| UK - England and Wales | 1 (7%)    | 4 (21%)   | <b>6 (38%)</b> |
| New Zealand            | 3 (21%)   | 8 (42%)   | <b>3 (19%)</b> |
| Spain                  | 0 (0%)    | 2 (11%)   | <b>2 (13%)</b> |
| Austria                | 0 (0%)    | 0 (0%)    | <b>1 (6%)</b>  |
| Denmark                | 0 (0%)    | 0 (0%)    | <b>1 (6%)</b>  |
| France                 | 1 (7%)    | 1 (5%)    | <b>1 (6%)</b>  |
| Romania                | 0 (0%)    | 0 (0%)    | <b>1 (6%)</b>  |
| USA                    | 4 (29%)   | 1 (5%)    | <b>1 (6%)</b>  |
| Other States           | 5 (36%)   | 3 (16%)   | <b>0 (0%)</b>  |
| <b>Total</b>           | <b>14</b> | <b>19</b> | <b>16</b>      |

##### Map of Contracting States which Made Access Applications to Australia in 2008



Australia received applications from 8 Contracting States, compared with 8 in 2003 and 9 in 1999. New Zealand made up a large proportion of applications in each survey (19%, 3 applications, in 2008; 42%, 8 applications, in 2003; and 21%, 3 applications, in 1999). The number of applications from UK – England and Wales has increased from 1 (7%) in 1999 to 4 (21%) in 2003 and 6 (38%) in 2008.

## **2. The Respondent**

Of the 16 access applications received by Australia, in 75% (12 applications) the respondent was the mother, lower than the global average of 79%. The remaining 25% (4 applications) were involved respondent fathers. This can also be compared with the past averages of Australia with 74% of respondents being mothers in 2003 and 79% in 1999<sup>5</sup>.

## **3. The status of the respondent as carer in relation to the child**

The Australian Central Authority was unable to provide information regarding the status as carer of the respondent.

## **4. The nationality of the respondent**

Information regarding the nationality of the respondent was available in 9 applications. In 2 of these the respondent was an Australian national (22%). Globally, 50% of respondents in access cases had the same nationality as the requested State. This can be compared with 50% of respondents being Australian nationals in 2003 and 7% in 1999.

## **5. The relationship and nationality of the respondent combined**

Out of the 9 applications where information on the nationality of the respondent was available, 7 respondents were mothers and 2 were fathers. 29% of respondent mothers were Australian nationals (2 out of 7 applications) and in both of the applications where the nationality of the respondent father was known, the respondent was not an Australian national. This can be compared with 2003 where proportionately more respondent fathers were Australian (60%, 3 out of 5 applications) compared with mothers (46%, 6 out of 13 applications) and 1999 where none of the respondent males (out of 3 applications) and 9% of females (1 out of 11 applications) were Australian.

## **6. The Children**

In 2008, 22 children were involved in the 16 access applications to Australia making an average of 1.38 children per application, compared with the global average of 1.32 children. This can also be compared with an average of 1.26 children per application in applications received by Australia in 2003 and 1.29 children in 1999.

In 2008, 63% of applications involved only one child, compared with the global average of 72%. In both 2003 and 1999, 79% of applications involved only one child.

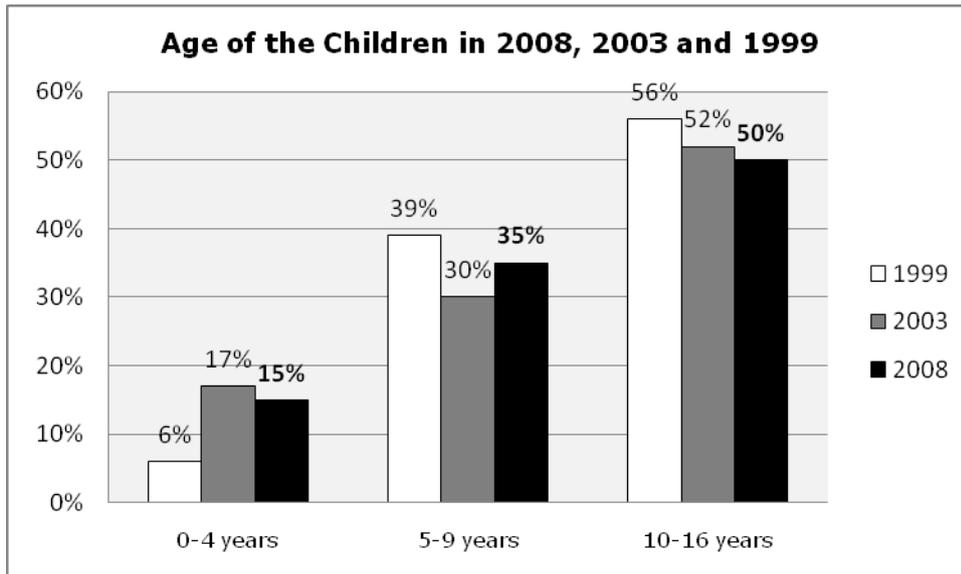
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<sup>5</sup> The relationship between the respondent and the child was not recorded in the 1999 survey but this figure has been estimated from the gender of the respondent.

## 7. The age of the children<sup>6</sup>

The average child involved in an access application to Australia was 8.9 years compared with the global average of 7.8 years.

In 2003 the average child involved was 9.0 years. In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. The proportion of children aged between 10-16 years has fallen in the past 3 surveys. Proportionately more children were aged between 0-4 years in 2008 than in 1999, but fewer than in 2003, and proportionately more children were 5-9 years than in 2003 but fewer than in 1999.



## 8. The gender of the children<sup>7</sup>

In 2008, 35% of children involved in access applications received by Australia were female and 65% male. Globally, 49% of children involved in access applications were female and 51% male.

In 2003, 29% of children involved in access applications made to Australia were female and 71% male and, in 1999, 56% female and 44% male.

## 9. The overall outcomes

The table and graph below show the outcomes of the 16 access applications received by Australia in 2008 compared with the global averages.

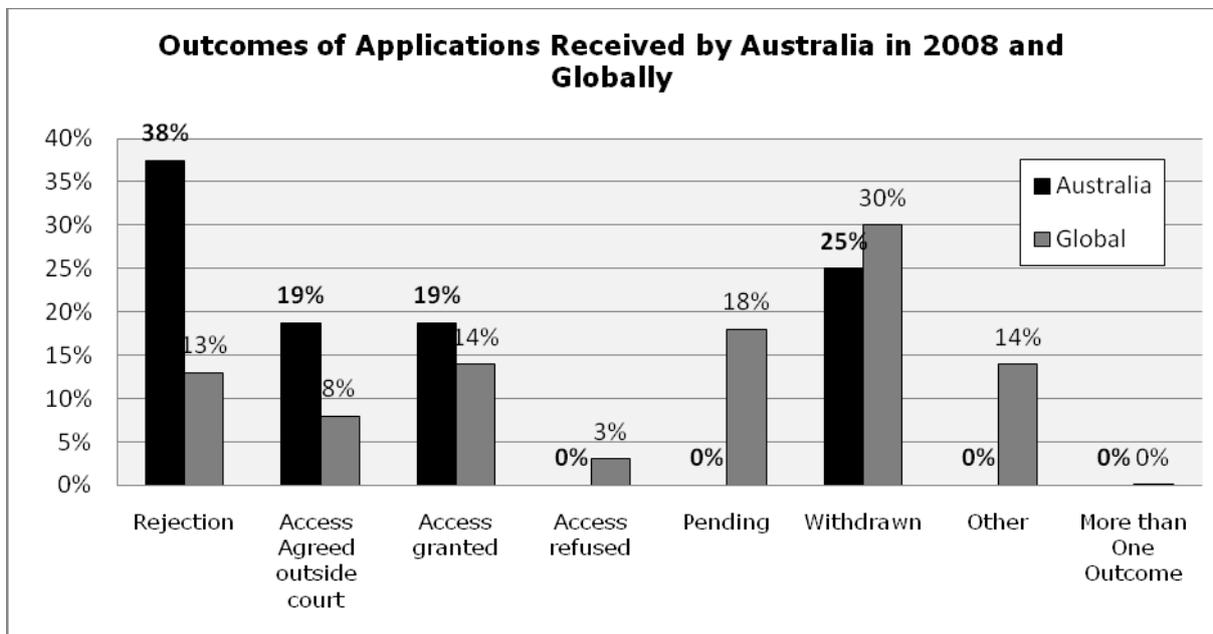
The overall rate at which access was agreed or ordered was 38% in Australia compared with 22% globally. The rate of rejection was higher than the global average (38% compared with 13% globally) and the proportion of applications withdrawn was lower (25% compared with 30%). No applications were refused or pending.

<sup>6</sup> Information regarding the age of the children was unavailable for 2 children (2 applications).

<sup>7</sup> Information regarding the gender of the children was unavailable for 2 children (2 applications).

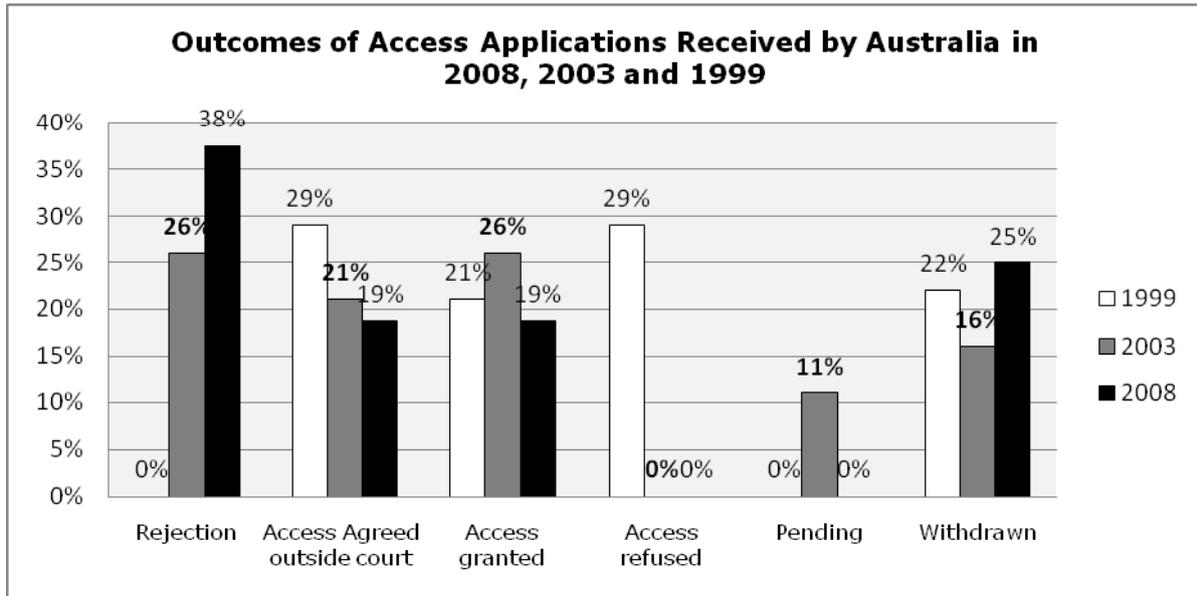
### Outcomes of Access Applications Received by Australia in 2008

|   | Australia | Global |
|---|-----------|--------|
| Rejection                                 | 6 (38%)   | 13%    |
| Access Agreed outside court               | 3 (19%)   | 8%     |
| Access granted                            | 3 (19%)   | 14%    |
| Access refused                            | 0 (0%)    | 3%     |
| Pending                                   | 0 (0%)    | 18%    |
| Withdrawn                                 | 4 (25%)   | 30%    |
| Other                                     | 0 (0%)    | 14%    |
| Different Outcomes for Different Children | 0 (0%)    | 1%     |
| More than One Outcome                     | 0 (0%)    | <1%    |



The graph below shows how the outcomes in 2008 compare with those of previous surveys. The proportion of applications in which access was agreed or granted was lower in 2008 (38%, 6 out of 16 applications) than 47% in 2003 (9 out of 19 applications) and 50% in 1999 (7 out of 14 applications).

A large proportion of applications were rejected in 2008 (38%, 6 applications) compared with 2003 (26%, 5 applications) and 1999 where no applications were rejected. Proportionately more applications were withdrawn in 2008 (25%, 4 applications) compared with 2003 (16%, 3 applications) and 1999 (22%, 3 applications). In 2008 no applications were refused (compared with none in 2003 and 29% in 1999) and none were pending (compared with 11% in 2003 and none in 1999).



### 11. The reasons for rejection by the Central Authority

In 2008, 6 applications were rejected by the Australian Central Authority. 1 because the child was over 16, 1 because the child could not be located and 4 for 'other' reasons (2 because the applicants' rights had not been breached, 1 because the Central Authority lost contact with the applicant and 1 because Australian proceedings were already taking place).

In 2003, 5 applications were rejected: 4 because the applicant had no rights of custody and 1 because the applicant had no rights of access. In 1999 no applications were rejected.

### 12. The reasons for judicial refusal

No applications were judicially refused in 2008 or 2003. In 1999, 1 access application was refused but no information is available on the reasons for this refusal.

### 13. Timing

In 2008, dates were available for 6 of the access applications received by Australia. 3 of these applications ended in a voluntary agreement for access and took an average of 259 days to conclude. In the remaining 3 applications access was judicially granted and took an average of 443 days. All applications ending with a judicial decision took over 6 months and 2 out of the 3 applications ending in a voluntary agreement took over 6 months. The remaining application ending in an access agreement was resolved on the day that the application was made.

This can be compared with the global averages of 309 days for a voluntary agreement and 357 days for a judicial order for access.

In 2003 it took an average of 231 days for an access agreement in Australia and 366 days to conclude an order for access. In 1999, 25% of voluntary settlements and 57% of judicial decisions took over 6 months.

## BELGIUM

### I. Overall Summary

In 2008 Belgium received 40 return and 7 access applications. This amounted to a 60% increase in return applications and a 125% increase in access applications from 2003. In total, the Belgian Central Authority dealt with 24% more applications in 2008 compared with their incoming and outgoing applications in 2003.

48% of the 40 incoming return applications ended with the return of the child. This is higher than the global return rate of 46% but the same as the Belgian return rate in 2003 and a decrease on the 88% returned in 1999. Overall, compared with the global figures, Belgium judicially refused more applications and more were withdrawn but no applications were rejected or pending at the cut off date of 30<sup>th</sup> June 2010.

The applications received by Belgium took longer to conclude at an average of 223 days compared with 188 days, globally.

With regard to access applications, the rate at which access was agreed or ordered was 28% compared with 22% globally and a high proportion of applications were still pending (28% compared with 18% globally).

Where the Brussels II a Regulation applied to applications received by Belgium there was a higher return rate than in applications where the Brussels II a Regulation did not apply (50% compared with 33% if the application came from a non-Brussels II a State) and a lower rate of refusal (15% compared with 33%). If the Brussels II a Regulation applied then there was a higher withdrawal rate (26% compared with 17% if the requesting State was not a Brussels II a State).

Overall, applications received by Belgium from fellow Brussels II a States were resolved faster taking an average of 195 days from the date the application arrived at the Central Authority to the date a conclusion was reached. This can be compared with 360 days for an application from a non-Brussels II a State. Applications from Brussels II a States ending with a judicial refusal took longer at 321 days compared with 300 days if the requesting State was not a Brussels II a State but judicial returns were resolved quicker in an average of 171 days compared with 489 days if the requesting State was not a Brussels II a State.

### II. The number of applications received and sent in 2008

|                 | 1999 | 2003 | <b>2008</b> |
|-----------------|------|------|-------------|
| Incoming Return | 9    | 25   | <b>40</b>   |
| Incoming Access | 0    | 2    | <b>7</b>    |
| Outgoing Return | 6    | 44   | <b>43</b>   |
| Outgoing Access | 0    | 9    | <b>9</b>    |

In 2008 the Belgian Central Authority received 40 return applications and 7 access applications, making a total of 47 incoming applications. This is a 74% increase on the 27 incoming applications dealt with in 2003 and a 422% increase on the 9 applications received in 1999 although it must be noted that the Convention only came into force in Belgium in May 1999.

The ratio of return to access in 2008 was 85% to 15%, respectively. This can be compared with 93% to 7% in 2003 and 1999 where all 9 applications received were for return.

In addition, the Central Authority made 52 outgoing applications made up of 43 return and 9 access applications. This is a 2% decrease on the 53 outgoing cases in 2003 and a significant increase on the 6 in 1999.

In total, the Central Authority dealt with 99 incoming and outgoing applications. A 24% increase from 80 applications handled in 2003 and six times as many applications as were handled in 1999.

**III. Incoming Return Applications**

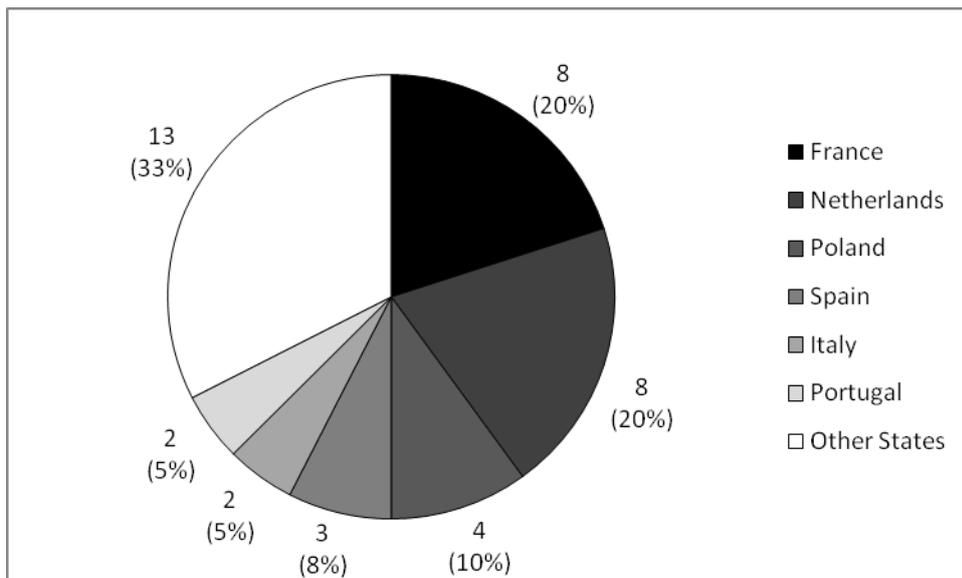
**1. The contracting States which made the application**

In 2008, Belgium received return applications from 19 different Central Authorities – compared with 14 requesting States in 2003 and 7 in 1999.

**The Contracting States which made the most applications to Belgium**

|              | <b>1999</b> | <b>2003</b> | <b>2008</b>     |
|--------------|-------------|-------------|-----------------|
| France       | 2 (22%)     | 3 (12%)     | <b>8 (20%)</b>  |
| Netherlands  | 1 (11%)     | 4 (16%)     | <b>8 (20%)</b>  |
| Poland       | 0 (0%)      | 0 (0%)      | <b>4 (10%)</b>  |
| Spain        | 0 (0%)      | 1 (4%)      | <b>3 (8%)</b>   |
| Italy        | 1 (11%)     | 1 (4%)      | <b>2 (5%)</b>   |
| Portugal     | 0 (0%)      | 2 (8%)      | <b>2 (5%)</b>   |
| Other States | 5 (56%)     | 11 (44%)    | <b>13 (33%)</b> |
| <b>Total</b> | <b>9</b>    | <b>25</b>   | <b>40</b>       |

**The Requesting States for Return Applications Received by Belgium in 2008**



In 2008, 85% of applications to Belgium came from what would now be EU States. In 2003, 68% of applications came from EU States and in 78% in 1999.

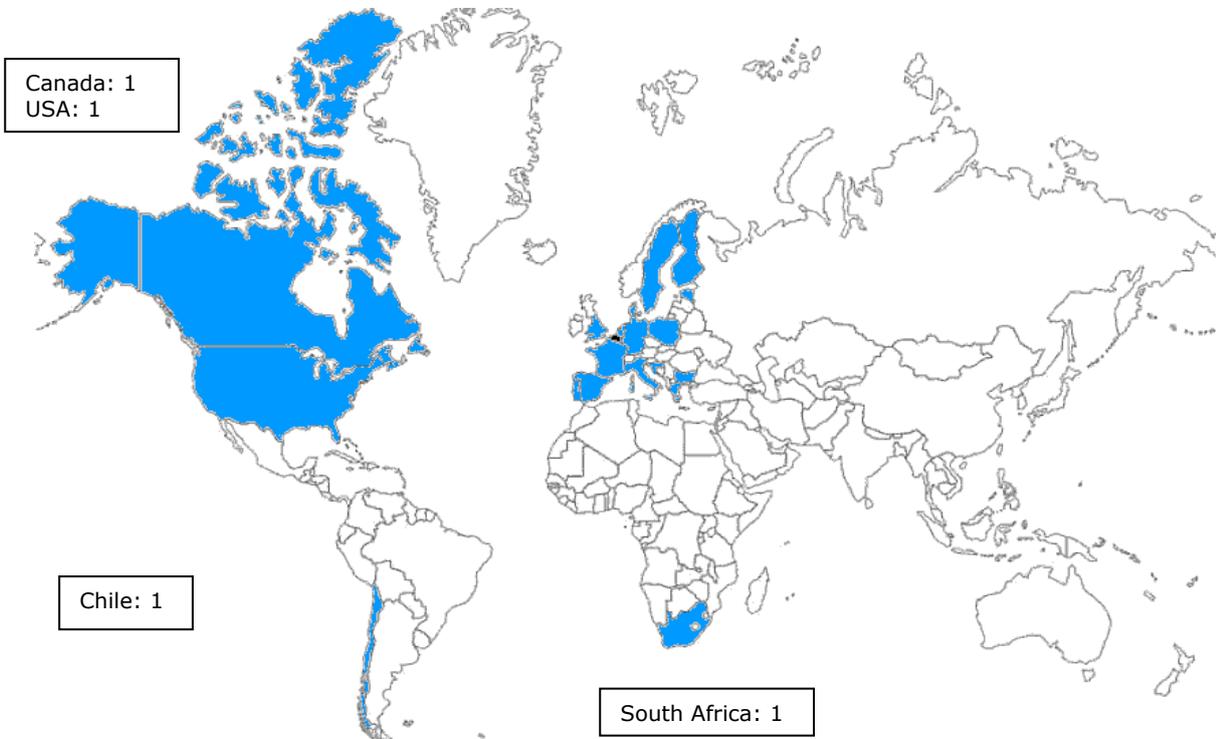
In 2008 the highest number of applications from a single State came from France and the Netherlands (8 applications, 20%). In both past surveys France made up a high proportion of applications to Belgium and was the State making the third highest proportion of applications in 2003 and joint highest in 1999. The 8 applications received by France in 2008 is an increase in the number of applications from 3 in 2003 (12%) and 2 in 1999 (22%).

In 2003 the Netherlands made the most number of applications to Belgium alongside the Central Authority of England and Wales (4 applications each). The proportion of applications from the Netherlands has increased in each survey from 11% (1 application) in 1999, to 16% (4 applications) in 2003 and 20% (8 applications) in 2008.

In 2008 England and Wales made only one return application to Belgium compared with 4 in 2003 and 2 in 1999.

### Map of Contracting States which made return applications to Belgium in 2008

|                |             |                         |
|----------------|-------------|-------------------------|
| France: 8      | Portugal: 2 | Finland: 1              |
| Netherlands: 8 | Bulgaria: 1 | Germany: 1              |
| Poland: 4      | Croatia: 1  | Greece: 1               |
| Spain: 3       | Denmark: 1  | Sweden: 1               |
| Italy: 2       | Estonia: 1  | UK-England and Wales: 1 |



## 2. The Taking Person

In 2008, the large majority, 70%, of the taking persons were mothers. The remaining 30% were fathers. This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

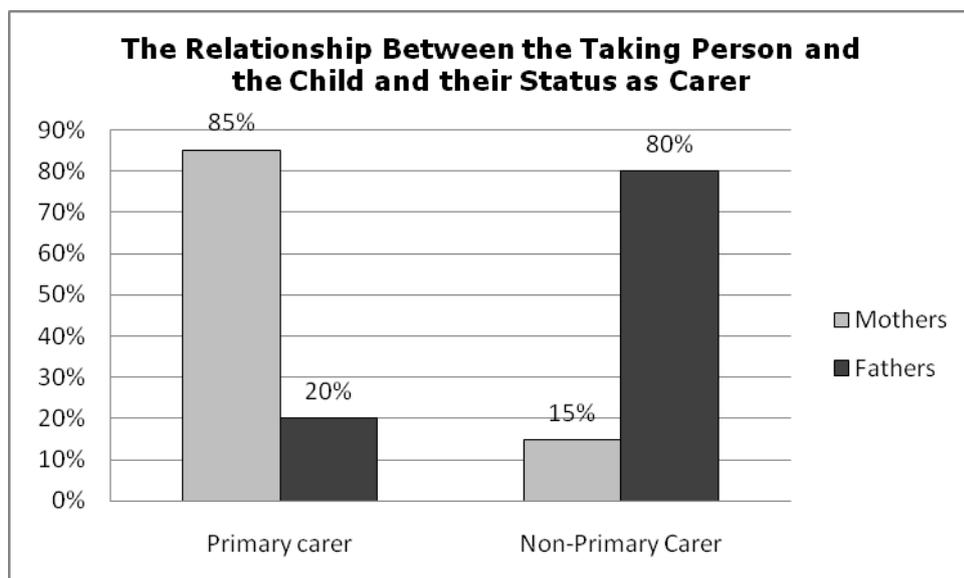
In past surveys taking persons coming to Belgium have been mostly mothers, making up 72% of taking persons in 2003 and 44% in 1999<sup>8</sup>.

## 3. The status of the taking person as carer in relation to the child

Information on the status as carer of the taking person was available for 37 applications. In 25 of these applications the taking person was the primary or joint primary carer of the child and in 12 applications the taking person was not a primary carer.

Out of the 37 applications, 27 of the taking persons were the mother of the child. As shown on the graph below, in 23 of these applications the mother was the primary or joint primary carer, this can be broken down into 15 applications where the taking mother was the sole primary carer and 8 applications where the mother was a joint primary carer.

The status as carer of 10 taking fathers was also recorded. One of these fathers was the sole primary carer of the child, 1 was a joint primary carer and 8 were not a primary carer.



Globally, 72% of taking persons were the primary or joint primary carer of the child. This rose to 88% where the taking person was the mother and 36% where it was the father.

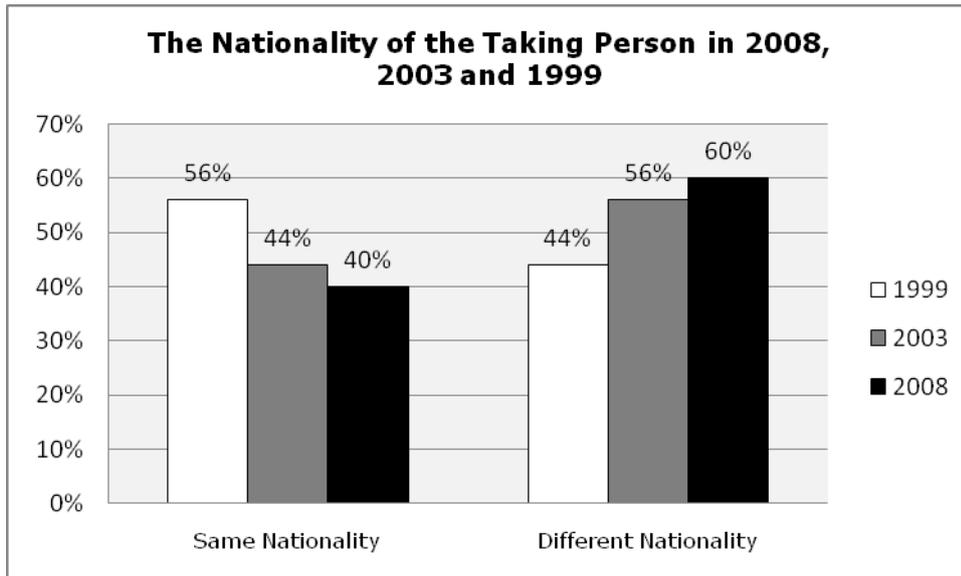
<sup>8</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication. In 1999, 64% of taking persons in applications received by Belgium were female and so probably mothers.

#### 4. The nationality of the taking person

In 2008, 40% of applications received involved a taking person who was a Belgian citizen (including 2 taking persons with dual nationality). This is a low proportion compared with the global average (51%) of taking persons who went to a state of which they were a national.

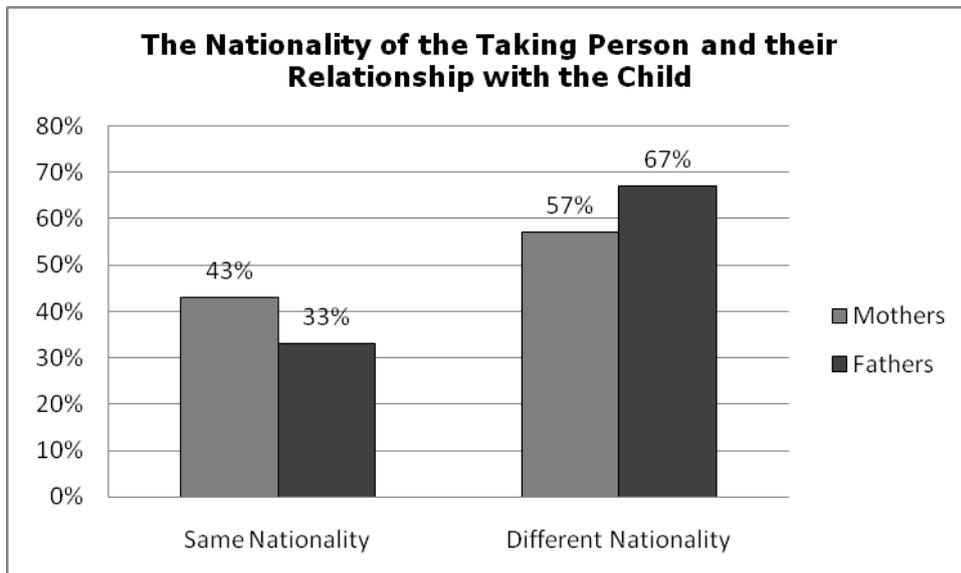
In 2003, 44% of taking persons were Belgian citizens and in 1999, 56%. These proportions can be compared with the global averages of 55% in 2003 and 52% in 1999.

The chart below compares the 2008 findings on nationality with the 2003 and 1999 surveys. It shows a clear trend of proportionately less Belgian nationals taking children to Belgium.



#### 5. The relationship and nationality of the taking person/respondent combined

The graph below shows that, in 2008, a higher proportion of mothers taking children to Belgium were found to be Belgian citizens than fathers.



43% of mothers were Belgian nationals compared with 33% of fathers. Globally, 53% of taking mothers were found to have the same nationality as the requested state and 48% of fathers.

In 2003, 39% of taking mothers and 47% of taking fathers were Belgian citizens. In 1999, 75% of female taking persons had Belgian citizenship and 40% of males.

## 6. The Children

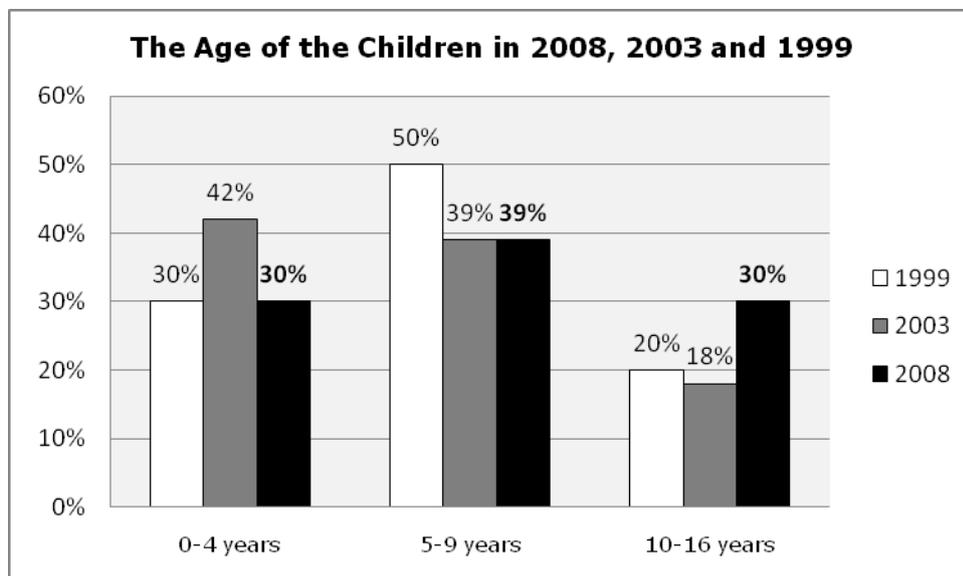
In 2008, 56 children were involved in the 40 applications received by Belgium. This makes an average of 1.40 children per application compared with the global average of 1.38 children. In 2003 an average of 1.56 children were involved in each application and 1.33 children in 1999.

68% of applications received were for the return of a single child, compared with the global average of 69%. This is an increase from 56% in 2003 and 63% in 1999.

## 7. The age of the children

The average child involved in a return application to Belgium was 7.3 years compared with the global average of 6.4 years.

In 2003 the average age was 6 years. In the 1999 survey this level of detail was not recorded and so to compare the findings in all 3 surveys the data has been reorganised into age groups. The graph below shows that fewer children fell into the 5-9 years age group and more were between 10-16 years.



## 8. The gender of the children

In 2008, 54% of the children involved were female and 46% male. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003, 47% of children were female and 53% male and in 1999, 40% of children were female and 60% male.

## 9. The overall outcomes

The table below shows all the outcomes of return applications received by Belgium in 2008 compared with the global findings.

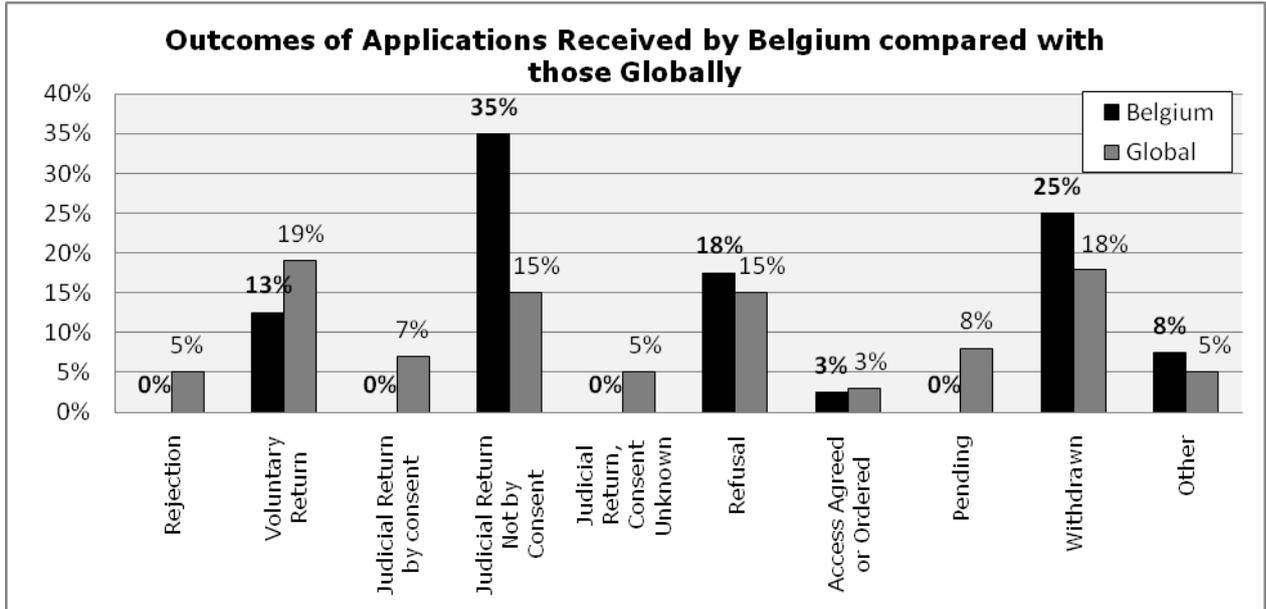
### The Outcomes of Return Applications in 2008

|   | <b>Belgium</b> | <b>Global</b> |
|---|----------------|---------------|
| Rejection                                 | 0 (0%)         | 5%            |
| Voluntary Return                          | 5 (13%)        | 19%           |
| Judicial Return by consent                | 0 (0%)         | 7%            |
| Judicial Return Not by Consent            | 14 (35%)       | 15%           |
| Judicial Return, Consent Unknown          | 0 (0%)         | 5%            |
| Refusal                                   | 7 (18%)        | 15%           |
| Access Agreed or Ordered                  | 1 (3%)         | 3%            |
| Pending                                   | 0 (0%)         | 8%            |
| Withdrawn                                 | 10 (25%)       | 18%           |
| Other                                     | 3 (8%)         | 5%            |
| Different Outcomes for Different Children | 0 (0%)         | 1%            |
| More than One Outcome                     | 0 (0%)         | <1%           |

The graph below shows more clearly how the findings in applications received by Belgium compare with those globally. The overall return rate of applications received by Belgium was 48% compared with the global return rate of 46%. This can be broken down into 13% voluntary returns, compared with 19% globally, and 35% judicial returns (all without consent), compared with 20% globally (15% judicial returns without consent and 5% judicial returns where the consent of the parties was unknown). One application ended with an order for access making up 3% of all outcomes – the same proportion as the global average.

Belgium judicially refused more applications on average (18%) compared with the global refusal rate of 15% and proportionately more applications were withdrawn (25% compared with 18% globally).

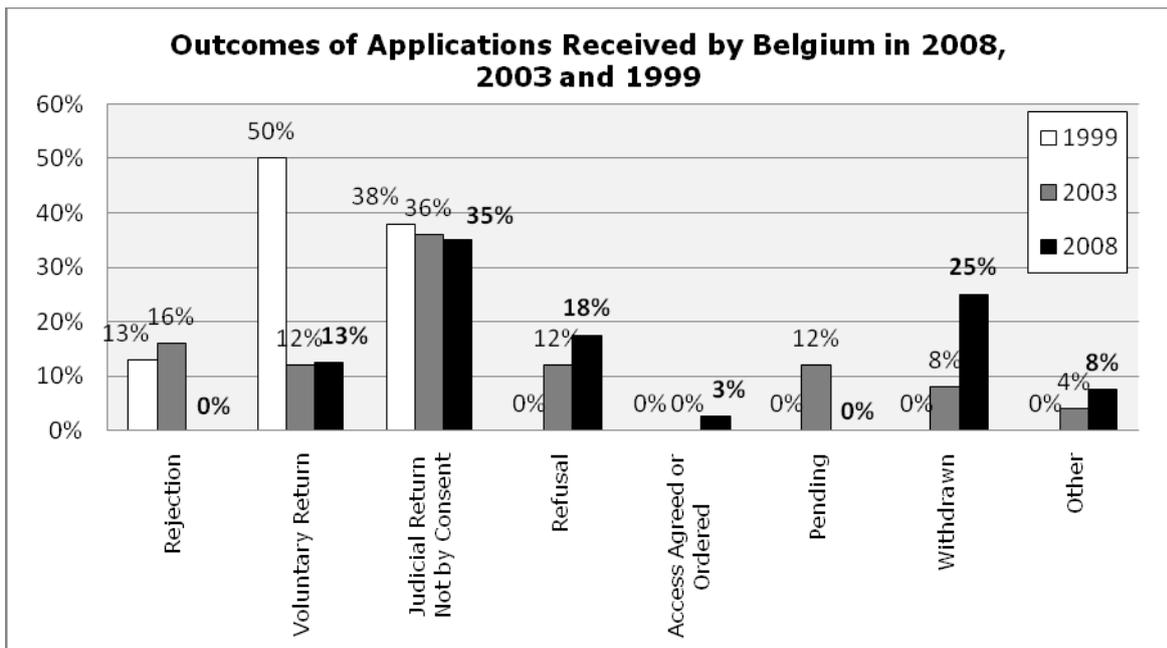
No applications were rejected by the Belgian Central Authority and none were pending at the cut off date of 30<sup>th</sup> June 2010.



The graph below compares the outcomes of applications received by Belgium in 2008 with those in 2003 and 1999. The return rate in 2008 was 48% (19 out of 40 applications), exactly the same proportion as in 2003 (12 out of 25 applications) but lower than the 88% recorded in 1999 (7 out of 9 applications).

In 2008 a greater proportion of applications were judicially refused (18%, 7 applications) compared with 2003 (12%, 3 applications) and 1999 (no applications). A higher proportion were also withdrawn (35%, 10 applications) compared with 8% in 2003 (2 applications) and none in 1999.

By contrast, a lower proportion of applications were rejected. In 2008 no application were rejected by the Belgian Central Authority compared with 4 applications in 2003 (16%) and 1 in 1999 (13%). No applications were recorded as pending for the 2008 or 1999 survey compared with 3 applications (12%) in 2003.



## 10. The reasons for rejection

No applications were rejected by the Belgian Central Authority in 2008 compared with the global average of 4%. In 2003 the Central Authority rejected 16% of the applications received (4 out of 25). Two applications were rejected because the convention was not in force at the time, one application was rejected because the child was in another State, another because the child could not be located. In 1999 only one application was rejected and this was because the child was in another State.

## 11. The reasons for judicial refusal

Out of the 23 cases that went to court, 7 (30%) were refused compared with 34% globally. In 2003, 25% of the applications that went to court were refused (3 out of 12 applications) and, in 1999, no applications were judicially refused.

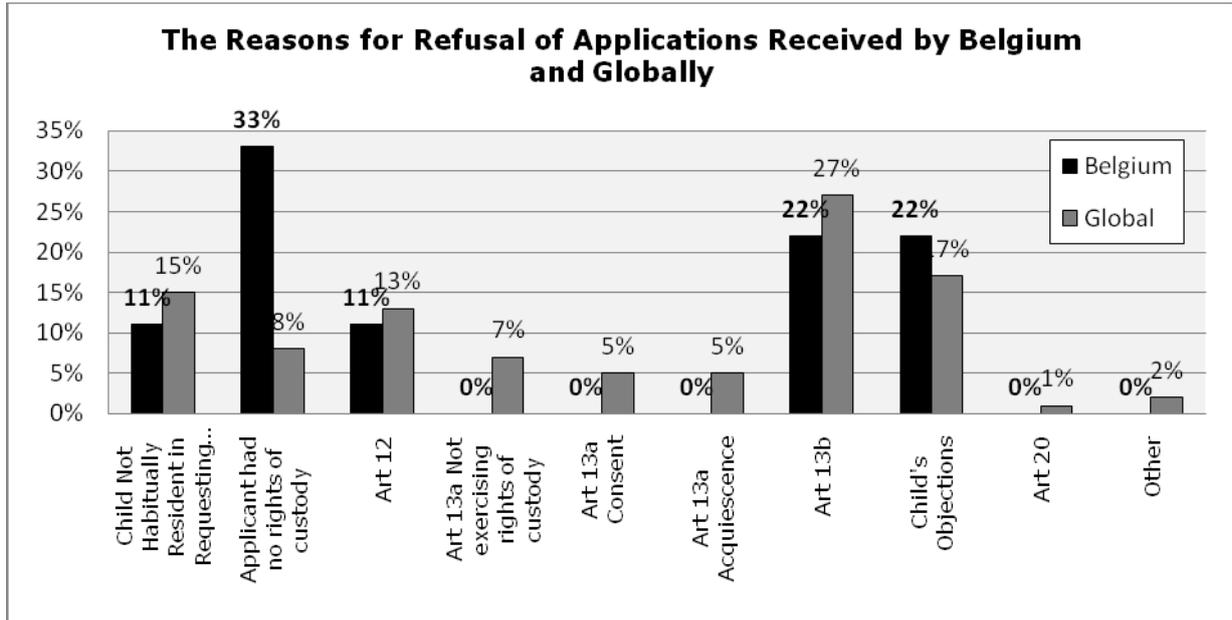
Of the 7 applications which were judicially refused, 2 were decided for more than one reason. In the table below all 9 reasons for refusal are compared with the reasons for refusal globally<sup>9</sup>.

**The Reasons for Refusal in Applications Received by Belgium and Globally in 2008**

|   | Belgium   |             | Global      |
|---|-----------|-------------|-------------|
|   | Frequency | Percentage  |             |
| Child Not Habitually Resident in Requesting State | 1         | 11%         | 15%         |
| Applicant had no rights of custody                | 3         | 33%         | 8%          |
| Art 12  | 1         | 11%         | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 0         | 0%          | 7%          |
| Art 13(1) a) Consent                              | 0         | 0%          | 5%          |
| Art 13(1) a) Acquiescence                         | 0         | 0%          | 5%          |
| Art 13(1) b)                                      | 2         | 22%         | 27%         |
| Child's Objections                                | 2         | 22%         | 17%         |
| Art 20  | 0         | 0%          | 1%          |
| Other   | 0         | 0%          | 2%          |
| <b>Total</b>                                      | <b>9</b>  | <b>100%</b> | <b>100%</b> |

The table above and the graph below show that proportionately more applications received by Belgium were refused based on a finding that the applicant had no rights of custody (33% compared with 8% globally) and the child's objections (22% compared with 17% globally). Proportionately fewer applications were refused under Article 13(1) b) (22% compared with 27% globally), because the child was not habitually resident in the requesting State (11% compared with 15% globally) or based on Article 12 (11% compared with 13% globally). No applications received by Belgium were judicially refused because the applicant was not exercising rights or custody, had consented or acquiesced or under Article 20.

<sup>9</sup> The global reasons for refusal include all the reasons given in applications refused for more than one reason.



In 2003 the reasons for refusal were only available in 2 out of the 3 applications refused. One application was refused based on Article 13(1) b) and one because the applicant had no rights of custody. In 1999 no applications were judicially refused.

## 12. The reasons for judicial refusal and the taking person

Of the 7 applications refused, 6 taking persons were mothers and 1 was a father. In the application where the taking person was the father the refusal was based on the child not being habitually resident in the requesting State. Where the taking person was the mother the most common reasons for refusal were Article 13(1) b), the child's objections and the child not being habitually resident in the requesting State (2 applications each)

## 13. Timings

The overall average time taken to reach a final settlement in the return applications received by Belgium was 223 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, voluntary returns were generally resolved more quickly, in an average on 124 days whereas judicial refusals took 315 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Belgium.

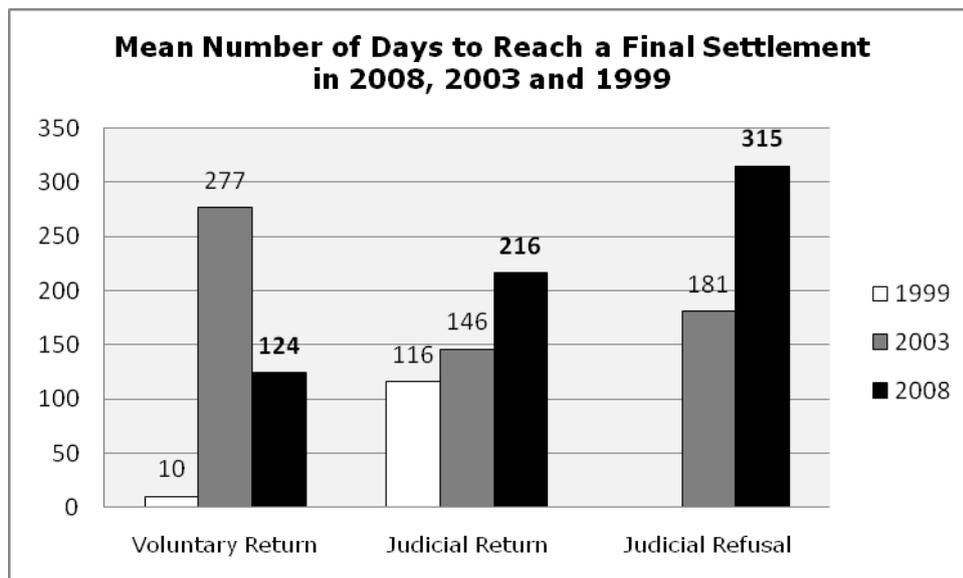
### The Number of Days Taken to Reach an Outcome

|                        | <b>Voluntary Return</b> | <b>Judicial Return</b> | <b>Judicial Refusal</b> |
|------------------------|-------------------------|------------------------|-------------------------|
| Mean                   | 124                     | 216                    | 315                     |
| Median                 | 144                     | 193                    | 304                     |
| Minimum                | 43                      | 21                     | 100                     |
| Maximum                | 167                     | 616                    | 544                     |
| <i>Number of Cases</i> | 4 <sup>10</sup>         | 14                     | 7                       |

<sup>10</sup> The timing for one voluntary return was unavailable.

In Belgium, voluntary returns were concluded in 124 days compared with the global average of 121 days. Judicial returns were resolved in an average of 216 days compared with 166 days globally and judicial refusals took 315 days to conclude in Belgium compared with 286 globally.

The graph below compares the timings of applications received by Belgium in 2008 with those in 2003 and 1999. Judicial returns took far longer in 2008 than in previous surveys with an average of 216 days to conclude compared with 146 days in 2003 and 116 in 1999. Judicial refusals took far longer in 2008 than in 2003 (315 days compared with 181 days in 2003) and voluntary returns were resolved more quickly in 124 days on average than 277 days in 2003 but more slowly than the 10 day average in 1999.



### Time taken to send application to court

In 2008 the length of time that the central authority held the application was recorded for the first time. In Belgium it took an average of 98 days before the application was sent to court and the court then took an average 141 days to conclude it<sup>11</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### Appeals

In 2008, 23 return applications went to court and 6 of these decisions (26%) were appealed, lower than the global average of 28%. The time taken to reach a final decision is obviously affected by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 188 days compared with 404 days to finalise a case that was appealed. The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

<sup>11</sup> These figures are based on 26 applications where the date sent to court was recorded and 23 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

#### IV. Incoming access applications

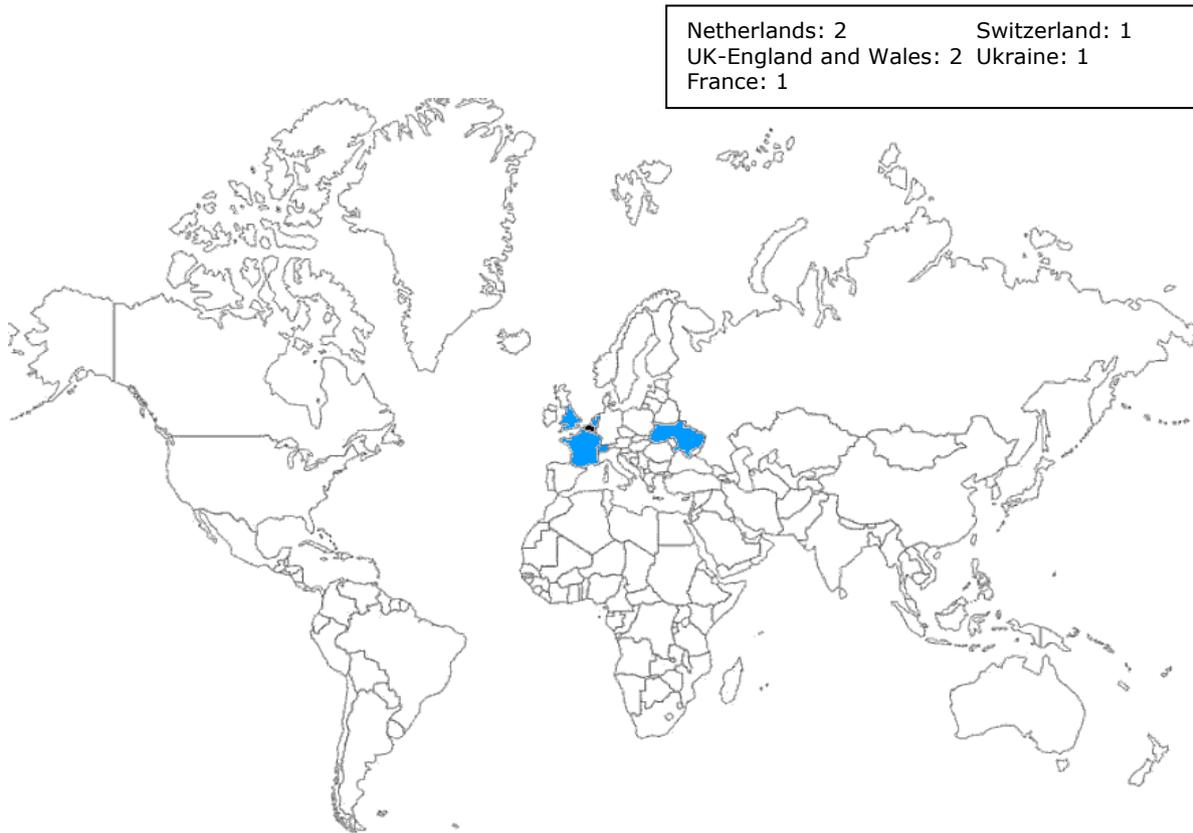
##### 1. The contracting States which made the application

In 2008 Belgium received 7 incoming access applications compared with 2 in 2003 and none in 1999. The most applications received from a single State in 2008 came from the Netherlands and England and Wales (2 applications each). In 2003 one application came from France and the other from Switzerland.

##### The Contracting States which made the Most Access Applications to Belgium in 2008 Compared with 2003 and 1999

|                      | 2003     | 2008     |
|----------------------|----------|----------|
| Netherlands          | 0 (0%)   | 2 (29%)  |
| UK-England and Wales | 0 (0%)   | 2 (29%)  |
| France               | 1 (50%)  | 1 (14%)  |
| Switzerland          | 1 (50%)  | 1 (14%)  |
| Ukraine              | 0 (0%)   | 1 (14%)  |
| <b>Total</b>         | <b>2</b> | <b>7</b> |

##### Map of Contracting States which Made Access Applications to Belgium in 2008



## **2. The Respondent**

Of the 7 access applications received by Belgium in 2008, in 6 (86%) the respondent was the mother which is higher than the global average of 79%. In the remaining application the respondent was the father of the child. In 2003 Belgium received two access applications with one respondent being the mother of the child and the other the step-mother.

## **3. The status of the respondent as carer in relation to the child**

In all of the applications received by Belgium the respondent was the sole primary carer of the child. Globally in 2008, of the 70 applications in which information on the status of the respondent as carer was available, all were primary carers of the child with 90% being the sole primary carer and 10% joint primary carers. In 2003 and 1999 Belgium did not provide information on the status of the taking person as carer of the child.

## **4. The nationality of the respondent**

Globally, 50% of respondents in access cases had the same nationality as the requested State. In Belgium, only 29% of respondents in access applications were Belgian nationals (including 1 respondent with dual nationality). This can be compared with 50% of respondents being Belgian nationals in 2003.

## **5. The relationship and nationality of the respondent combined**

33% of taking mothers were Belgian nationals whereas the one respondent who was a father was not a Belgian national. This can be compared with 2003 where the respondent recorded as the step-mother of the child was a Belgian national and the respondent mother was not.

## **6. The Children**

In 2008, 11 children were involved in the 7 access applications to Belgium making an average of 1.57 children per application compared with the global average of 1.3 children. In 2003 one child was involved in each of the two access applications.

In 2008, 4 out of 7 (57%) of applications involved only one child, compared with 71% globally.

## **7. The age of the children**

The average age of the children involved in access applications to Belgium was 6.6 years, compared with the global average of 7.8 years. In 2003 one of the two children was 4 years and the other 12 years.

## **8. The gender of the children**

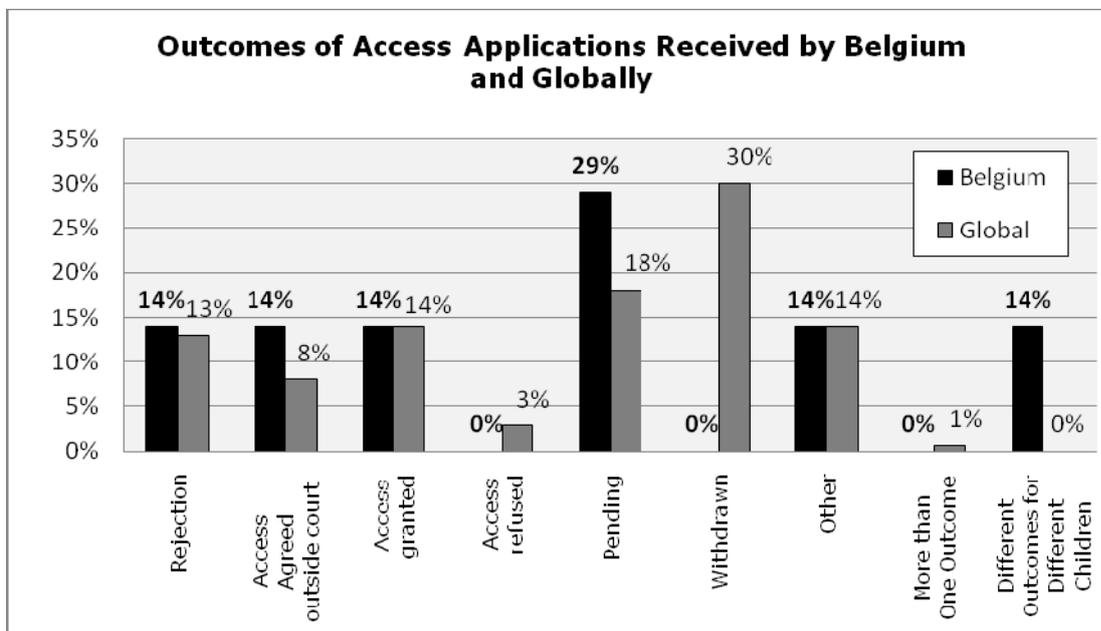
In 2008, 5 of children involved in access applications received by Belgium were female (45%) and 6 were male (55%). Globally, 49% of children involved in access applications were female and 51% male. In 2003, one of the children was male and one female.

## 9. The overall outcomes

The table and graph below show the outcomes of the 7 access applications received by Belgium in 2008 compared with the global averages. The overall rate at which access was agreed or ordered was 28% in Belgium with one additional application being recorded as having different outcomes for different children where one child turned 16 and the remaining two children were the subject of a judicial order for access granted under domestic law. This can be compared with a global access rate of 22%. The rate of rejection was slightly higher (14% compared with 13% globally) and no applications were withdrawn compared with 30% globally. Proportionately more applications were still pending at the cut off date of 13<sup>th</sup> June 2010 (29% compared with 18% globally).

### Outcomes of Access Applications Received by Belgium in 2008

|   | Belgium | Global |
|---|---------|--------|
| Rejection                                 | 1 (14%) | 13%    |
| Access Agreed outside court               | 1 (14%) | 8%     |
| Access granted                            | 1 (14%) | 14%    |
| Access refused                            | 0 (0%)  | 3%     |
| Pending                                   | 2 (29%) | 18%    |
| Withdrawn                                 | 0 (0%)  | 30%    |
| Other                                     | 1 (14%) | 14%    |
| More than One Outcome                     | 0 (0%)  | <1%    |
| Different Outcomes for Different Children | 1 (14%) | 0%     |



Only 2 access applications were received by Belgium in 2003, one application was rejected by the Central Authority and access was granted in the other pending court hearing. No access applications were received in 1999.

## **10. The reasons for rejection by the Central Authority**

In 2008, 1 access application was rejected by the Central Authority because the child could not be located. In 2003 one application was rejected for the same reason and in 1999 one application was rejected because the child was located in another State. Globally, 12% of applications were rejected because the child could not be located and 9% because the child was in another State.

## **11. The reasons for judicial refusal**

No applications were judicially refused in 2008, 2003 or 1999.

## **12. Timing**

In 2008, dates were available in 2 of the 7 access applications received. One application which concluded with access being judicially granted as a Hague application, took 469 days to conclude. In the other, recorded as having different outcomes for different children, access was judicially granted under domestic law and took 411 days to conclude. This can be compared with the global average of 357 days for a judicial order for access. In 2003 the one application in which access was granted pending a court hearing, took 193 days to reach a final outcome. Belgium did not receive any access applications in 1999.

## **V. The Impact of the Revised Brussels II a Regulation**

### **1. Revised Brussels II a Regulation proportion**

The Brussels II a Regulation applies to 26 EU Member States (Brussels II a States) i.e. all such States except for Denmark. Brussels II a States who have responded to the questionnaire received a total of 988 return applications. 705 of these applications came from fellow Brussels II a States (71%) and the remaining 283 applications came from what will be termed non-Brussels II a States (29%). In 2003, 62% of all applications received by what would now be Brussels II a States were from what would now be fellow Brussels II a States.

Belgium received 40 return applications in 2008 and 34 of these came from Brussels IIa States (85%). This is a higher proportion than in 2003 where 68% came from what is now a Brussels IIa State and 77% in 1999<sup>12</sup>.

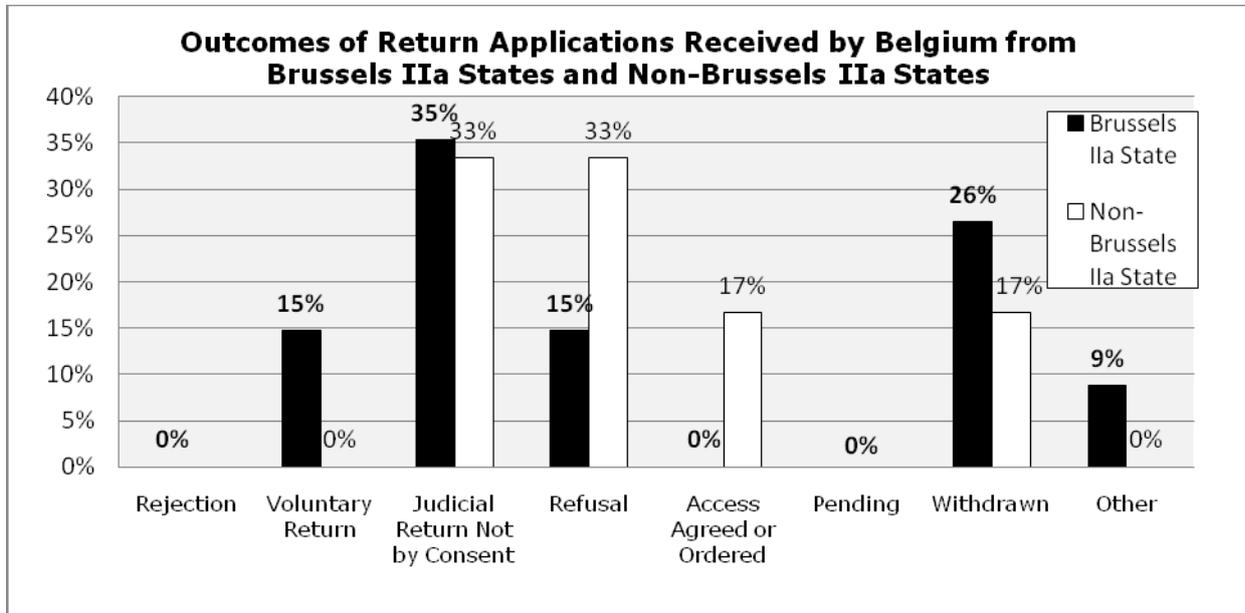
### **2. Revised Brussels II a Regulation and Outcomes**

The graph below shows the outcomes of applications from Brussels IIa States and non-Brussels IIa States that were received by Belgium in 2008. The overall return rate was higher where the application came from a Brussels IIa State (50%, 18 applications) than from a non-Brussels IIa State (33%, 2 applications). 15% of all applications from a

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<sup>12</sup> In 2008 the most applications received by Belgium from a single state were from Poland, making up 135 of all applications compared with only 1% in 2003 and in 1999. This goes some way to explaining the large increase in applications received from BRUSSELS IIA States. If Poland is excluded from all calculations then the proportion of applications received from BRUSSELS IIA States was 60% in 2008, 54% in 2003 and 47% in 1999.

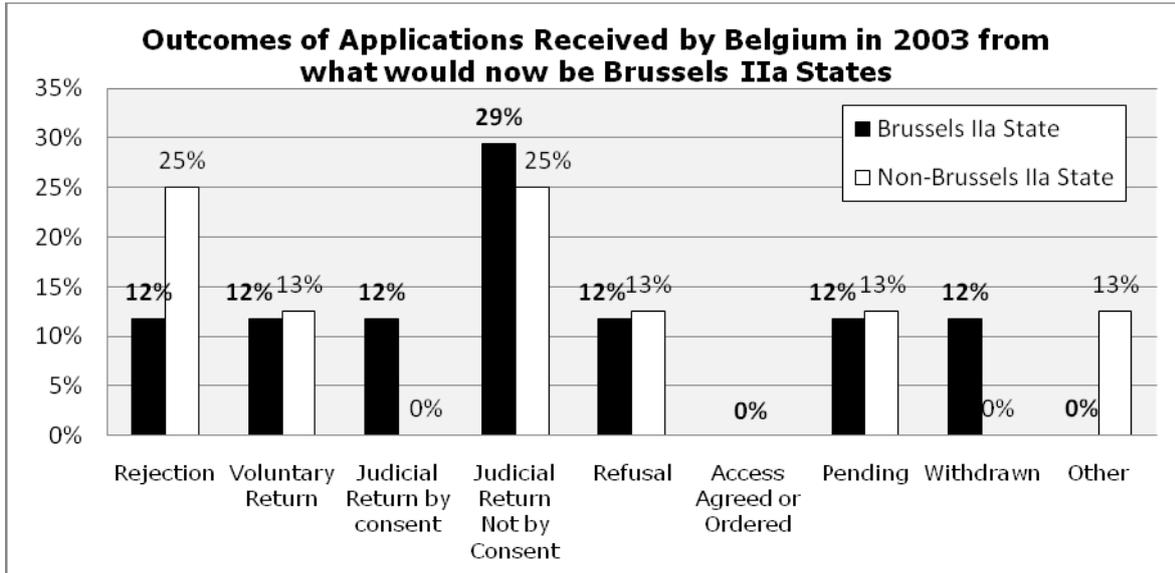
Brussels IIa State ended in a voluntary return (5 applications) whereas no applications from non-Brussels IIa States ended in this way. However, a further application from non-Brussels IIa States ended in an agreement or order for access. A lower proportion of Brussels IIa applications were rejected (15%, 5 applications) compared with non-Brussels IIa States (33%, 2 applications) and a higher proportion were withdrawn (26%, 9 applications) compared with 17% of non-Brussels IIa applications.



For the main part, these findings are reflective of the global picture where applications involved two Brussels IIa States with more returns and fewer refusals.

These findings can also be compared with the 2003 survey by looking at the outcomes of cases received by Belgium from States that would now be subject to the Brussels IIa Regulation. Any applications between what are now Brussels IIa States would not have been subject to the Revised Brussels II a Regulation in 2003 as it was not yet in force. But, by looking at the outcomes of what would now be Brussels IIa States and Non-Brussels IIa States, it is possible to ascertain whether the Brussels II a Regulation has had an impact, for example in increasing the return rate between Brussels IIa States, or whether there has always been a higher proportion of returns between them.

In line with the findings of the 2008 survey, in 2003 there was a higher overall return rate for applications that came from Brussels IIa States (53%) than from non-Brussels IIa States (38%). There were also proportionately fewer rejections by the Central Authority (12% compared with 25%) if the application came from what would now be a Brussels IIa State and fewer judicial refusals and pending cases (both 12% compared with 13%). There was a high withdrawal rate in applications coming from what are now Brussels IIa States (12% compared with none from non-Brussels IIa States).



### 3. Refusals and Reasons for Refusal

Out of the 7 applications which were judicially refused in 2008, 5 came from Brussels IIa States and 2 from non-Brussels II a States.

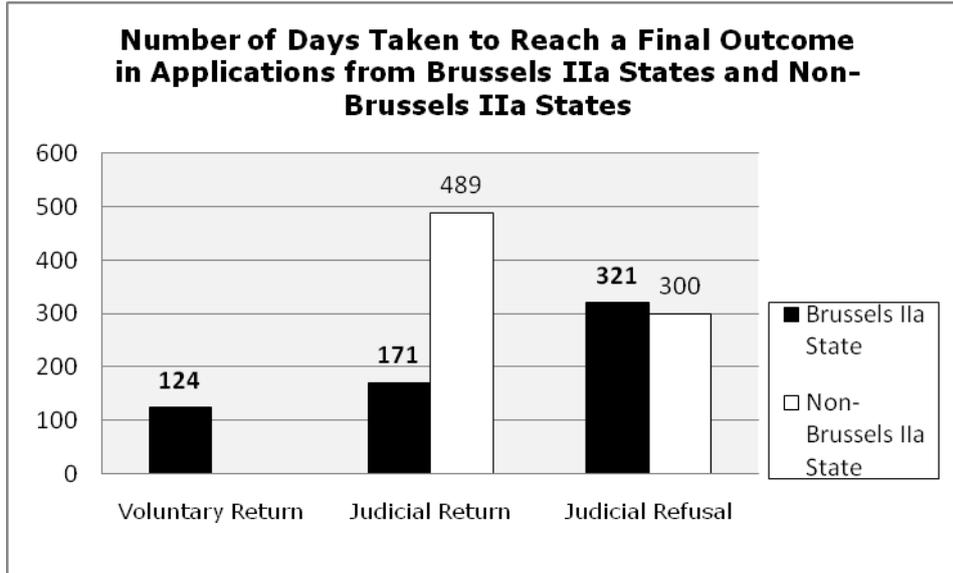
Where the requesting State was Brussels II a State, the most frequently cited reason for refusal was that the applicant had no rights of custody (3 applications), followed by Article 13(1) b) (2 applications), the child's objections (2 applications) and Article 12 (1 application). In the two refused applications where the requesting State was not a Brussels II a State was refused based on the child's objections and one because the child was not habitually resident in the requesting State.

### 4. Brussels IIa and Timing

Overall, the applications received by Belgium in which the Brussels II a Regulation applied, were not resolved more quickly than those outside Brussels IIa. The overall average time taken to reach a final settlement was 195 days if the requesting state was Brussels IIa and 360 days if it was not.

Breaking these findings down into the time taken to reach different outcomes, the table and graph below show that Brussels IIa cases were resolved slightly quicker in applications ending in a return but judicial refusals took longer compared with applications from requesting States outside Brussels IIa.

|                 | Voluntary Return |                  | Judicial Return |                  | Judicial Refusal |                  |
|-----------------|------------------|------------------|-----------------|------------------|------------------|------------------|
|                 | Brussels IIa     | Non-Brussels IIa | Brussels IIa    | Non-Brussels IIa | Brussels IIa     | Non-Brussels IIa |
| <b>Mean</b>     | <b>124</b>       |                  | <b>171</b>      | <b>489</b>       | <b>321</b>       | <b>300</b>       |
| Median          | 143              |                  | 183             | 489              | 304              | 300              |
| Minimum         | 43               |                  | 21              | 361              | 104              | 100              |
| Maximum         | 163              |                  | 399             | 616              | 544              | 499              |
| Number of cases | 4                | 0                | 12              | 2                | 5                | 2                |



13% of applications from Brussels IIa States were resolved in 6 weeks whereas no applications from non-Brussels IIa States were concluded in this time. 21% of Brussels IIa applications were resolved in 12 weeks and 38% in 18 weeks compared with no applications from non-Brussels IIa States being resolved in 12 weeks and 20% in 18 weeks. 2 applications (8%) from Brussels IIa States took over 54 weeks to conclude compared with 2 applications (40%) from a non-Brussels IIa States.

Overall, only 15% of all applications to which the Brussels II a Regulation applied were resolved in 6 weeks compared with 16% of applications received by Brussels II a States from non-Brussels II a States. 51% of Brussels II a applications were resolved in 18 weeks compared with 58% of applications received by Brussels II a States from non-Brussels II a States

## CANADA

### I. Overall Summary

In 2008 Canada received 49 return applications and 13 access applications. This amounted to a 13% decrease in the number of return applications and an 18% increase in access applications from those received in 2003. In total the Canadian Central Authority dealt with 113 incoming and outgoing applications in 2008 which is a 17% decrease on the 136 in 2003.

The overall rate of return in the 49 return applications was 59% compared with 46% globally. This can be compared with the 2003 return rate of 42% and 60% in 1999. Proportionately fewer applications received by Canada were judicially refused, pending or withdrawn compared with the global figures but more were rejected by the Central Authorities.

A judicial return took 137 days to conclude and a judicial refusal 121 days compared with the global averages of 166 days for a judicial return and 286 days for a judicial refusal.

With regard to access applications, access was agreed or ordered in 42% of applications compared with 22% globally. A high proportion of access applications received by Canada were withdrawn, 42%, compared with 30% globally.

### II. The number of applications received and sent in 2008

|                 | 1999 | 2003 | <b>2008</b> |
|-----------------|------|------|-------------|
| Incoming Return | 36   | 56   | <b>49</b>   |
| Incoming Access | 8    | 11   | <b>13</b>   |
| Outgoing Return | 49   | 55   | <b>44</b>   |
| Outgoing Access | 10   | 14   | <b>7</b>    |

Canada is a Federal nation and there is a Central Authority in each Province and Territory<sup>13</sup>. According to the Central Authorities in Canada, together they received 62 applications in total made up of 49 incoming return and 13 incoming access applications. This is a 7% decrease on the 67 incoming applications received in 2003 but a 41% increase on the 44 applications received in 1999.

The ratio of return to access in 2008 was 79% to 21%, respectively. This can be compared with 84% to 16% in 2003 and 82% to 18% in 1999.

In addition, the Central Authority made 51 outgoing applications made up of 44 return and 7 access applications. This is a 26% decrease on the 69 outgoing cases in 2003 and a 14% decrease on the 59 in 1999.

In total, the Central Authority dealt with 113 incoming and outgoing applications. A 17% decrease from 136 applications handled in 2003 and a 10% increase from 103 applications in 1999.

<sup>13</sup> The Province of Alberta has in fact designated two Central Authorities.

### The Provinces and Territories which Received the Applications

In 2008, Quebec received the most applications of any Canadian Province or Territory with a total of 23 incoming applications. The Central Authority which received the second highest number of applications was Ontario with 18 applications. In 2003 this was reversed and Ontario received the most applications (24 applications, 19 for return and 5 for access) and Quebec the second highest (19 applications, all of which were for return). In 1999 the 2 Canadian States which received the highest number of applications were Quebec and Alberta (14 and 10 applications, respectively).

|                  | <b>Incoming<br/>Return<br/>Applications</b> | <b>Incoming<br/>Access<br/>Applications</b> | <b>Total</b> |
|------------------|---|---|--------------|
| Quebec           | 19  | 4   | <b>23</b>    |
| Ontario          | 15  | 3   | <b>18</b>    |
| British Columbia | 10  | 5   | <b>15</b>    |
| Alberta          | 2   | 1   | <b>3</b>     |
| Saskatchewan     | 2   | 0   | <b>2</b>     |
| Manitoba         | 1   | 0   | <b>1</b>     |
| <b>Total</b>     | <b>49</b>                                   | <b>13</b>                                   | <b>62</b>    |

Manitoba and Saskatchewan each received return applications in 2008 but no access applications. No applications at all were received by New Brunswick, Newfoundland and Labrador, North West Territories, Nova Scotia, Nunavut, Prince Edward Island, Yukon.

### III. Incoming Return Applications

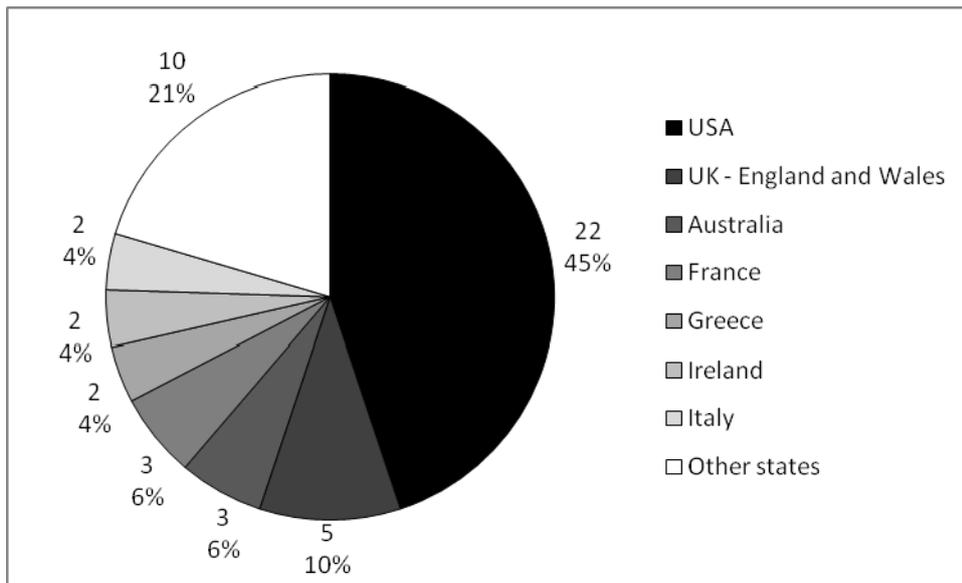
#### 1. The Contracting States which made the application

In 2008, Canada received return applications from 17 different Central Authorities – compared with 16 requesting states in 2003 and 14 in 1999.

#### The Contracting States which made the most applications to Canada

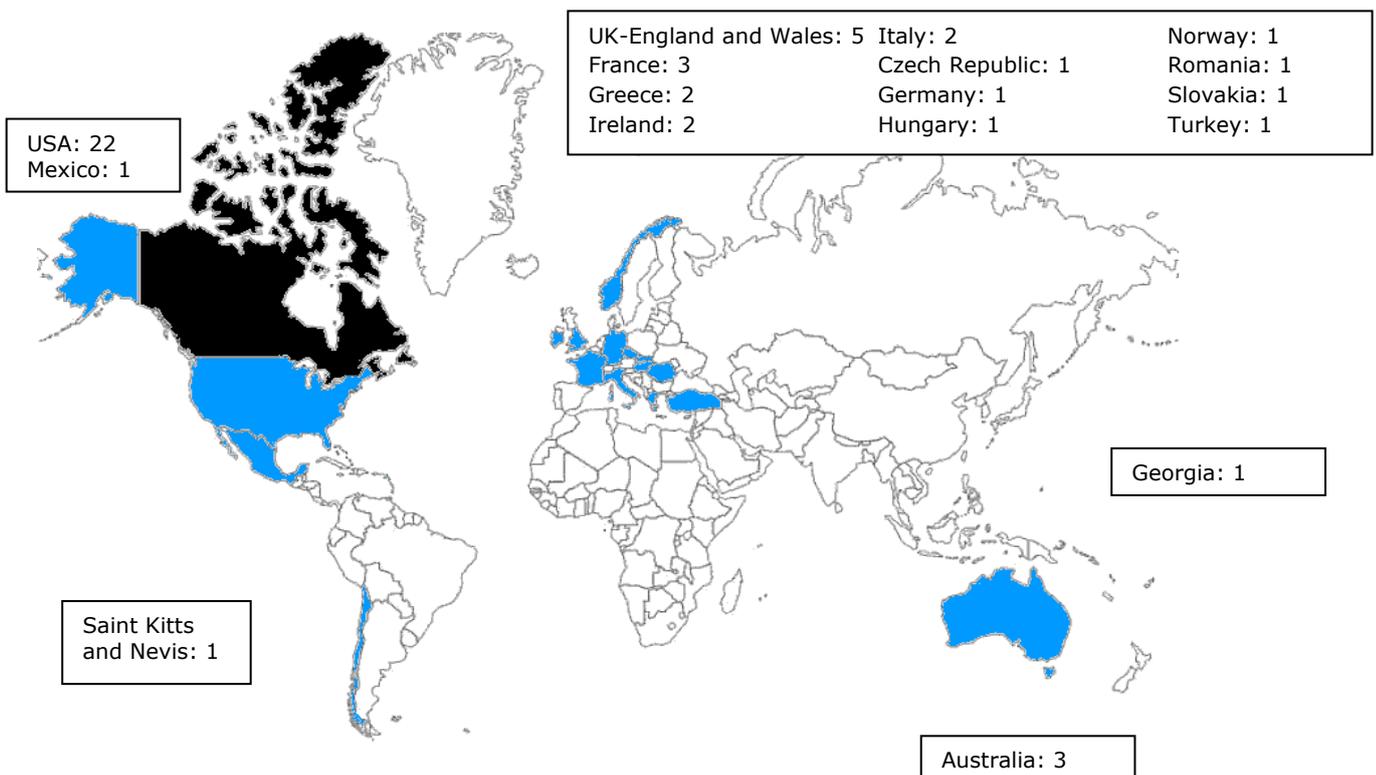
|                         | <b>1999</b> | <b>2003</b> | <b>2008</b>     |
|-------------------------|-------------|-------------|-----------------|
| USA                     | 11 (31%)    | 26 (46%)    | <b>22 (45%)</b> |
| UK-England and<br>Wales | 5 (14%)     | 5 (9%)      | <b>5 (10%)</b>  |
| Australia               | 0 (0%)      | 2 (4%)      | <b>3 (6%)</b>   |
| France                  | 5 (14%)     | 7 (13%)     | <b>3 (6%)</b>   |
| Greece                  | 0 (0%)      | 0 (0%)      | <b>2 (4%)</b>   |
| Ireland                 | 1 (3%)      | 1 (2%)      | <b>2 (4%)</b>   |
| Italy                   | 1 (3%)      | 0 (0%)      | <b>2 (4%)</b>   |
| Other States            | 13 (36%)    | 15 (27%)    | <b>10 (20%)</b> |
| <b>Total</b>            | <b>36</b>   | <b>56</b>   | <b>49</b>       |

**The Requesting States for Return Applications Received by Canada in 2008**



As in previous surveys, the highest number of applications from a single state came from the USA which made 22 applications to Canada in 2008 (45%), 26 applications in 2003 (46%) and 11 applications in 1999 (31%). The second highest number of applications from a single State in 2008 came from England and Wales (5 applications, 10%) which made exactly the same number of applications as in 2003 and 1999 (9% and 14% respectively). In 2003 and 1999 England and Wales were the third highest State sending applications to Canada, with France being the second. The proportion of applications from France has dropped steadily from 14% in 1999 (5 applications) to 13% in 2003 (7 applications) and 6% in 2008 (3 applications).

**Map of Contracting States which made return applications to Canada in 2008**



## **2. The Taking Person**

In 2008 a large majority of the taking persons were mothers (69%) and the remaining 31% were fathers. This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

In past surveys taking persons coming to Canada have been mostly mothers, making up 71% of taking persons in 2003 and 75% in 1999<sup>14</sup>.

## **3. The status of the taking person as carer in relation to the child**

Information on the status as carer of the taking person was available for 27 applications. In 20 of these applications the taking person was the primary or joint primary carer of the child and in 7 applications the taking person was not a primary carer.

Out of the 27 applications, 16 of the taking persons (59%) were the mother of the child. In all of these applications the mother was the primary or joint primary carer, this can be broken down into 5 applications where the taking mother was the sole primary carer and 11 applications where the mother was a joint primary carer.

The status as carer of 11 taking fathers was also recorded. None of these fathers were the sole primary carer of the child, 4 were a joint primary carer and 7 were not a primary carer.

Globally, 72% of taking persons were the primary or joint primary carer of the child. This rose to 88% where the taking person was the mother and 36% where it was the father.

## **4. The nationality of the taking person**

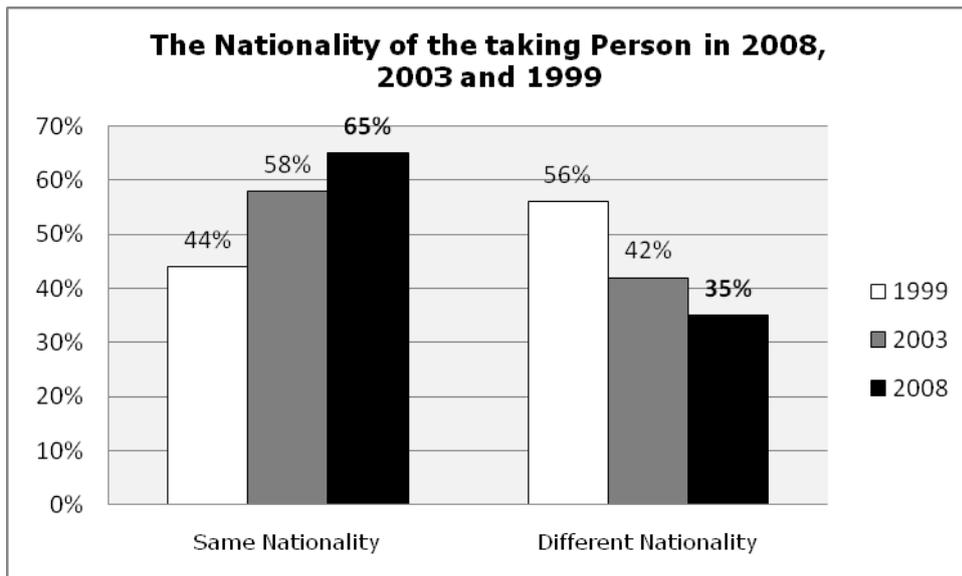
In 2008, 65% of applications received involved a taking person who was a Canadian citizen (including 10 taking persons with dual nationality and 1 with triple nationality). This is a high proportion compared with the global 51% of taking persons who went to a state of which they were a national.

In 2003, 58% of taking persons were Canadian citizens and in 1999, 44%. These proportions can be compared with the global averages of 55% in 2003 and 52% in 1999.

The chart below compares the 2008 findings on nationality with the 2003 and 1999 surveys. It shows a clear trend of proportionately more Canadian nationals taking children to Canada.

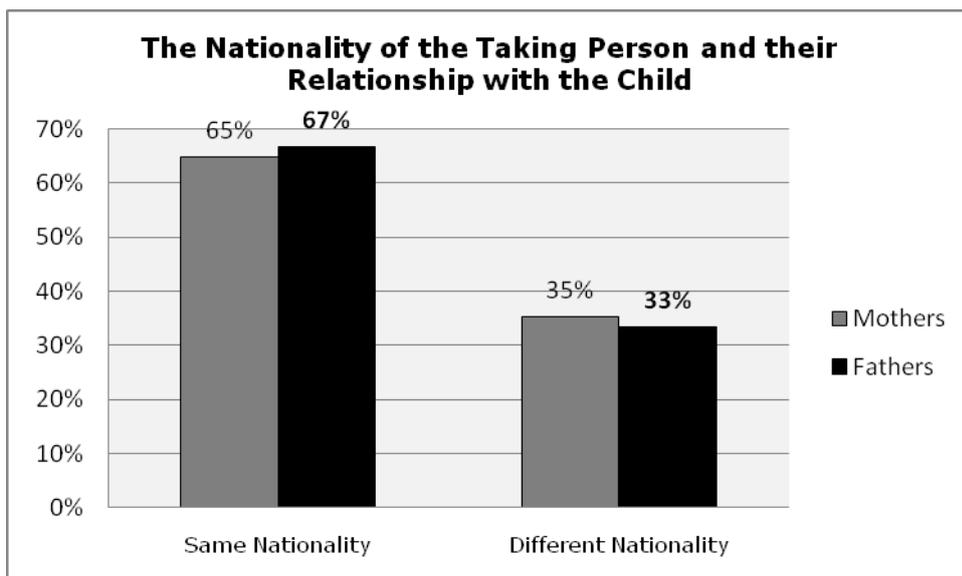
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<sup>14</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication. In 1999, 64% of taking persons in applications received by Canada were female and so probably mothers.



### 5. The relationship and nationality of the taking person combined

The graph below shows that, in 2008, a slightly higher proportion of fathers taking children to Canada were found to be Canadian citizens than mothers.



65% of mothers were Canadian nationals compared with 67% of fathers. Globally, 53% of taking mothers were found to have the same nationality as the requested state and 48% of fathers.

In 2003, 63% of taking mothers and 47% of taking fathers were Canadian citizens. In 1999, 42% of female taking persons had Canadian citizenship and 50% of males.

## 6. The children

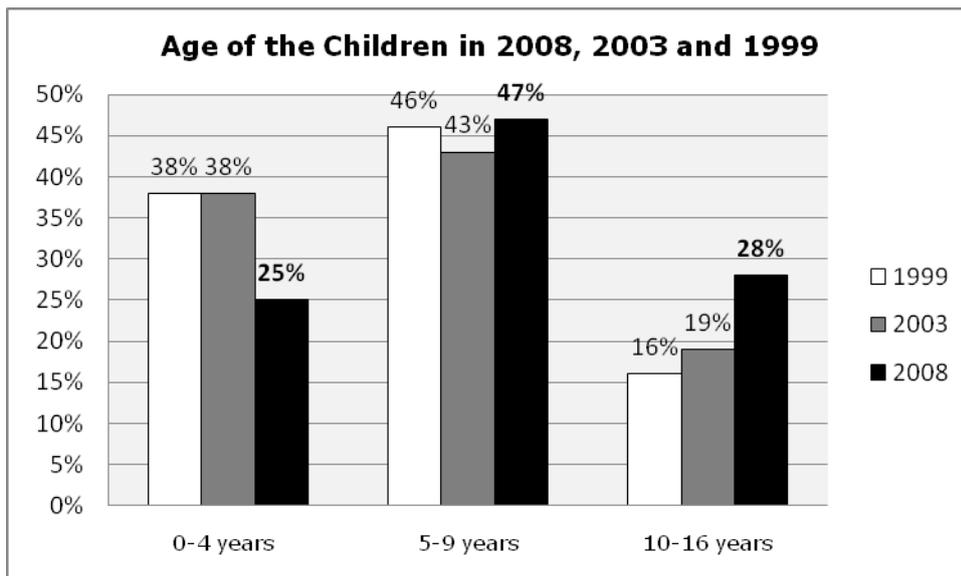
In 2008, the number of children involved in each return application was recorded for 48 applications. 64 children were involved in these 48 applications making an average of 1.33 children per application compared with the global average of 1.38 children. In both 2003 and 1999 an average of 1.39 children were involved in each application.

71% of applications received were for the return of a single child, compared with the global average of 69%. This is an increase from 70% of applications to Canada in 2003 and 64% in 1999.

## 7. The age of the children<sup>15</sup>

The average child involved in a return application to Canada was 7.1 years compared with the global average of 6.4 years.

In 2003 the average child involved was 6.4 years. In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. The proportion of children falling within the 10-16 year age group has increased from 16% in 1999, to 19% in 2003 and 28% in 2008. In 2008 there was a decrease in the proportion of children between the ages of 0-4 years from 38% in 2003 and 1999 to only 25%.



## 8. The gender of the children

In 2008, 48% of the children involved were female and 52% male. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003, 54% of the children taken to Canada were female and 46% male and, in 1999, 44% were female and 56% male.

<sup>15</sup> This information was not available for one application.

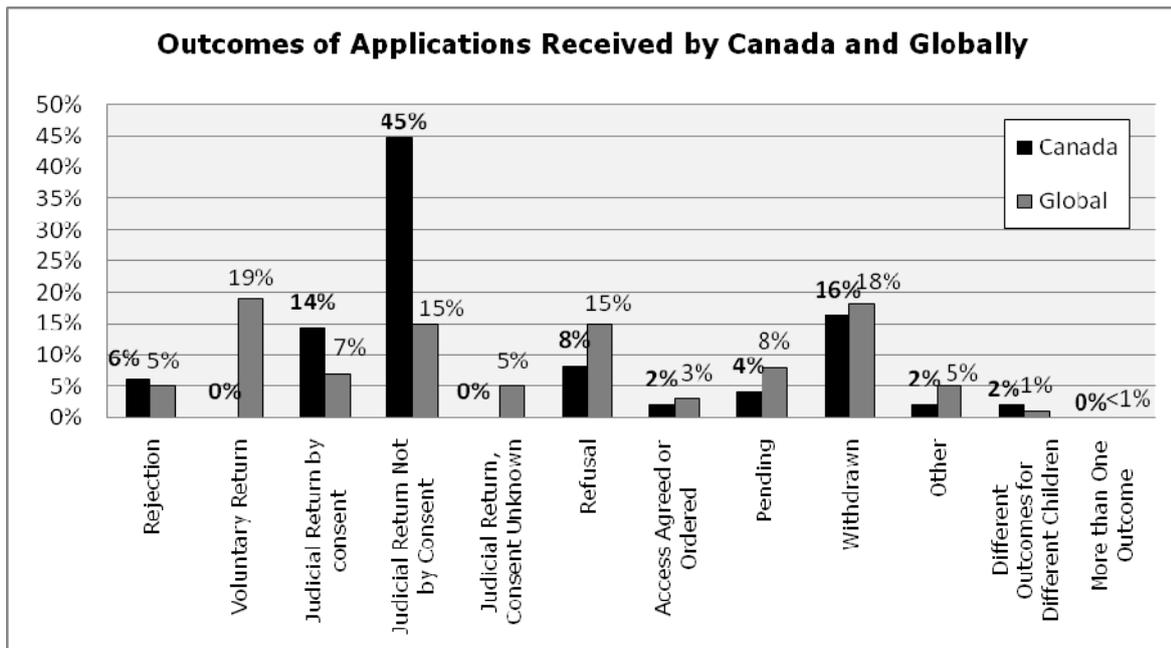
## 9. The overall outcomes

The table below shows all the outcomes of return applications received by Canada in 2008 compared with the global findings.

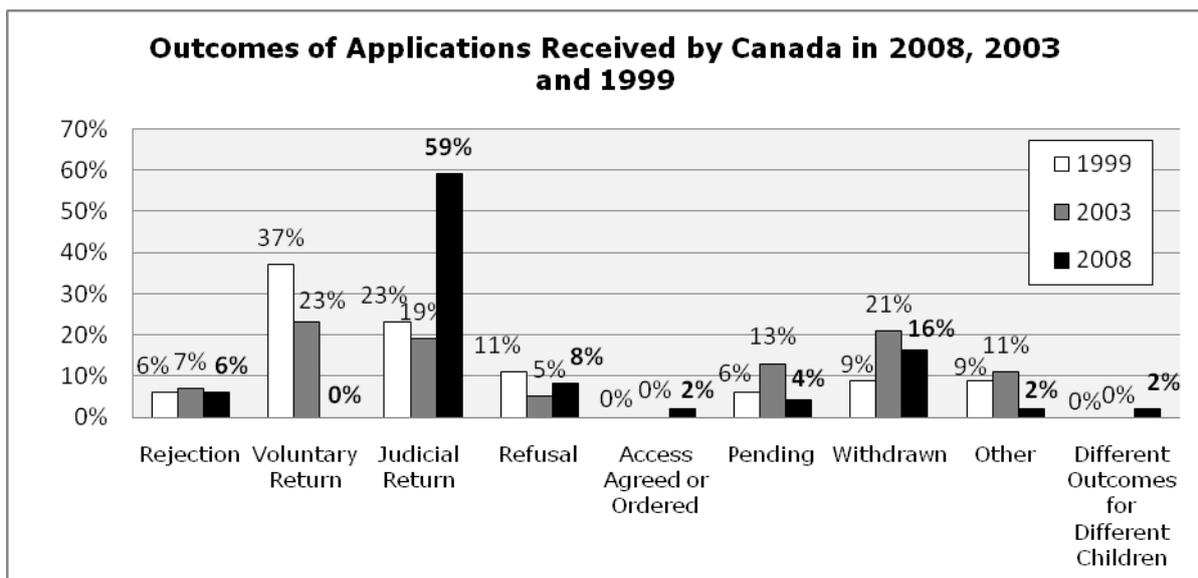
|   | <b>Canada</b> | <b>Global</b> |
|---|---------------|---------------|
| Rejection                                 | 3 (6%)        | 5%            |
| Voluntary Return                          | 0 (0%)        | 19%           |
| Judicial Return by consent                | 7 (14%)       | 7%            |
| Judicial Return Not by Consent            | 22 (45%)      | 15%           |
| Judicial Return, Consent Unknown          | 0 (0%)        | 5%            |
| Refusal                                   | 4 (8%)        | 15%           |
| Access Agreed or Ordered                  | 1 (2%)        | 3%            |
| Pending                                   | 2 (4%)        | 8%            |
| Withdrawn                                 | 8 (16%)       | 18%           |
| Other                                     | 1 (2%)        | 5%            |
| Different Outcomes for Different Children | 1 (2%)        | 1%            |
| More than One Outcome                     | 0 (0%)        | <1%           |

The graph below shows more clearly how the results in applications received by Canada compare to those globally. In 2008, 59% of applications received by Canada ended with a return compared with the global judicial return rate of 46%. This 59% judicial return rate can be broken down into 14% judicial returns by consent order (7% globally) and 45% judicial returns without consent (15% globally with an additional 5% of applications ending with a judicial return but where the consent of the parties unknown). No applications received by Canada ended with a voluntary return in 2008 compared with 19% globally. A further application was recorded as having different outcomes for different children and ended with two children being returned by consent and the return of one child refused. Access was also agreed in 1 application (2%) compared to 3% globally.

The Canadian Central Authority rejected proportionately more applications (3 applications, 6%) than the global average but proportionately fewer applications were judicially refused (4 applications, 8%) than the global average of 15%. 4% of applications were still pending at the cut off date of 30<sup>th</sup> July 2010 which is half the global average of 8% and a lower proportion of applications were withdrawn (16% compared with 18% globally).



The graph below compares the outcomes of applications received by Canada in 2008 to those in 2003 and 1999.



The overall return rate of 59% in 2008 increased from 42% in 2003 and is now closer to the overall return rate of 60% in 1999. The proportion of voluntary returns has steadily decreased (from 37% in 1999 to 23% in 2003 and none in 2008) and judicial returns increased (from 23% in 1999 and 23% in 2003 to 59% in 2008).

The proportion of applications rejected by the Central Authority has stayed relatively constant in past surveys (6% in 1999, 7% in 2003 and 6% in 2008). The rate of judicial refusals was 8%, higher than 5% in 2003 but lower than 11% in 1999. The proportion of applications pending has decreased and was lower in 2008 (4%) than in 2003 (13%) and 1999 (6%). The proportion of withdrawn applications has decreased from 21% in 2003 but has increased from the 9% recorded in 1999.

## 10. Overall Outcomes by Province and Territory

The table below shows the outcomes of applications according to the Province or Territory that received them. The provinces with the highest judicial return rates were British Columbia (80%, 8 out of 10 applications) and Quebec (63%, 12 out of 19 applications). Conversely, as in 2003 and 1999, no child was judicially returned from Saskatchewan. Only 2 applications were pending in the 2008 survey and both of these were received by the Central Authority in Ontario.

|                  | Rejection | Judicial Order for Return by Consent | Judicial Order for Return Not by Consent | Judicial Refusal | Order for Access Judicially Granted | Application Pending | Withdrawn | Other    | Different Outcomes Different Children | Total     |
|------------------|-----------|--------------------------------------|--|------------------|-------------------------------------|---------------------|-----------|----------|---------------------------------------|-----------|
| Ontario          | 1         | 2                                    | 6  | 2                |                                     | 2                   | 2         |          |                                       | 15        |
| British Columbia |           | 3                                    | 5  |                  |                                     |                     | 1         | 1        |                                       | 10        |
| Manitoba         |           |                                      |  |                  |                                     |                     | 1         |          |                                       | 1         |
| Quebec           | 2         | 2                                    | 10                                       | 1                |                                     |                     | 3         |          | 1                                     | 19        |
| Saskatchewan     |           |                                      |  | 1                |                                     |                     | 1         |          |                                       | 2         |
| Alberta          |           |                                      | 1  |                  | 1                                   |                     |           |          |                                       | 2         |
| <b>Total</b>     | <b>3</b>  | <b>7</b>                             | <b>22</b>                                | <b>4</b>         | <b>1</b>                            | <b>2</b>            | <b>8</b>  | <b>1</b> | <b>1</b>                              | <b>49</b> |

## 11. The reasons for rejection

In 2008, 3 applications were rejected by the Canadian Central Authority compared with 5 in 2003 (including one application recoded as having different outcomes for different children<sup>16</sup>) and 2 in 1999. In 2008 all 3 applications were rejected because the child was located in another State. In 2003, 3 applications were rejected for this reason, one because the child was over 16 and one because the applicant had no rights of custody. In 1999 both applications were rejected because the child could not be located.

## 12. The reasons for judicial refusal

Out of the 36 cases that went to court, 6<sup>17</sup> (17%) were refused compared with 33% globally. In 2003, 21% of the applications that went to court were refused and in 1999, 33%.

Of the 6 applications which involved a judicial refusal, 3 were based on Article 12, 1 was refused because the child was not habitually resident in the requesting State and 1 because the applicant had no rights of custody. The final application was refused because the applicant had participated extensively in court proceedings in Saskatchewan for almost a year and had only filed a Hague application after a 2 week custody trial. It was held that she had chosen to have such matters adjudicated in Saskatchewan<sup>18</sup>.

<sup>16</sup> In this application the return of one child was rejected because the child was over 16, the outcome of the application for the other two children involved was pending.

<sup>17</sup> Including one application where a return order was refused under Article 12 but access was ordered which was recorded as an order for access and one application recorded as having different outcomes for different children and the return of one child was refused because the applicant had no rights of custody.

<sup>18</sup> This application was recorded as being decided for 'other' reasons.

As shown in the table below, globally the most common reason for refusal was Article 13(1) b). No applications received by Canada were judicially refused under Article 13(1) b) in 2008 or 1999 and only one application was refused for this reason in 2003.

### **The Reasons for Refusal in Applications Received by Canada and Globally in 2008**

|   | Canada    |             | Global      |
|---|-----------|-------------|-------------|
|   | Frequency | Percentage  |             |
| Child Not Habitually Resident in Requesting State | 1         | 17%         | 15%         |
| Applicant had no rights of custody                | 1         | 17%         | 8%          |
| Art 12  | 3         | 50%         | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 0         | 0%          | 7%          |
| Art 13(1) a) Consent                              | 0         | 0%          | 5%          |
| Art 13(1) a) Acquiescence                         | 0         | 0%          | 5%          |
| Art 13(1) b)                                      | 0         | 0%          | 27%         |
| Child's Objections                                | 0         | 0%          | 17%         |
| Art 20  | 0         | 0%          | 1%          |
| Other   | 1         | 17%         | 2%          |
| <b>Total</b>                                      | <b>6</b>  | <b>100%</b> | <b>100%</b> |

In 2003, 3 applications were refused. One based on Article 13(1) b), 1 under Article 12 and 1 following the child's objections. In 1999, 4 applications were refused and each for one of the following different reasons: the child not habitually resident in the requesting State, Article 12, the child's objections, and 1 for 'other' reasons.

### **13. The reasons for judicial refusal and the taking person**

Of the 6 applications refused, 4 involved taking mothers and 2 involved taking fathers. Where the taking person was the mother 3 applications for return were refused under Article 12 and 1 because applicant was found to have no rights of custody. Where the taking person was the father 1 application was refused because the child was not habitually resident in the requesting State and 1 for 'other' reasons.

### **14. Timing**

The overall average time taken to reach a final settlement in the return applications received by Canada was 145 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, judicial returns by consent order were generally resolved more quickly, in an average on 120 days whereas judicial returns without consent took 142 days to conclude.

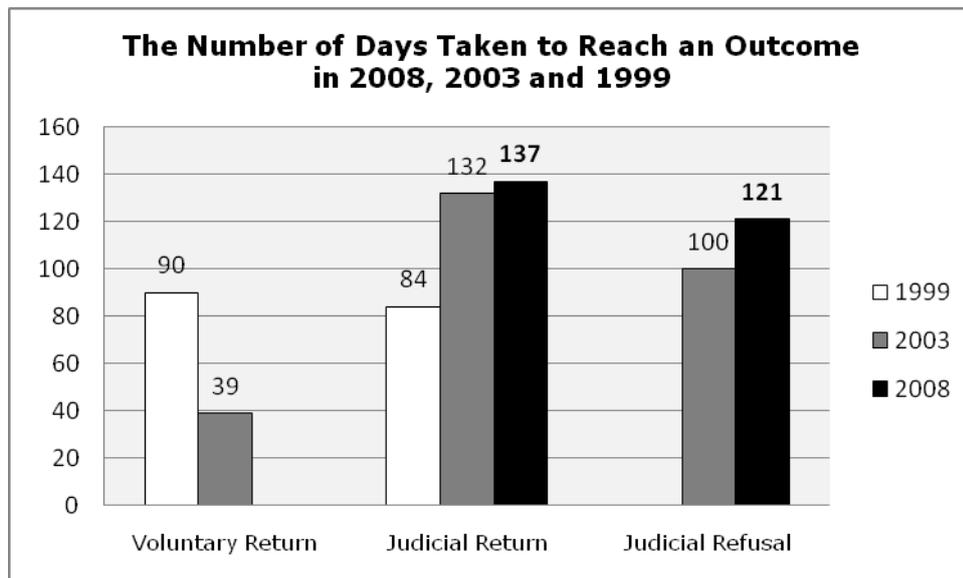
The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Canada.

### The Number of Days Taken to Reach an Outcome

|                 | Judicial Return by Consent Order | Judicial Return Not by Consent | Judicial Refusal |
|-----------------|----------------------------------|--------------------------------|------------------|
| Mean            | 120                              | 142                            | 121              |
| Median          | 72                               | 104                            | 84               |
| Minimum         | 28                               | 8                              | 68               |
| Maximum         | 380                              | 398                            | 210              |
| Number of Cases | 6 <sup>19</sup>                  | 21 <sup>20</sup>               | 3 <sup>21</sup>  |

In Canada, applications were resolved more quickly with judicial consent order for return being reached in 120 days compared with 163 days globally and judicial returns without consent in 142 days compared with 204 days globally. Overall, a judicial return took 137 days to conclude in Canada compared with 166 days globally<sup>22</sup>. Judicial refusals took an average of 121 days to conclude in Canada compared with 286 globally. In 2008 the global average for a voluntary return order was 121 days.

The graph below compares the timings of applications received by Canada in 2008 with those in 2003 and 1999. Information regarding the timing of voluntary returns was unavailable in 2008. In 1999 the time taken to reach a judicial refusal was only recorded for one application which took 309 days.



Judicial returns and judicial refusals both took longer than in previous surveys. The graph above combines judicial returns made by consent order and without consent to be comparable with the 1999 findings. In 2008 judicial returns by consent order took longer to conclude than in 2003 (120 days compared with 73 days) but judicial returns without consent were resolved more quickly (142 days compared with 162 days).

<sup>19</sup> The timing for one application ending in a judicial consent order was unavailable.

<sup>20</sup> The timing for one application ending in a judicial return without consent was unavailable.

<sup>21</sup> The timing for one application ending in a judicial refusal was unavailable.

<sup>22</sup> This figure includes the 5% of applications globally which ended with a judicial return but where the consent of the parties was not known.

## Time taken to send application to court

In 2008 the length of time that the Central Authority held the application was recorded for the first time. In Canada it took an average of 54 days before the application was sent to court and the court then took an average 69 days to conclude it<sup>23</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

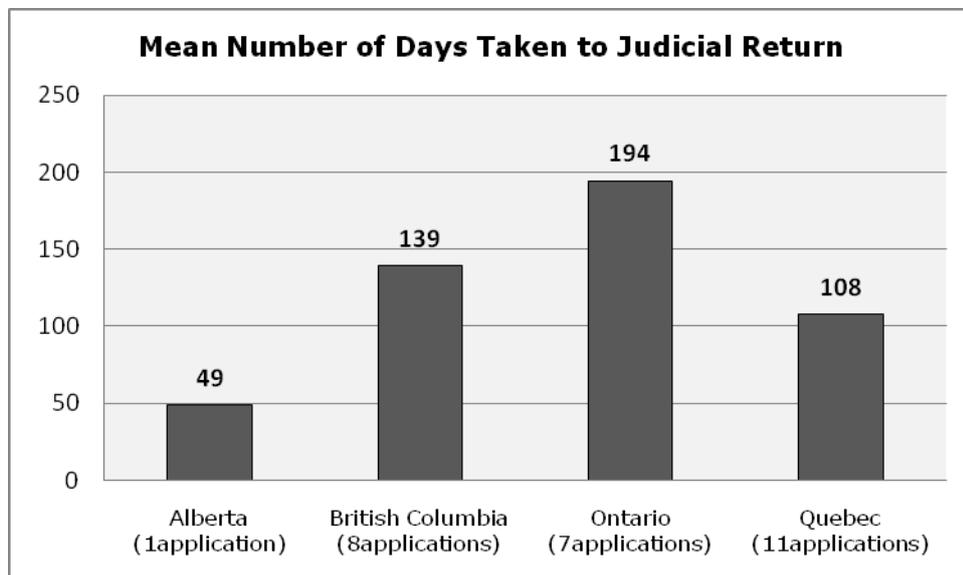
## Appeals

In 2008, 36 return applications went to court and 3 of these decisions (8%) were appealed, lower than the global average of 28%. The time taken to reach a final decision is obviously affected by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 128 days compared with 279 days to finalise a case that was appealed. The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

## 15. Timings by Province and Territory

### (i) Judicial Returns

The graph below shows the average number of days taken to reach a judicial return in all the relevant Provinces. Alberta, British Columbia and Quebec all resolved applications quicker, on average, than the global mean of 165 days. Ontario took longer to resolve applications in this way with an average of 194 days.

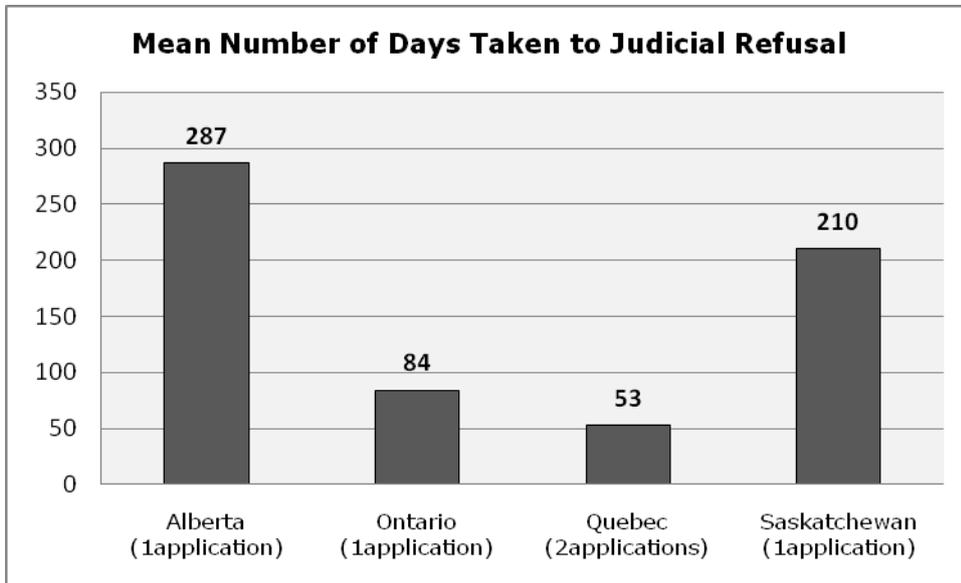


In 2003, Alberta made one judicial return which took 142 days. The average time to conclude a judicial return in British Columbia was 286 days (2 applications) and in Quebec 79 days (6 applications). In 1999 the mean number of days to finalise a judicial return were recorded for Alberta, Manitoba, Ontario and Quebec which each took 43 days, 134 days, 133 days and 16 days on average, respectively.

<sup>23</sup> These figures are based on 22 applications where the date sent to court was recorded and 21 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

### (i) Judicial Refusals

The graph below shows the average number of days taken to reach a judicial refusal in the Provinces that made them. Ontario, Quebec and Saskatchewan all resolved applications quicker, on average, than the global mean of 285 days. Ontario took longer to resolve applications in this way with an average of 194 days. The refused application which was received by Alberta took slightly longer at 287 days.



In 2003, Alberta refused 1 application which took 76 days to conclude and the average time taken in the two refusals in Quebec was 112 days. No average timings were recorded in 1999.

## IV. Incoming access applications

### 1. The Contracting States which made the application

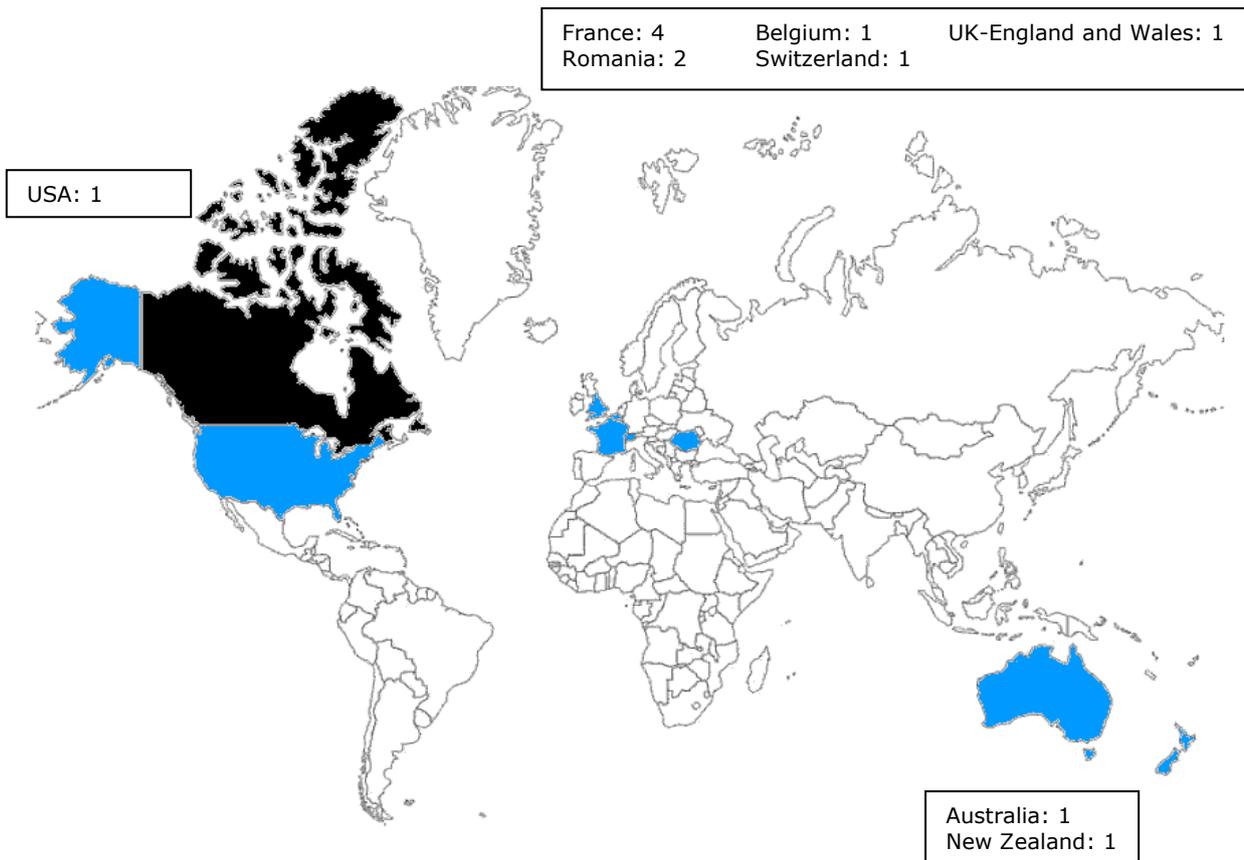
The most applications received from a single State in 2008 came from France which made 4 applications (33%) and the second highest number of applications came from Romania (17%, 2 applications). Neither of these States had made any access applications to Canada in previous surveys.

#### The Contracting States which made Access Applications to Canada in 2008 Compared with 2003 and 1999<sup>24</sup>

|                        | 1999     | 2003      | 2008           |
|------------------------|----------|-----------|----------------|
| France                 | 0 (0%)   | 0 (0%)    | <b>4 (33%)</b> |
| Romania                | 0 (0%)   | 0 (0%)    | <b>2 (17%)</b> |
| Australia              | 0 (0%)   | 1 (9%)    | <b>1 (8%)</b>  |
| Belgium                | 0 (0%)   | 1 (9%)    | <b>1 (8%)</b>  |
| New Zealand            | 0 (0%)   | 0 (0%)    | <b>1 (8%)</b>  |
| Switzerland            | 2 (25%)  | 0 (0%)    | <b>1 (8%)</b>  |
| UK - England and Wales | 2 (25%)  | 2 (18%)   | <b>1 (8%)</b>  |
| USA                    | 1 (13%)  | 0 (0%)    | <b>1 (8%)</b>  |
| <b>Total</b>           | <b>8</b> | <b>11</b> | <b>12</b>      |

<sup>24</sup> The requesting State of one application was missing.

## Map of Contracting States which Made Access Applications to Canada in 2008



### 2. The Respondent

Of the 13 access applications received by Canada in 2008, in 69% (9 applications) the respondent was the mother, lower than the global average of 79%. The remaining 31% was made up of 23% fathers (3 applications) and 1 application where both parents took the child (8%). This can also be compared with the past averages of Canada with 73% of respondents being mothers in 2003 and 75% in 1999<sup>25</sup>.

### 3. The status of the respondent as carer in relation to the child

The status of the respondent as carer to the child was recorded in 9 of the access applications received by Canada. In all of these applications the respondent was the primary carer of the child. In 6 applications the respondent was the mother of the child, in 2 it was the father and in 1 application both parents were living with the child in Canada.

### 4. The nationality of the respondent

Globally, 50% of respondents in access cases had the same nationality as the requested state. In Canada, 69% of respondents in access applications were Canadian nationals (including 3 respondents with dual nationality). This can be compared with 54% of respondents being Canadian nationals in 2003 and 63% in 1999.

<sup>25</sup> The relationship between the respondent and the child was not recorded in the 1999 survey but this figure has been estimated from the gender of the respondent.

## 5. The relationship and nationality of the respondent combined

The same proportion of respondent fathers and mothers were Canadian nationals (67%). This can be compared with 2003 where proportionately more respondent fathers were Canadian (100%, 3 applications) compared with mothers (38%, 3 applications) and 1999 where 50% of males and 33% of females were Canadian.

## 6. The Children

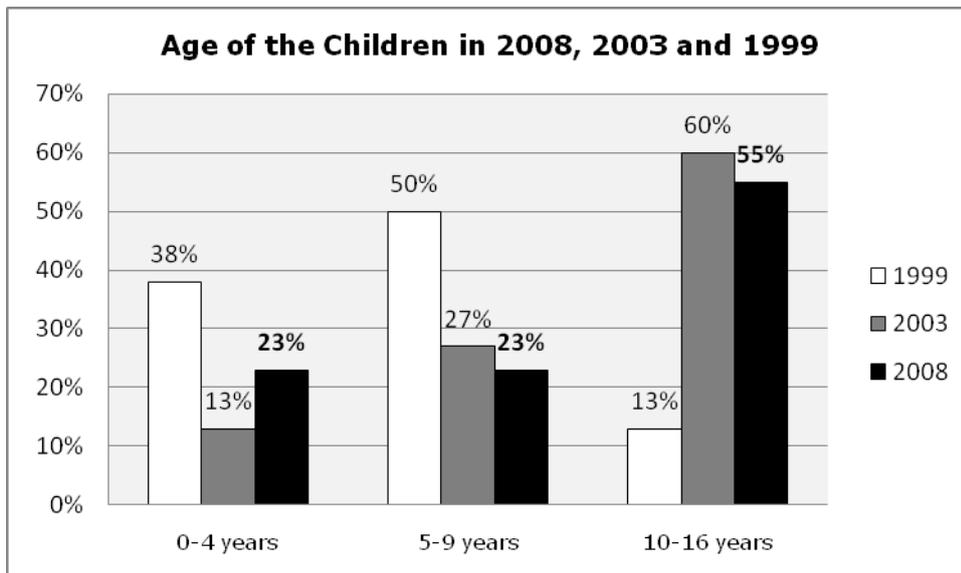
In 2008, 22 children were involved in the 13 access applications to Canada making an average of 1.69 children per application, which is higher than the global average of 1.32 children. This can also be compared with an average of 1.36 children in applications received by Canada in 2003 and 1 child per application in 1999.

In 2008, 38% of applications involved only one child, compared with the global average of 72%. In 2003, 82% of applications received were single child applications and 88% in 1999.

## 7. The age of the children

The average child involved in an access application to Canada was 9.0 years compared with the global average of 7.8 years.

In 2003 the average child involved was 9.5 years. In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. The proportion of children falling within the 5-9 year age group has decreased from 50% in 1999, to 27% in 2003 and 23% in 2008. More children fell within the 0-4 year age group and less within the 10-16 year age group than in 2003 but, overall in the 3 surveys, there appears to be a trend of more children falling in the higher age band and fewer in the lower two.



## 8. The gender of the children

In 2008, 68% of children involved in access applications received by Canada were female and 32% male. Globally, 49% of children involved in access applications were female and 51% male.

In 2003, 27% of children involved in access applications made to Canada were female and 73% male and, in 1999, 29% female and 71% male.

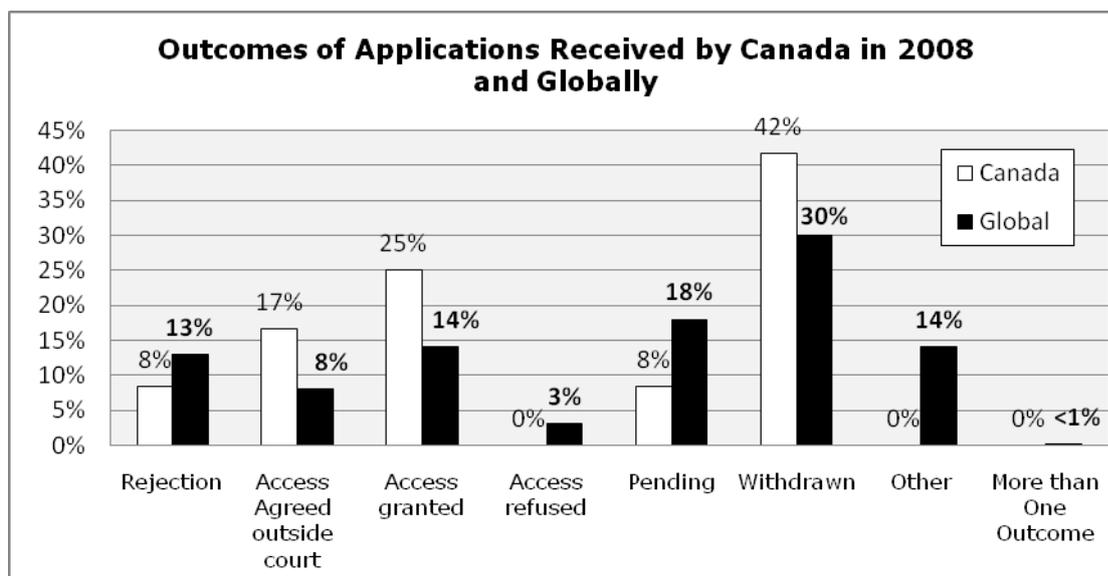
## 9. The overall outcomes

The table and graph below show the outcomes of 12<sup>26</sup> access applications received by Canada in 2008 compared with the global averages.

The overall rate at which access was agreed or ordered was 42% in Canada compared with 22% globally. The rate of rejection was slightly lower (8% compared with 13% globally) as were the proportion of applications pending (8% in Canada compared with 18% globally). The proportion of applications withdrawn (42%) was higher than the global average of 30%.

### Outcomes of Access Applications Received by Canada in 2008

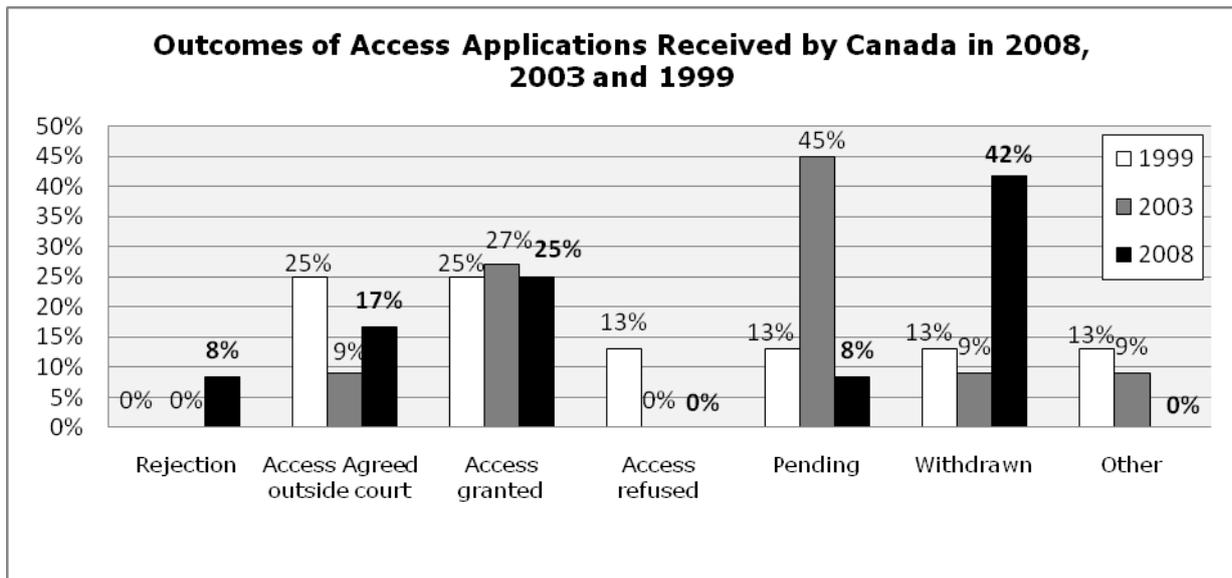
|   | Canada  | Global |
|---|---------|--------|
| Rejection                                 | 1 (8%)  | 13%    |
| Access Agreed outside court               | 2 (17%) | 8%     |
| Access granted                            | 3 (25%) | 14%    |
| Access refused                            | 0 (0%)  | 3%     |
| Pending                                   | 1 (8%)  | 18%    |
| Withdrawn                                 | 5 (42%) | 30%    |
| Other                                     | 0 (0%)  | 14%    |
| Different Outcomes for Different Children | 0 (0%)  | 1%     |
| More than One Outcome                     | 0 (0%)  | <1%    |



<sup>26</sup> The outcome of one application was missing.

The graph below shows how the outcomes in 2008 compare with those of previous surveys. The proportion of applications in which access was agreed or granted was higher in 2008 (42%, 5 applications) than 36% in 2003 (4 out of 11 applications) and 50% in 1999 (4 out of 8 applications).

A large proportion of applications were withdrawn in 2008 (42%, 5 applications) compared with 9% (1 application) in 2003 and 13% (1 application) in 1999. One application was rejected by a Central Authority in 2008 (8%) whereas no applications were rejected in 2003 or 1999. Only 4% of applications were pending in 2008 (1 application), compared with 45% in 2003 (5 applications) and 13% in 1999 (1 application).



## 10. Overall Outcomes by Province and Territory

The table below shows the outcomes of applications according to the Province or Territory that received them<sup>27</sup>. In each Province access was granted or agreed in at least one application.

|                  | Rejection | Access Agreed Outside Court Proceedings | Access Judicially Granted | Application Pending | Withdrawn | Total     |
|------------------|-----------|---|---------------------------|---------------------|-----------|-----------|
| Ontario          |           | 1                                       |                           |                     | 2         | 3         |
| British Columbia |           | 1                                       | 2                         | 1                   | 1         | 5         |
| Quebec           | 1         |   | 1                         |                     | 2         | 4         |
| <b>Total</b>     | <b>1</b>  | <b>2</b>                                | <b>3</b>                  | <b>1</b>            | <b>5</b>  | <b>12</b> |

<sup>27</sup> The outcome of one application received by Alberta is missing.

**11. The reasons for rejection by the Central Authority**

In 2008, 1 application was rejected by a Canadian Central Authority because the child was located in another State. Globally, 9% of rejected access applications are rejected for this reason.

In 2003 and 1999 no access applications were rejected by Canadian Central Authorities.

**12. The reasons for judicial refusal**

No applications were judicially refused in 2008 or 2003. In 1999, 1 access application was refused but no information is available on the reasons for this refusal.

**13. Timing**

In 2008, dates were available for 5 of the access applications received by Canada. Two of these applications ended in a voluntary agreement for access and took 347 and 365 days each. In the remaining 3 applications access was judicially granted and took 220 days, 518 days and 582 days. Every application took over 6 months to conclude.

This can be compared with the global averages of 309 days for a voluntary agreement and 357 days for a judicial order for access.

In 2003 the timing was not available in relation to any access applications and in 1999 information was only available for 2 applications: 1 voluntary agreement for access and one judicial order for access. The voluntary agreement was concluded in under 6 weeks one judicial grant took 6-12 weeks and one over 6 months.

## FRANCE

### I. Overall Summary

In 2008 France received 76 return and 22 access applications. This amounted to an 81% increase in return applications and a 69% increase in access applications from 2003. In total, the French Central Authority dealt with 68% more applications in 2008 compared with 2003.

56% of the 76 incoming return applications ended with the return of the child. This is higher than the global return rate of 46% but a decrease on the 66% returned in 2003 and 50% in 1999. Overall, compared with the global figures, France judicially refused more applications but fewer applications were rejected, withdrawn or pending at the cut off date of 30<sup>th</sup> June 2010.

The applications received by France took longer to conclude at an average of 278 days compared with 188 days, globally.

With regard to access applications, the rate at which access was agreed or ordered was 10% compared with 22% globally and a high proportion of applications were withdrawn (32%) or still pending (32%).

Where the Brussels II a Regulation applied to applications received by France there was a higher return rate than in applications where the Brussels II a Regulation did not apply (58% compared with 52% if the application came from a non-Brussels II a State) and a lower rate of refusal (12% compared with 24%), rejection (2% compared with 4%) and fewer pending applications (2% compared with 8%). If the Brussels II a regulation applied then there was a higher withdrawal rate (10% compared with 4% if the requesting State was not a Brussels II a State).

Overall, applications received by France from fellow Brussels II a States were resolved faster taking an average of 245 days from the date the application arrived at the Central Authority to the date a conclusion was reached. This can be compared with 327 days for an application from a non-Brussels II a State. Applications from Brussels II a States ending with a judicial return took longer at 253 days compared with 224 days if the requesting State was not a Brussels II a State but judicial refusals were resolved quicker in an average of 335 days compared with 549 days if the requesting State was not a Brussels II a State.

### II. The number of applications received and sent in 2008

|                 | 1999 | 2003 | 2008      |
|-----------------|------|------|-----------|
| Incoming Return | 42   | 42   | <b>76</b> |
| Incoming Access | 15   | 13   | <b>22</b> |
| Outgoing Return | 43   | 57   | <b>78</b> |
| Outgoing Access | 7    | 15   | <b>37</b> |

In 2008 the French Central Authority received 76 return applications and 22 access applications, making a total of 98 incoming applications. This is a 78% increase on the 55 incoming applications dealt with in 2003 and a 72% increase on the 57 applications received in 1999.

The ratio of return to access in 2008 was 78% to 22%, respectively. This can be compared with 76% to 24% in 2003 and 74% to 26% in 1999.

In addition, the Central Authority made 115 outgoing applications made up of 78 return and 37 access applications. This is a 60% increase on the 72 outgoing cases in 2003 and a 130% increase on the 50 in 1999. In total, the Central Authority dealt with 213 incoming and outgoing applications. A 68% increase from 127 applications handled in 2003 and a 99% increase from 107 applications in 1999.

### III. Incoming Return Applications

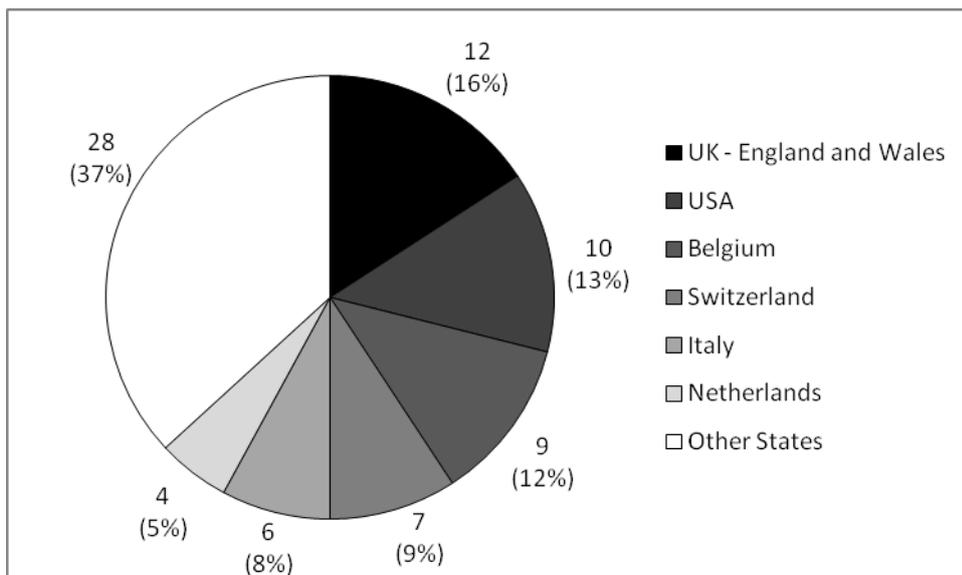
#### 1. The Contracting States which made the application

In 2008, France received return applications from 26 different Central Authorities – an increase on the 17 requesting States in 2003 and 16 in 1999.

#### The Contracting States which made the most applications to France

|                        | 1999      | 2003      | 2008            |
|------------------------|-----------|-----------|-----------------|
| UK - England and Wales | 6 (14%)   | 5 (12%)   | <b>12 (16%)</b> |
| USA                    | 5 (12%)   | 9 (21%)   | <b>10 (13%)</b> |
| Belgium                | 0 (0%)    | 3 (7%)    | <b>9 (12%)</b>  |
| Switzerland            | 3 (7%)    | 4 (10%)   | <b>7 (9%)</b>   |
| Italy                  | 4 (10%)   | 2 (5%)    | <b>6 (8%)</b>   |
| Netherlands            | 2 (5%)    | 0 (0%)    | <b>4 (5%)</b>   |
| Other States           | 22 (52%)  | 19 (45%)  | <b>28 (37%)</b> |
| <b>Total</b>           | <b>42</b> | <b>42</b> | <b>76</b>       |

#### The Requesting States for Return Applications Received by France in 2008



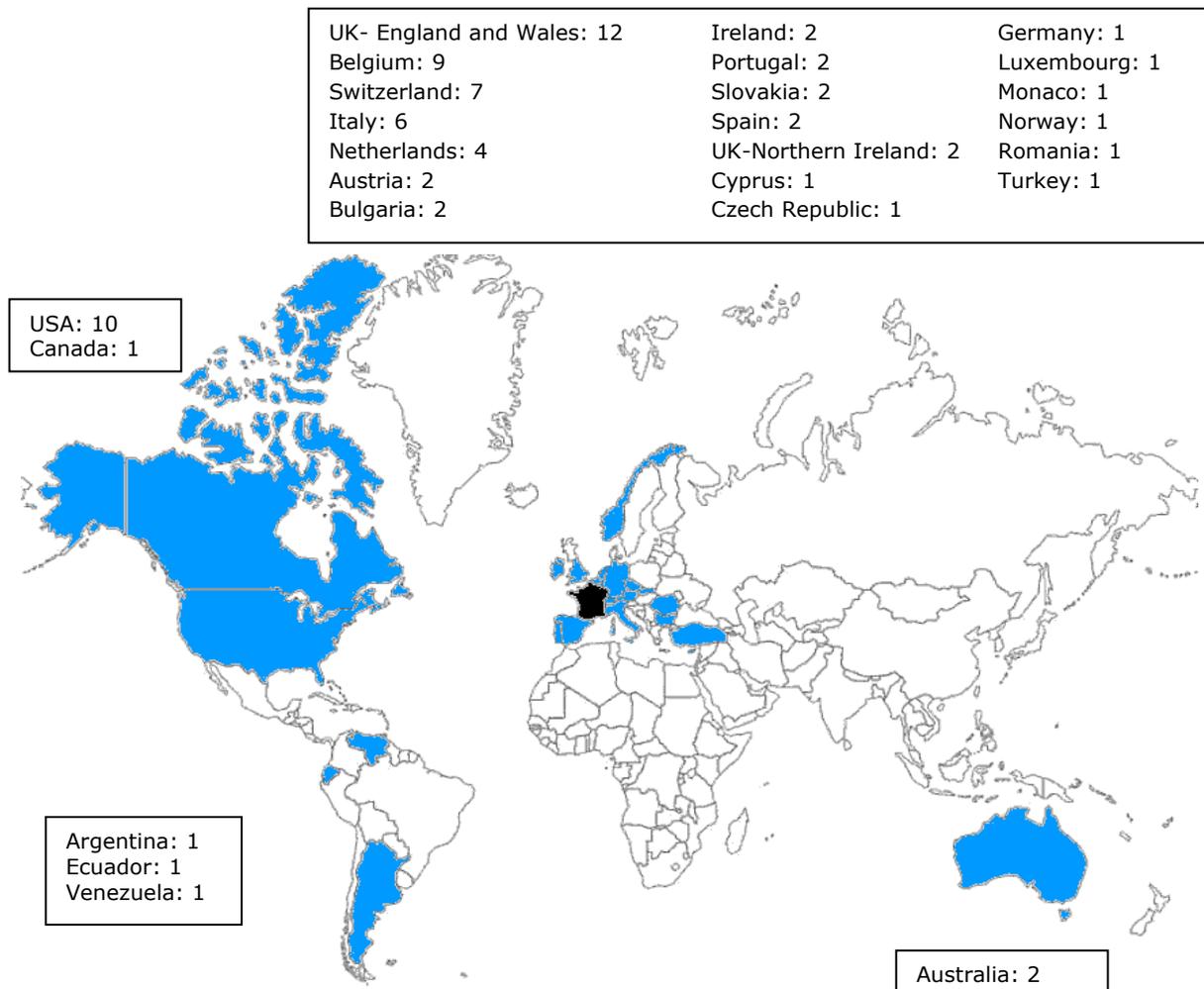
In 2008, 66% of applications to France came from EU States. In 2003, 47% of the applications received came from what would now be EU States and 57% in 1999.

The greatest number of applications from a single State came from England and Wales, making up 16% of all return applications received. This is an increase from 12% in 2003 and 14% in 1999.

In 2003 the highest proportion of applications received from a single State came from the USA (21%, 9 applications). The number of applications from the USA increased in 2008 to 10 applications but the proportion decreased to 13% which is closer to the 12% received in 1999.

The number of applications received from Germany had decreased in each survey. In 1999 France received 6 applications from Germany, in 2003 this fell to 3 and in 2008 there was only 1 application. By contrast, the number of applications from Belgium has increased in each survey. In 1999 no applications came to France from Belgium, in 2003 there were 3 such applications and in 2008 there were 9.

### Map of Contracting States which made return applications to France in 2008



## 2. The taking person

In 2008 a large majority of the taking persons were mothers, 81%, and 16% were fathers. In the remaining 3 applications two 'taking persons' were recorded as being an institution and in one case the child was taken by her stepfather. This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

In past surveys taking persons coming to France have been mostly mothers, making up 71% of taking persons in 2003 and 64% in 1999<sup>28</sup>.

## 3. The status of the taking person as carer in relation to the child

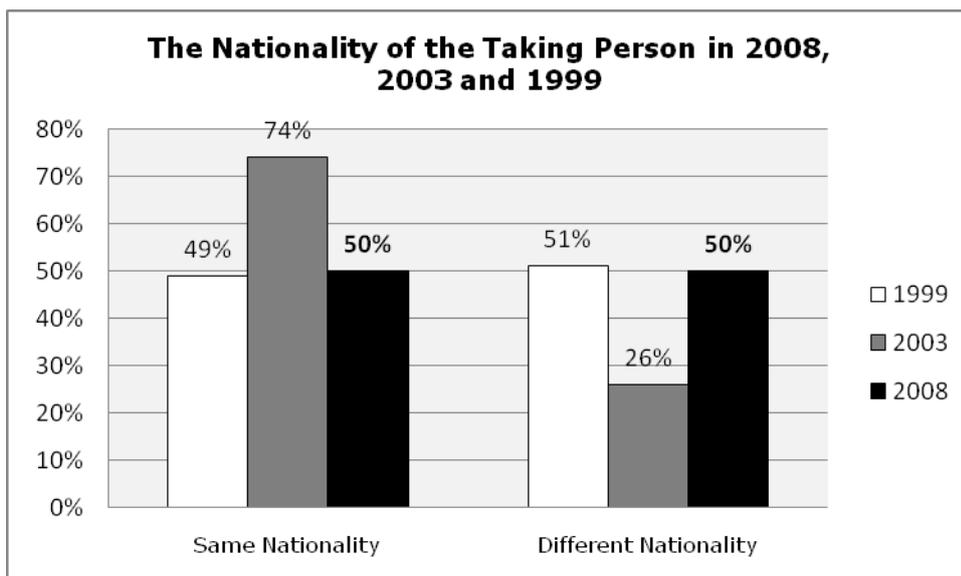
Information on the status as carer of the taking person was only available for 4 applications. In each of these applications the taking person was the primary carer. Two of the taking persons were mothers and two were fathers.

## 4. The nationality of the taking person

In 2008, 50% of applications received involved a taking person who was a French citizen (including 1 taking person with dual nationality) compared with the global 51% of taking persons who went to a State of which they were a national.

In 2003, 74% of taking persons were French citizens and in 1999, 49%. These proportions can be compared with the global averages 55% in 2003 and 52% in 1999.

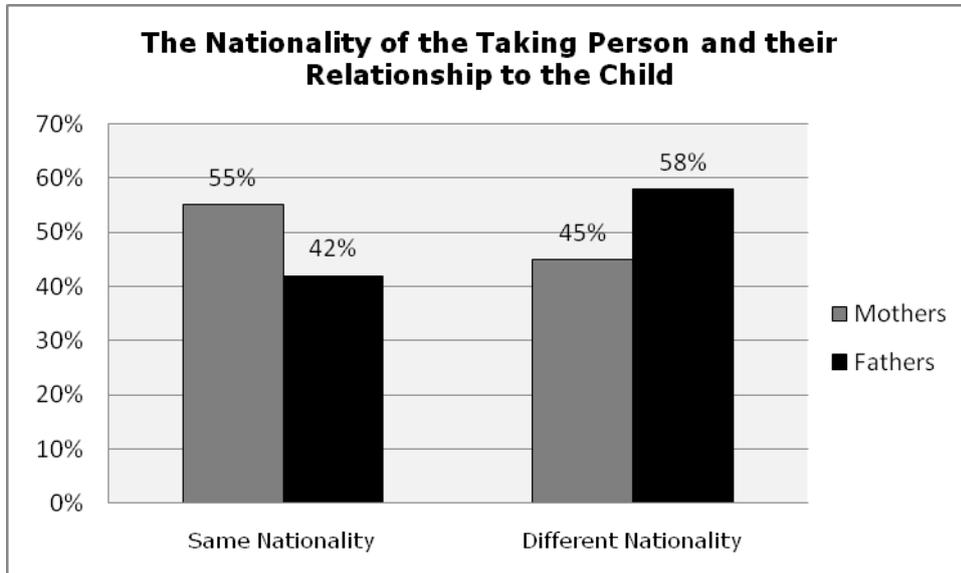
The chart below compares the 2008 findings on nationality with the 2003 and 1999 surveys. The 2008 findings are closer to those in 1999 with around 50% of taking persons being French citizens whereas, in 2003, a much higher proportion (74%) were French citizens.



<sup>28</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication. In 1999, 64% of taking persons in applications received by France were female and so probably mothers.

## 5. The relationship and nationality of the taking person combined

The graph below shows that, in 2008, a higher proportion of mothers taking children to France were found to be French citizens than fathers.



55% of mothers were French nationals compared with 42% of fathers. Globally, 53% of taking mothers were found to have the same nationality as the requested State and 48% of fathers.

In 2003, 70% of taking mothers and 83% of taking fathers were French citizens. In 1999, the figures were closer to those in 2008 with 46% of females having French citizenship and 53% of males.

## 6. The children

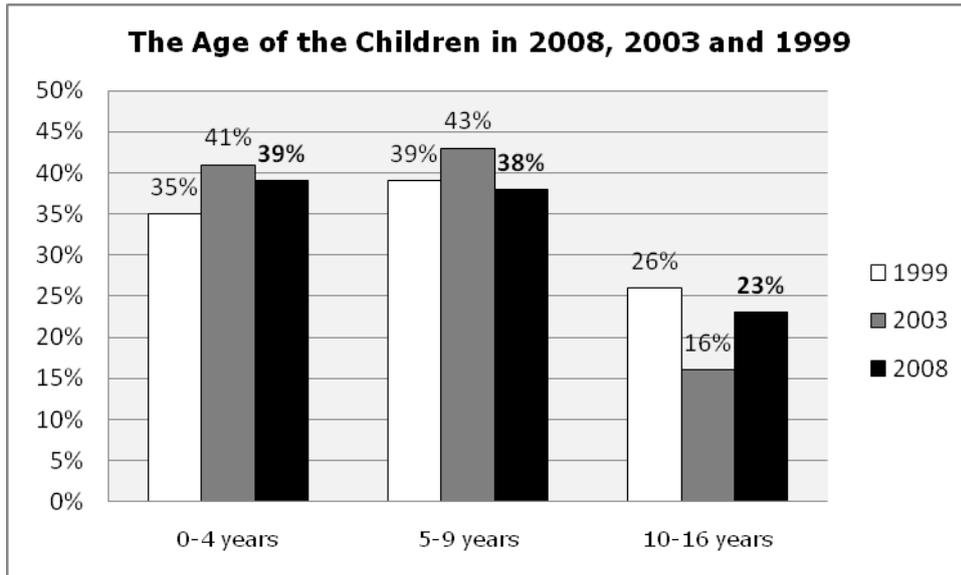
In 2008, 102 children were involved in the 76 applications received by France. This makes an average of 1.34 children per application which is slightly lower than the global average of 1.38 children. In 2003 an average of 1.43 children were involved in each application received by France and in 1999 this was 1.36 children.

70% of applications received were for the return of a single child compared with the global average of 69%. In 2003, 85% of applications to France were for single children but only 67% in 1999.

## 7. The age of the children

The average child involved in a return application to France was 6.2 years compared with the global average of 6.4 years. In 2003 the average age of a child involved in an application received by France was 7.0 years.

In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. The number of children falling within each age group has fluctuated in the three surveys. Overall, there appear to be an increasing number of children falling within the 0-4 year age group and a decrease in the number within the 10-16 year age group.



### 8. The gender of the children

In 2008, 52% of the children involved were male and 48% female. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003 exactly 50% of the children were female and 50% male but, in 1999, 33% were female and 67% male.

### 9. The overall outcomes

The table below shows all the outcomes of return applications received by France in 2008 compared with the global findings.

#### The Outcomes of Return Applications in 2008

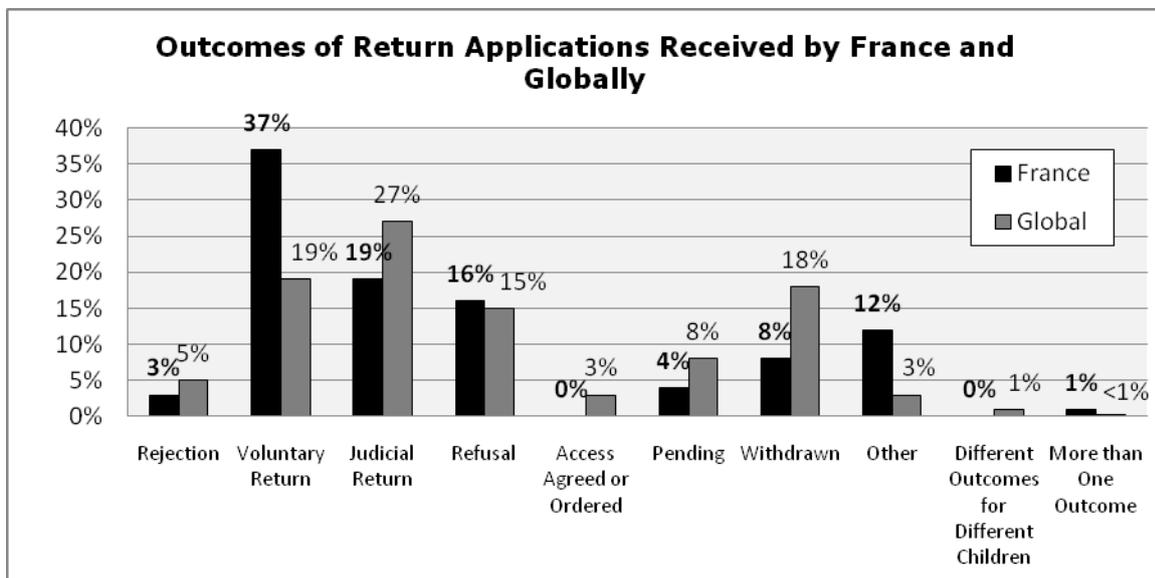
|   | France           | Global      |
|---|------------------|-------------|
| Rejection                                 | 2 (3%)           | 5%          |
| Voluntary Return                          | 28 (37%)         | 19%         |
| Judicial Return                           | 14 (19%)         | 27%         |
| Refusal                                   | 12 (16%)         | 15%         |
| Access Agreed or Ordered                  | 0 (0%)           | 3%          |
| Pending                                   | 3 (4%)           | 8%          |
| Withdrawn                                 | 6 (8%)           | 18%         |
| Other                                     | 9 (12%)          | 3%          |
| Different Outcomes for Different Children | 0 (0%)           | 1%          |
| More than One Outcome                     | 1 (1%)           | <1%         |
| <b>Total</b>                              | <b>75 (100%)</b> | <b>100%</b> |

The graph below shows more clearly how the results in applications received by France compare with those globally. In 2008, 56% of applications received by France ended with a return compared with the global return rate of 46%. This 56% return rate can be broken down into 19% judicial returns, compared with 27% globally, and 37% voluntary returns, almost double the global rate of 19%. No applications ended with an order or agreement for access compared with 3% globally.

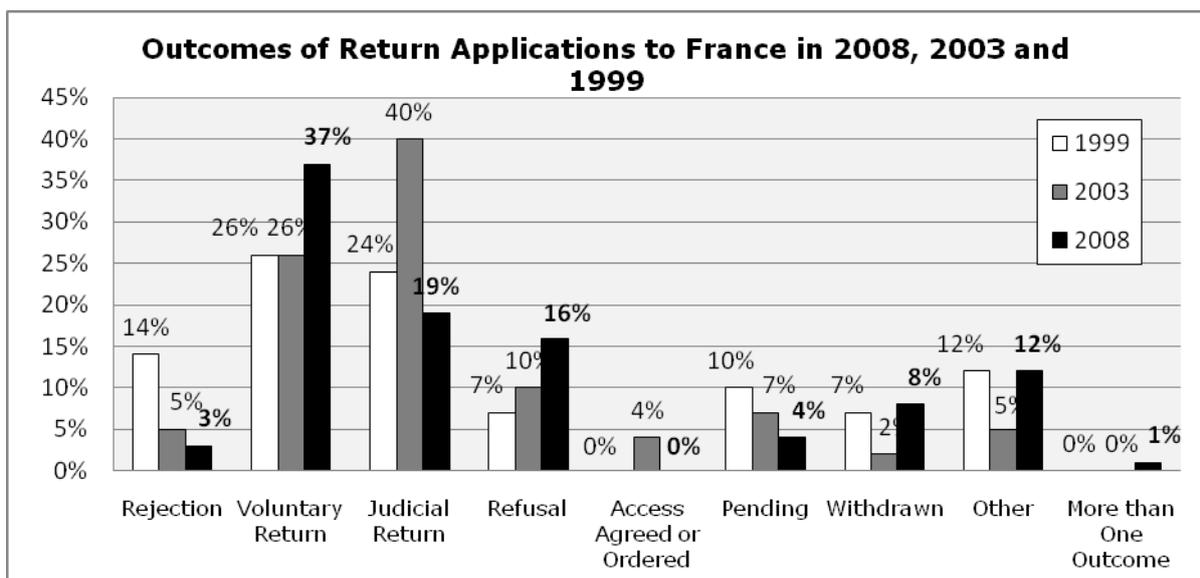
Proportionately fewer applications received by France were pending at the cut off date of 30<sup>th</sup> June 2010 (4% compared with 8% globally) or withdrawn (8% compared with 18% globally). A lower proportion of applications were rejected by the Central Authority (3% compared with 5% globally) and a higher proportion judicially refused (16% compared with 15%).

The outcomes of 12% of applications were categorised as 'other'. One of these applications ended with some form of agreement between the parties, in one the child was returned and the taking person arrested, in one application the child was taken to Tunisia, in one the child could not be located and 5 applications were closed following decisions in domestic courts.

One application had more than one outcome as the case was judicially refused based on a finding that the child was not habitually resident in the requesting State but the child was then voluntarily returned.



The graph below compares the outcomes of applications received by France in 2008 with those in 2003 and 1999.



The overall return rate of 56% in 2008 has decreased from 66% in 2003, but is still an increase on the 50% in 1999. The proportion of voluntary returns was higher in 2008 than in previous surveys but the judicial return rate dropped to 19% in 2008 from 40% in 2003 and 24% in 1999.

The rate of rejection by the Central Authority has gradually decreased from 14% in 1999 to 5% in 2003 and 3% in 2008 and, similarly, the proportion of applications still pending was 4% in 2008 compared with 7% in 2003 and 10% in 1999.

The proportion of judicial refusals has increased from 7% in 1999 to 10% in 2003 to 16% in 2008 and the proportion of withdrawn cases was higher than in previous surveys at 8% compared with 2% in 2003 and 7% in 1999.

## 10. The reasons for rejection

In 2008 only 2 applications were rejected by the French Central Authority. Both were rejected based on a finding that the child's habitual residence was in France. In 2003, 2 applications were rejected, 1 based on Article 12 and 1 because the children could not be located. By contrast, in 1999, 6 applications were rejected by the French Central Authority: 3 because the child could not be located, 2 because the child was not in France and 1 because the applicant had no rights of custody.

## 11. The reasons for judicial refusal

Out of the 27 cases that went to court, 13<sup>29</sup> (48%) were refused compared with 33% globally. In 2003 only 19% of the applications received by France that went to court were refused and in 1999, 23%. A further case in 2008 resulted in more than one outcome and the application was refused based on a finding that the child was not habitually resident in the requesting State (the child was later returned voluntarily).

Of the 13 applications which were judicially refused, 3 applications were decided for more than one reason. In the table below all 18 reasons for refusal are compared with the reasons for refusal globally<sup>30</sup>.

**The Reasons for Refusal in Applications Received by France and Globally in 2008**

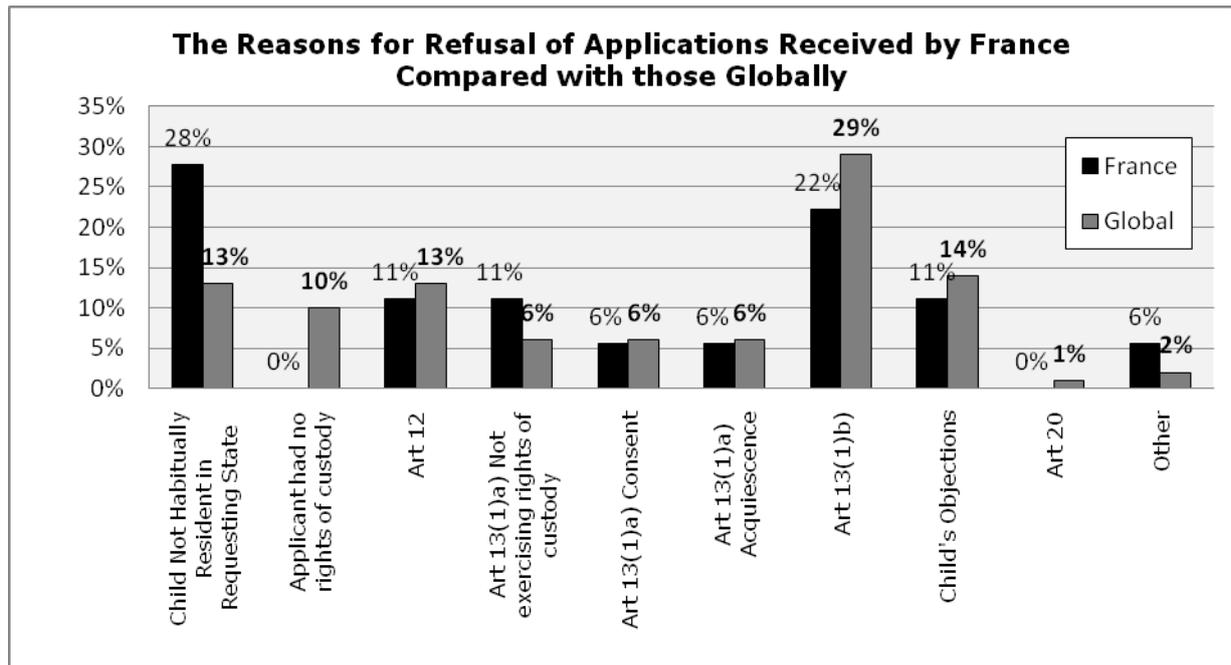
|   | France    |              | Global      |
|---|-----------|--------------|-------------|
|   | Frequency | Percentage   |             |
| Child Not Habitually Resident in Requesting State | 5         | 28%          | 15%         |
| Applicant had no rights of custody                | 0         | 0%           | 8%          |
| Art 12  | 2         | 11%          | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 2         | 11%          | 7%          |
| Art 13(1) a) Consent                              | 1         | 6%           | 5%          |
| Art 13(1) a) Acquiescence                         | 1         | 6%           | 5%          |
| Art 13(1) b)                                      | 4         | 22%          | 27%         |
| Child's Objections                                | 2         | 11%          | 17%         |
| Art 20  | 0         | 0%           | 1%          |
| Other   | 1         | 6%           | 2%          |
| <b>Total</b>                                      | <b>18</b> | <b>≈100%</b> | <b>100%</b> |

<sup>29</sup> Including one application recorded as having more than one outcome as the child was later voluntarily returned.

<sup>30</sup> The global reasons for refusal include all the reasons given in applications refused for more than one reason.

The table above and the graph below show that proportionately more applications received by France were refused due to a finding that the child was not habitually resident in the requesting State (28% compared with 15% globally), that the applicant was not exercising their rights of custody (11% compared with 7%) or based on the consent or acquiescence of the applicant (both 6% compared with 5% globally).

By contrast, proportionately fewer applications were refused under Article 13(1) b) (22% compared with 27%) or following the child's objections (11% compared with 17%). No applications were refused under Article 20 (1% globally) or due to a finding that the applicant had no rights of custody (10% globally).



In 2008, 13 applications were judicially refused compared with 4 in 2003 and 3 in 1999. No applications received in 2008 were refused based on the applicant having no rights of custody. In 2003, 2 applications (50%) were refused for this reason and 1 application (33%) in 1999. In 2008, 22% of applications were refused based on Article 13(1) b). In 2003, 1 application (25%) was refused for this reason compared with 2 applications (67%) in 1999. The fourth judicial refusal (25% of all refused) in 2003 was based on a finding that the child was not habitually resident in the requesting State. This was the most common reason for refusal in 2008 with 5 applications (28%) being refused wholly or partially for this reason.

## 12. The reasons for judicial refusal and the taking person

In the 13 applications that were judicially refused, 10 involved a taking mother and 3 a taking father. Where the taking person was the mother of the child then the most common reason for refusal was based on a finding that the child was not habitually resident in the requesting State (30%, 4 out of 13 applications) or based on Article 13(1)b) (23%, 3 out of 13).

Where the taking person was the father of the child one application was refused based on Article 13(1)a) acquiescence, one on a finding that the child was not habitually resident in the requesting State and one following the child's objections.

### 13. Timing

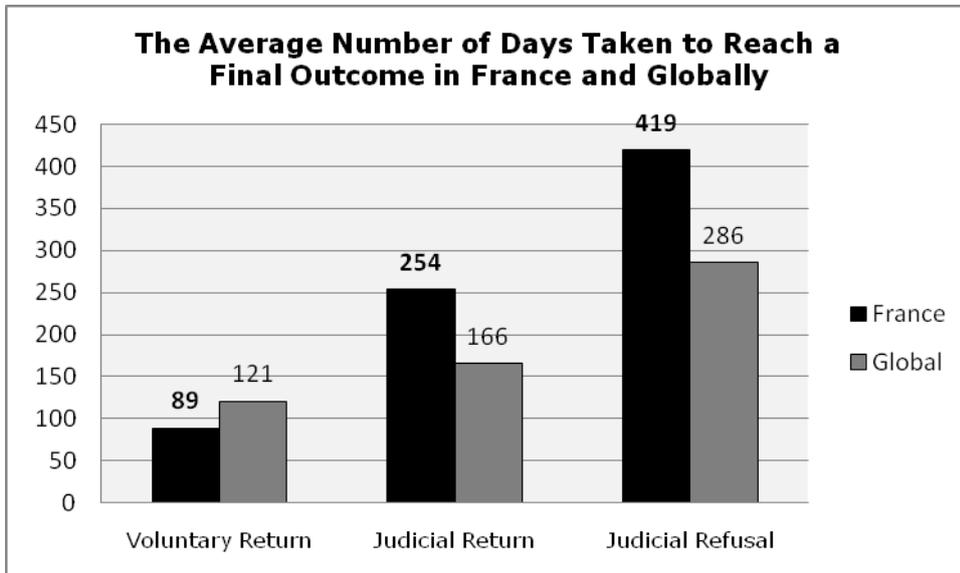
The overall average time taken to reach a final settlement in the return applications received by France was 278 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, voluntary returns were generally resolved more quickly, in an average on 89 days whereas judicial refusals took 419 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in France.

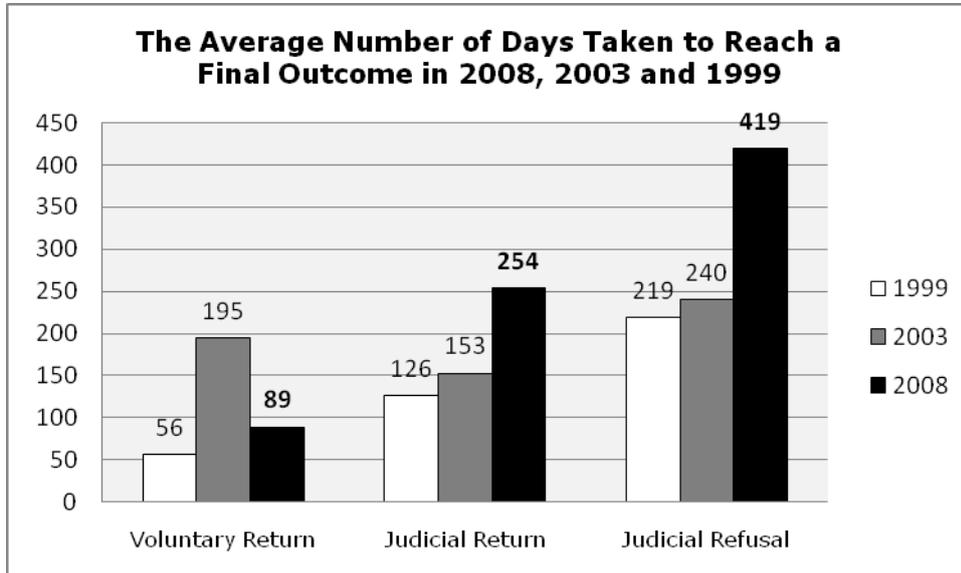
**The Number of Days Taken to Reach an Outcome**

|                 | <b>Voluntary Return</b> | <b>Judicial Return</b> | <b>Judicial Refusal</b> |
|-----------------|-------------------------|------------------------|-------------------------|
| Mean            | 89                      | 254                    | 419                     |
| Median          | 91                      | 266                    | 334                     |
| Minimum         | 28                      | 52                     | 182                     |
| Maximum         | 147                     | 526                    | 880                     |
| Number of Cases | 4                       | 12                     | 11                      |

As can be seen in the graph below, globally, applications that went to court were resolved more quickly with judicial return order being reached in 166 days compared with 254 days in France and judicial refusals took an average of 286 days to conclude compared with 419 days in France. Dates were only available for 4 out of the 28 applications that ended in a voluntary return but these 4 applications were resolved quicker on average in 89 days compared with 121 days globally.



The graph below compares the timings of applications received by France in 2008 with those in 2003 and 1999. Judicial return orders and judicial refusals took considerably longer to conclude in 2008 than in previous surveys. Voluntary returns were resolved more quickly than in 2003 but still took longer than the average time in 1999.



### Time taken to send application to court

In 2008 the length of time that the Central Authority held the application was recorded for the first time. In France it took an average of 119 days before the application was sent to court and the court then took an average 191 days to conclude it<sup>31</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### Appeals

In 2008, 27 return applications went to court and 18 of these decisions (66%) were appealed, considerably higher than the global average of 28%. The time taken to reach a final decision is obviously affected by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 162 days compared with 386 days to finalise a case that was appealed. This is more in line with the global averages of 168 days for a first instance decision and 324 days to conclude an appeal.

## IV. Incoming Access Applications

### 1. The Contracting States which made the application

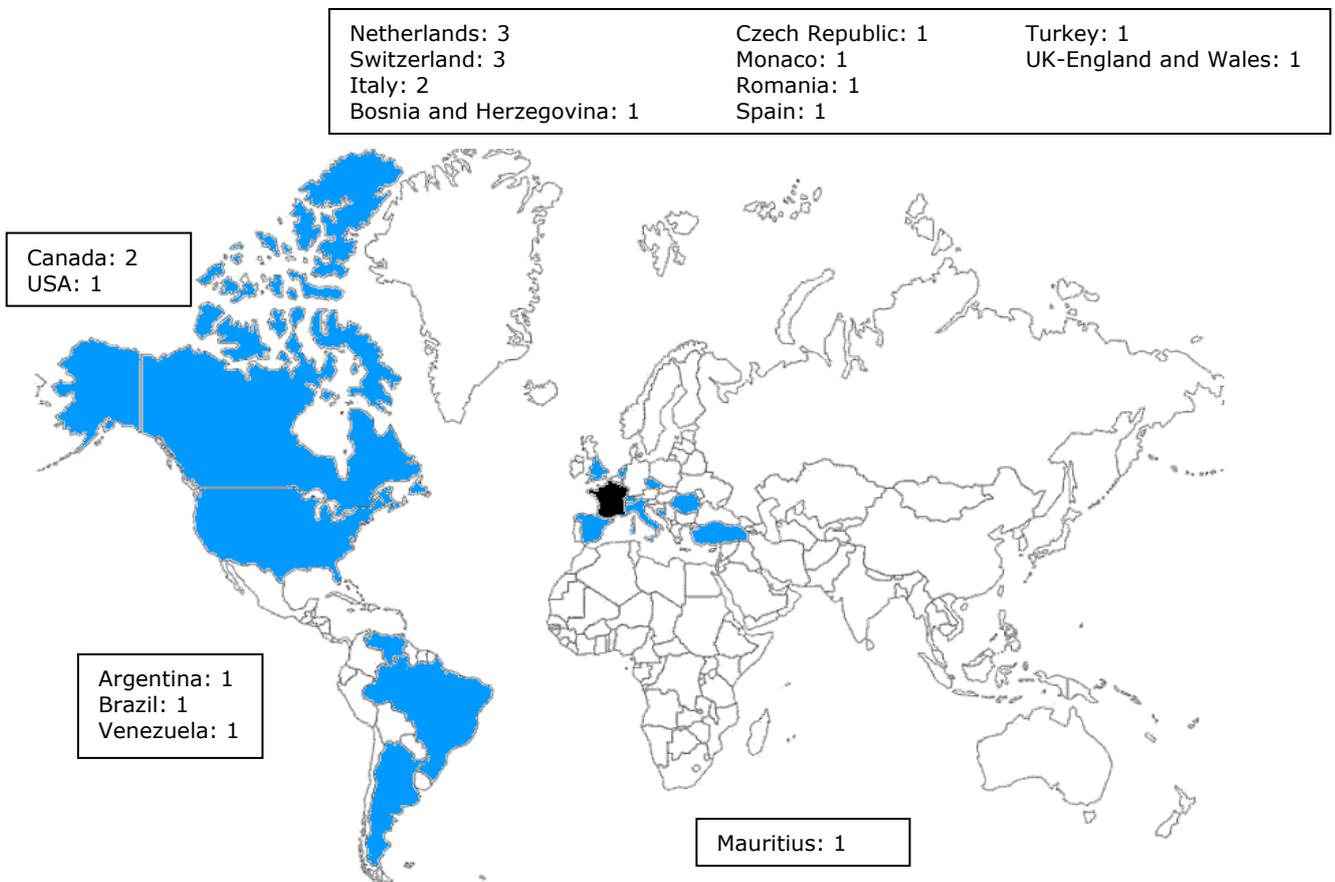
In 2008, the most applications from a single State came from both Switzerland and the Netherlands (both 14%, 3 applications).

<sup>31</sup> These figures are based on 25 applications where the date sent to court was recorded and 24 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

**The Contracting States which made the Most Access Applications to France in 2008 Compared with 2003 and 1999**

|              | <b>1999</b>      | <b>2003</b>      | <b>2008</b>      |
|--------------|------------------|------------------|------------------|
| Netherlands  | 1 (7%)           | 1 (8%)           | 3 (14%)          |
| Switzerland  | 0 (0%)           | 2 (15%)          | 3 (14%)          |
| Canada       | 1 (7%)           | 0 (0%)           | 2 (9%)           |
| Italy        | 3 (20%)          | 2 (15%)          | 2 (9%)           |
| Other States | 10 (67%)         | 8 (53%)          | 12 (55%)         |
| <b>Total</b> | <b>15 (100%)</b> | <b>13 (100%)</b> | <b>22 (100%)</b> |

**Map of Contracting States which Made Access Applications to France in 2008**



## 2. The respondent

Of the 22 access applications received by France in 2008, 77% of respondents were the mother, lower than the global average of 79%, and the remaining 23% were fathers. This can also be compared with the past averages of France with 71% of respondents being mothers in 2003 and 64% in 1999<sup>32</sup>.

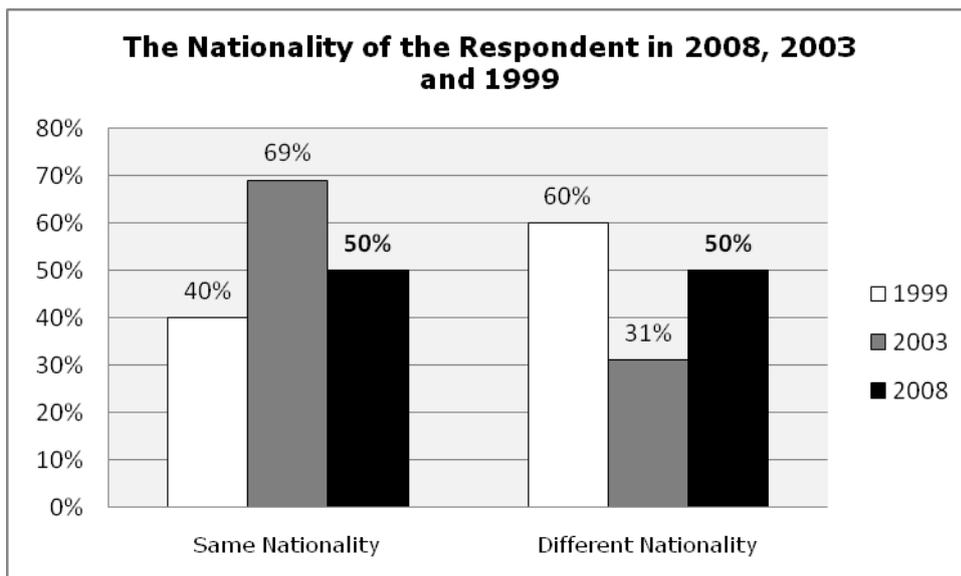
<sup>32</sup> The relationship between the respondent and the child was not recorded in the 1999 survey but this figure has been estimated from the gender of the respondent.

### 3. The status of the respondent as carer in relation to the child

The French Central Authority did not provide information on the status of the respondent as carer.

### 4. The nationality of the respondent

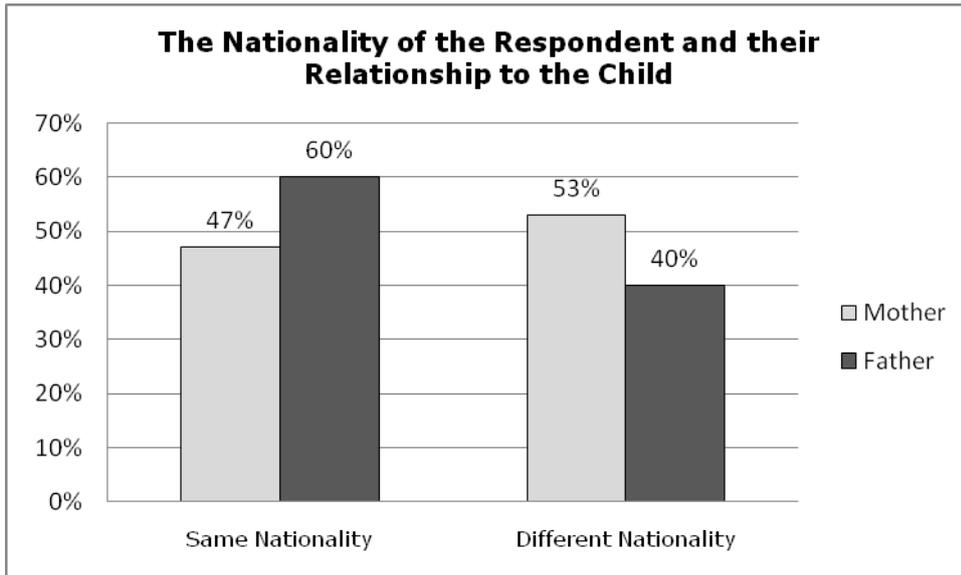
Globally, 52% of respondents in access cases had the same nationality as the requested State. In France, exactly 50% of respondents in access applications were French nationals (including 2 respondents with dual nationality). This can be compared with 69% of respondents being French nationals in 2003 and 40% in 1999.



### 5. The relationship and nationality of the respondent combined

The graph below shows that a higher proportion of respondent fathers were French nationals than respondent mothers (60% compared with 47%). This can be compared with 2003 where more respondent mothers were French (78% compared with 50% of fathers) and 1999 where proportionately fewer mothers were French nationals (46% compared with 53% of fathers).

Globally, 52% of taking mothers and 45% of taking fathers had the same nationality as the requested State.



## 6. The children

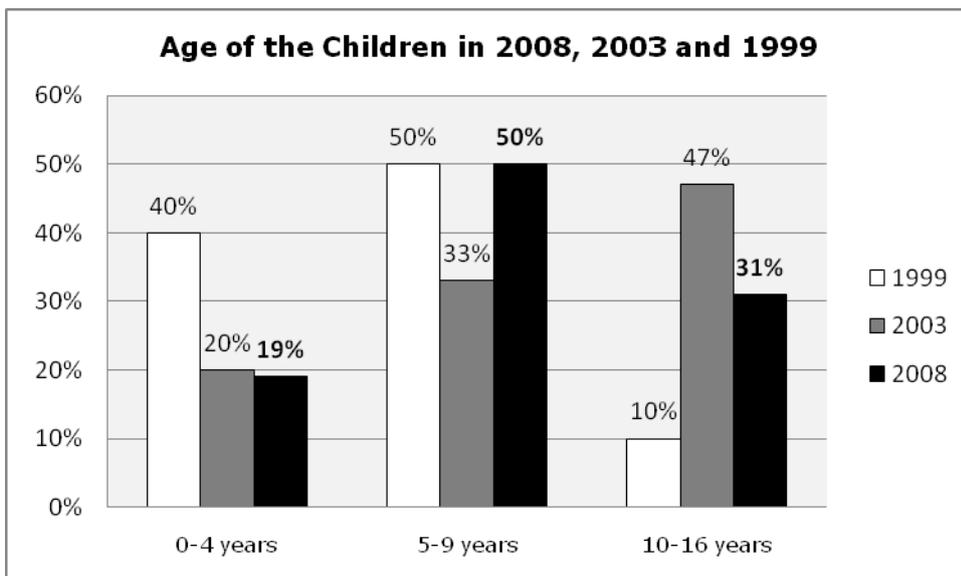
In 2008, 32 children were involved in the 22 access applications to France making an average of 1.45 children per application compared with the global average of 1.32 children. This can be compared with 1.15 children in 2003 and 1.33 children in 1999.

In 2008, 73% of applications involved only one child compared with the global average of 72%. In 2003, 85% of applications received were single child applications and 67% in 1999.

## 7. The age of the children

The average child involved in an access application was 7.7 years compared with the global average of 7.8 years. This is lower than the 2003 French average of 8.3 years.

The graph below shows that an increasing proportion of children are within the 5-9 year age bracket and proportionately fewer are between 0-4 years.



## 8. The gender of the children

In 2008, 47% of children involved in access applications received by France were female and 53% male. Globally, 49% of children involved in access applications were female and 51% male.

In 2003, 60% of children involved in access applications made to France were female and 40% male and in 1999 55% female and 45% male.

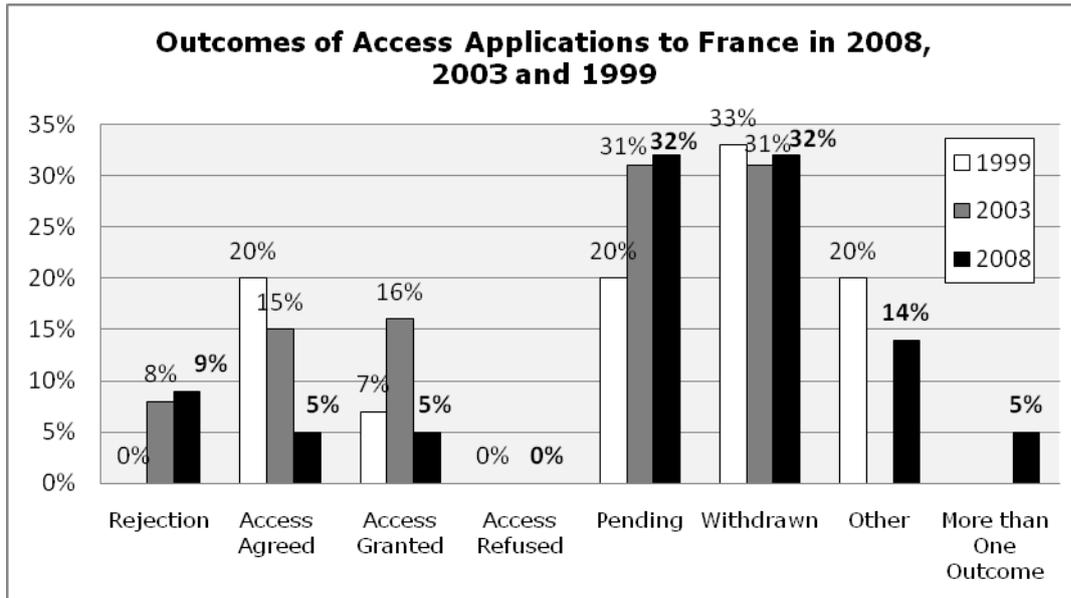
## 9. The overall outcomes

The table below shows the outcomes of the 22 access applications received by France in 2008. The overall rate at which access was agreed or ordered was 10%, lower than the global average of 22%. Fewer applications were rejected by the French Central Authority than globally (9% compared with 13%) and no applications were judicially refused compared with 3% globally. A higher proportion of applications to France (32%) were pending compared with the global average (18%) and 32% were withdrawn compared with 30% globally. One application to France had more than one outcome, this case was recorded as being rejected by the Central Authority but also withdrawn.

**Outcomes of Access Applications Received by France in 2008**

|   | <b>France</b>     | <b>Global</b> |
|---|-------------------|---------------|
| Rejection                                 | 2 (9%)            | 13%           |
| Access agreed outside court               | 1 (5%)            | 8%            |
| Access granted                            | 1 (5%)            | 14%           |
| Access refused                            | 0 (0%)            | 3%            |
| Pending                                   | 7 (32%)           | 18%           |
| Withdrawn                                 | 7 (32%)           | 30%           |
| Other                                     | 3 (14%)           | 14%           |
| Different outcomes for different children | 0 (0%)            | 1%            |
| More than one outcome                     | 1 (5%)            | <1%           |
| <b>Total</b>                              | <b>22 (≈100%)</b> | <b>≈100%</b>  |

The graph below shows how the outcomes in 2008 compare with those of previous surveys. The proportion of applications in which access was agreed or granted is lower in 2008 than the rate of 31% in 2003 and 27% in 1999. The proportion of rejections has increased from 0% in 1999 to 8% in 2003 and 9% in 2008. The proportion of applications withdrawn has been virtually constant in all surveys (32% in 2008, 31% in 2003 and 33% in 1999) and the proportion of applications still pending remains high and increasing at 32% compared with 31% in 2003 and 20% in 1999.



### 10. The reasons for rejection by the Central Authority

In 2008, 3 applications were rejected by the French Central Authority (including 1 which was recorded as having more than one outcome). All 3 applications were rejected based on a finding that the applicant had no rights of custody. In 2003, 1 application was rejected as the access order was to be enforced under the Luxembourg Convention rather than the Hague Convention. No applications were rejected in 1999.

### 11. The reasons for judicial refusal

No applications were judicially refused in 2008, 2003 or 1999.

### 12. Timing

In 2008 only 2 applications ended in access and so only 2 dates were available for comparison. One application in which access was agreed outside court took 212 days and one in which access was judicially granted took 344. Access was also granted at first instance in a further application, recorded as pending, this first instance decision took 728 days to conclude and is pending an appeal. This can be compared with the global averages of 309 days for a voluntary agreement and 357 days for a judicial order for access.

In 2003, access was voluntarily agreed in an average of 46 days which was notably quicker than in 1999 where 2 out of 3 voluntary settlements took over 6 months to reach a conclusion. The one application that resulted in a judicial order for access in 2003 took 206 days to conclude.

## V. The Impact of the Brussels II a Regulation

### 1. The proportion of applications received from Brussels II a Regulation States

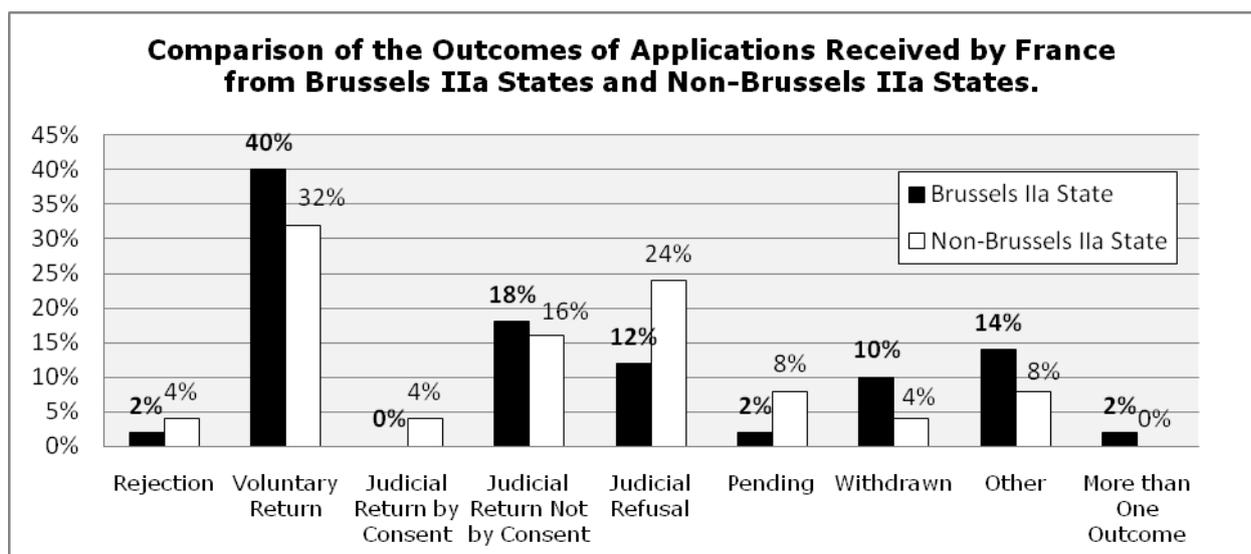
The Brussels II a Regulation applies to 26 EU Member States (Brussels II a States) i.e. all such States except for Denmark. Brussels II a States who have responded to the questionnaire received a total of 988 return applications. 705 of these applications came from fellow Brussels II a States (71%) and the remaining 283 applications came from what will be termed non-Brussels II a States (29%). In 2003, 62% of all applications received by what would now be Brussels II a States were from what would now be fellow Brussels II a States.

France received 76 return applications in 2008 and 50 of these came from Brussels II a States (66%). This is a higher proportion than in 2003 where 48% came from what is now a Brussels II a State and 57% in 1999.

### 2. Brussels II a Regulation and outcomes

The graph below shows the outcomes of applications from Brussels II a States and non-Brussels II a States that were received by France in 2008.

When the application came from a Brussels II a State there were proportionately more returns (58% compared with 52% if the State making the application was not a Brussels II a State). Where the requesting State was a Brussels II a State the rate of rejection by the Central Authority and the rate of judicial refusal were both half the rate if the State was a non-Brussels II a State (2% compared with 4% and 12% compared with 24%, respectively). There were also less applications pending at the cut off date of 30<sup>th</sup> June 2010 (2% compared with 8%). If the requesting State was Brussels II a then there was a higher rate of withdrawal (10%) compared with 4% if the requesting State was not a Brussels II a State.

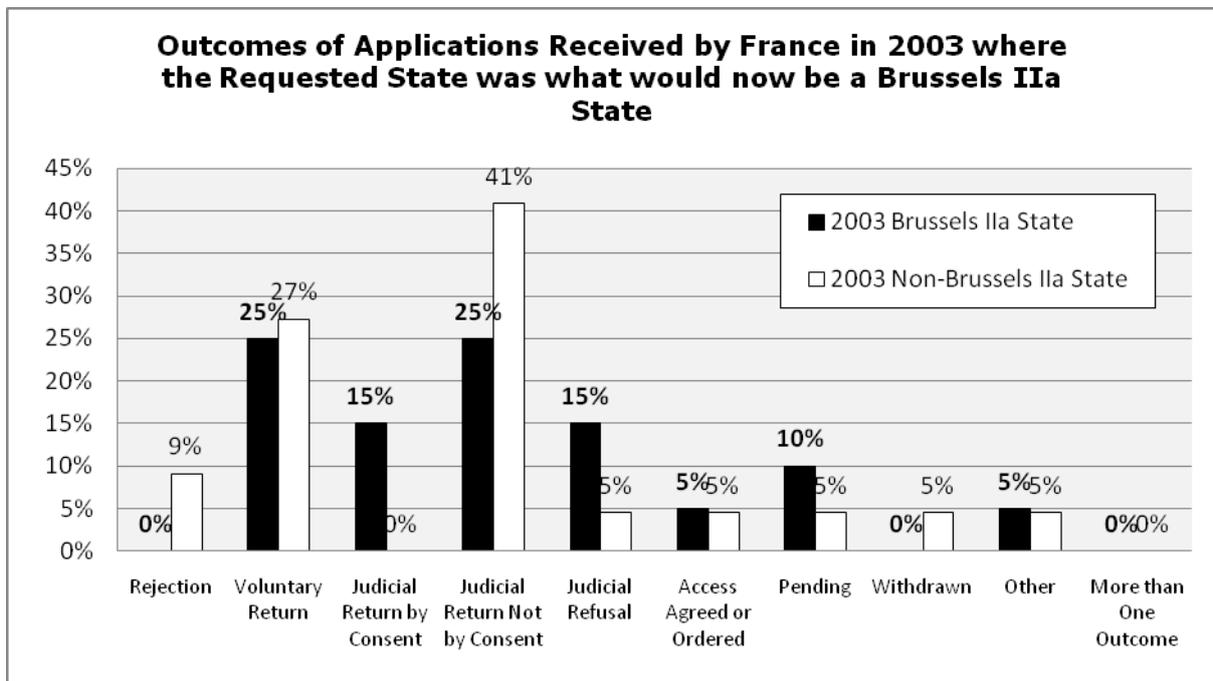


For the main part, these results are reflective of the global picture where applications involved two Brussels II a States with more returns and fewer rejections, refusals and pending cases.

These results can also be compared with the 2003 survey by looking at the outcomes of cases received by France from States that would now be subject to the Brussels II a Regulation. Any applications between what are now Brussels II a States would not have been subject to the Revised Brussels II a Regulation in 2003 as it was not yet in force. But, by looking at the outcomes of what would now be Brussels II a States and Non-Brussels II a States, it is possible to ascertain whether the Brussels II a Regulation has had an impact, for example in increasing the return rate between Brussels II a States, or whether there has always been a higher proportion of returns between them.

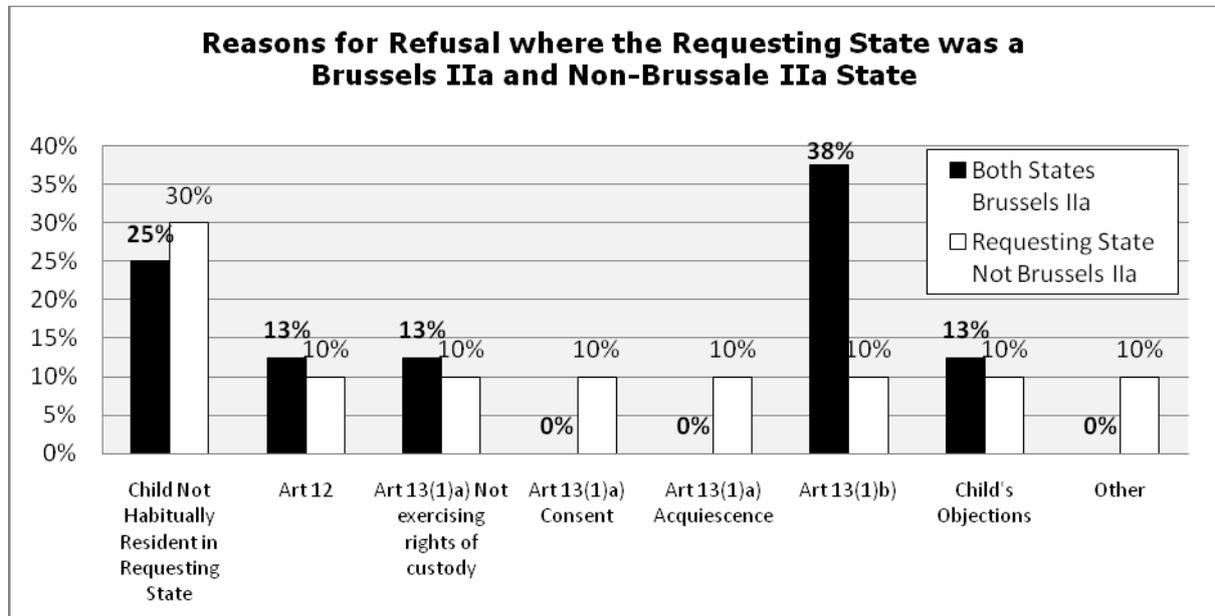
In 2003 there was a lower return rate between what would now be Brussels II a States at 65% compared with 68% if the requesting State was one that is not now Brussels II a. By contrast, in 2008 there was a 58% return rate between Brussels II a States and a 52% rate where the requesting State would now be a non-Brussels II a State.

Furthermore, in 2003, there were more judicial refusals between States that would now be Brussels II a and more pending cases. This can be compared with 2008 where there were half as many judicial refusals between Brussels II a States compared with an application from a non-Brussels II a State and a quarter of the proportion of pending cases.



### 3. Refusals and reasons for refusal

Fewer applications received by France were refused if the requesting State was a Brussels II a State than if it was not (12% as against 24%). The graph below shows the reasons for refusal in these applications.



Surprisingly, the most frequent reason for refusal of an application from a Brussels II a State was Art 13(1) b) which was relied upon wholly or in part in 3 applications compared with only 1 application coming from a non-Brussels II a State. Fewer refusals between Brussels II a States were based on a finding that the child was not habitually resident in the requesting State but there was no difference between applications received from Brussels II a States and non-Brussels II a States in relation to Article 12, Article 13(1) a) not exercising rights of custody and the child's objections as each article was relied upon once regardless of whether the requesting State was a Brussels II a one.

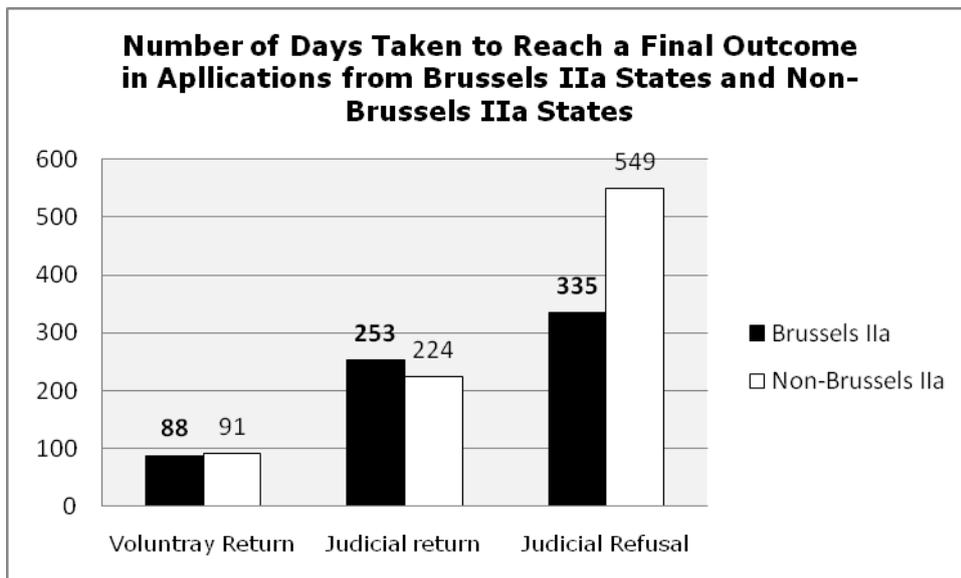
This profile reflects the overall impact of the Brussels II a Regulation which also found that a far greater proportion of cases were refused under Art 13(1) b) where the application was subject to the Regulation.

### 4. Brussels II a and timing

The applications received by France in 2008 to which the Brussels II a Regulation applied were resolved more quickly than those received from non-Brussels II a States. The overall average time taken to reach a final settlement was 245 days if the requesting State was a Brussels II a State and 327 days if it was not.

Breaking these results down into the time taken to reach different outcomes, the table and graph below show that Brussels II a cases were resolved more quickly in applications ending in voluntary returns and judicial refusals but judicial returns took longer compared with applications from requesting States outside Brussels II a.

|                 | Voluntary Return |                   | Judicial Return |                   | Judicial Refusal |                   |
|-----------------|------------------|-------------------|-----------------|-------------------|------------------|-------------------|
|                 | Brussels II a    | Non-Brussels II a | Brussels II a   | Non-Brussels II a | Brussels II a    | Non-Brussels II a |
| <b>Mean</b>     | <b>88</b>        | <b>91</b>         | <b>253</b>      | <b>224</b>        | <b>335</b>       | <b>549</b>        |
| Median          | 88               | 91                | 267             | 226               | 303              | 520               |
| Minimum         | 28               | 45                | 52              | 80                | 282              | 182               |
| Maximum         | 147              | 137               | 526             | 364               | 460              | 880               |
| Number of cases | 2                | 2                 | 9               | 4                 | 5                | 5                 |



Only 1 application from a Brussels II a State was resolved in 6 weeks (6%) whereas no applications from non-Brussels IIa States were concluded in this time. 17% of Brussels IIa applications were resolved in 12 weeks (3 applications) and 22% in 18 weeks (4 applications) compared with 7% of applications from non-Brussels IIa States being resolved in 12 weeks (2 applications) and 25% in 18 weeks (3 applications). 12 applications (67%) from Brussels IIa States took over 24 weeks to conclude and 17% (3 applications) took over 54 weeks, compared with 8 applications (67%) from a non-Brussels IIa State taking over 24 weeks and 4 applications (33%) taking more than 54 weeks.

Overall, only 15% of all applications to which the Brussels II a Regulation applied were resolved in 6 weeks compared with 16% of applications received by Brussels II a States from non-Brussels II a States. 51% of Brussels II a applications were resolved in 18 weeks compared with 58% of applications received by Brussels II a States from non-Brussels II a States

## FRANCE

### I. Résumé

En 2008, la France a reçu 76 demandes de retour et 22 demandes de droit de visite, soit respectivement 81 % et 69 % de plus qu'en 2003. Au total, l'Autorité centrale française a traité 68 % de demandes de plus en 2008 qu'en 2003.

56 % des 76 demandes de retour reçues se sont conclues par le retour de l'enfant. Ce chiffre est supérieur au pourcentage mondial de retours, qui est de 46 %, mais il est en recul par rapport à 2003 (66 %) et à 1999 (50 %). Dans l'ensemble, par rapport aux chiffres mondiaux, la France a refusé davantage de retours par décision judiciaire, mais le nombre de demandes rejetées, retirées ou en cours au 30 juin 2010, date d'arrêt des statistiques, est inférieur.

Le délai de règlement des demandes de retour adressées à la France, de 278 jours en moyenne, est plus long que le délai mondial moyen, qui est de 188 jours.

En matière de droit de visite, le pourcentage de demandes réglées par un droit de visite octroyé par accord entre les parties ou par décision judiciaire est de 10 % contre 22 % à l'échelle mondiale, et une forte proportion de demandes ont été retirées (32 %) ou étaient encore en cours (32 %).

Le pourcentage de retours est plus élevé lorsque le Règlement Bruxelles II *bis* s'applique aux demandes reçues par la France que dans le cas contraire (58 % contre 52 %) et on observe également un pourcentage plus faible de décisions judiciaires refusant le retour (12 % contre 24 %), de demandes rejetées (2 % contre 4 %) et de demandes en cours (2 % contre 8 %). En outre, lorsque le Règlement s'applique, le pourcentage de demandes retirées est plus élevé (10 % contre 4 %).

Dans l'ensemble, les demandes adressées à la France par d'autres États parties au Règlement Bruxelles II *bis* ont été réglées plus rapidement, avec un délai moyen de 245 jours entre la réception à l'Autorité centrale et la conclusion, que les demandes émanant d'États non parties au Règlement (327 jours). Le délai de règlement des demandes conclues par une décision ordonnant le retour est plus long, de 253 jours, lorsque la demande émane d'États parties au Règlement que dans le cas contraire (224 jours), mais celui des demandes réglées par décision refusant le retour est plus court, de 335 jours contre 549.

### II. Nombre de demandes reçues et envoyées en 2008

|                                      | 1999 | 2003 | 2008      |
|--------------------------------------|------|------|-----------|
| Demandes de retour reçues            | 42   | 42   | <b>76</b> |
| Demandes de droit de visite reçues   | 15   | 13   | <b>22</b> |
| Demandes de retour envoyées          | 43   | 57   | <b>78</b> |
| Demandes de droit de visite envoyées | 7    | 15   | <b>37</b> |

En 2008, l'Autorité centrale française a reçu 76 demandes de retour et 22 demandes de droit de visite, soit un total de 98 demandes. Ce chiffre représente une augmentation de 78 % par rapport à 2003 (55 demandes) et de 72 % par rapport à 1999 (57 demandes).

La proportion de demandes de retour et de demandes de droit de visite en 2008 s'établit respectivement à 78 % et 22 %, contre 76 % et 24 % en 2003 et 74 % et 26 % en 1999.

De plus, l'Autorité centrale a envoyé 115 demandes, à raison de 78 demandes de retour et de 37 demandes de droit de visite, soit 60 % de plus qu'en 2003 (72 demandes envoyées) et 130 % de plus qu'en 1999 (50 demandes envoyées).

Au total, l'Autorité centrale a traité 213 demandes reçues et envoyées, soit 68 % de plus qu'en 2003 (127 demandes) et 99 % de plus qu'en 1999 (107 demandes).

### III. Demandes de retour reçues

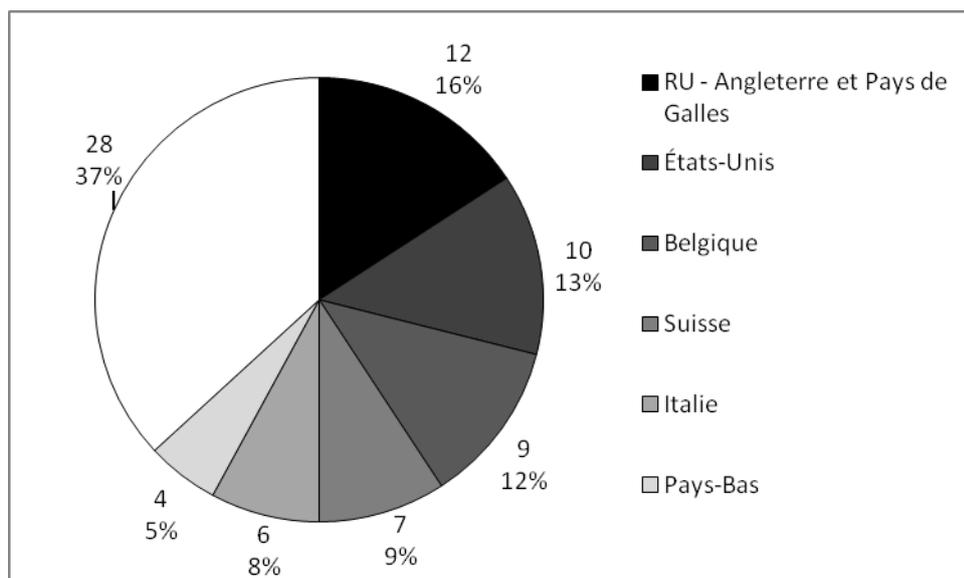
#### 1. États requérants

En 2008, la France a reçu des demandes de retour émanant de 26 Autorités centrales – soit plus qu'en 2003 (17 États requérants) et qu'en 1999 (16).

#### États contractants ayant adressé le plus grand nombre de demandes à la France

|                                   | 1999      | 2003      | 2008            |
|-----------------------------------|-----------|-----------|-----------------|
| RU - Angleterre et Pays de Galles | 6 (14%)   | 5 (12%)   | <b>12 (16%)</b> |
| États-Unis d'Amérique             | 5 (12%)   | 9 (21%)   | <b>10 (13%)</b> |
| Belgique                          | 0 (0%)    | 3 (7%)    | <b>9 (12%)</b>  |
| Suisse                            | 3 (7%)    | 4 (10%)   | <b>7 (9%)</b>   |
| Italie                            | 4 (10%)   | 2 (5%)    | <b>6 (8%)</b>   |
| Pays-Bas                          | 2 (5%)    | 0 (0%)    | <b>4 (5%)</b>   |
| Autres États                      | 22 (52%)  | 19 (45%)  | <b>28 (37%)</b> |
| <b>Total</b>                      | <b>42</b> | <b>42</b> | <b>76</b>       |

#### États ayant adressé des demandes de retour à la France en 2008



En 2008, 66 % des demandes adressées à la France émanaient de l'Union européenne (UE). En 2003, 47 % des demandes reçues émanaient d'États qui seraient aujourd'hui membres de l'UE et 57 % en 1999.

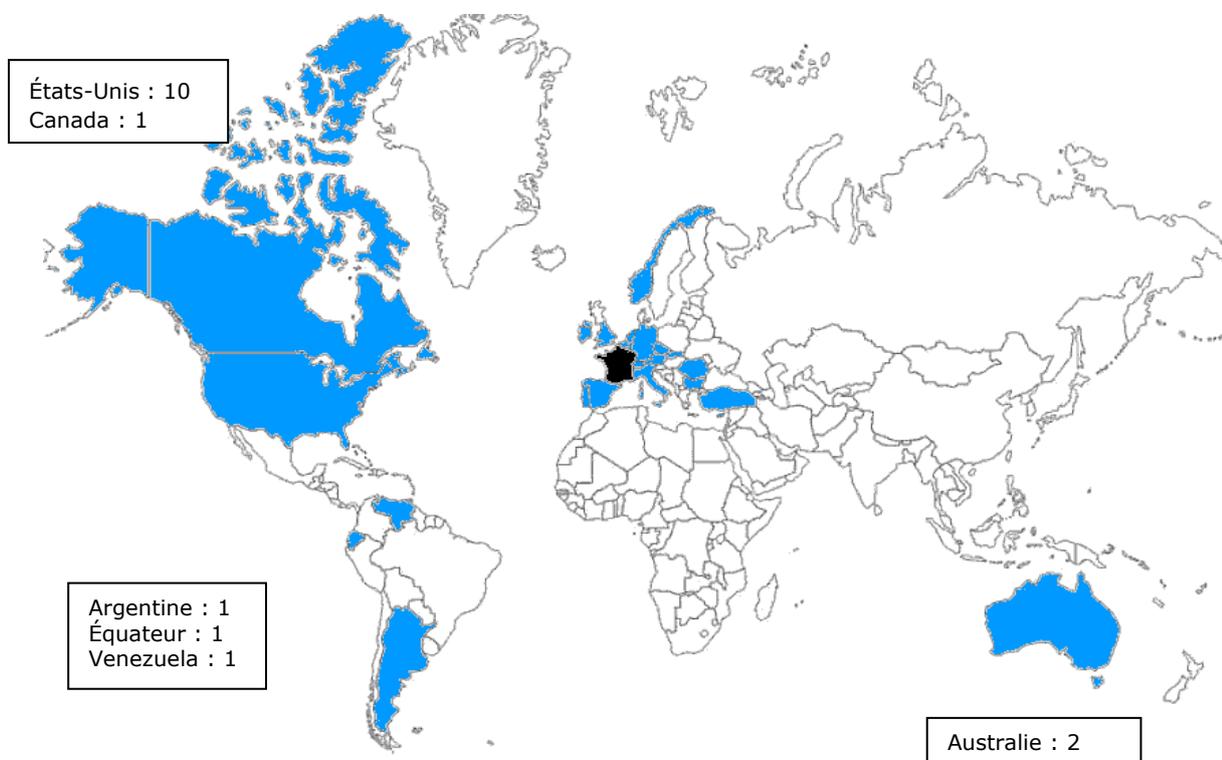
L'État ayant adressé le plus grand nombre de demandes est le Royaume-Uni (Angleterre et Pays de Galles), avec 16 % des demandes de retour reçues. Ce chiffre est plus élevé qu'en 2003 (12 %) et 1999 (14 %).

En 2003, c'étaient les États-Unis d'Amérique qui avaient adressé le plus grand nombre de demandes (21 %, 9 demandes). Les demandes émanant de cet État ont augmenté en valeur absolue (10 demandes en 2008), mais elles ont reculé en pourcentage, à 13 %, un chiffre plus proche des 12 % enregistrés en 1999.

Le nombre de demandes émanant de l'Allemagne recule à chaque enquête ; la France a reçu 6 demandes de cet État en 1999, 3 en 2003 et 1 seulement en 2008. À l'inverse, le nombre de demandes émanant de la Belgique augmente à chaque enquête ; il était nul en 1999, de 3 en 2003 et de 9 en 2008.

### États contractants ayant présenté des demandes de retour à la France en 2008

|                                       |                        |                |
|---------------------------------------|------------------------|----------------|
| RU- Angleterre et Pays de Galles : 12 | Irlande : 2            | Allemagne : 1  |
| Belgique : 9                          | Portugal : 2           | Luxembourg : 1 |
| Suisse : 7                            | Slovaquie : 2          | Monaco : 1     |
| Italie : 6                            | Espagne : 2            | Norvège : 1    |
| Pays-Bas : 4                          | RU-Irlande du Nord : 2 | Roumanie : 1   |
| Autriche : 2                          | Chypre : 1             | Turquie : 1    |
| Bulgarie : 2                          | République tchèque : 1 |                |



## **2. Personne ayant emmené ou retenu l'enfant**

En 2008, la grande majorité (81 %) des personnes ayant emmené ou retenu un enfant étaient des mères, tandis que 16 % étaient des pères. Dans les 3 autres demandes, deux « personnes ayant emmené ou retenu l'enfant » étaient des institutions et dans une affaire, l'enfant, une fille, avait été emmené par son beau-père. Ces chiffres sont à comparer avec la moyenne mondiale, 69 % étant des mères et 28 % des pères.

Dans les enquêtes précédentes, les personnes ayant emmené ou retenu un enfant en France étaient majoritairement des mères, 71 % en 2003 et 64 % en 1999<sup>33</sup>.

## **3. Statut de la personne ayant emmené ou retenu l'enfant en matière de soins à l'enfant**

Le statut de la personne ayant emmené ou retenu l'enfant en matière de soins à l'enfant n'est connu que pour 4 demandes. Dans chacune de ces demandes, la personne ayant emmené ou retenu l'enfant était celle qui en prenait soin à titre principal, la mère dans deux cas, le père dans les deux autres.

## **4. Nationalité de la personne ayant emmené ou retenu l'enfant**

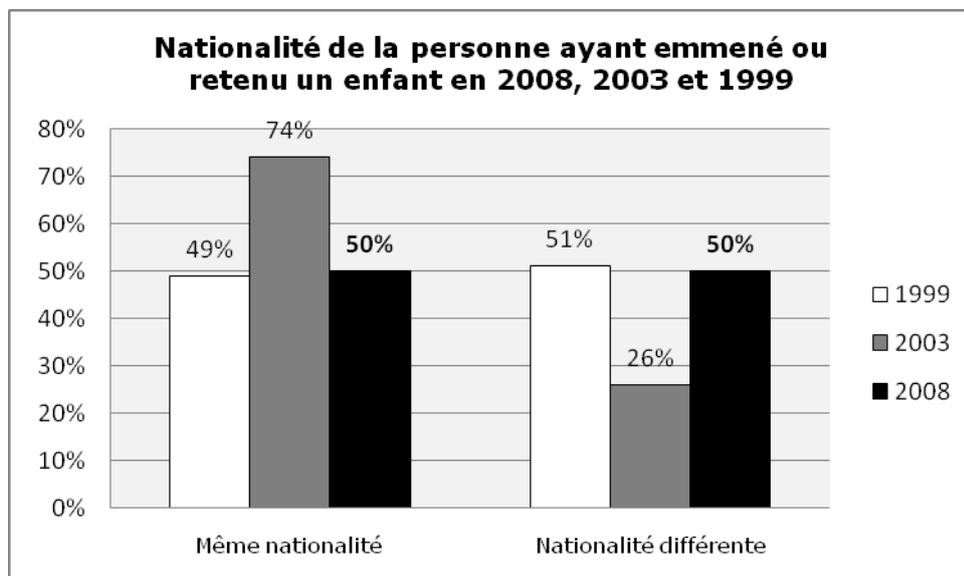
En 2008, dans 50 % des demandes reçues, la personne ayant emmené ou retenu l'enfant avait la nationalité française (une personne ayant une double nationalité) ; à l'échelle mondiale, 51 % des personnes ayant emmené ou retenu un enfant se sont rendues dans un État dont elles étaient ressortissantes.

À titre de comparaison, 74 % des personnes ayant emmené ou retenu un enfant avaient la nationalité française en 2003 et 49 % en 1999. La moyenne mondiale était de respectivement 55 % et 52 % en 2003 et en 1999.

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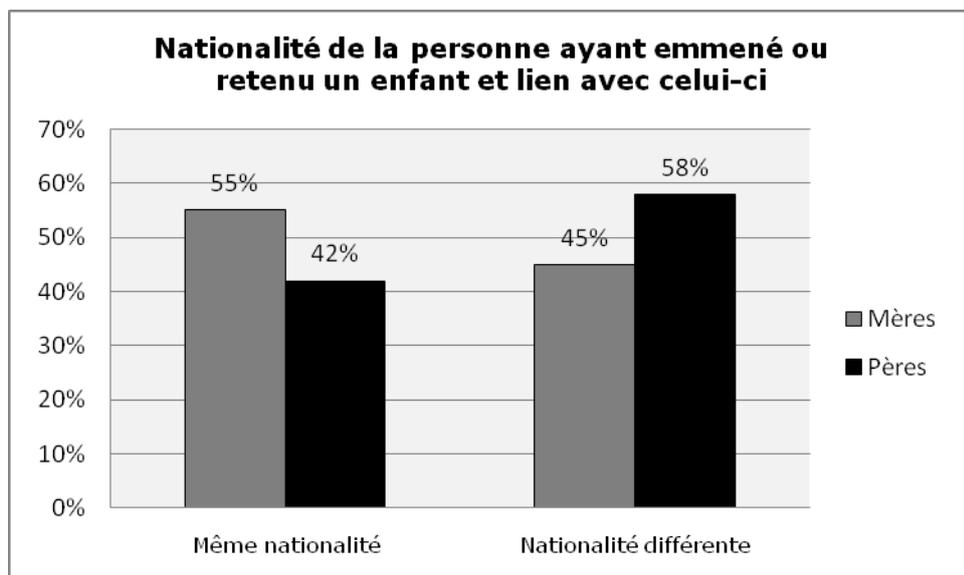
<sup>33</sup> En 1999, le lien entre l'enfant et la personne qui l'avait emmené ou retenu n'était pas enregistré, mais comme la grande majorité des personnes emmenant ou retenant un enfant sont les parents, le sexe de la personne qui emmène ou retient l'enfant donne une bonne indication. En 1999, 64 % des personnes ayant emmené ou retenu un enfant dans les demandes reçues par la France étaient des femmes, et donc probablement la mère.

Le graphique suivant compare les constats de 2008 sur la nationalité à ceux de 2003 et de 1999. Les constats de 2008 sont plus proches des chiffres de 1999, avec environ 50 % de personnes ayant emmené ou retenu un enfant ressortissantes françaises, alors que la proportion était nettement plus élevée en 2003 (74 %).



### 5. Lien entre l'enfant et la personne l'ayant emmené ou retenu et nationalité de celle-ci

Le graphique suivant montre qu'en 2008, le pourcentage de ressortissantes françaises parmi les personnes ayant emmené ou retenu leur enfant en France est plus élevé parmi les mères que parmi les pères.



55 % des mères sont ressortissantes françaises, contre 42 % des pères. À l'échelle mondiale, 53 % des mères ayant emmené ou retenu leur enfant et 48 % des pères dans cette situation ont la nationalité de l'État requis.

En 2003, 70 % des mères ayant emmené ou retenu leur enfant et 83 % des pères dans la même situation avaient la nationalité française, tandis qu'en 1999, les chiffres étaient plus proches de ceux de 2008, avec 46 % de ressortissantes françaises et 53 % de ressortissants français.

## 6. Enfants

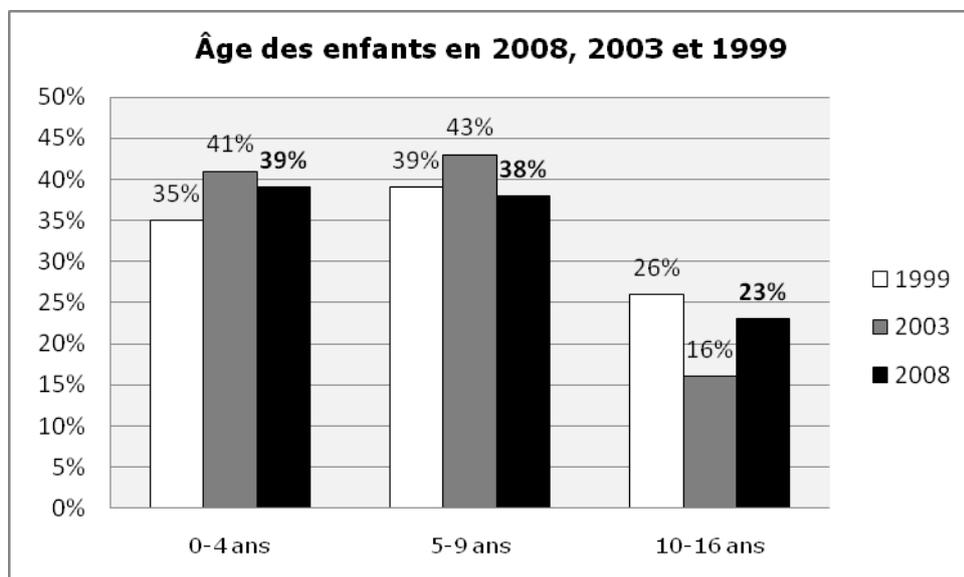
En 2008, les 76 demandes de retour reçues par la France concernaient 102 enfants, soit une moyenne de 1,34 enfant par demande, un chiffre légèrement inférieur à la moyenne mondiale de 1,38 enfant. Ce chiffre était en France de 1,43 enfant par demande en 2003 et de 1,36 en 1999.

70 % des demandes concernent le retour d'un seul enfant en 2008, pour une moyenne mondiale de 69 %, contre 85 % en 2003, mais seulement 67 % en 1999.

## 7. Âge des enfants

L'enfant concerné par une demande de retour adressée à la France est âgé de 6,2 ans en moyenne en 2008 (moyenne mondiale de 6,6 ans) et de 7,0 ans en 2003.

Ce renseignement n'était pas donné dans l'enquête de 1999 ; c'est pourquoi, afin de comparer les résultats des trois enquêtes, les données ont été réorganisées en tranches d'âge dans le graphique ci-dessous. Le nombre d'enfants de chaque tranche d'âge varie d'une enquête à l'autre mais globalement, il semble que le nombre d'enfants âgés de 0 à 4 ans augmente et que le nombre d'enfants âgés de 10 à 16 ans diminue.



## 8. Sexe des enfants

En 2008, 52 % des enfants concernés sont des garçons et 48 % sont des filles, ces chiffres étant de respectivement 51 % et 49 % à l'échelle mondiale. En 2003, les enfants se répartissaient exactement à 50 % entre filles et garçons mais en 1999, 33 % étaient des filles et 67 % des garçons.

## 9. Issue globale

Le tableau suivant indique toutes les issues des demandes de retour reçues par la France en 2008 et les compare aux valeurs mondiales.

### Issue des demandes de retour en 2008

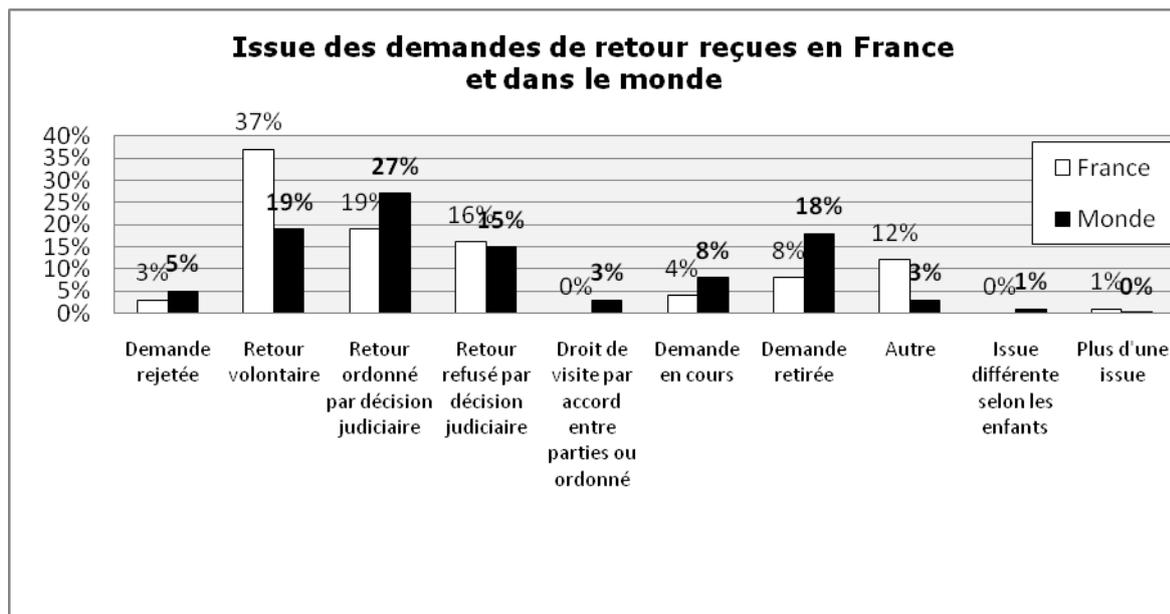
|   | <b>France</b>    | <b>Monde</b> |
|---|------------------|--------------|
| Demande rejetée par l'Autorité centrale             | 2 (3%)           | 5%           |
| Retour volontaire                                   | 28 (37%)         | 19%          |
| Retour ordonné par décision judiciaire              | 14 (19%)         | 27%          |
| Retour refusé par décision judiciaire               | 12 (16%)         | 15%          |
| Droit de visite par accord entre parties ou ordonné | 0 (0%)           | 3%           |
| Demande en cours                                    | 3 (4%)           | 8%           |
| Demande retirée                                     | 6 (8%)           | 18%          |
| Autre   | 9 (12%)          | 3%           |
| Issue différente selon les enfants                  | 0 (0%)           | 1%           |
| Plus d'une issue                                    | 1 (1%)           | <1%          |
| <b>Total</b>  | <b>75 (100%)</b> | <b>100%</b>  |

Le graphique ci-dessous illustre mieux comment l'issue des demandes reçues par la France se compare avec les chiffres mondiaux. En 2008, 56 % des demandes reçues par la France ont abouti à un retour, contre 46 % à l'échelle mondiale. Ce pourcentage global de 56 % de retours se décompose en 19 % de retours ordonnés par décision judiciaire (27 % au niveau mondial) et 37 % de retours volontaires, soit près du double du pourcentage mondial, qui est de 19 %. Aucune demande n'a été réglée par une décision octroyant un droit de visite ou un accord en la matière, alors que le pourcentage mondial est de 3 %.

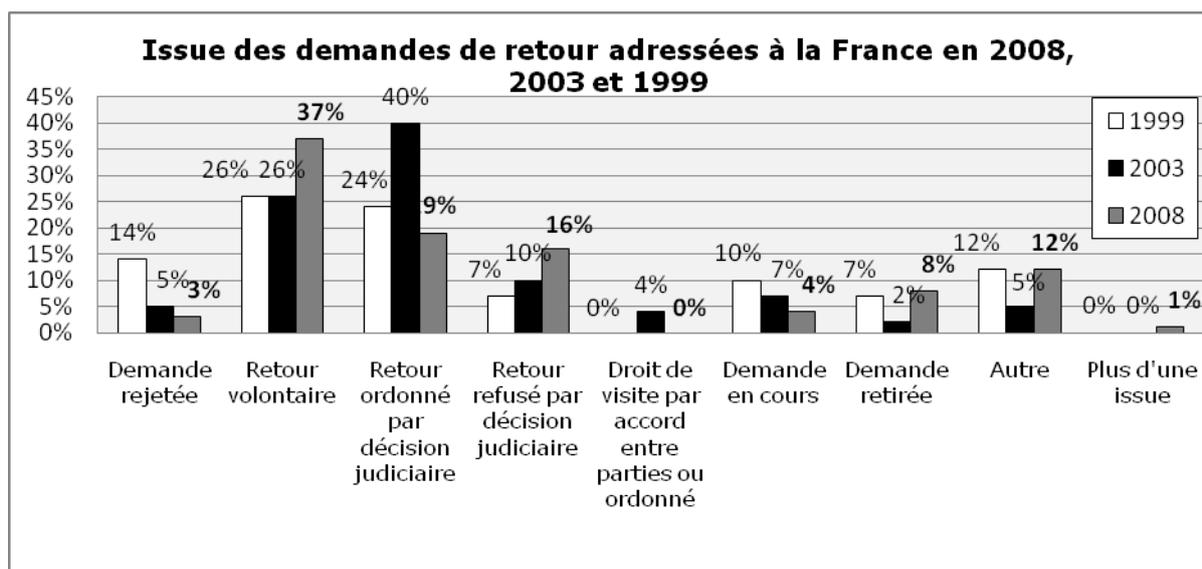
La proportion de demandes en cours au 30 juin 2010, date d'arrêt des statistiques, est plus faible en France (4 % contre 8 % au niveau mondial), de même que la proportion de demandes retirées (8 % contre 18 %). L'Autorité centrale a rejeté moins de demandes (3 % contre 5 % au niveau mondial) et une plus forte proportion de demandes ont été réglées par une décision judiciaire refusant le retour (16 % contre 15 %).

L'issue de 12 % des demandes a été classée dans la catégorie « Autre ». Une de ces demandes s'est conclue par une forme d'accord entre les parties, une autre par le retour de l'enfant et l'arrestation du parent qui l'avait emmené ou retenu ; d'autre part, dans une demande l'enfant a été emmené en Tunisie, dans une autre, l'enfant n'a pas pu être localisé et 5 demandes ont été closes à la suite de décisions rendues par les juridictions internes.

Une demande a eu plusieurs issues car l'affaire a fait l'objet d'un refus de retour de l'autorité judiciaire au motif que l'enfant ne résidait pas habituellement dans l'État requérant mais il y a eu remise volontaire de l'enfant par la suite.



Le graphique suivant compare l'issue des demandes reçues par la France en 2008 à celle des demandes reçues en 2003 et 1999.



Le pourcentage global de retours, de 56 % en 2008, est en recul par rapport à 2003 (66 %), mais en augmentation par rapport à 1999 (50 %). La proportion de retours volontaires est plus élevée en 2008 que lors des enquêtes précédentes, mais le pourcentage de retours ordonnés par décision judiciaire, qui était de 40 % en 2003 et de 24 % en 1999, est tombé à 19 % en 2008.

Le pourcentage de rejets par l'Autorité centrale diminue progressivement, de 14 % en 1999 à 5 % en 2003 et 3 % en 2008, de même que la proportion de demandes encore en cours, qui est de 4 % en 2008 contre 7 % en 2003 et 10 % en 1999.

La proportion de retours refusés par décision judiciaire est en hausse, de 7 % en 1999 à 10 % en 2003 et 16 % en 2008, de même que le pourcentage de demandes retirées, qui est de 8 % en 2008 contre 2 % en 2003 et 7 % en 1999.

## 10. Motifs de rejet par l’Autorité centrale

En 2008, l’Autorité centrale française n’a rejeté que 2 demandes, toutes deux au motif que l’enfant ne résidait pas habituellement en France. En 2003, 2 demandes avaient été rejetées, l’une sur le fondement de l’article 12, l’autre en raison de l’impossibilité de localiser les enfants. En 1999, 6 demandes avaient été rejetées : 3 parce que l’enfant ne pouvait être localisé, 2 parce que l’enfant ne se trouvait pas sur le territoire français, 1 parce que le demandeur n’avait pas de droit de garde.

## 11. Motifs des décisions judiciaires refusant le retour

Sur 27 affaires réglées en justice, 13<sup>34</sup> (48 %) se sont conclues par une décision refusant le retour (33 % au niveau mondial), contre 19 % en 2003 et 23 % en 1999. Une autre affaire en 2008 a eu plusieurs issues et l’autorité judiciaire a refusé le retour au motif que l’enfant ne résidait pas habituellement dans l’État requérant (il y a eu retour volontaire de l’enfant par la suite).

Sur les 13 demandes pour lesquelles l’autorité judiciaire a refusé le retour, 3 se sont fondées sur plusieurs motifs. Dans le tableau suivant, les 18 motifs de refus sont comparés aux motifs des refus prononcés au niveau mondial<sup>35</sup>.

### Motifs des décisions refusant le retour dans le cadre des demandes reçues par la France et dans le monde en 2008

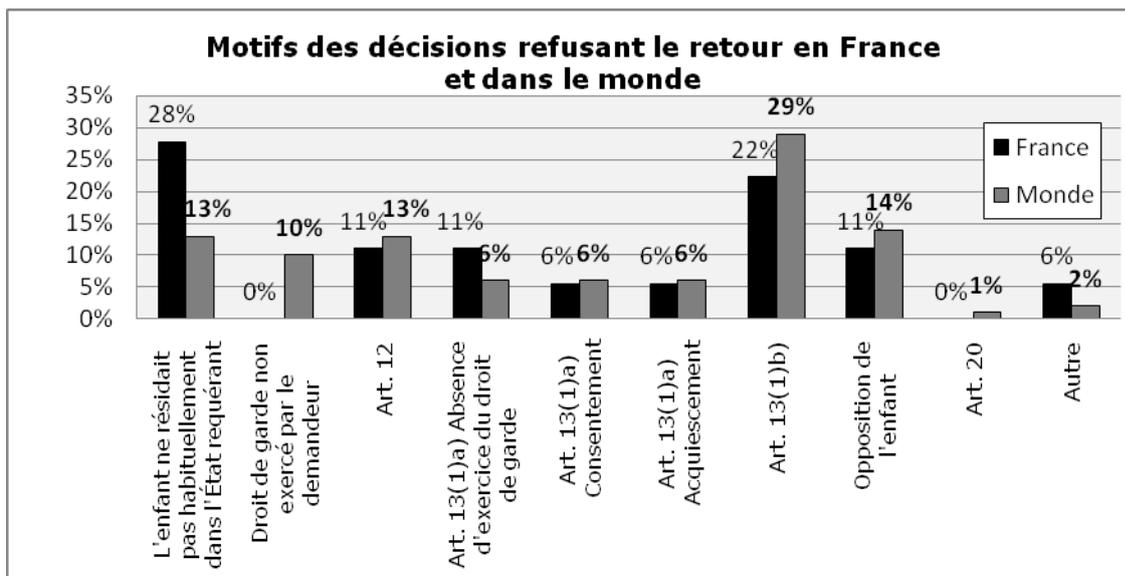
|   | France    |              | Monde       |
|---|-----------|--------------|-------------|
|   | Fréquence | Pourcentage  |             |
| L’État requérant n’est pas l’État de résidence habituelle de l’enfant | 5         | 28%          | 15%         |
| Absence de droit du garde du demandeur                                | 0         | 0%           | 8%          |
| Art. 12   | 2         | 11%          | 13%         |
| Art. 13(1) a) Droit de garde non exercé                               | 2         | 11%          | 7%          |
| Art. 13(1) a) Consentement  | 1         | 6%           | 5%          |
| Art. 13(1) a) Acquiescement   | 1         | 6%           | 5%          |
| Art. 13(1) b)   | 4         | 22%          | 27%         |
| Opposition de l’enfant  | 2         | 11%          | 17%         |
| Art. 20   | 0         | 0%           | 1%          |
| Autre motif   | 1         | 6%           | 2%          |
| <b>Total</b>  | <b>18</b> | <b>≈100%</b> | <b>100%</b> |

Le tableau ci-dessus et le graphique suivant montrent qu’une plus forte proportion de demandes reçues par la France ont abouti à une décision judiciaire refusant le retour au motif que l’enfant ne résidait pas habituellement dans l’État requérant (28 % contre 15 % à l’échelle mondiale) ou que le demandeur n’exerçait pas son droit de garde (11 % contre 7 %) ou en raison du consentement ou de l’acquiescement du demandeur (6 % chacun contre 5 % à l’échelle mondiale).

En revanche, le pourcentage de refus fondés sur l’article 13(1) b) (22 % contre 27 % au niveau mondial) ou sur l’opposition de l’enfant (11 % contre 17 %) est plus faible. Aucun refus n’a été prononcé sur le fondement de l’article 20 (1 % au niveau mondial) ou pour absence de droit de garde du demandeur (10 % au niveau mondial).

<sup>34</sup> Dont une demande ayant eu plusieurs issues car il y a eu ensuite retour volontaire de l’enfant.

<sup>35</sup> Les motifs de refus au niveau mondial comprennent tous les motifs invoqués dans les décisions refusant le retour pour plusieurs motifs.



En 2008, 13 refus de retour ont été prononcés par une autorité judiciaire contre 4 en 2003 et 3 en 1999. Aucun refus n'a été prononcé en 2008 pour absence de droit de garde du demandeur, contre 2 (50 %) en 2003 et 1 (33 %) en 1999. En 2008, 22 % des demandes de retour ont abouti à un refus fondé sur l'article 13(1) b), contre 25 % en 2003 (1 refus) et 67 % (2 refus) en 1999. Le quatrième refus prononcé par décision judiciaire (25 % des refus) en 2003 l'avait été au motif que l'enfant ne résidait pas habituellement dans l'État requérant. C'est le motif de refus le plus courant en 2008, cinq demandes (28 %) s'étant heurtées à un refus en tout ou partie pour ce motif.

## 12. Motifs des décisions judiciaires refusant le retour et personne ayant emmené ou retenu l'enfant

Sur les 13 demandes à l'issue desquelles le retour a été refusé par décision judiciaire, 10 concernent une mère ayant emmené ou retenu un enfant et 3 un père. Lorsque l'enfant a été emmené ou retenu par sa mère, le motif de refus le plus courant est que l'enfant ne résidait pas habituellement dans l'État requérant (30 %, 4 demandes sur 13) ou une exception de l'article 13(1) b) (23 %, 3 demandes sur 13).

Lorsque l'enfant a été emmené ou retenu par son père, un retour a été refusé au motif de l'acquiescement de l'article 13(1) a), un autre au motif que l'enfant n'avait pas sa résidence habituelle dans l'État requérant et le troisième en raison de l'opposition de l'enfant.

## 13. Délais

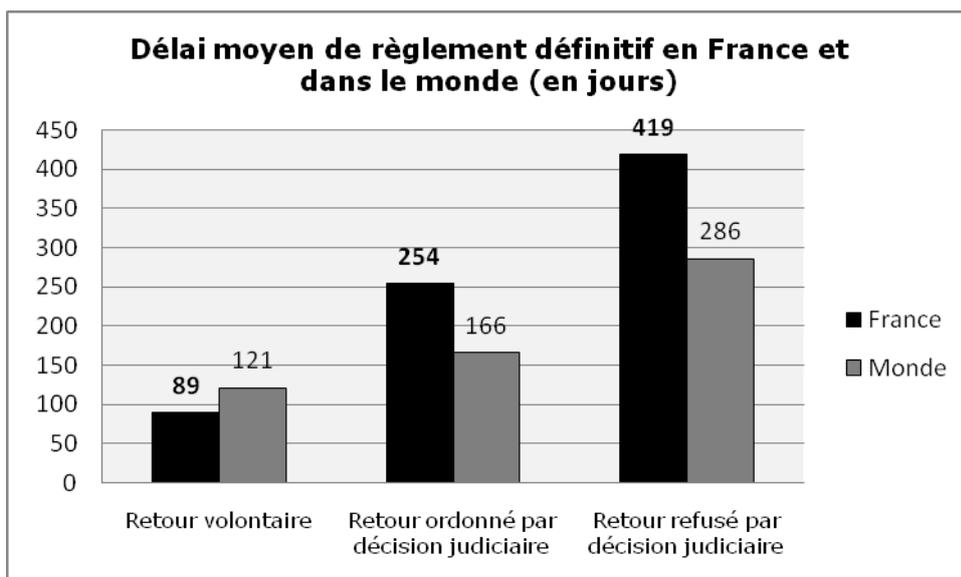
Le délai moyen de règlement des demandes de retour reçues en France est de 278 jours. Il dépend fortement de la solution trouvée. Comme l'indique le tableau suivant, les retours volontaires sont généralement réglés plus rapidement, en 89 jours en moyenne, contre 419 jours pour les décisions judiciaires refusant le retour.

Le tableau suivant présente les écarts de délai en fonction de la solution et donne plus d'informations sur le système français.

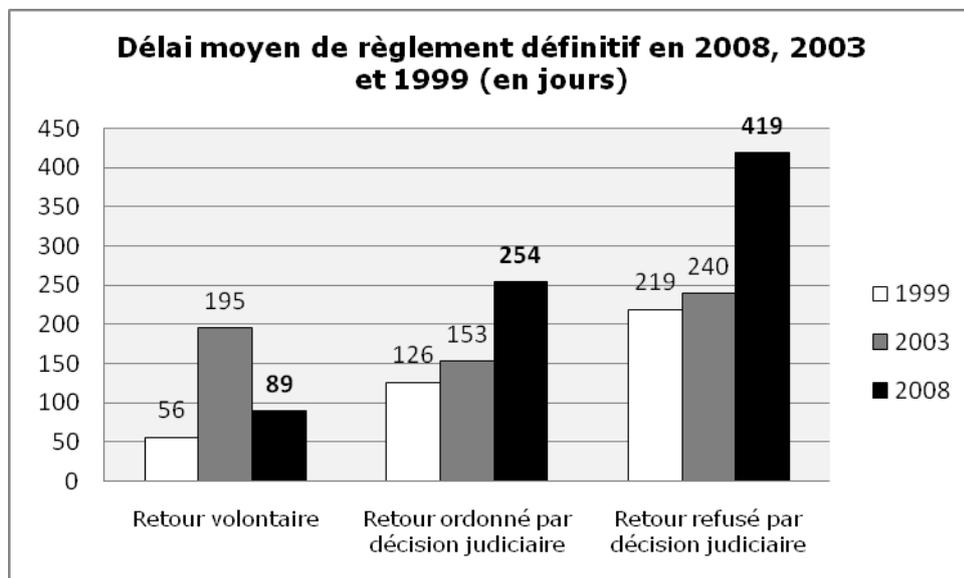
### Nombre de jours jusqu'au règlement

|               | <b>Retour<br/>volontaire</b> | <b>Retour<br/>ordonné par<br/>décision<br/>judiciaire</b> | <b>Retour refusé<br/>par décision<br/>judiciaire</b> |
|---------------|------------------------------|---|--|
| Délai moyen   | 89                           | 254   | 419  |
| Délai médian  | 91                           | 266   | 334  |
| Délai minimum | 28                           | 52  | 182  |
| Délai maximum | 147                          | 526   | 880  |
| Nombre de cas | 4                            | 12  | 11   |

Comme le montre le graphique suivant, les demandes portées en justice sont réglées plus rapidement à l'échelle mondiale, le délai jusqu'à la décision ordonnant le retour étant de 166 jours contre 254 jours en France tandis que le délai jusqu'à la décision refusant le retour s'établit à 286 jours au niveau mondial contre 419 jours en France. Les dates n'étaient indiquées que pour 4 demandes réglées par un retour volontaire sur 28, mais ces demandes ont été réglées plus rapidement, en moyenne en 89 jours contre 121 jours au niveau mondial.



Le graphique suivant compare les délais de traitement des demandes reçues par la France en 2008 à ceux de 2003 et de 1999. Le délai d'obtention des décisions judiciaires ordonnant ou refusant le retour est considérablement plus long en 2008 que lors des enquêtes précédentes. Les retours volontaires ont été réglés plus rapidement qu'en 2003 mais moins qu'en 1999.



### Délai d'envoi des demandes à la juridiction

La durée de rétention de la demande par l'Autorité centrale a été enregistrée pour la première fois en 2008. L'Autorité centrale française a mis en moyenne 119 jours pour transmettre la demande à la juridiction et celle-ci a mis 191 jours pour statuer. À l'échelle mondiale, ces délais moyens sont de respectivement 76 jours et 153 jours.

### Appels

En 2008, 27 demandes de retour ont abouti à une décision judiciaire et un recours a été exercé contre 18 de ces décisions (66 %), un taux considérablement plus élevé que la moyenne mondiale de 28 %. Le délai de règlement définitif dépend évidemment du niveau de juridiction, première instance ou appel. En 2008, le délai moyen d'obtention d'une décision est de 162 jours en première instance et de 386 jours en appel. Ces délais sont plus conformes aux moyennes mondiales, qui sont de 168 jours en première instance et de 324 jours en appel.

## IV. Demandes de droit de visite reçues

### 1. États requérants

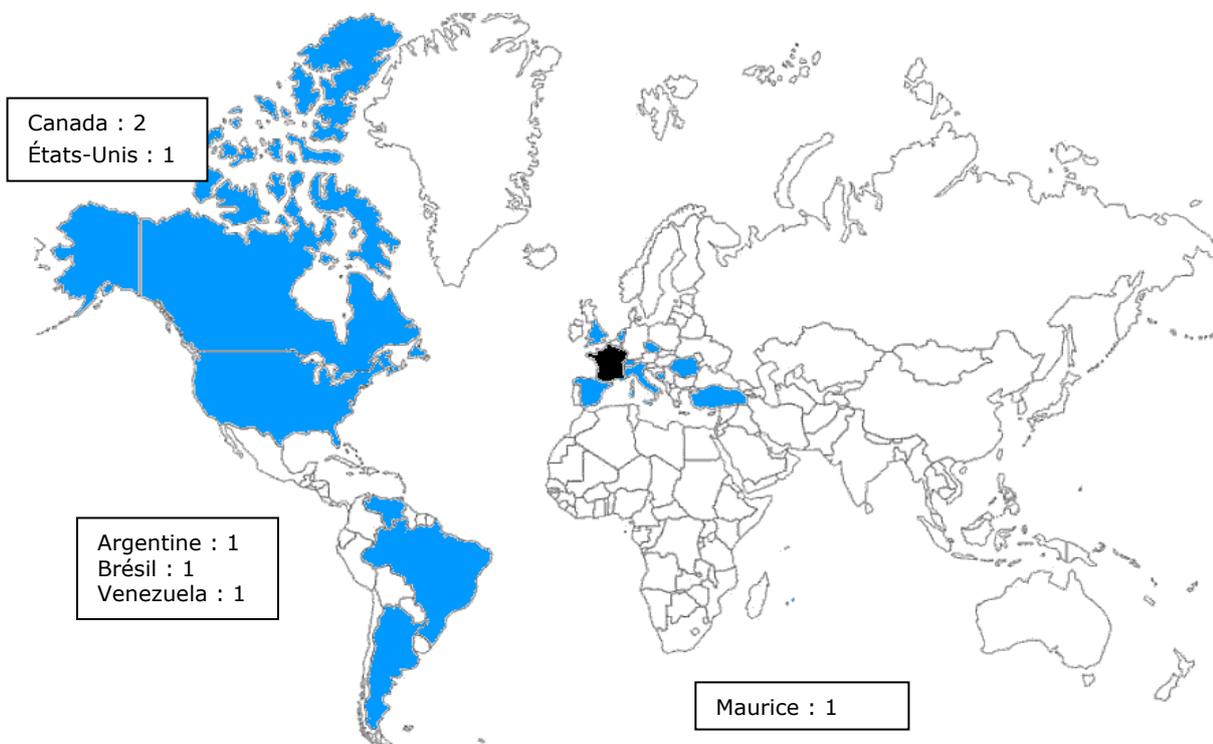
En 2008, ce sont la Suisse et les Pays-Bas qui ont adressé le plus grand nombre de demandes (tous deux 14 %, 3 demandes).

## États contractants ayant adressé le plus grand nombre de demandes à la France

|              | 1999             | 2003             | 2008             |
|--------------|------------------|------------------|------------------|
| Pays-Bas     | 1 (7%)           | 1 (8%)           | 3 (14%)          |
| Suisse       | 0 (0%)           | 2 (15%)          | 3 (14%)          |
| Canada       | 1 (7%)           | 0 (0%)           | 2 (9%)           |
| Italie       | 3 (20%)          | 2 (15%)          | 2 (9%)           |
| Autres États | 10 (67%)         | 8 (53%)          | 12 (55%)         |
| <b>Total</b> | <b>15 (100%)</b> | <b>13 (100%)</b> | <b>22 (100%)</b> |

## États contractants ayant adressé des demandes de droit de visite à la France en 2008

|                        |                        |                                     |
|------------------------|------------------------|-------------------------------------|
| Pays-Bas : 3           | République tchèque : 1 | Turquie : 1                         |
| Suisse : 3             | Monaco : 1             | RU-Angleterre et Pays de Galles : 1 |
| Italie : 2             | Roumanie : 1           |                                     |
| Bosnie-Herzégovine : 1 | Espagne : 1            |                                     |



## 2. Défendeur

Dans les 22 demandes de droit de visite adressées à la France en 2008, le défendeur est la mère dans 77 % des cas, un chiffre inférieur à la moyenne mondiale, de 79 %, et le père dans 23 % des cas. Ces chiffres sont également comparables aux chiffres historiques de la France, 71 % des défendeurs étant la mère en 2003 et 64 % en 1999<sup>36</sup>.

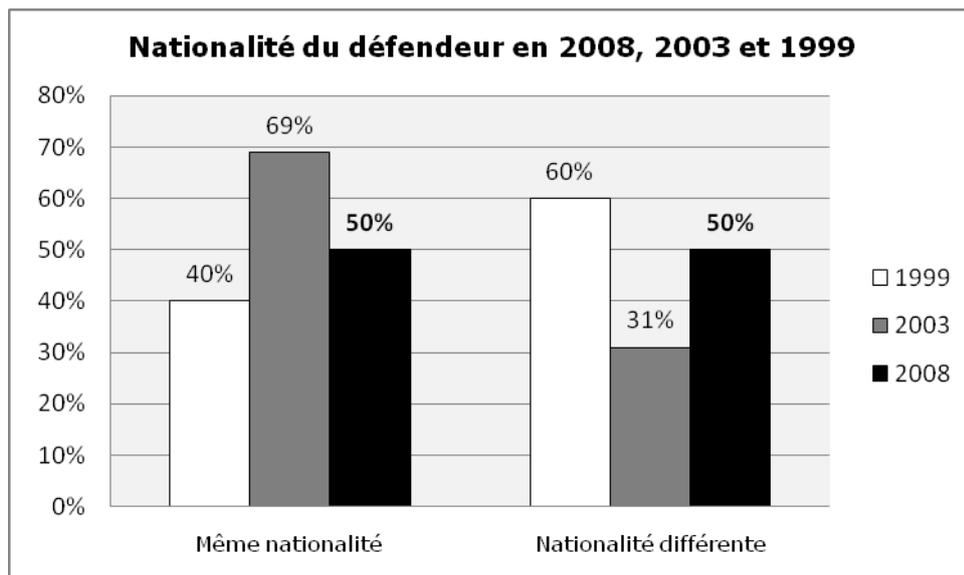
<sup>36</sup> Le lien entre l'enfant et la personne l'ayant emmené ou retenu n'était pas enregistré dans l'enquête de 1999 mais ce chiffre a été estimé à partir du sexe du défendeur.

### 3. Statut du défendeur en matière de soins à l'enfant

L'Autorité centrale française n'a pas donné d'information sur le statut du défendeur en matière de soins à l'enfant.

### 4. Nationalité du défendeur

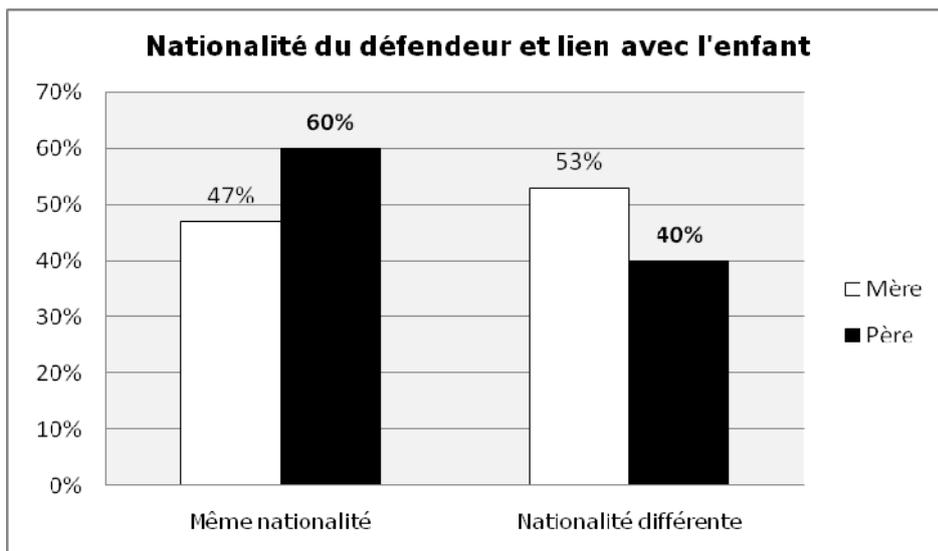
À l'échelle mondiale, le défendeur avait la nationalité de l'État requis dans 52% des demandes de droit de visite. En France, exactement 50 % des défendeurs à ces demandes étaient ressortissants français (dont 2 défendeurs possédant une double nationalité). Ce pourcentage était de 69 % en 2003 et de 40 % en 1999.



### 5. Nationalité du défendeur et lien avec l'enfant

Le graphique suivant montre qu'une proportion plus élevée de pères défendeurs que de mères défenderesses sont de nationalité française (60 % contre 47 %). À titre de comparaison, un plus grand nombre de mères défenderesses étaient françaises en 2003 (78 % contre 50 % des pères) et une plus faible proportion de mères étaient françaises en 1999 (46 % contre 53 % des pères).

À l'échelle mondiale, 52 % des mères ayant emmené ou retenu un enfant et 45 % des pères dans cette situation avaient la nationalité de l'État requis.



## 6. Enfants

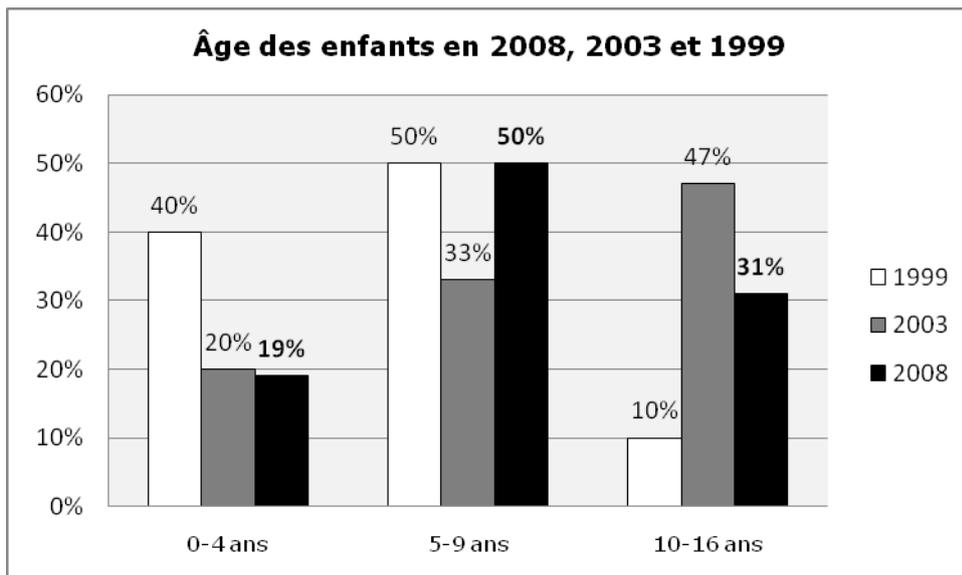
Les 22 demandes de droit de visite adressées à la France en 2008 concernent 32 enfants, soit 1,45 enfant en moyenne par demande, pour une moyenne mondiale de 1,32. Ce chiffre était de 1,15 enfant en 2003 et de 1,33 enfant en 1999.

En 2008, 73 % des demandes ne concernent qu'un seul enfant pour une moyenne mondiale de 72 %. La proportion était de 85 % en 2003 et de 67 % en 1999.

## 7. Âge des enfants

L'enfant concerné par une demande de droit de visite est âgé de 7,7 ans en moyenne en 2008 (7,8 ans à l'échelle mondiale), ce qui est plus jeune qu'en 2003 (8,3 ans).

Le graphique suivant montre que le nombre d'enfants âgés de 5 à 9 ans augmente tandis que celui des enfants de 0 à 4 ans diminue.



## **8. Sexe des enfants**

En 2008, 47 % des enfants concernés par une demande de droit de visite adressée à la France sont des filles et 53 % des garçons. Au niveau mondial, 49 % des enfants sont des filles et 51 % des garçons.

En 2003, 60 % des enfants concernés par des demandes de droit de visite adressées à la France étaient des filles et 40 % des garçons, ces chiffres s'établissant respectivement à 55 % et 45 % en 1999.

## **9. Issue définitive**

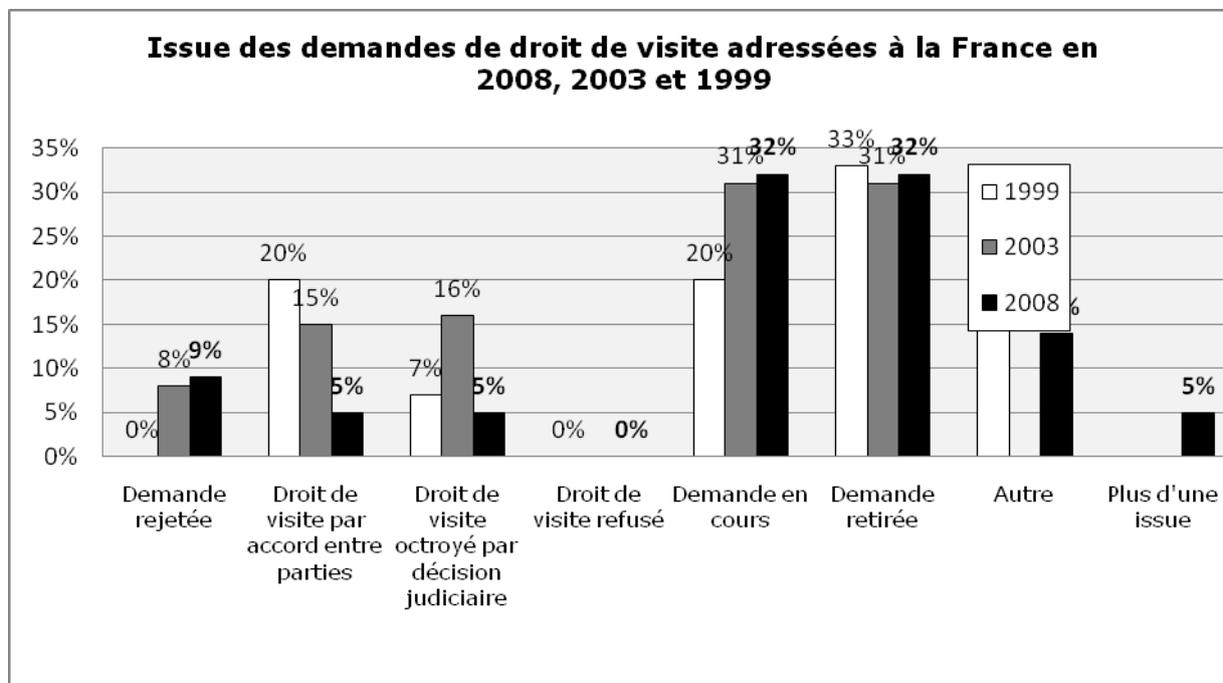
Le tableau suivant présente l'issue des 22 demandes de droit de visite reçues par la France en 2008. Le pourcentage global des droits de visite octroyé par accord entre les parties ou ordonné est de 10 %, un chiffre inférieur à la moyenne mondiale, de 22 %. L'Autorité centrale française a rejeté proportionnellement moins de demandes qu'au niveau mondial (9 % contre 13 %) et aucune demande n'a donné lieu à un refus prononcé par une autorité judiciaire, ce chiffre étant de 3 % à l'échelle mondiale.

La proportion de demandes en cours (32 %) est supérieure à la moyenne mondiale (18 %) tandis que la proportion de demandes retirées est de 32 % en France, contre 30 % à l'échelle mondiale. Une demande adressée à la France a eu plus d'une issue ; cette demande a été enregistrée parmi les demandes rejetées par l'Autorité centrale mais elle a également été retirée.

### Issue des demandes de droit de visite reçues par la France en 2008

|  | France            | Monde        |
|--|-------------------|--------------|
| Demande rejetée par l'Autorité centrale          | 2 (9%)            | 13%          |
| Droit de visite octroyé par accord entre parties | 1 (5%)            | 8%           |
| Droit de visite octroyé par décision judiciaire  | 1 (5%)            | 14%          |
| Droit de visite refusé par décision judiciaire   | 0 (0%)            | 3%           |
| Demande en cours                                 | 7 (32%)           | 18%          |
| Demande retirée                                  | 7 (32%)           | 30%          |
| Autres   | 3 (14%)           | 14%          |
| Issue différente selon les enfants               | 0 (0%)            | 1%           |
| Plus d'une issue                                 | 1 (5%)            | <1%          |
| <b>Total</b>                                     | <b>22 (≈100%)</b> | <b>≈100%</b> |

Le graphique suivant compare l'issue des demandes en 2008 à celle des enquêtes précédentes. La proportion de demandes réglées par un droit de visite ordonné ou octroyé par accord entre les parties est plus faible en 2008 qu'en 2003 (31 %) et 1999 (27 %). La proportion de demandes rejetées est passée de 0 en 1999 à 8 % en 2003 et 9 % en 2008. La proportion de demandes retirées reste pratiquement constante (32 % en 2008, 31 % en 2003 et 33 % en 1999), tandis que la proportion de demandes encore en cours reste élevée, à 32 % contre 31 % en 2003 et 20 % en 1999.



## **10. Motifs du rejet de l’Autorité centrale**

En 2008, l’Autorité centrale française a rejeté 3 demandes (dont 1 ayant eu plus d’une issue), toutes trois au motif que le demandeur n’avait pas de droit de garde. En 2003, une demande avait été rejetée parce que la décision octroyant un droit de visite devait être exécutée sur le fondement de la Convention de Luxembourg et non la Convention de La Haye. Aucune demande n’avait été rejetée en 1999.

## **11. Motifs des décisions judiciaires refusant le droit de visite**

Aucune décision judiciaire refusant le droit de visite n’a été prononcée en 2008, 2003 et 1999.

## **12. Délais**

En 2008, 2 demandes seulement ont été réglées par un droit de visite ; on ne dispose donc que de 2 dates aux fins des comparaisons. Une demande dans laquelle un droit de visite a été consenti par accord entre les parties a été réglée en 212 jours et l’autre, dans laquelle le droit de visite a été octroyé par décision judiciaire, en 344 jours. Le droit de visite a également été consenti en première instance dans une autre demande, encore en cours ; la décision en première instance, qui est en appel, a été rendue en 728 jours. Ces chiffres sont à comparer avec une moyenne mondiale de 309 jours pour un accord volontaire et de 357 jours pour une décision judiciaire octroyant un droit de visite.

En 2003, un accord entre les parties sur le droit de visite a été trouvé en moyenne en 46 jours, ce qui est nettement plus rapide qu’en 1999, où 2 demandes sur 3 avaient été réglées en plus de 6 mois. Pour l’unique demande ayant abouti à une décision judiciaire octroyant un droit de visite en 2003, le délai de règlement avait été de 206 jours.

## **V. Impact du Règlement Bruxelles II *bis***

### **1. Proportion de demandes émanant d’États parties au Règlement Bruxelles II *bis***

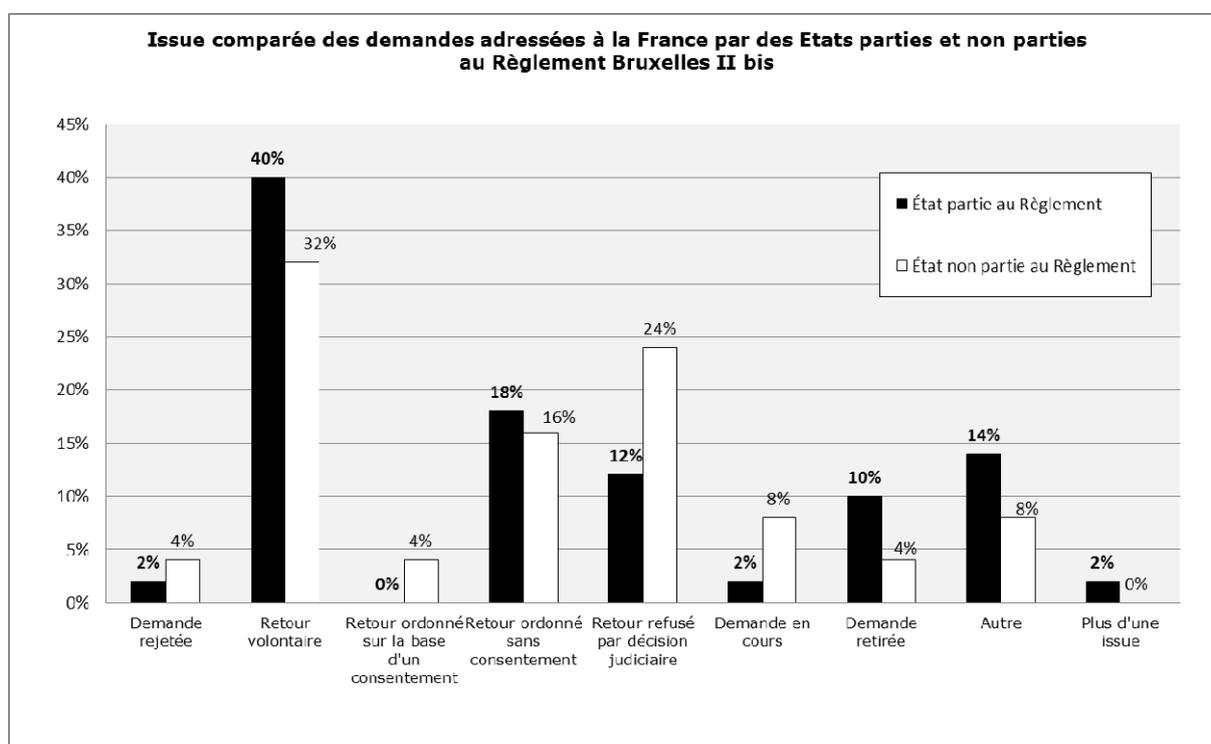
Le Règlement Bruxelles II *bis* concerne 26 États européens (États parties au Règlement Bruxelles II *bis* ou États parties au Règlement). Parmi ces États, ceux qui ont répondu au questionnaire ont reçu 988 demandes de retour au total, dont 705 émanaient d’autres États parties au Règlement (71 %) et 283 d’États non parties (29 %). En 2003, 62 % des demandes reçues par des États qui seraient aujourd’hui parties au Règlement émanaient d’États qui y seraient eux aussi parties aujourd’hui.

La France a reçu 76 demandes de retour en 2008, dont 50 émanaient d’États parties au Règlement Bruxelles II *bis* (66 %). Cette proportion est plus élevée qu’en 2003, où 48 % des demandes émanaient d’États qui seraient aujourd’hui parties au Règlement et qu’en 1999 (57 %).

## 2. Règlement Bruxelles II *bis* et issue des demandes

Le graphique ci-dessous présente l'issue des demandes adressées à la France en 2008 par des États parties et non parties au Règlement Bruxelles II *bis*.

La proportion de retour est plus élevée lorsque la demande est présentée par un État partie au Règlement (58 % contre 52 % pour les États non parties). Le pourcentage de rejets par l'Autorité centrale et de décisions judiciaires refusant le retour est deux fois moins élevé lorsque l'État requérant est partie au Règlement que dans le cas contraire (2 % et 12 % contre respectivement 4 % et 24 %). Le nombre de demandes en cours au 30 juin 2010, date d'arrêt des statistiques, est également inférieur (2 % contre 8 %). Enfin, le pourcentage de retrait des demandes est plus élevé lorsque l'État requérant est partie au Règlement (10 %) que dans le cas contraire (4 %).

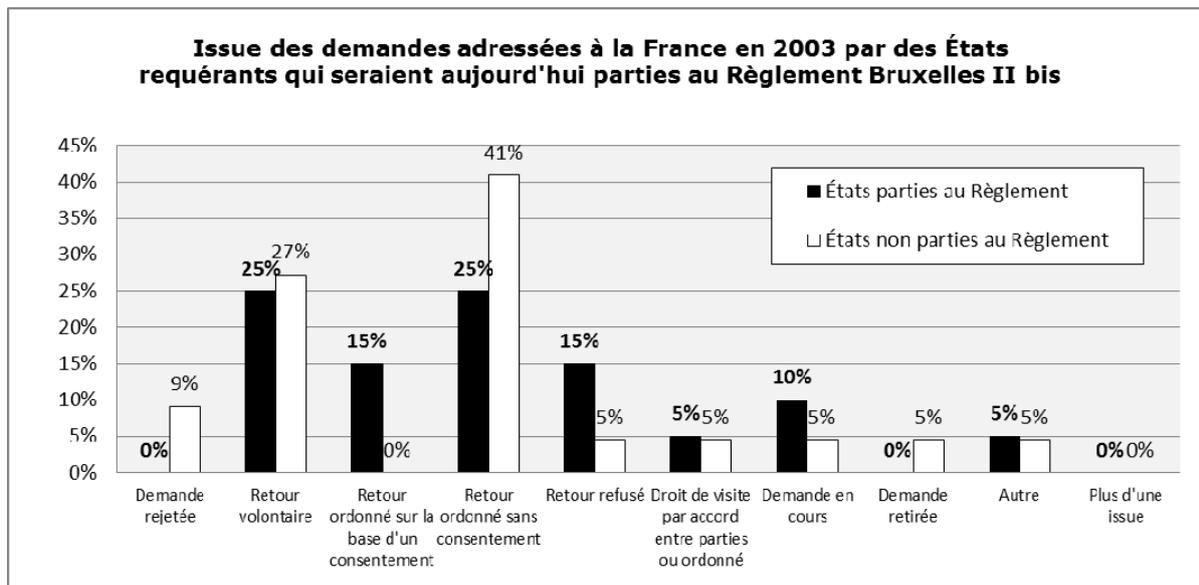


Ces résultats illustrent pour l'essentiel une situation générale dans laquelle les demandes concernant deux États parties au Règlement Bruxelles II *bis* donnent lieu à davantage de retours et moins de rejets, de refus par décision judiciaire et de demandes en cours.

Ces résultats peuvent être également comparés à ceux de l'enquête de 2003 en examinant l'issue des demandes adressées à la France par des États qui seraient aujourd'hui parties au Règlement Bruxelles II *bis*. Le Règlement n'était pas encore en vigueur en 2003, mais en examinant l'issue des demandes émanant des États qui seraient parties au Règlement aujourd'hui, on peut déterminer s'il a eu un impact, par exemple s'il a augmenté le pourcentage de retours entre les États qui y sont parties ou si la proportion a toujours été plus élevée entre eux.

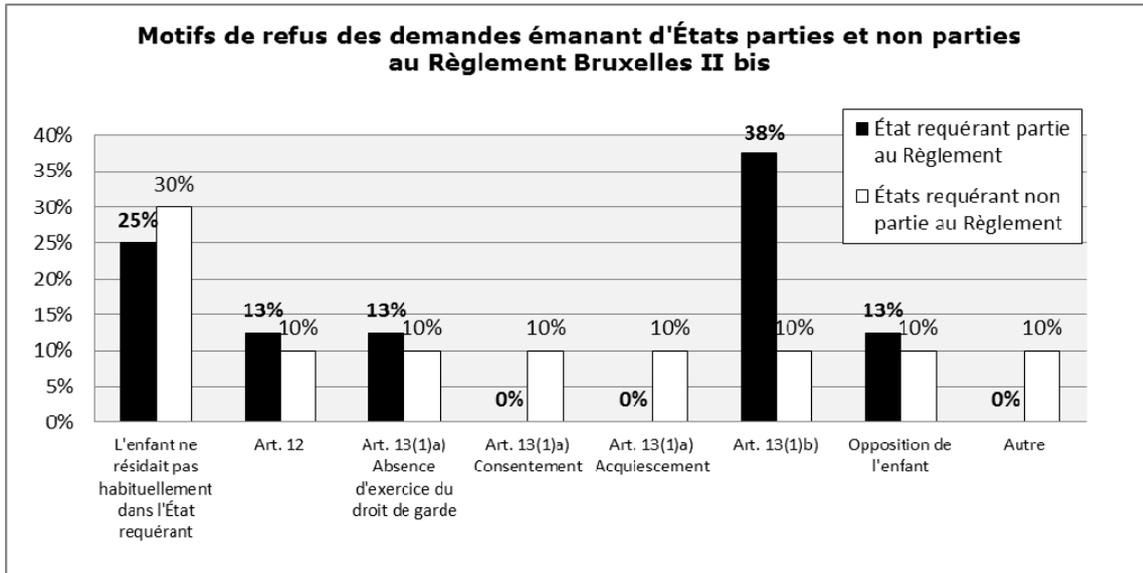
En 2003, la proportion de retours entre des États qui seraient aujourd'hui parties au Règlement était de 65 %, un chiffre inférieur aux 68 % enregistrés pour les États requérants non parties au Règlement. En 2008 en revanche, le pourcentage de retours entre deux États parties au Règlement est de 58 % alors qu'il est de 52 % lorsque l'État requérant n'y est pas partie.

Toujours en 2003, le nombre de retours refusés par décision judiciaire et le nombre de demandes en cours est plus élevé entre les États aujourd'hui parties au Règlement. En 2008 en revanche, le nombre de décisions judiciaires refusant le retour est deux fois moins élevé entre des États parties au Règlement que lorsque l'État requérant n'y est pas partie, tandis que le pourcentage de demandes en cours est d'un quart.



### 3. Décisions judiciaires refusant le retour et motifs

Le nombre de demandes ayant abouti en France à une décision judiciaire refusant le retour est plus faible si l'État requérant est partie au Règlement Bruxelles II *bis* que dans le cas contraire (12 % contre 24 %). Le graphique suivant présente les motifs de refus dans ces demandes.



Étonnamment, le motif de refus le plus souvent opposé à une demande émanant d'un État partie au Règlement Bruxelles II *bis* est l'art. 13(1) *b*), sur lequel la décision s'est fondée en tout ou partie dans 3 demandes, mais seulement pour 1 demande émanant d'un État non partie au Règlement. Un nombre inférieur de décisions refusant le retour entre États parties au Règlement se sont fondées sur le fait que l'enfant ne résidait pas habituellement dans l'État requérant mais il n'y a pas de différences entre les demandes émanant d'États parties et non parties au Règlement en ce qui concerne l'article 12, l'article 13(1) *a*) (absence d'exercice du droit de garde et opposition de l'enfant au retour) car chaque article a été invoqué une fois indépendamment du statut de l'État requérant au regard du Règlement.

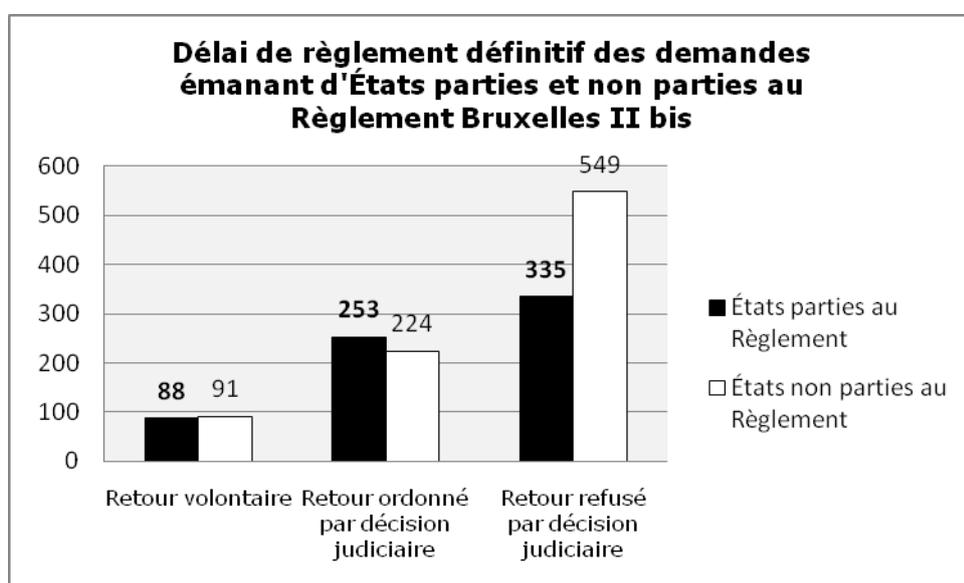
Ces constats correspondent à l'analyse globale de l'impact du Règlement Bruxelles II *bis*, qui constate elle aussi qu'une bien plus forte proportion de demandes ont abouti à un refus de retour par une autorité judiciaire sur le fondement de l'article 13(1) *b*) lorsque la demande était soumise au Règlement.

#### 4. Bruxelles II *bis* et délais

Les demandes adressées à la France en 2008 en application du Règlement Bruxelles II *bis* ont été réglées plus rapidement que celles qui n'en relevaient pas. Le délai moyen de règlement définitif est de 245 jours lorsque l'État requérant est partie au Règlement et de 327 jours dans le cas contraire.

En décomposant ces résultats en fonction des différentes issues trouvées, le tableau et le graphique ci-dessous montrent que les demandes relevant de Bruxelles II *bis* ont été résolues plus rapidement lorsqu'elles ont abouti à un retour volontaire ou à une décision judiciaire refusant le retour, mais que les retours ordonnés par décision judiciaire ont pris plus longtemps que lorsque l'État requérant n'était pas partie au Règlement.

|                    | Retour volontaire |                      | Retour ordonné par décision judiciaire |                      | Retour refusé par décision judiciaire |                      |
|--------------------|-------------------|----------------------|--|----------------------|---------------------------------------|----------------------|
|                    | Bruxelles II bis  | Non-Bruxelles II bis | Bruxelles II bis                       | Non-Bruxelles II bis | Bruxelles II bis                      | Non-Bruxelles II bis |
| <b>Délai moyen</b> | <b>88</b>         | <b>91</b>            | <b>253</b>                             | <b>224</b>           | <b>335</b>                            | <b>549</b>           |
| Délai médian       | 88                | 91                   | 267                                    | 226                  | 303                                   | 520                  |
| Délai minimum      | 28                | 45                   | 52                                     | 80                   | 282                                   | 182                  |
| Délai maximum      | 147               | 137                  | 526                                    | 364                  | 460                                   | 880                  |
| Nombre de cas      | 2                 | 2                    | 9                                      | 4                    | 5                                     | 5                    |



Une seule demande émanant d'un État partie au Règlement Bruxelles II *bis* a été réglée en 6 semaines (6 %) tandis qu'aucune demande émanant d'États non parties au Règlement n'a été réglée dans ce délai. 17 % des demandes présentées par des États parties au Règlement ont été réglées en 12 semaines (3 demandes) et 22 % en 18 semaines (4 demandes), alors que 7 demandes présentées par des États non parties ont été réglées en 12 semaines (2 demandes) et 25 % en 18 semaines (3 demandes). 12 demandes (67 %) émanant d'États parties au Règlement ont été réglées en plus de 24 semaines et 17 % (3 demandes) en plus de 54 semaines, contre respectivement 8 demandes (67%) et 4 demandes (33 %) émanant d'État non parties au Règlement.

## GERMANY

### I. Overall Summary

In 2008 Germany received 115 return and 31 access applications. This amounted to a 34% increase in return applications and a 72% increase in access applications from 2003. In total, the German Central Authority dealt with 383 applications which was a 50% increase on the number of incoming and outgoing applications in 2003.

Of the return applications received, 37% ended with the return of the child compared with the global average of 46%. This is a decrease from the 39% return rate in Germany in 2003 but an increase from 35% in 1999. Overall, compared with the global figures, more applications received by Germany were rejected, refused or withdrawn.

Applications received by Germany were concluded more quickly than the global average. Judicial returns by consent order were resolved in 109 days compared with 163 globally, judicial returns without consent in 122 days compared with 204 days globally and judicial refusals in 232 days compared with 286 globally.

With regard to access applications, the rate at which access was agreed or ordered was 6%, lower than the global average of 22%. A large proportion of access applications were pending (42% compared with 17% globally) but fewer applications were withdrawn (16% compared with 30% globally) or rejected (10% compared with 13%).

Where the Brussels II a Regulation applied to return applications received by Germany the rate of return was slightly higher at 37% compared with 35% if the requesting State was a non-Brussels II a State. There were fewer judicial refusals (17% compared with 21% if the requesting State was a non-Brussels II a State), rejections by the Central Authority (7% compared with 10%) and withdrawals (21% compared with 28%).

Overall, applications from non-Brussels II a States were resolved faster in an average of 156 days compared with 166 days if the Brussels II a Regulation applied.

### II. The number of applications received and sent in 2008

|                 | 1999 | 2003 | 2008       |
|-----------------|------|------|------------|
| Incoming Return | 70   | 80   | <b>115</b> |
| Incoming Access | 24   | 18   | <b>31</b>  |
| Outgoing Return | 103  | 138  | <b>199</b> |
| Outgoing Access | 13   | 19   | <b>38</b>  |

In 2008 the Central Authority of Germany received 115 return applications and 31 access applications, making a total of 146 incoming applications. This is a 49% increase on the 98 incoming applications dealt with in 2003 and a 55% increase on the 94 applications received in 1999.

The ratio of return to access in 2008 was 79% to 21%, respectively. This can be compared with 82% to 18% in 2003 and 74% to 26% in 1999.

In addition, the Central Authority made 237 outgoing applications made up of 199 return and 38 access applications. This is a 51% increase on the 157 outgoing cases in 2003 and a 104% increase on the 116 in 1999.

In total, the Central Authority dealt with 383 incoming and outgoing applications. A 50% increase from 255 applications handled in 2003 and an 82% increase from 210 applications in 1999. The German Central Authority was the 3<sup>rd</sup> busiest Central Authority behind the USA and UK – England and Wales.

### III. Incoming Return Applications

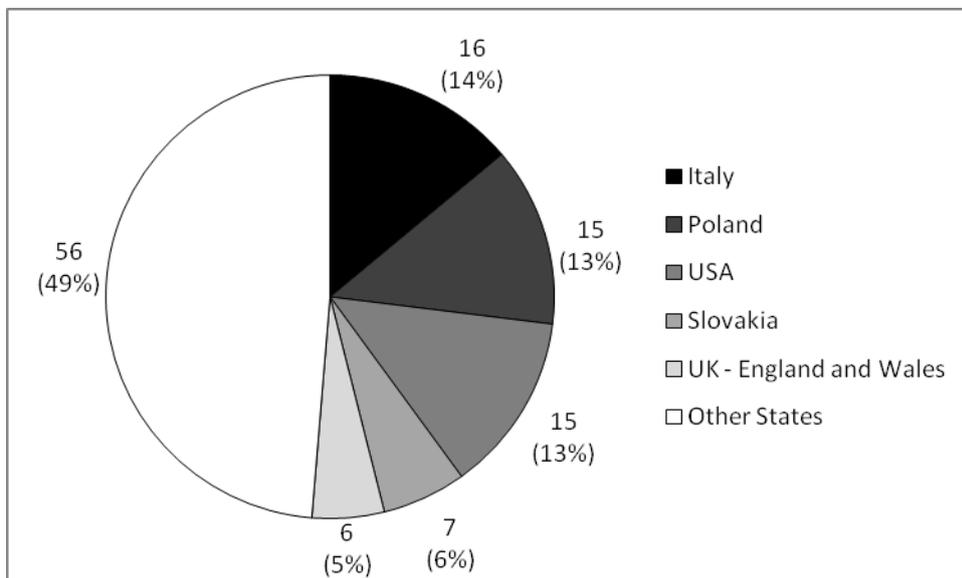
#### 1. The contracting States which made the application

In 2008, Germany received return applications from 32 different Central Authorities – compared with 33 requesting states in 2003 and 21 in 1999.

#### The Contracting States which made the most applications to Germany

|                        | 1999      | 2003      | 2008            |
|------------------------|-----------|-----------|-----------------|
| Italy                  | 4 (9%)    | 9 (11%)   | <b>16 (14%)</b> |
| Poland                 | 1 (1%)    | 5 (6%)    | <b>15 (13%)</b> |
| USA                    | 24 (34%)  | 9 (11%)   | <b>15 (13%)</b> |
| Slovakia               | 0 (0%)    | 1 (1%)    | <b>7 (6%)</b>   |
| UK - England and Wales | 11 (16%)  | 6 (8%)    | <b>6 (5%)</b>   |
| Other States           | 30 (43%)  | 50 (63%)  | <b>56 (49%)</b> |
| <b>Total</b>           | <b>70</b> | <b>80</b> | <b>115</b>      |

#### The Requesting States for Return Applications Received by Germany in 2008



In 2008, 66% of applications to Germany came from EU States. In 2003, 68% of applications came from what would now be EU States and 44% in 1999.

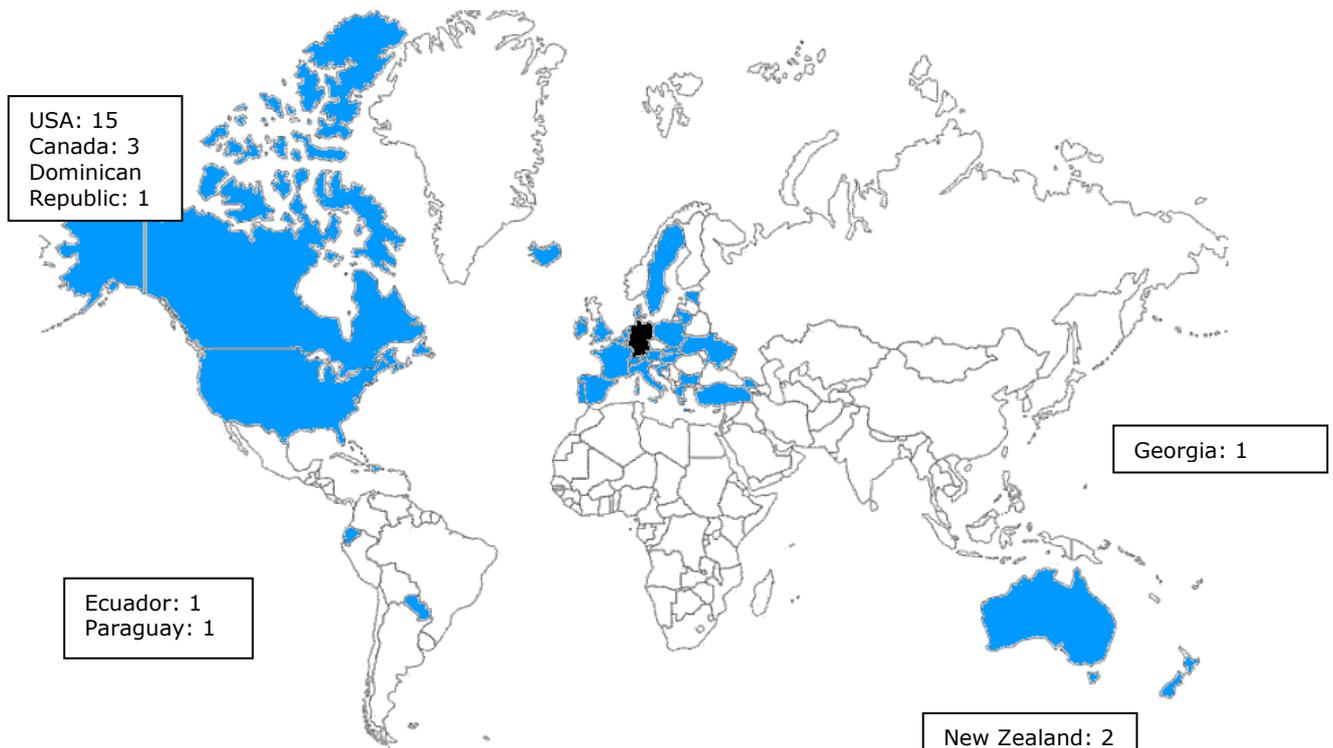
As in 2003, the greatest number of applications from a single State came from Italy, making up 14% of all return applications received (16 out of 115 applications). This is an increase from 11% (9 out of 80) in 2003 and 9% (4 out of 70) in 1999.

In 1999 the highest proportion of applications received from a single State came from the USA (34%, 24 applications). The number of applications from the USA decreased in 2003 to 9 applications (11%) but increased in 2008 to 15 applications (13%).

The proportion of applications received from Poland has increased from 1% (1 application) in 1999 to 6% (5 applications) in 2003 and 13% (15 applications) in 2008. Conversely, the proportion of applications from England and Wales has decreased from 16% in 1999 (11 applications) to 8% in 2003 (6 applications) and 5% in 2008 (6 applications).

### Map of Contracting States which made return applications to Germany in 2008

|                         |                |                        |
|-------------------------|----------------|------------------------|
| Italy: 16               | France: 3      | Belgium: 2             |
| Poland: 15              | Greece: 3      | Estonia: 1             |
| Slovakia: 7             | Ireland: 3     | Hungary: 1             |
| UK-England and Wales: 6 | Netherlands: 3 | Iceland: 1             |
| Spain: 5                | Turkey: 3      | Latvia: 1              |
| Portugal: 4             | Bulgaria: 2    | Sweden: 1              |
| Switzerland: 4          | Croatia: 2     | Ukraine: 1             |
| Austria: 3              | Denmark: 2     | UK-Northern Ireland: 1 |



## **2. The Taking Person**

In 2008 a large majority, 74%, of the taking persons were mothers and 22% were fathers. The remaining 4% was made up of 3 applications which involved both parents taking the child to Germany<sup>37</sup> and 2 applications in which the taking person was a grandparent. This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

In past surveys taking persons moving to Germany have been mostly mothers, making up 78% of taking persons in 2003 and 77% in 1999<sup>38</sup>.

## **3-5. The Nationality of the taking person and their Status as carer in relation to the child**

The German Central Authority was unable to provide information regarding the nationality of the taking person or their status as carer of the child.

## **6. The Children**

In 2008, 154 children were involved in the 115 applications received by Germany. This makes an average of 1.3 children per application which is slightly lower than the global average of 1.38 children. In both 2003 and 1999 an average of 1.4 children were involved in each application.

73% of applications received were for the return of a single child, compared with the global average of 69%. This is an increase from 65% in 2003 and 64% in 1999.

## **7. The age of the children**

The average child involved in a return application to Germany was 6.0 years compared with the global average of 6.4 years.

In previous surveys Germany was unable to provide information on the age of the children involved in a format compatible with the questionnaire.

## **8. The gender of the children**

In 2008, 51% of the children involved were female and 49% male, exactly the same as in 2003. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 1999, 44% of children were female and 56% male.

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<sup>37</sup> In two of these applications the applicant was an institution seeking the return of the child and in one it was the child's foster parents.

<sup>38</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication. In 1999, 64% of taking persons in applications received by Germany were female and so probably mothers.

## 9. The overall outcomes

The table below shows all the outcomes of return applications received by Germany in 2008 compared with the global findings.

### The Outcomes of Return Applications in 2008

|   | <b>Germany</b>     | <b>Global</b> |
|---|--------------------|---------------|
| Rejection                                 | 9 (8%)             | 5%            |
| Voluntary Return                          | 12 (10%)           | 19%           |
| Judicial Return by consent                | 11 (10%)           | 7%            |
| Judicial Return Not by Consent            | 19 (17%)           | 15%           |
| Judicial Return, Consent Unknown          | 0 (0%)             | 5%            |
| Refusal                                   | 21 (18%)           | 15%           |
| Access Agreed or Ordered                  | 3 (3%)             | 3%            |
| Pending                                   | 9 (8%)             | 8%            |
| Withdrawn                                 | 27 (23%)           | 18%           |
| Other                                     | 3 (3%)             | 5%            |
| Different Outcomes for Different Children | 0 (0%)             | 1%            |
| More than One Outcome                     | 1 (1%)             | <1%           |
| <b>Total</b>                              | <b>115 (≈100%)</b> | <b>(100%)</b> |

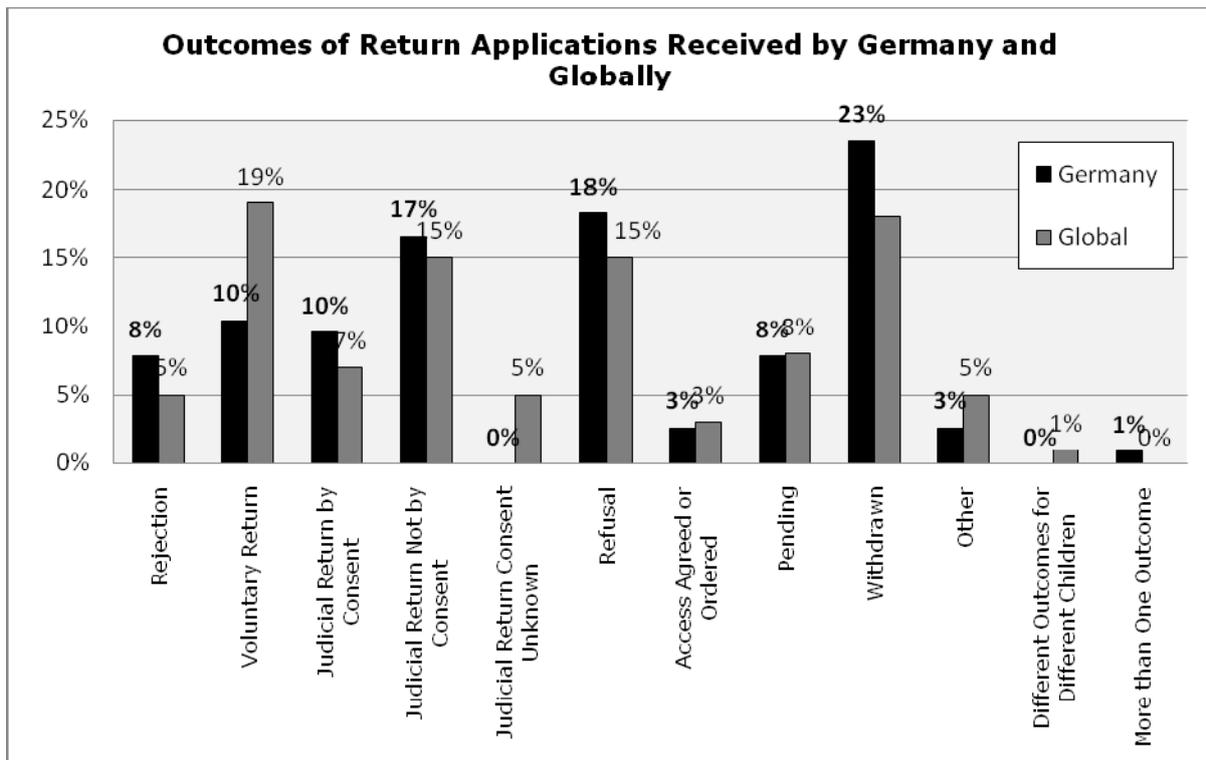
The graph below shows more clearly how the results in applications received by Germany compare with those globally. In 2008, 37% of applications received by Germany ended with a return compared with the global return rate of 46%. This 37% judicial return rate can be broken down into 10% voluntary returns (19% globally), 10% judicial returns by consent order<sup>39</sup> (7% globally) and 17% judicial returns without consent (15% globally<sup>40</sup>). A further 3% of applications ended in an agreement or order for access, the same proportion as globally, and a further application ended with some form of agreement between the parties and was recorded as 'other'.

The German Central Authority rejected 8% of the applications they received compared with 5% globally and proportionately more applications received by Germany were judicially refused (18% compared with 15% globally). More applications were withdrawn (23% compared with 18% globally) and the same proportion was pending at the cut off date of 30<sup>th</sup> June 2010 (8%).

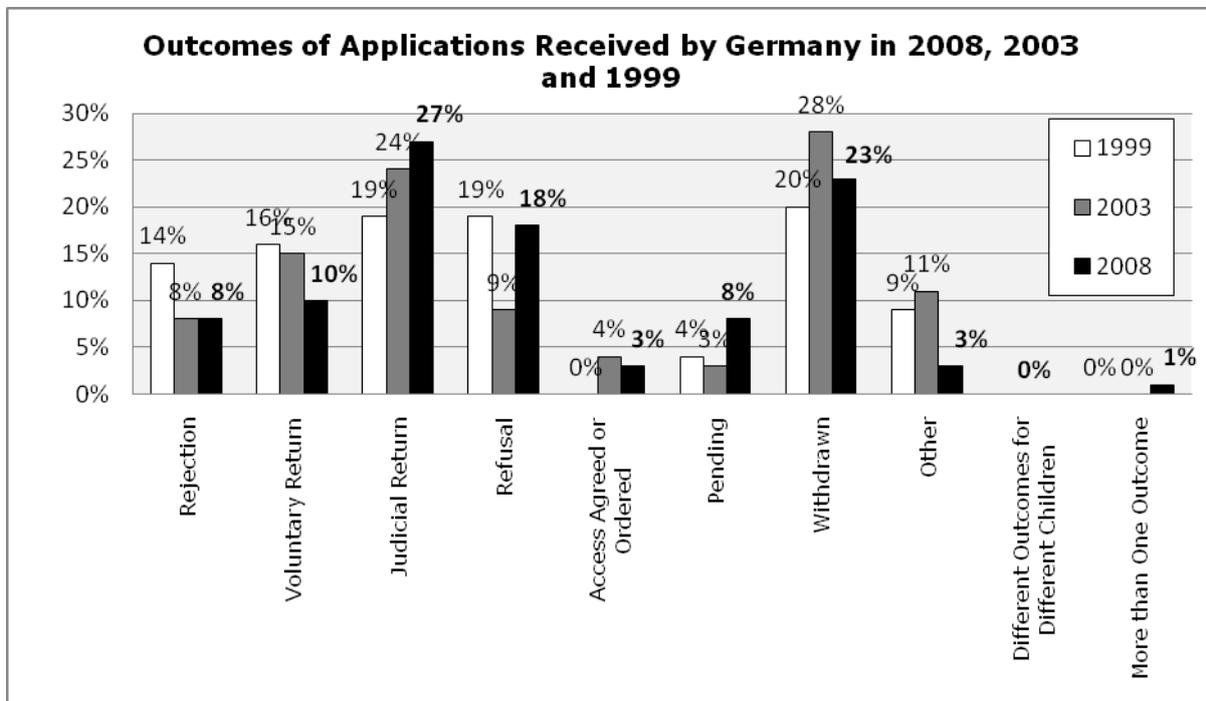
One application received by Germany had more than one outcome. In this case the application was judicially refused but the parties came to some form of extra judicial agreement.

<sup>39</sup> Including one application where an agreement was concluded before the family court than the mother would return to the USA with the child but subsequently the father agreed that the child may remain in Germany and one agreement to return which contained a revocation clause which was subsequently used three months later and the children remained in Germany.

<sup>40</sup> An additional 5% of applications globally ended with a judicial return but the consent, or lack of consent, of the parties was unknown.



The graph below compared the outcomes of applications received by Germany in 2008 to those in 2003 and 1999.



The overall return rate of 37% in 2008 has decreased from 39% in 2003, but is an increase on the 35% in 1999. The proportion of voluntary returns has steadily decreased (from 16% in 1999 and 15% in 2003 to 10% in 2008) but judicial returns increased (from 19% in 1999 and 24% in 2003 to 27% in 2008).

The rate of rejection by the Central Authority was 8%, as in 2003, and so has remained lower than the 14% recorded in 1999. The proportion of judicial refusals, at 18%, has increased from 9% in 2003 and is closer to the 1999 proportion of 19%. The proportion of applications pending has also increased and is now double what it was in 1999 and 2003. The proportion of withdrawn applications, 23%, has decreased from 28% in 2003 and is not closer to the 20% recorded in 1999.

## 10. The reasons for rejection

In 2008, 9 applications were rejected by the German Central Authority compared with 6 in 2003 and 9 in 1999. In 2008 the most common single reason for rejection was that the child could not be located (33%, 3 applications), the same proportion as in 2003 (33%, 2 applications) but in 1999, no applications were rejected for this reason. A rejection based on the Convention not being in force at the time<sup>41</sup> (1 application) or Article 27 (2 applications) had not been reasons for rejection in previous surveys.

|                                    | <b>1999</b> | <b>2003</b> | <b>2008</b> |
|------------------------------------|-------------|-------------|-------------|
| Child Located in Another State     | 3           | 0           | 0           |
| Child Not Located                  | 0           | 2           | 3           |
| Applicant had no Rights of Custody | 0           | 3           | 0           |
| Art 27                             | 0           | 0           | 2           |
| Convention not in Force            | 0           | 0           | 1           |
| Other                              | 6           | 1           | 3           |
| <b>Total</b>                       | <b>9</b>    | <b>6</b>    | <b>9</b>    |

## 11. The reasons for judicial refusal

Out of the 55 cases that went to court, 21<sup>42</sup> (38%) were refused compared with 33% globally. In 2003 only 27% of the applications that went to court were refused but in 1999, 50%. A further case in 2008 resulted in more than one outcome and the application was refused based on a finding that the applicant had no rights of custody (the parties later came to an agreement).

Of the 22 applications which were judicially refused, 1 was decided for more than one reason. In the table below all 23 reasons for refusal are compared with the reasons for refusal globally<sup>43</sup>.

<sup>41</sup> Application from Slovakia.

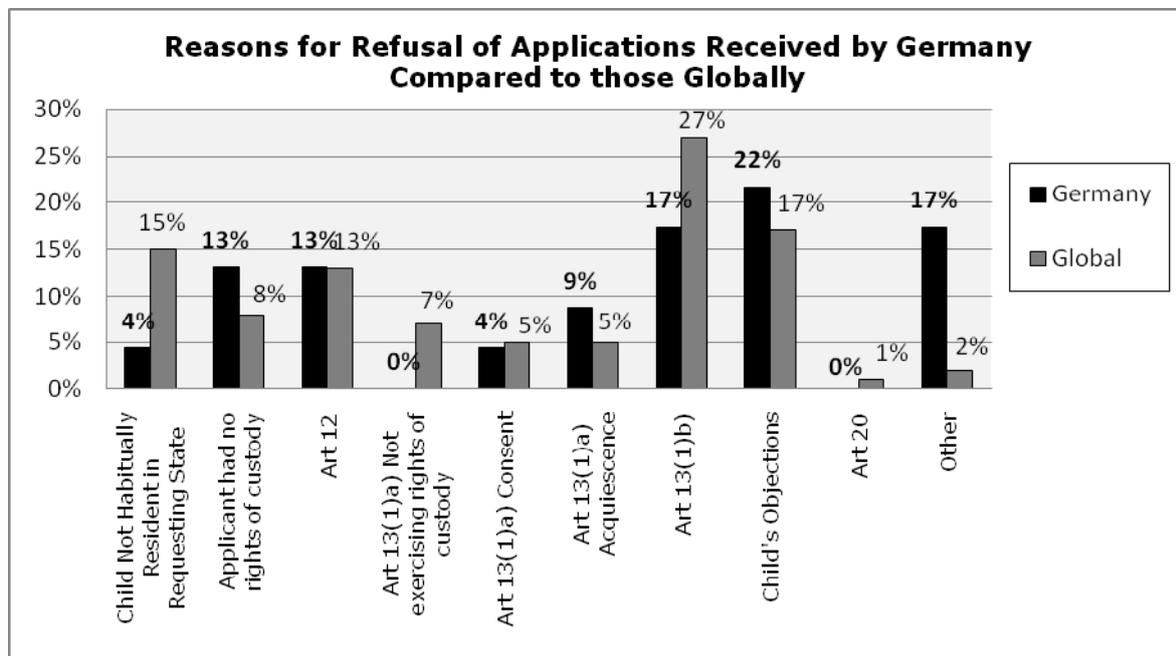
<sup>42</sup> Including one application recorded as having more than one outcome as the parties subsequently came to an extra-judicial agreement.

<sup>43</sup> The global reasons for refusal include all the reasons given in applications refused for more than one reason.

### The Reasons for Refusal in Applications Received by Germany and Globally in 2008

|   | Germany   |              | Global      |
|---|-----------|--------------|-------------|
|   | Frequency | Percentage   |             |
| Child Not Habitually Resident in Requesting State | 1         | 4%           | 15%         |
| Applicant had no rights of custody                | 3         | 13%          | 8%          |
| Art 12  | 3         | 13%          | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 0         | 0%           | 7%          |
| Art 13(1) a) Consent                              | 1         | 4%           | 5%          |
| Art 13(1) a) Acquiescence                         | 2         | 9%           | 5%          |
| Art 13(1) b)                                      | 4         | 17%          | 27%         |
| Child's Objections                                | 5         | 22%          | 17%         |
| Art 20  | 0         | 0%           | 1%          |
| Other   | 4         | 17%          | 2%          |
| <b>Total</b>                                      | <b>23</b> | <b>≈100%</b> | <b>100%</b> |

The table above and the graph below show that proportionately more applications received by Germany were refused based on the child's objections (22% compared with 17% globally). By contrast, proportionately fewer were refused under Article 13 (1) b) (17% compared with 27% globally) or based on the child not being habitually resident in the requesting State (4% compared with 15% globally).



In 2003 only 7 applications were judicially refused and the most commonly cited reason for refusal was Article 13 (1) b) (29%, 2 applications). The other reasons cited were the

child not being habitually resident in the requesting state, Article 13 (1) a) applicant not exercising rights of custody and Article 13(1) a) consent (each 14% and 1 application)<sup>44</sup>.

This can be compared with 1999 when 13 applications were refused and the most cited reason for refusal was Article 12 (31%, 4 applications) followed by Article 13(1) b) (23%, 3 applications) and a finding that the applicant was not exercising rights of custody under Article 13(1) a) (15%, 2 applications). The remaining refusals were decided on Article 13 (1) a) consent, Article 13 (1) a) acquiescence and the child's objections (each 8%, 1 application)<sup>45</sup>.

## 12. The reasons for judicial refusal and the taking person

Of the 22 applications refused, 17 involved taking mothers and 5 taking fathers. Where the taking person was the mother of the child the most common reason for refusal was based on the child's objections (22%, 4 out of 18 reasons), followed by Article 13(1) b) and Article 12 (each 17%, 3 out of 18 reasons), Article 13(1) a) acquiescence (11%, 2 out of 18 reasons) and the child not being habitually resident in the requesting State (6%, 1 out of 18 reasons)<sup>46</sup>.

Where the taking person was the father of the child the most common reason for refusal was a finding that the applicant had no rights of custody (40%, 2 out of 5 reasons). The remaining 3 applications that were refused were decided under Article 13(1) b), following the child's objections or for some 'other' reason (each 20%, 1 reason).

## 13. Timings

The overall average time taken to reach a final settlement in the return applications received by Germany was 163 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, judicial returns by consent order were generally resolved more quickly, in an average of 109 days, whereas judicial refusals took 232 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Germany.

**The Number of Days Taken to Reach an Outcome**

|                 | <b>Judicial Return by Consent Order</b> | <b>Judicial Return Not by Consent</b> | <b>Judicial Refusal</b> |
|-----------------|---|---------------------------------------|-------------------------|
| Mean            | 109                                     | 122                                   | 232                     |
| Median          | 116                                     | 104                                   | 215                     |
| Minimum         | 31                                      | 50                                    | 25                      |
| Maximum         | 222                                     | 313                                   | 558                     |
| Number of Cases | 10 <sup>47</sup>                        | 19                                    | 21                      |

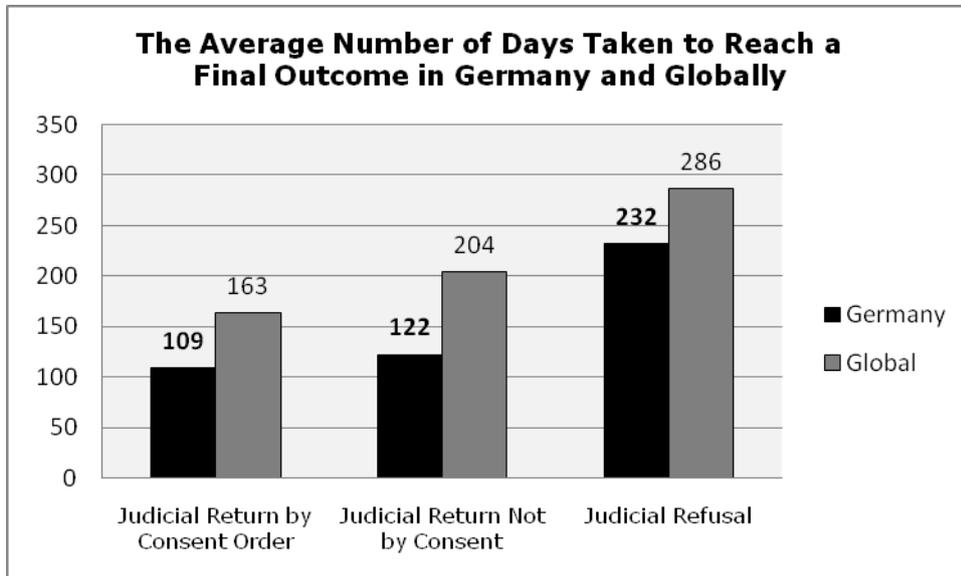
<sup>44</sup> A further application was refused for 'other' reasons and one was decided for more than one reason and based on the applicant having no rights of custody and the child not being habitually resident in the requesting State

<sup>45</sup> The remaining application was decided for more than one reason and was based on the applicant having no rights of custody and the child not being habitually resident in the requesting State.

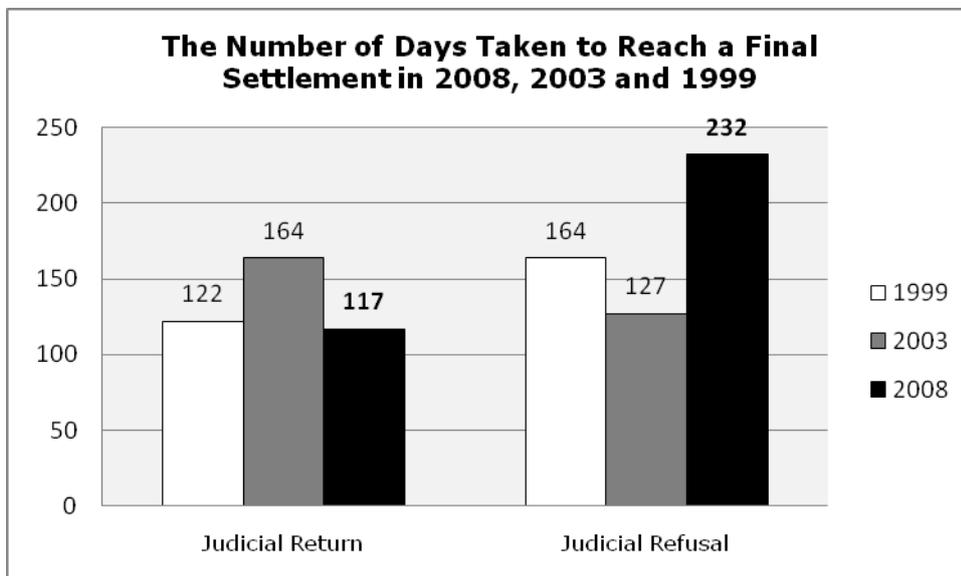
<sup>46</sup> Three further applications were rejected for 'other' reasons.

<sup>47</sup> The timing for one application ending in a judicial consent order was unavailable.

As can be seen in the graph below, applications received by Germany that went to court were resolved more quickly compared with the global averages with judicial consent order for return being reached in 109 days compared with 163 days globally and judicial returns without consent in 122 days compared with 204 days globally. Judicial refusals took an average of 232 days to conclude in Germany compared with 286 globally. As in 2003, information regarding the timing of voluntary returns was unavailable but the global average was 121 days<sup>48</sup>.



The graph below compares the timings of applications received by Germany in 2008 with those in 2003 and 1999. Judicial refusals took far longer in 2008 than in 2003 and 1999 but judicial returns were decided more quickly.



<sup>48</sup> In 1999 a voluntary return from Germany took an average of 64 days to conclude.

### Time taken to send application to court

In 2008 the length of time that the Central Authority held the application was recorded for the first time. In Germany it took an average of 72 days before the application was sent to court and the court then took an average 89 days to conclude it<sup>49</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### Appeals

In 2008, 55 return applications went to court and 22 of these decisions (40%) were appealed, higher than the global average of 28%. The time taken to reach a final decision is obviously affected by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 119 days compared with 219 days to finalise a case that was appealed. The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

## IV. Incoming access applications

### 1. The Contracting States which made the application

The most applications received from a single State in 2008 came from Switzerland which made 5 applications (16%). No applications were received from Switzerland in 2003 and only 1 (4%) in 1999. The second highest number of applications came from Belgium which had not made any access applications to Germany in previous surveys.

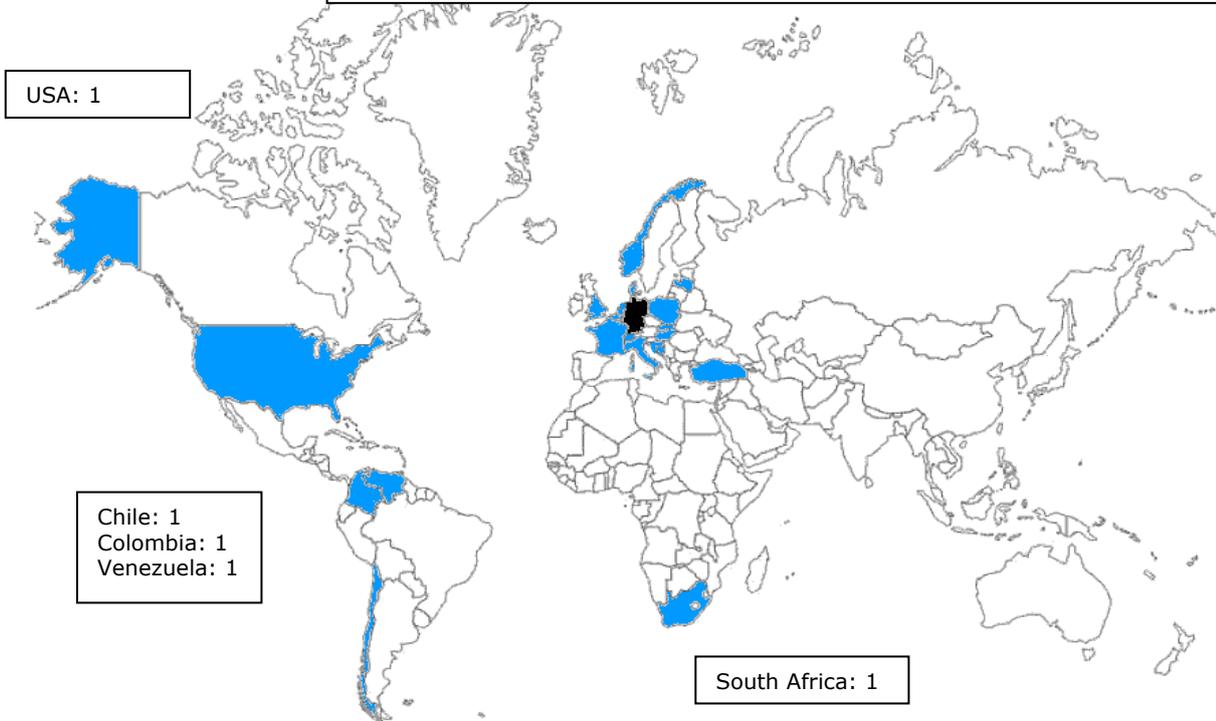
#### The Contracting States which made the Most Access Applications to Germany in 2008 Compared with 2003 and 1999

|                      | <b>1999</b> | <b>2003</b> | <b>2008</b> |
|----------------------|-------------|-------------|-------------|
| Switzerland          | 1 (4%)      | 0 (0%)      | 5 (16%)     |
| Belgium              | 0 (0%)      | 0 (0%)      | 3 (10%)     |
| Hungary              | 1 (4%)      | 0 (0%)      | 2 (6%)      |
| Netherlands          | 0 (0%)      | 1 (6%)      | 2 (6%)      |
| Turkey               | 0 (0%)      | 0 (0%)      | 2 (6%)      |
| UK-England and Wales | 3 (13%)     | 1 (6%)      | 2 (6%)      |
| Other States         | 19 (79%)    | 16 (89%)    | 15 (48%)    |
| <b>Total</b>         | <b>24</b>   | <b>18</b>   | <b>31</b>   |

<sup>49</sup> These figures are based on 55 applications where the date sent to court was recorded and 51 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

## Map of Contracting States which Made Access Applications to Germany in 2008

|                |                           |           |             |
|----------------|---------------------------|-----------|-------------|
| Switzerland: 5 | UK-England and Wales: 2   | Italy: 1  | Slovakia: 1 |
| Belgium: 3     | Bosnia and Herzegovina: 1 | Latvia: 1 |             |
| Hungary: 2     | Croatia: 1                | Monaco: 1 |             |
| Netherlands: 2 | Denmark: 1                | Norway: 1 |             |
| Turkey: 2      | France: 1                 | Poland: 1 |             |



## 2. The Respondent

Of the 31 access applications received by Germany in 2008, in 27 (87%) the respondent was the mother, higher than the global average of 79%. In the remaining 4 applications (13%) the respondent was the father. This can also be compared with the past averages of Germany with 83% of respondents being mothers in 2003 and 96% in 1999<sup>50</sup>.

## 3-5. The Nationality of the taking person and their Status as carer in relation to the child

The German Central Authority was unable to provide information regarding the nationality of the taking person or their status as carer of the child.

## 6. The Children

In 2008, 45 children were involved in the 31 access applications to Germany making an average of 1.45 children per application compared with the global average of 1.32 children. This can be compared with an average of 1.22 children in 2003 and 1.25 children in 1999.

<sup>50</sup> The relationship between the respondent and the child was not recorded in the 1999 survey but this figure has been estimated from the gender of the respondent.

In 2008, 71% of applications involved only one child compared with 72% globally. In 2003, 83% of applications received were single child applications and 75% in 1999.

### 7. The age of the children

The average child involved in an access application to Germany was 7.6 years compared with the global average of 7.8 years.

Information regarding the age of the children involved was not recorded in a format compatible with past surveys.

### 8. The gender of the children

In 2008, 45% of children involved in access applications received by Germany were female and 54% male. Globally, 49% of children involved in access applications were female and 51% male.

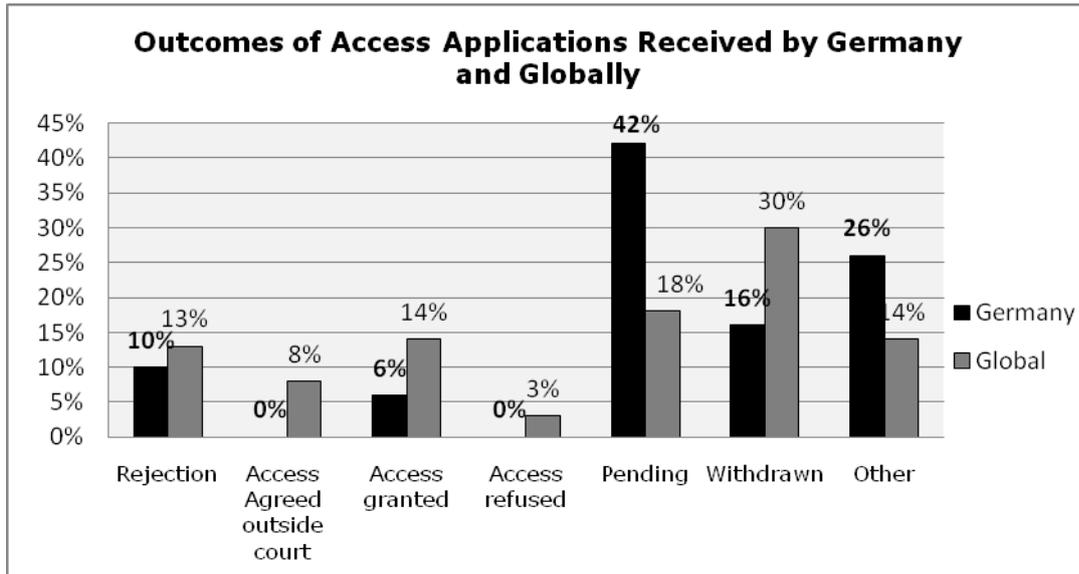
In 2003, 51% of children involved in applications made to Germany were female and 49% male and, in 1999, 44% female and 56% male.

### 9. The overall outcomes

The table and graph below show the outcomes of the 31 access applications received by Germany in 2008 compared with the global averages. The overall rate at which access was agreed or ordered was 6% in Germany compared with 22% globally. However, at least two of the applications recorded as 'other' there was some form of agreement between the parties. The rate of rejection was slightly lower (10% compared with 13% globally) and the proportion of applications withdrawn was nearly half the global average (16% compared with 30%). Proportionately more applications were still pending at the cut off date of 13<sup>th</sup> June 2010 (42% compared with 18%).

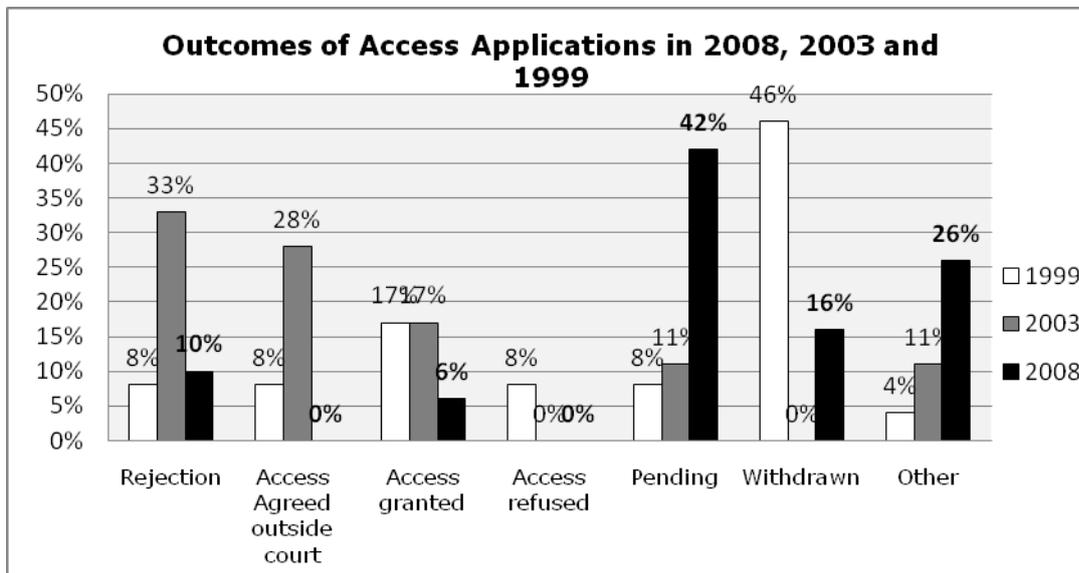
#### Outcomes of Access Applications Received by Germany in 2008

|   | <b>Germany</b>   | <b>Global</b> |
|---|------------------|---------------|
| Rejection                                 | 3 (10%)          | 13%           |
| Access Agreed outside court               | 0 (0%)           | 8%            |
| Access granted                            | 2 (6%)           | 14%           |
| Access refused                            | 0 (0%)           | 3%            |
| Pending                                   | 13 (42%)         | 18%           |
| Withdrawn                                 | 5 (16%)          | 30%           |
| Other                                     | 8 (26%)          | 14%           |
| Different Outcomes for Different Children | 0 (0%)           | 1%            |
| More than One Outcome                     | 0 (0%)           | <1%           |
| <b>Total</b>                              | <b>31 (100%)</b> | <b>≈100%</b>  |



The graph below shows how the outcomes in 2008 compared with those of previous surveys. The proportion of applications in which access was agreed or granted was lower in 2008 (6%, 2 applications) than 45% in 2003 (8 out of 18 applications) and 25% in 1999 (6 out of 24 applications).

The proportion of applications still pending was high in 2008 at 42% compared with 11% in 2003 and 8% in 1999. The number of applications withdrawn was higher in 2008 than in 2003 (16% compared with no applications in 2003) but lower than the 46% withdrawal rate in 1999. The proportion of applications rejected was lower than 2003 (10% compared with 33% in 2003 and closer to the 1999 rate of 8%).



## **10. The reasons for rejection by the Central Authority**

In 2008, 3 applications were rejected by the German Central Authority. Two applications were rejected because the child could not be located and one based on other, unspecified, reasons.

In 2003, one application was rejected because the child could not be located, one because the child was over 16 and a further 4 for 'other' reasons. In 1999, 2 applications were rejected, one because the child was located in another State and the other because the respondent had previously started domestic judicial proceedings, which resulted in the applicant being precluded from having access to the child.

## **11. The reasons for judicial refusal**

No applications were judicially refused in 2008, 2003 or 1999.

## **12. Timing**

In 2008, dates were only available for 3 of the access applications received by Germany. Two of these applications ended in an order for access and took 255 and 617 days and the third was a court approved settlement<sup>51</sup> which took 336 days to conclude. This can be compared with the global averages of 309 days for a voluntary agreement and 357 days for a judicial order for access.

In 2003, the one case in which access was judicially granted took 280 days and one case in which the child was returned took only 3 days and was said to have been made "following direct compulsion/coercion". In 1999 one voluntary settlement took between 3-6 months and another over 6 months. Of the 6 judicial decisions, 2 took under 6 weeks and the remaining 5 over 6 months.

## **V. The Impact of the Brussels II a Regulation**

### **1. Brussels II a Regulation proportion**

The Brussels II a Regulation applies to 26 EU Member States (Brussels II a States) i.e. all such States except for Denmark. Brussels II a States who have responded to the questionnaire received a total of 988 return applications. 705 of these applications came from fellow Brussels II a States (71%) and the remaining 283 applications came from what will be termed non-Brussels II a States (29%). In 2003, 62% of all applications received by what would now be Brussels II a States were from what would now be fellow Brussels II a States.

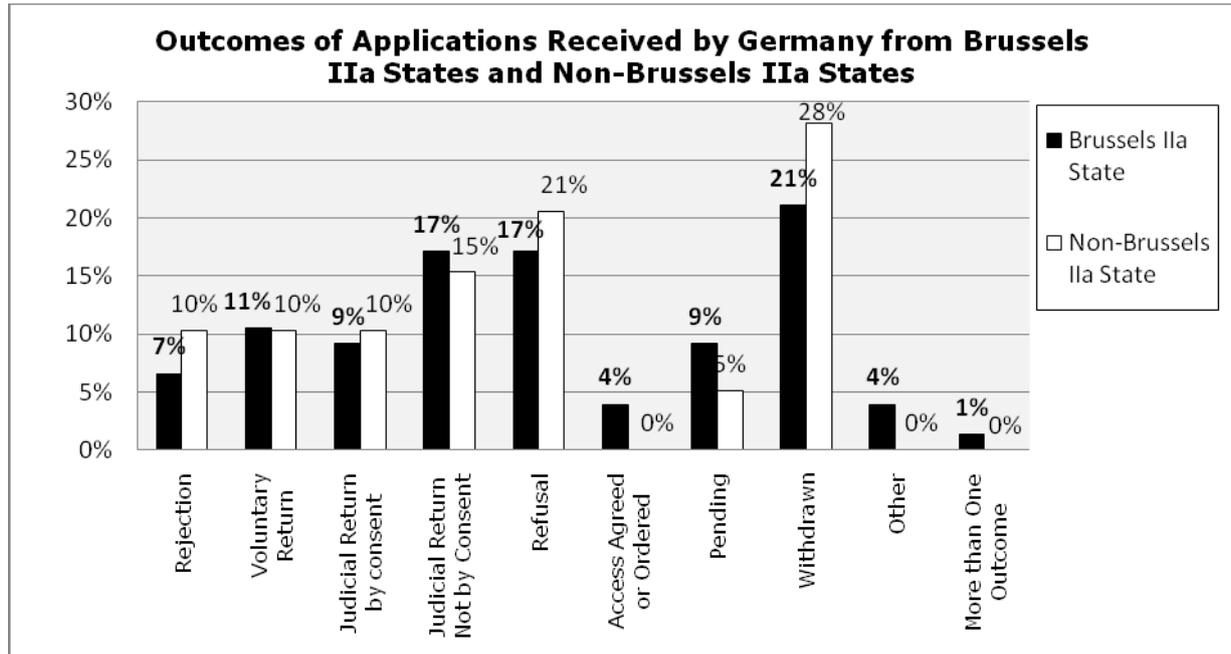
Germany received 115 return applications in 2008 and 76 of these came from Brussels IIa States (66%). This is a lower proportion than in 2003 where 68% came from what is now a Brussels IIa State and 56% in 1999.

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<sup>51</sup> The outcome of this application was recorded as 'other'.

## 2. Brussels II a Regulation and Outcomes

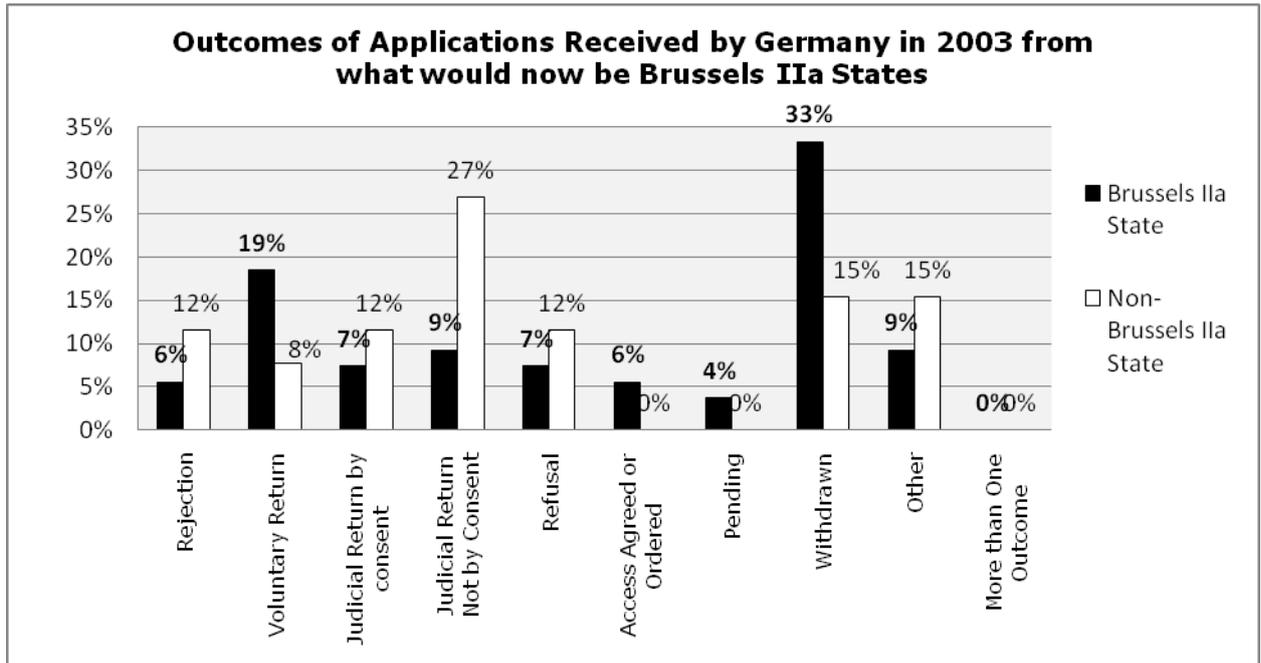
The graph below shows the outcomes of applications from Brussels IIa States and non-Brussels IIa States that were received by Germany in 2008. The overall return rate was slightly higher where the application came from a Brussels IIa State (37%) than from a non-Brussels IIa State (35%). A further 4% of applications from Brussels IIa States ended in an agreement or order for access. The proportion of applications rejected by the Central Authority, judicially refused or withdrawn was lower if the requesting State was a Brussels IIa State but more applications were still pending.



For the main part, these results are reflective of the global picture where applications involved two Brussels IIa States with more returns and fewer rejections, refusals and withdrawn applications.

These results can also be compared with the 2003 survey by looking at the outcomes of cases received by Germany from States that would now be subject to the Brussels IIa Regulation. Any applications between what are now Brussels IIa States would not have been subject to the Revised Brussels II a Regulation in 2003 as it was not yet in force. But, by looking at the outcomes of what would now be Brussels IIa States and Non-Brussels IIa States, it is possible to ascertain whether the Brussels II a Regulation has had an impact, for example in increasing the return rate between Brussels IIa States, or whether there has always been a higher proportion of returns between them.

In contrast to the findings of the 2008 survey, in 2003 there was a higher overall return rate for applications that came from non-Brussels IIa States (47%) than from Brussels IIa States (35%). As in 2008, there were fewer rejections by the Central Authority and refusals if the application came from what would now be a Brussels IIa State and access was agreed or ordered in proportionately more applications (6% compared with none from non-Brussels IIa States). There was a high withdrawal rate in applications coming from what are now Brussels IIa States (33% compared with 15% from non-Brussels IIa States) and more cases were pending (4% compared with none).

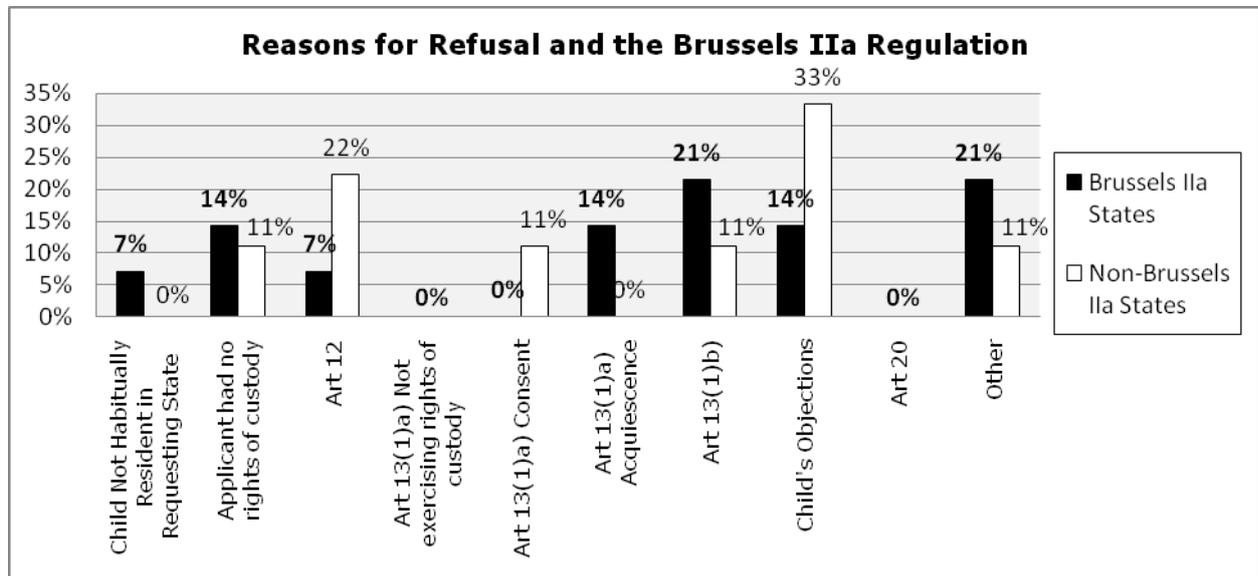


### 3. Refusals and Reasons for Refusal

Fewer applications received by Germany were refused if the requesting state was a Brussels IIa State than if it was not (the proportions were 17% of applications to 21%, respectively).

Surprisingly the most frequently cited single reason for refusal of an application from a Brussels IIa State was Art 13(1) b) making up 21% (3 reasons) compared with only 11% (1 reason) where the application was not from a Brussels IIa state.

By contrast, 33% of applications from non-Brussels II a States were refused following the child's objections compared with only 14% of applications from Brussels II a States and Article 12 made up 22% (2 applications) of the reasons for refusal where the requesting State was not Brussels IIa but only 7% (1 application) if it was Brussels IIa.



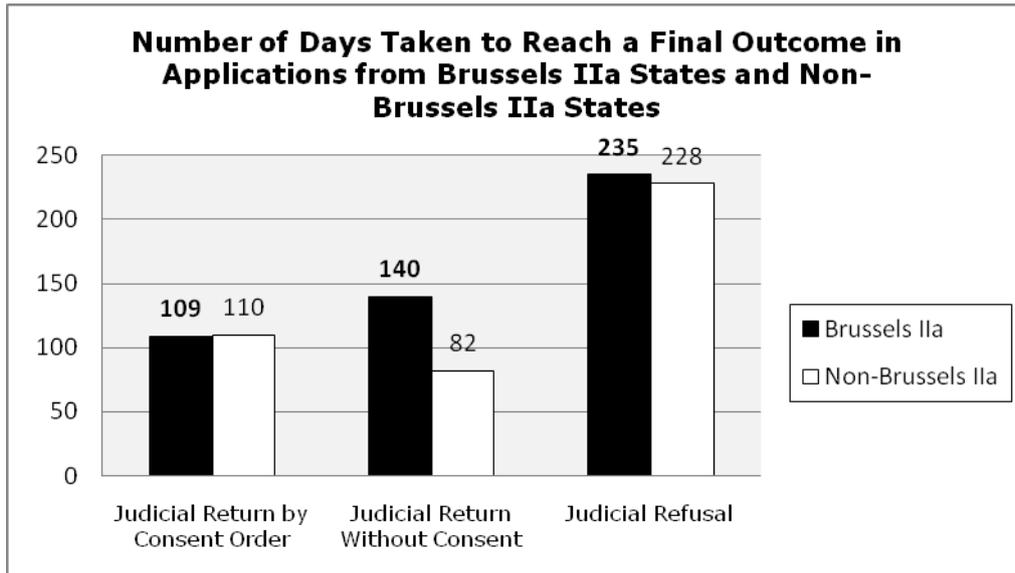
This profile reflects the overall impact of the Brussels II a Regulation which also found that a far greater proportion of cases were refused under Art 13(1) b) when the application was subject to the Regulation.

#### 4. Brussels IIa and Timing

Overall, the applications received by Germany in 2008 in which the Brussels II a Regulation applied were not resolved more quickly than those received from non-Brussels II a States. The overall average time taken to reach a final settlement was 166 days if the requesting State was a Brussels II a State and 156 days if it was not.

Breaking these results down into the time taken to reach different outcomes, the table and graph below show that applications from Brussels IIa States were resolved slightly quicker in applications ending in a judicial return by consent but judicial returns without consent and judicial refusals took longer compared with applications from requesting States outside Brussels IIa.

|                 | Judicial Return by Consent Order |                  | Judicial Return Without Consent |                  | Judicial Refusal |                  |
|-----------------|----------------------------------|------------------|---------------------------------|------------------|------------------|------------------|
|                 | Brussels IIa                     | Non-Brussels IIa | Brussels IIa                    | Non-Brussels IIa | Brussels IIa     | Non-Brussels IIa |
| <b>Mean</b>     | <b>109</b>                       | <b>110</b>       | <b>140</b>                      | <b>82</b>        | <b>235</b>       | <b>228</b>       |
| Median          | 114                              | 118              | 127                             | 82               | 215              | 195              |
| Minimum         | 31                               | 90               | 50                              | 53               | 25               | 93               |
| Maximum         | 222                              | 123              | 313                             | 106              | 527              | 558              |
| Number of cases | 7                                | 3                | 13                              | 6                | 13               | 8                |



8% of applications from Brussels IIa States were resolved in 6 weeks whereas no applications from non-Brussels IIa States were concluded in this time. 28% of Brussels IIa applications were resolved in 12 weeks and 42% in 18 weeks compared with 18% of applications from non-Brussels IIa States being resolved in 12 weeks and 71% in 18 weeks. 4 applications (12%) from Brussels IIa States took over 24 weeks to conclude compared with only 1 application (6%) from a non-Brussels IIa State.

Overall, only 15% of all applications to which the Brussels II a Regulation applied were resolved in 6 weeks compared with 16% of applications received by Brussels II a States from non-Brussels II a States. 51% of Brussels II a applications were resolved in 18 weeks compared with 58% of applications received by Brussels II a States from non-Brussels II a States

## MEXICO

### I. Overall Summary

In 2008 Mexico received 168 return applications and 6 access applications. This amounted to a 522% increase in the number of return applications. No access applications were received by Mexico in 2003. In total the Mexican Central Authority dealt with 272 incoming and outgoing applications in 2008 which is a 121% increase on the 123 in 2003.

The overall rate of return in the 168 return applications was 40% compared with 46% globally. This can be compared with the 2003 return rate of 63% and 15% in 1999. Proportionately fewer applications received by Mexico were withdrawn or rejected by the Central Authority but proportionately more were judicially refused or pending.

In Mexico applications were resolved in similar times to the global averages but, overall, were slightly slower. Voluntary returns took 232 days to conclude compared with 121 days globally, judicial returns without consent took 206 days compared with 204 days globally and judicial refusals took 290 days compared with 286 globally. Judicial returns by consent order were resolved more quickly in Mexico, taking an average of 152 days to conclude compared with 163 days globally.

With regard to the 6 access applications received, access was ordered in 1 application (17%) compared with an overall access rate of 22% globally. 2 applications were still pending (33%, compared with 18% globally), 1 application was refused (17% compared with 3% globally), 1 was withdrawn (17% compared with 30% globally) and 1 decided for 'other' reasons. No applications were rejected by the Central Authority or ended with a voluntary agreement for access.

### II. The number of applications received and sent in 2008

|                 | 1999 | 2003 | <b>2008</b> |
|-----------------|------|------|-------------|
| Incoming Return | 41   | 27   | <b>168</b>  |
| Incoming Access | 0    | 0    | <b>6</b>    |
| Outgoing Return | 55   | 91   | <b>93</b>   |
| Outgoing Access | 0    | 5    | <b>5</b>    |

The Mexican Central Authority received 174 applications in total made up of 168 incoming return and 6 incoming access applications. This is a 544% increase on the 27 incoming applications received in 2003 and a 324% increase on the 41 applications received in 1999.

The ratio of return to access in 2008 was 97% to 3%, respectively. No access applications were received in 2003 or 1999.

In addition, the Central Authority made 98 outgoing applications made up of 93 return and 5 access applications. This is a 2% increase on the 96 outgoing cases in 2003 and a 78% increase on the 55 in 1999.

In total, the Central Authority dealt with 272 incoming and outgoing applications. A 121% increase from 123 applications handled in 2003 and a 183% increase from 96 applications in 1999. The Mexican Central Authority was the fourth busiest Central Authority in 2008 behind the USA, UK – England and Wales and Germany.

### III. Incoming Return Applications

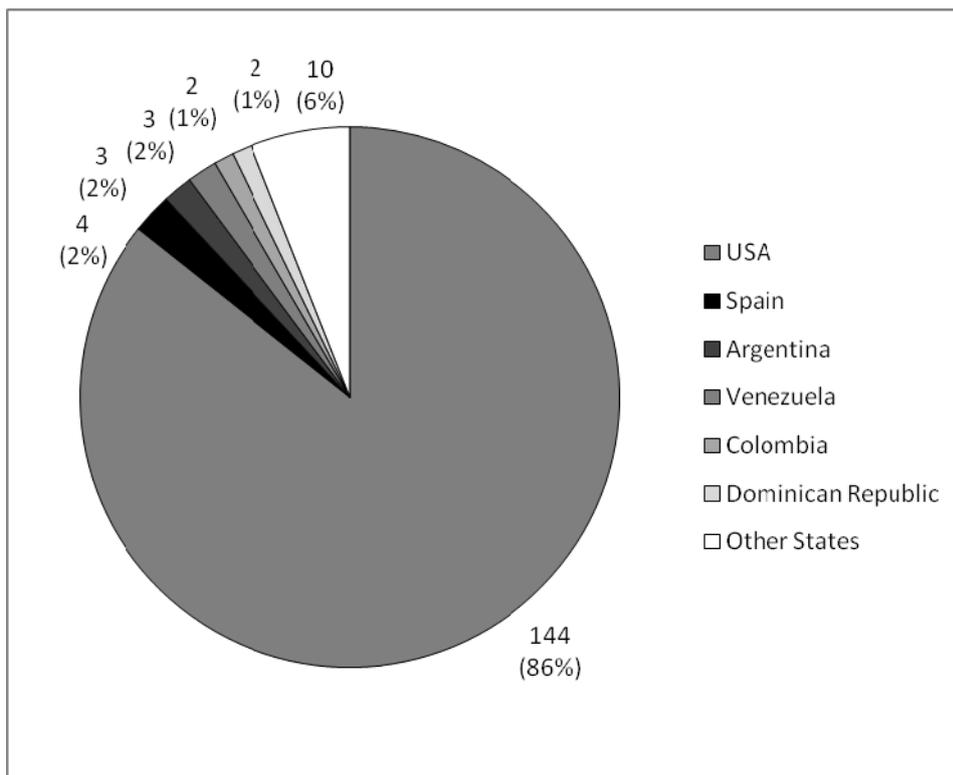
#### 1. The Contracting States which made the application

In 2008, Mexico received return applications from 16 different Central Authorities – compared with 4 requesting States in 2003 and 7 in 1999.

#### The Contracting States which made the most applications to Mexico

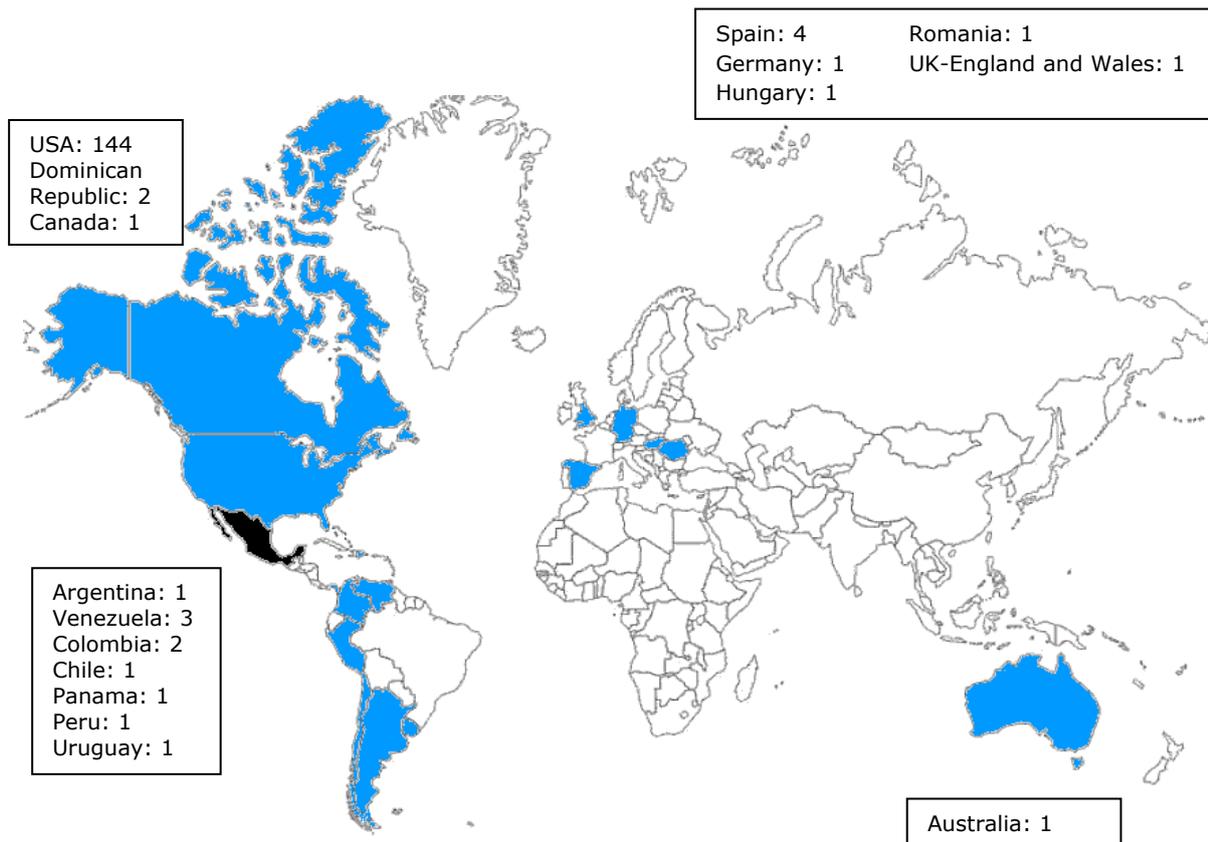
|                    | 1999      | 2003      | 2008             |
|--------------------|-----------|-----------|------------------|
| USA                | 35 (85%)  | 23 (85%)  | <b>144 (86%)</b> |
| Spain              | 0 (0%)    | 1 (4%)    | <b>4 (2%)</b>    |
| Argentina          | 0 (0%)    | 2 (7%)    | <b>3 (2%)</b>    |
| Venezuela          | 0 (0%)    | 0 (0%)    | <b>3 (2%)</b>    |
| Colombia           | 1 (2%)    | 0 (0%)    | <b>2 (1%)</b>    |
| Dominican Republic | 0 (0%)    | 0 (0%)    | <b>2 (1%)</b>    |
| Other States       | 5 (12%)   | 1 (4%)    | <b>10 (6%)</b>   |
| <b>Total</b>       | <b>41</b> | <b>27</b> | <b>168</b>       |

#### The Requesting States for Return Applications Received by Mexico in 2008



As in previous surveys, the highest number of applications from a single state came from the USA which made 144 applications to Mexico in 2008 (86%), 23 applications in 2003 (85%) and 35 applications in 1999 (85%). The second highest number of applications from a single State in 2008 came from Spain (4 applications, 2%) which made only 1 application in 2003 and no applications to Mexico in 1999. Argentina made 3 applications to Mexico in 2008 compared with 2 in 2003 and none in 1999.

### Map of Contracting States which made return applications to Mexico in 2008



## 2. The Taking Person

In 2008, 49% of taking persons going to Mexico were fathers and 47% mothers. This can be compared with the global average of 69% of taking persons being mothers and 28% fathers. The remaining 4% of applications to Mexico involved 5 taking grandparents and 1 application where both parents took the child.

In past surveys there has also been a relatively high proportion of taking fathers coming to Mexico. In 2003, 48% of taking persons were fathers and 52% mothers and in 1999 52% were male and 48% female<sup>52</sup>.

## 3. The status of the taking person as carer in relation to the child

The Mexican Central Authority was unable to provide information regarding the status of the taking person as carer of the child.

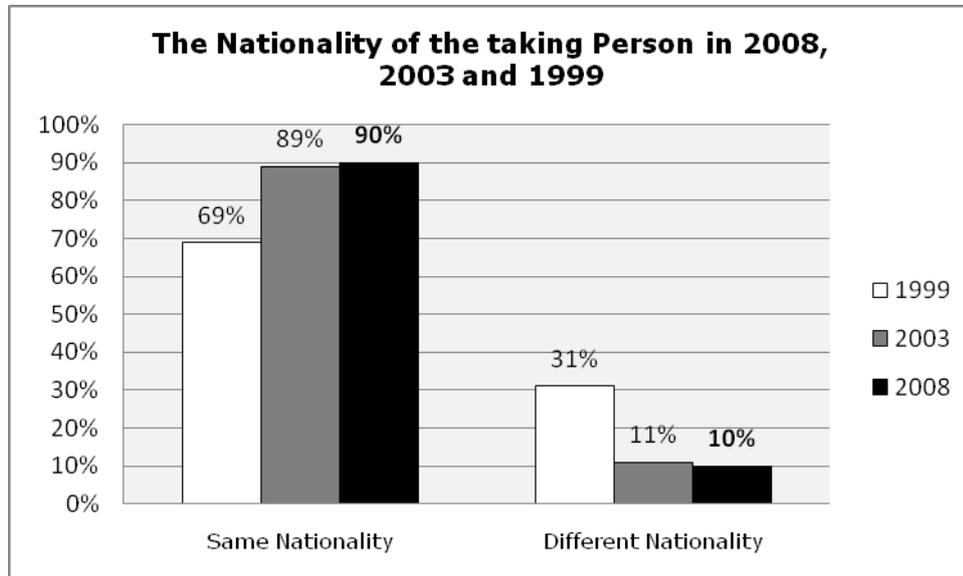
## 4. The nationality of the taking person

In 2008, 90% of applications received involved a taking person who was a Mexican citizen (including 2 taking persons with dual nationality). This is a high proportion compared with the global 51% of taking persons who went to a state of which they were a national.

<sup>52</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication.

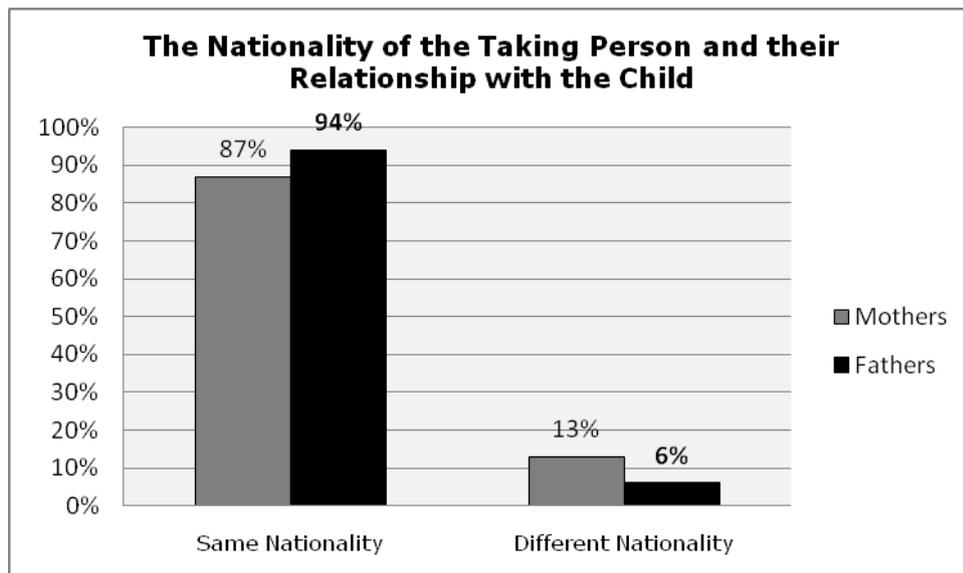
In 2003, 89% of taking persons were Mexican citizens and in 1999, 69%. These proportions can be compared with the global averages of 55% in 2003 and 52% in 1999.

The chart below compares the 2008 findings on nationality with the 2003 and 1999 surveys. It shows a clear trend of proportionately more Mexican nationals taking children to Mexico.



### 5. The relationship and nationality of the taking person combined

The graph below shows that, in 2008, a slightly higher proportion of fathers taking children to Mexico were found to be Mexican citizens than mothers.



87% of mothers were Mexican nationals compared with 94% of fathers. Globally, 53% of taking mothers were found to have the same nationality as the requested state and 48% of fathers.

In 2003, 79% of taking mothers (11 out of 14 applications) and all of the 13 taking fathers were Mexican citizens. In 1999, 75% of female taking persons had Mexican citizenship and 69% of males.

## 6. The children

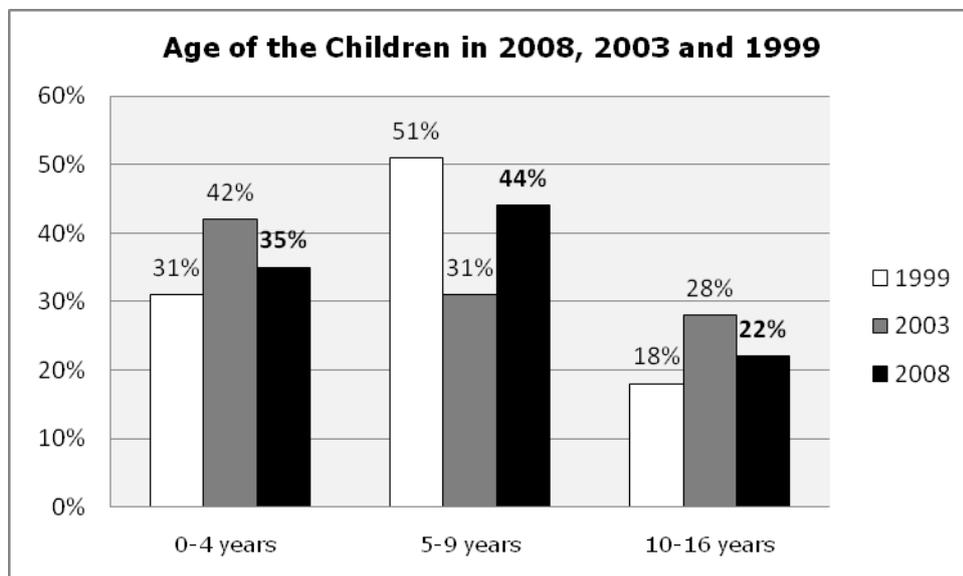
In 2008, 270 children were involved in the 168 applications making an average of 1.61 children per application compared with the global average of 1.38 children. In 2003 the average number of children in each return application received by Mexico was 1.33 children and, in 1999, 1.41 children.

57% of applications received were for the return of a single child, compared with the global average of 69%. This is a decrease from 74% of applications to Mexico in 2003 and 73% in 1999.

## 7. The age of the children

The average child involved in a return application to Mexico was 6.5 years, exactly the same figure as in 2003, compared with the global average of 6.4 years.

In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. The proportion of children falling within the 10-16 year age group (22%) has decreased from 28% in 2003 but is higher than the 18% in 1999. Proportionately more children fell into the 5-9 year age bracket than in 2003 (44% compared with 31%) but fewer than the 51% in 1999. A lower proportion of children were aged between 0-4 years in 2008 (35%) than in 2003 (42%) but higher than in 1999 (31%).



## 8. The gender of the children

In 2008, 49% of the children involved were female and 51% male, exactly the same as the global average. In 2003, 64% of the children taken to Mexico were female and 36% male and, in 1999, 47% were female and 53% male.

## 9. The overall outcomes

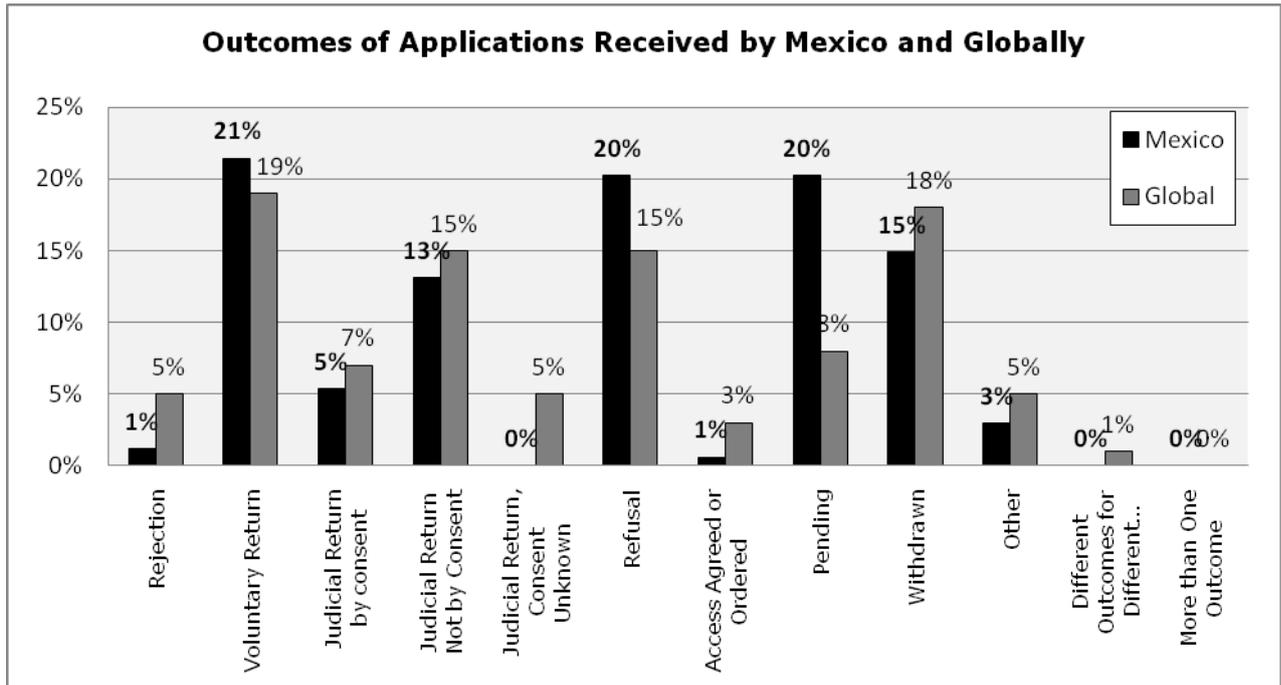
The table below shows all the outcomes of return applications received by Mexico in 2008 compared with the global findings.

|   | <b>Mexico</b> | <b>Global</b> |
|---|---------------|---------------|
| Rejection                                 | 2 (1%)        | 5%            |
| Voluntary Return                          | 36 (21%)      | 19%           |
| Judicial Return by Consent                | 9 (5%)        | 7%            |
| Judicial Return Not by Consent            | 22 (13%)      | 15%           |
| Judicial Return, Consent Unknown          | 0 (0%)        | 5%            |
| Refusal                                   | 34 (20%)      | 15%           |
| Access Agreed or Ordered                  | 1 (1%)        | 3%            |
| Pending                                   | 34 (20%)      | 8%            |
| Withdrawn                                 | 25 (15%)      | 18%           |
| Other                                     | 5 (3%)        | 5%            |
| Different Outcomes for Different Children | 0 (0%)        | 1%            |
| More than One Outcome                     | 0 (0%)        | <1%           |

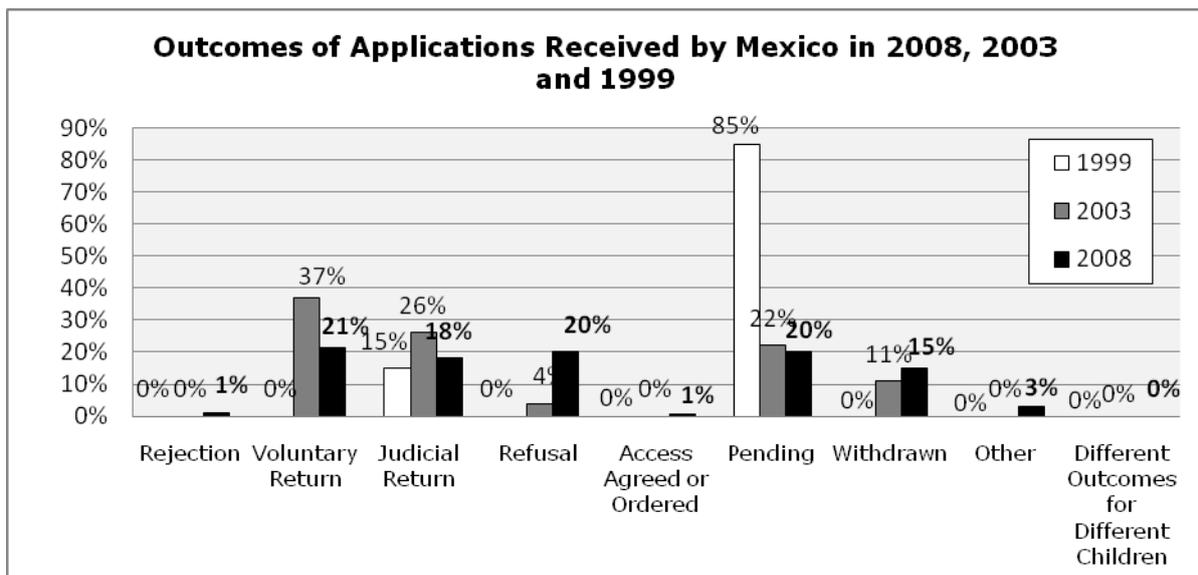
The graph below shows more clearly how the results in applications received by Mexico compare to those globally. In 2008, 40%<sup>53</sup> of applications received by Mexico ended with a return compared with the global judicial return rate of 46%. This 40% judicial return rate can be broken down into 21% voluntary returns (compared with 19% globally), 5% judicial returns by consent order (7% globally) and 13% judicial returns without consent (15% globally with an additional 5% of applications ending with a judicial return but where the consent of the parties unknown). Access was also ordered in 1 application (1%) compared to 3% globally.

The Mexican Central Authority rejected proportionately fewer applications (2 applications, 1%) than the global average of 5% but proportionately more applications were judicially refused (34 applications, 20%) than the global average of 15%. 20% of applications were still pending at the cut off date of 30<sup>th</sup> July 2010 compared with the global average of 8% but a lower proportion of applications were withdrawn (15% compared with 18% globally).

<sup>53</sup> The figures in the table for voluntary returns, judicial returns by consent and judicial returns without consent have been rounded down.



The graph below compares the outcomes of applications received by Mexico in 2008 to those in 2003 and 1999.



The overall return rate of 40% (67 applications) in 2008 has proportionately decreased from 63% in 2003 (17 applications) but is higher than the 15% (6 applications) in 1999. The proportion of voluntary returns has decreased from 37% (10 applications) in 2003 to 21% (36 applications) in 2008. No applications ended with a voluntary return in 1999.

No applications were rejected by the Mexican Central Authority in 2003 and 1999 compared with 2 applications (1%) in 2008. The rate of judicial refusal was 20% in 2008 (34 applications), higher than 4% in 2003 (1 application) and 1999 when no applications were judicially refused. The proportion of applications pending has decreased and was proportionately lower in 2008 (20%, 34 applications) than in 2003 (22%, 6 applications) and 1999 (85%, 35 applications). The proportion of withdrawn applications has increased from none in 1999 to 11% in 2003 (3 applications) and 15% (25 applications) in 2008.

## 10. The reasons for rejection

In 2008, 2 applications were rejected by the Mexican Central Authority, both for 'other' reasons. One because the child's habitual residence was found to have always been in Mexico and in one (an application from the USA) because the child's habitual residence was in Canada. No applications were rejected in 2003 or 1999.

## 11. The reasons for judicial refusal

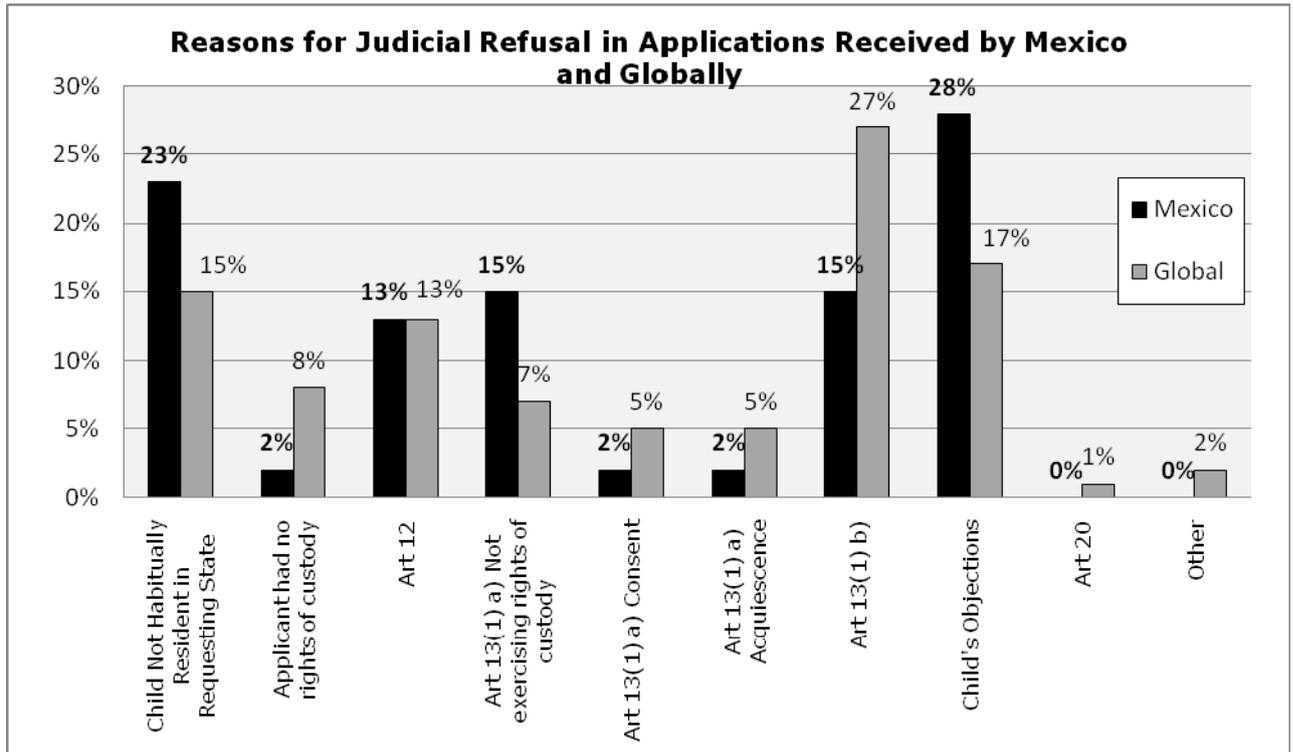
Out of the 66 cases that went to court, 34 (52%) were refused compared with 33% globally. In 2003, 12% of the applications that went to court were refused and in 1999 no applications were refused.

In 2008, 12 of the 34 applications that were judicially refused were refused for more than one reason and a total of 53 reasons for refusal were relied upon. The table and graph below show the reasons for refusal in Mexico compared with those globally. The most common reason for refusal in applications received by Mexico was based on the child's objections (28%) compared with 17% of reasons for refusal globally followed by a finding that the child was not habitually resident in the requested State (23%) compared with 15% globally. A higher proportion of refusals in Mexico were based on the applicant not exercising their rights of custody under Article 13(1) a).

Article 13(1) b) was relied upon in 8 applications (15%) compared with 27% globally. Proportionately fewer applications in Mexico were refused based on the applicant having no rights of custody (2% compared with 8% globally) and Article 13(1) a) consent and acquiescence (both 2% compared with 5% globally).

### The Reasons for Refusal in Applications Received by Mexico and Globally in 2008

|   | Mexico    |             | Global      |
|---|-----------|-------------|-------------|
|   | Frequency | Percentage  |             |
| Child Not Habitually Resident in Requesting State | 12        | 23%         | 15%         |
| Applicant had no rights of custody                | 1         | 2%          | 8%          |
| Art 12  | 7         | 13%         | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 8         | 15%         | 7%          |
| Art 13(1) a) Consent                              | 1         | 2%          | 5%          |
| Art 13(1) a) Acquiescence                         | 1         | 2%          | 5%          |
| Art 13(1) b)                                      | 8         | 15%         | 27%         |
| Child's Objections                                | 15        | 28%         | 17%         |
| Art 20  | 0         | 0%          | 1%          |
| Other   | 0         | 0%          | 2%          |
| <b>Total</b>                                      | <b>53</b> | <b>100%</b> | <b>100%</b> |



In 2003, only one application was judicially refused and the reasons for refusal were based on Article 13(1) b) and the child's objections. No applications were refused in 1999.

## 12. The reasons for judicial refusal and the taking person

Of the 34 applications refused, 17 involved taking mothers, 16 involved taking fathers and 1 involved a taking grandparent.

Where the taking person was the mother the most common reason for refusal was based on the child not being habitually resident in the requesting State (29%, 8 applications) followed by the child's objections (25%, 7 applications). Where the taking person was the father of the child the most common reason for refusal was based on the child's objections (33%, 8 applications).

|   | Mothers   |             | Fathers   |             |
|---|-----------|-------------|-----------|-------------|
|   | Frequency | Percentage  | Frequency | Percentage  |
| Child Not Habitually Resident in Requesting State | 8         | 29%         | 4         | 17%         |
| Applicant had no rights of custody                | 0         | 0%          | 1         | 4%          |
| Art 12  | 4         | 14%         | 3         | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 3         | 11%         | 4         | 17%         |
| Art 13(1) a) Consent                              | 1         | 4%          | 0         | 0%          |
| Art 13(1) a) Acquiescence                         | 1         | 4%          | 0         | 0%          |
| Art 13(1) b)                                      | 4         | 14%         | 4         | 17%         |
| Child's Objections                                | 7         | 25%         | 8         | 33%         |
| <b>Total</b>                                      | <b>28</b> | <b>100%</b> | <b>24</b> | <b>100%</b> |

### 13. Timing

The overall average time taken to reach a final settlement in the return applications received by Mexico was 252 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, judicial returns by consent order were generally resolved more quickly, in an average on 152 days whereas judicial refusals took 290 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Mexico.

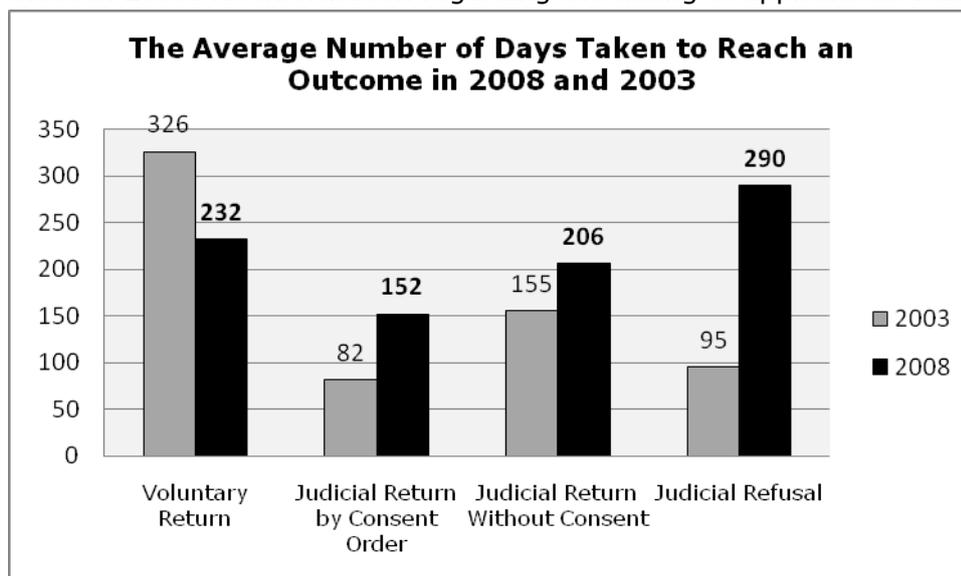
**The Number of Days Taken to Reach an Outcome**

|                 | <b>Voluntary Return</b> | <b>Judicial Return by Consent Order</b> | <b>Judicial Return Not by Consent</b> | <b>Judicial Refusal</b> |
|-----------------|-------------------------|---|---------------------------------------|-------------------------|
| Mean            | 232                     | 152                                     | 206                                   | 290                     |
| Median          | 143                     | 125                                     | 143                                   | 272                     |
| Minimum         | 0                       | 28                                      | 11                                    | 36                      |
| Maximum         | 700                     | 331                                     | 548                                   | 724                     |
| Number of Cases | 33 <sup>54</sup>        | 9                                       | 20 <sup>55</sup>                      | 33 <sup>56</sup>        |

Voluntary returns took 232 days to conclude compared with 121 days globally, judicial returns without consent took 206 days compared with 204 days globally and judicial refusals took 290 days compared with 286 globally. Judicial returns by consent order were resolved more quickly in Mexico, taking an average of 152 days to conclude compared with 163 days globally.

Overall, a judicial return took 189 days to conclude in Mexico compared with 166 days globally<sup>57</sup>.

The graph below compares the timings of applications received by Mexico in 2008 with those in 2003. No information regarding the timing of applications was available in 1999.



<sup>54</sup> The timing for three applications ending in a voluntary return was unavailable.

<sup>55</sup> The timing for two applications ending in a judicial return without consent was unavailable.

<sup>56</sup> The timing for one application ending in a judicial refusal was unavailable.

<sup>57</sup> This figure includes the 5% of applications globally which ended with a judicial return but where the consent of the parties was not known.

Applications that were decided in court in 2008 took longer, on average, than in 2003. Judicial returns by consent order took 152 days (compared with 82 days in 2003), judicial returns without consent took 206 days (compared with 155 days) and judicial refusals took 290 days (compared with 95 days).

Voluntary returns were resolved quicker in 2008 in an average of 232 days compared with 326 days in 2003.

### **Time taken to send application to court**

In 2008 the length of time that the Central Authority held the application was recorded for the first time. In Mexico it took an average of 47 days before the application was sent to court and the court then took an average 211 days to conclude it<sup>58</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### **Appeals**

In 2008, out of the 66 return applications decided in court, 2 of these decisions (3%) were appealed, lower than the global average of 28%. A further 3 applications were pending an appeal at the cut off date of 30<sup>th</sup> June 2010.

The time taken to reach a final decision is obviously affected by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 251 days. One of the appealed applications was resolved in 257 days (ending with a judicial return without consent) and the other in 291 days (ending with a judicial refusal).

The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

## **IV. Incoming access applications**

### **1. The Contracting States which made the application**

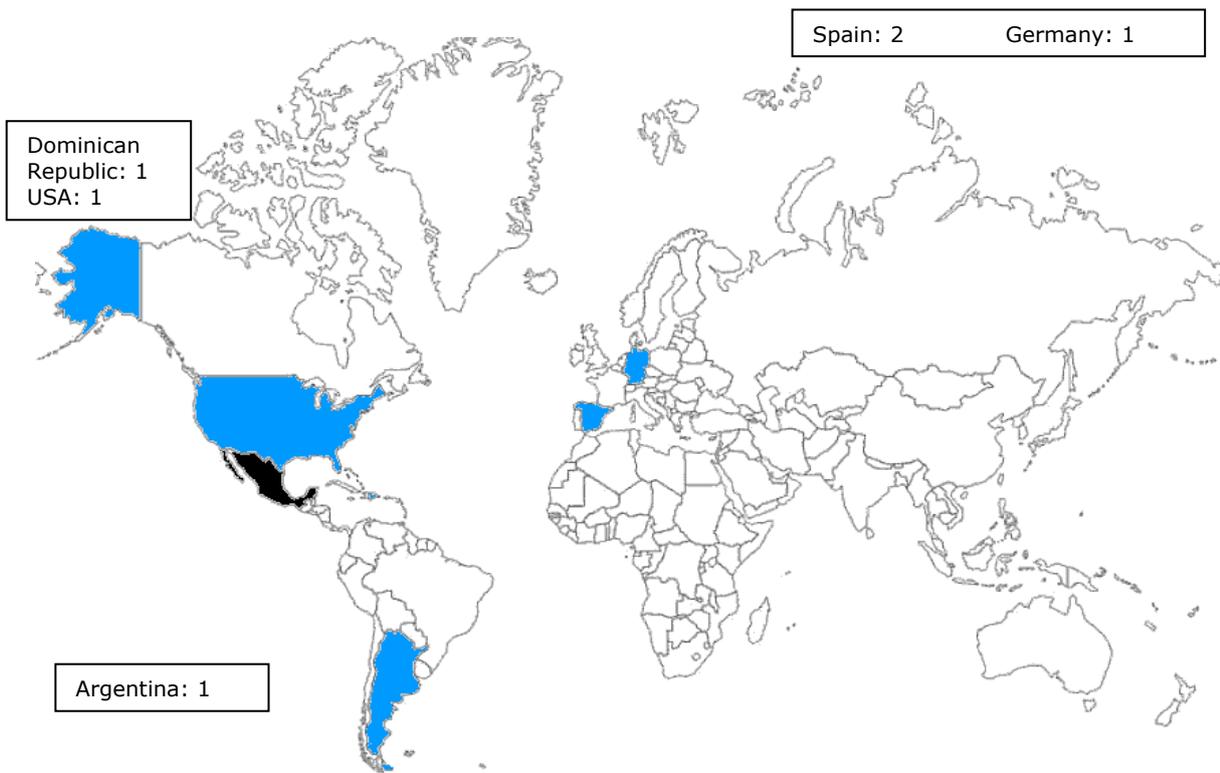
In 2008 Mexico received 6 access applications. Two applications came from Spain and one application was received from Argentina, Dominican Republic, Germany and the USA.

#### **The Contracting States which made Access Applications to Mexico in 2008**

|                    | <b>2008</b>    |
|--------------------|----------------|
| Spain              | <b>2 (33%)</b> |
| Argentina          | <b>1 (17%)</b> |
| Dominican Republic | <b>1 (17%)</b> |
| Germany            | <b>1 (17%)</b> |
| USA                | <b>1 (17%)</b> |
| <b>Total</b>       | <b>12</b>      |

<sup>58</sup> These figures are based on 140 applications where the date sent to court was recorded and 64 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

### Map of Contracting States which Made Access Applications to Mexico in 2008



#### 2. The Respondent

Of the 6 access applications received by Mexico in 2008, in 4 applications (67%) the respondent was the father, higher than the global average of 20%, and in 2 applications the respondent was the mother (33%) lower than the global average of 79%. No access applications were received by Mexico in 2003 or 1999.

#### 3. The status of the respondent as carer in relation to the child

The Mexican Central Authority was unable to provide information regarding the status of the respondent as carer of the child.

#### 4. The nationality of the respondent

Globally, 50% of respondents in access cases had the same nationality as the requested state. All of the respondents in the 6 access applications received by Mexico were Mexican citizens.

#### 5. The Children

In 2008, one child was involved in each of the 6 access applications compared with the global average of 1.32 children per application.

## 6. The age of the children

The average child involved in an access application to Mexico was 6.8 years compared with the global average of 7.8 years. 2 children were aged between 0-4 years, 3 between 5-9 years and 1 between 10-16 years.

## 7. The gender of the children

In 2008, 3 of the children involved were female and 3 were male. Globally, 49% of children involved in access applications were female and 51% male.

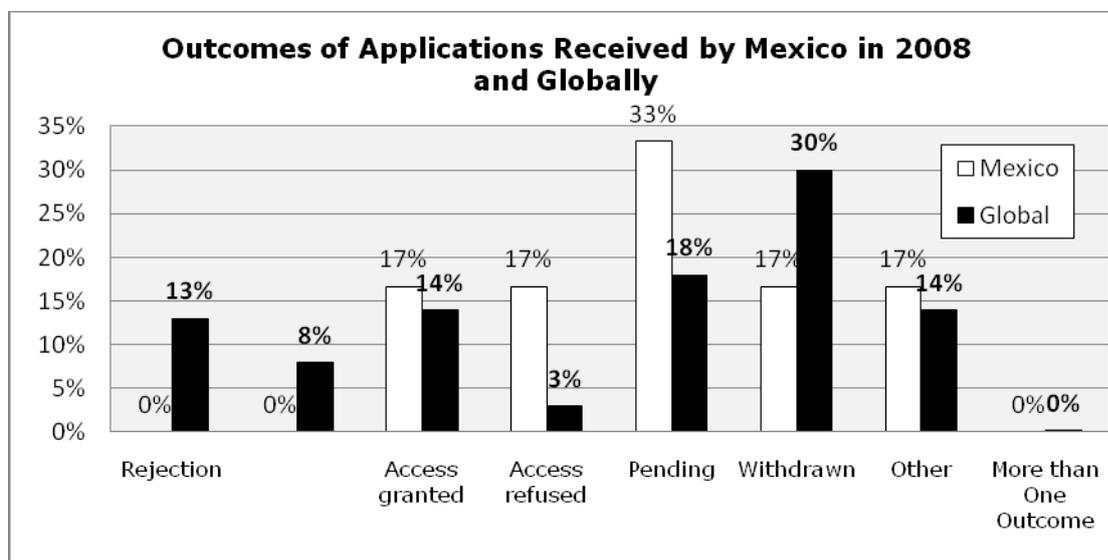
## 8. The overall outcomes

The table and graph below show the outcomes of 6 access applications received by Mexico in 2008 compared with the global averages.

Access was ordered in 1 application (17%) compared with the global rate at which access was agreed or ordered of 22%. 1 application was refused (17%, compared with 3% globally), 1 was withdrawn (17% compared with 30% globally) and 2 were pending (33% compared with 18% globally).

**Outcomes of Access Applications Received by Mexico in 2008**

|   | <b>Mexico</b> | <b>Global</b> |
|---|---------------|---------------|
| Rejection                                 | 0 (0%)        | 13%           |
| Access Agreed outside court               | 0 (0%)        | 8%            |
| Access granted                            | 1 (17%)       | 14%           |
| Access refused                            | 1 (17%)       | 3%            |
| Pending                                   | 2 (33%)       | 18%           |
| Withdrawn                                 | 1 (17%)       | 30%           |
| Other                                     | 1 (17%)       | 14%           |
| Different Outcomes for Different Children | 0 (0%)        | 1%            |
| More than One Outcome                     | 0 (0%)        | <1%           |



### **9. The reasons for rejection by the Central Authority**

No applications were rejected by the Mexican Central Authority.

### **10. The reasons for judicial refusal**

One application was judicially refused in 2008 but no information is available on the reasons for this refusal.

### **11. Timing**

In 2008, dates were available for 2 of the access applications received by Mexico. One application, ending in a judicial refusal, was resolved in 50 days and the other, an order for access, took 111 days to conclude.

This can be compared with the global averages of 357 days for a judicial order for access and 276 days for a judicial refusal.

## POLAND

### I. Overall Summary

In 2008 Poland received 67 return and 2 access applications. This amounted to a 272% increase in return applications from the 18 received in 2003 and a 75% decrease in access applications from the 8 received in 2003. In total, the Polish Central Authority dealt with 134 applications which was a 219% increase on the 42 incoming and outgoing applications in 2003. Poland did not participate in the 1999 Statistical Survey so we cannot compare the number of applications received in that year.

Of the return applications received, 31% ended with the return of the child compared with the global average of 46%. This is a decrease from the 33% return rate in Poland in 2003. Proportionately more applications received by Poland (39%) were refused compared with the global average (15%).

Applications received by Poland were concluded more quickly compared with the global average. Voluntary returns took 57 days to conclude compared with 121 globally, judicial returns without consent took 138 days compared with 204 days globally and judicial refusals took 240 days compared with 286 globally.

Poland received only 2 access applications in 2008. One of these applications ended with a judicial grant for access and the other was withdrawn. The application in which access was granted took 537 days to conclude compared with the global average of 357 days.

Where the Brussels II a Regulation applied to return applications received by Poland the rate of return was higher at 35% compared with 15% if the requesting State was a non-Brussels II a State. There were fewer judicial refusals (31% compared with 69% if the requesting State was a non-Brussels II a State) and pending applications (2% compared with 8%). By contrast a higher proportion of application from Brussels II a States were withdrawn (20% compared with 8% of applications from non-Brussels II a States) and rejected (7% compared with no applications from non-Brussels II a States). Overall, applications from Brussels II a States were resolved faster in an average of 190 days compared with 214 days if the application came from a non-Brussels II a State. However, looking at the time taken to reach each outcome, non-Brussels II a applications were resolved more quickly with voluntary returns being concluded in 46 days compared with 60 days for Brussels II a States and Refusals in 232 days compared with 243 days.

### II. The number of applications received and sent in 2008

|                 | <b>2003</b> | <b>2008</b> |
|-----------------|-------------|-------------|
| Incoming Return | 18          | <b>67</b>   |
| Incoming Access | 8           | <b>2</b>    |
| Outgoing Return | 12          | <b>62</b>   |
| Outgoing Access | 4           | <b>3</b>    |

In 2008 the Central Authority of Poland received 67 return applications and 2 access applications, making a total of 69 incoming applications. This is a 165% increase on the 26 incoming applications dealt with in 2003.

The ratio of return to access in 2008 was 97% to 3%, respectively. This can be compared with 69% to 31% in 2003.

In addition, the Central Authority made 65 outgoing applications comprising 62 return and 3 access applications. This is a 306% increase on the 16 outgoing cases in 2003.

In total, the Central Authority dealt with 134 incoming and outgoing applications. A 219% increase from 42 applications handled in 2003.

### III. Incoming Return Applications

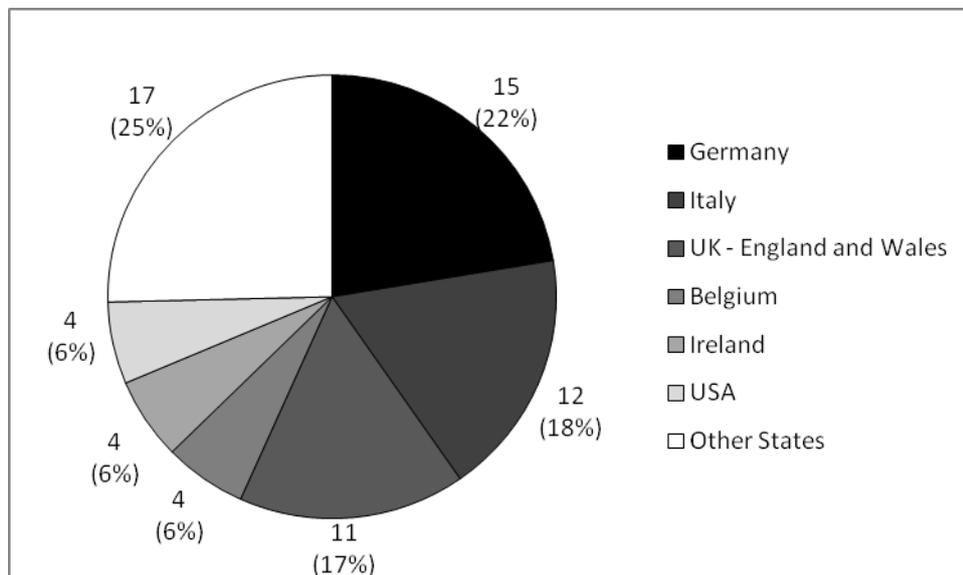
#### 1. The contracting States which made the application

In 2008, Poland received return applications from 16 different Central Authorities – compared with 5 requesting States in 2003.

#### The Contracting States which made the most applications to Poland

|                       | 2003      | 2008      |
|-----------------------|-----------|-----------|
| Germany               | 11 (61%)  | 15 (22%)  |
| Italy                 | 3 (17%)   | 12 (18%)  |
| UK- England and Wales | 0 (0%)    | 11 (16%)  |
| Belgium               | 0 (0%)    | 4 (6%)    |
| Ireland               | 0 (0%)    | 4 (6%)    |
| USA                   | 0 (0%)    | 4 (6%)    |
| Denmark               | 1 (6%)    | 3 (4%)    |
| Other States          | 3 (17%)   | 14 (20%)  |
| <b>Total</b>          | <b>18</b> | <b>67</b> |

#### The Requesting States for Return Applications Received by Poland in 2008

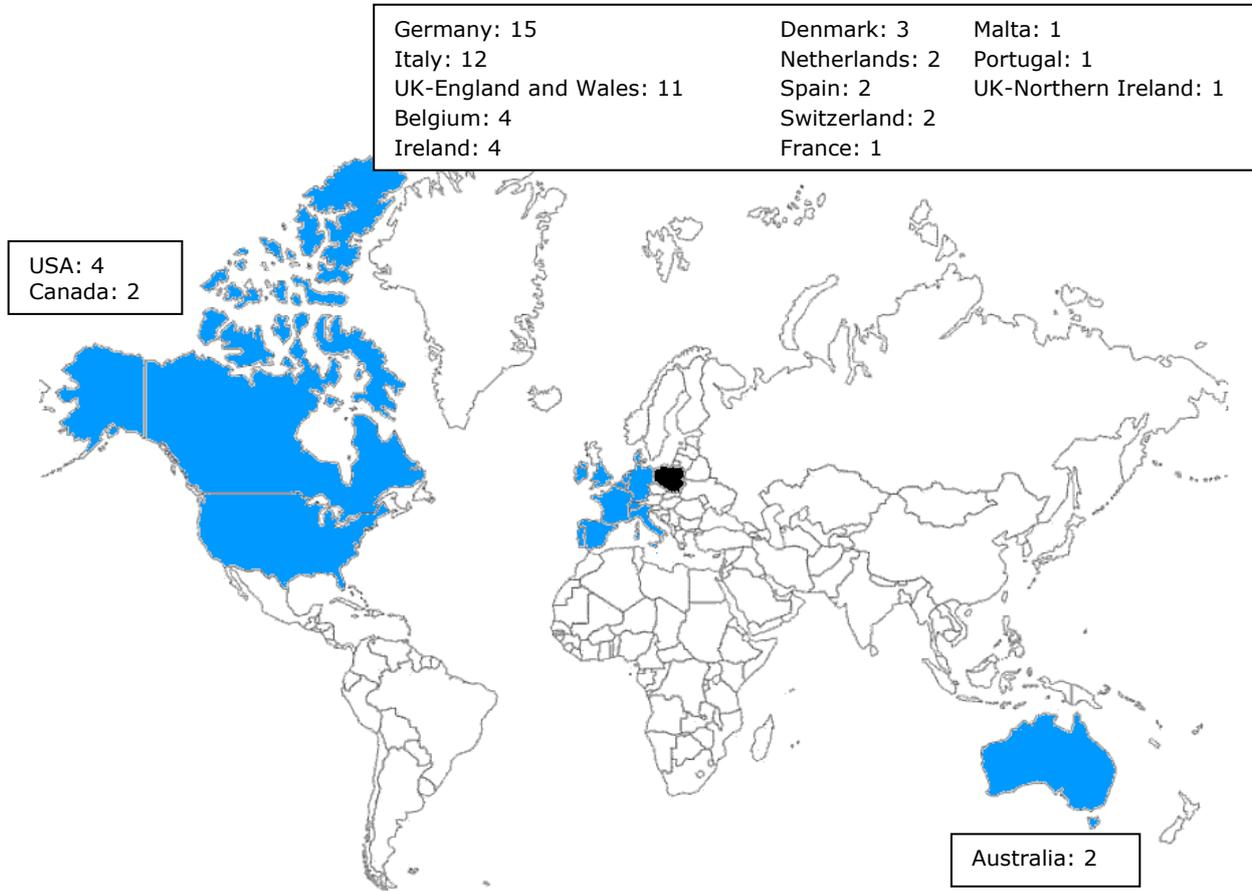


In 2008, 85% of applications to Poland (57 out of 67 applications) came from EU States. In 2003, all of the 18 return applications received came from EU States.

The greatest number of applications received from a single State in 2008 came from Germany (22%, 15 out of 67 applications) compared with 11 in 2003 (61%).

The second highest number came from Italy, 12 applications (18%) compared with 3 applications in 2003 (17%). UK - England and Wales made 11 applications to Poland in 2008(16%) but made no applications in 2003.

### Map of Contracting States which made return applications to Poland in 2008



## 2. The Taking Person

In 2008 a large majority, 76%, of the taking persons were mothers and 18% were fathers. The remaining 6% comprised 2 applications involving both parents moving with the child to Poland, 1 application involving a grandparent and 1 application where the child was taken by their grandparent and uncle. This can be compared with the global average of 69% of taking persons being mothers, 28% fathers and 3% grandparents and other relatives.

In 2003 most taking persons moving to Poland were mothers (89%).

## 3. The status of the taking person as carer in relation to the child

The Polish Central Authority was unable to provide information regarding the status as carer of the taking person.

#### 4. The nationality of the taking person<sup>59</sup>

In 2008, 97% of applications received involved a taking person who was a Polish citizen (60 applications, including 5 taking persons with dual nationality) compared with the global average of 51% of taking persons who went to a State of which they were a national.

In 2003, all 18 taking persons were Polish citizens. .

#### 5. The relationship and nationality of the taking person combined

In 2008, 98% of taking mothers (50 out of 51 applications) and 100% of taking fathers (12 applications) were Polish citizens. Globally, 53% of taking mothers were found to have the same nationality as the requested State and 48% of fathers.

#### 6. The Children

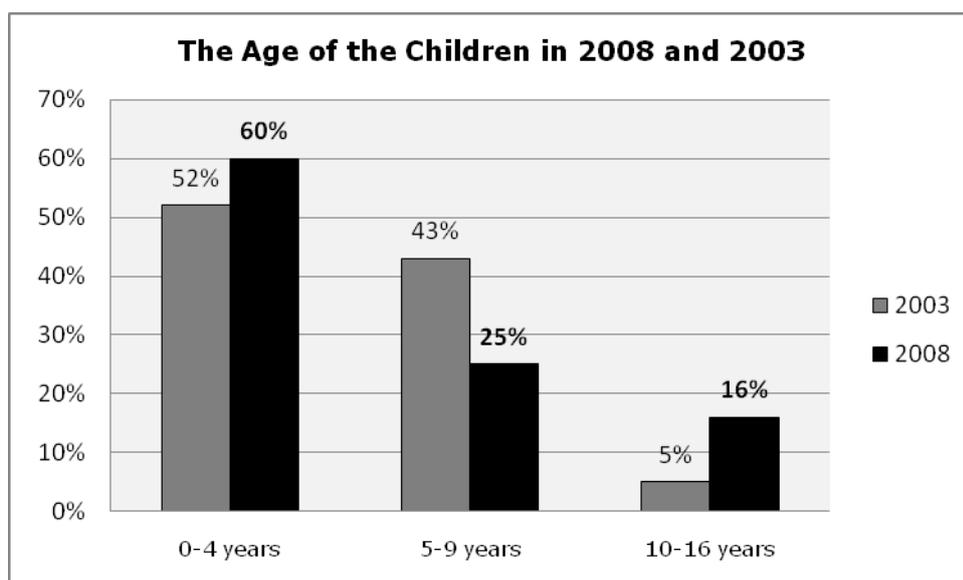
In 2008, 77 children were involved in the 67 return applications received by Poland. This makes an average of 1.15 children per application which is lower than the global average of 1.38 children. In 2003 there was an average of 1.17 children per application.

85% of applications received were for the return of a single child, compared with the global average of 69%. This is a decrease from 89% in 2003.

#### 7. The age of the children

The average child involved in a return application to Poland was 4.8 years compared with the global average of 6.4 years.

In 2003 the average age of a child involved in a return application to Poland was 5.4 years. The graph below shows the ages of the children in 2008 and 2003. In 2008 proportionately more children were aged between 0-4 years or between 10-16 years and fewer were between 5-9 years.



<sup>59</sup> Information regarding the nationality of the taking person was not available in 2 applications.

## 8. The gender of the children

52% of the children involved in return applications to Poland were male and 48% female. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003, 86% of the children involved were female.

## 9. The overall outcomes

The table below shows all the outcomes of return applications received by Poland in 2008 compared with the global findings.

### The Outcomes of Return Applications in 2008

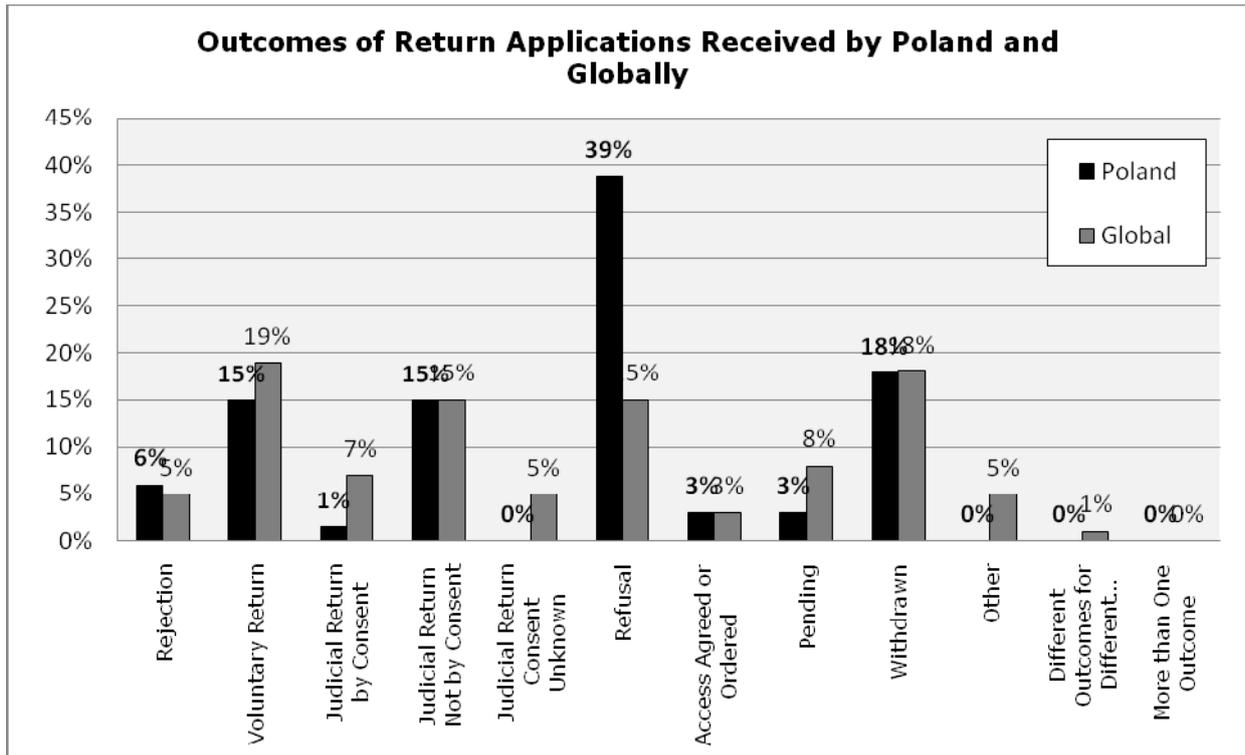
|   | <b>Poland</b>    | <b>Global</b> |
|---|------------------|---------------|
| Rejection                                 | 4 (6%)           | 4%            |
| Voluntary Return                          | 10 (15%)         | 19%           |
| Judicial Return by consent                | 1 (1%)           | 7%            |
| Judicial Return Not by Consent            | 10 (15%)         | 20%           |
| Judicial Return, Consent Unknown          | 0 (0%)           | 1%            |
| Refusal                                   | 26 (39%)         | 15%           |
| Access Agreed or Ordered                  | 2 (3%)           | 3%            |
| Pending                                   | 2 (3%)           | 8%            |
| Withdrawn                                 | 12 (18%)         | 18%           |
| Other                                     | 0 (0%)           | 5%            |
| Different Outcomes for Different Children | 0 (0%)           | 1%            |
| More than One Outcome                     | 0 (0%)           | <1%           |
| <b>Total</b>                              | <b>67 (100%)</b> | <b>100%</b>   |

The graph below shows more clearly how the recorded outcomes in applications received by Poland compare with those globally. In 2008, 31% of applications received by Poland ended with a return compared with the global return rate of 46%. This 31% judicial return rate comprised 15% voluntary returns (19% globally), 1% judicial returns by consent order (7% globally) and 15% judicial returns without consent (15% globally<sup>60</sup>). Two further applications ended in an access order (3%) compared with 3% of applications ending in some form of agreement or order for access globally.

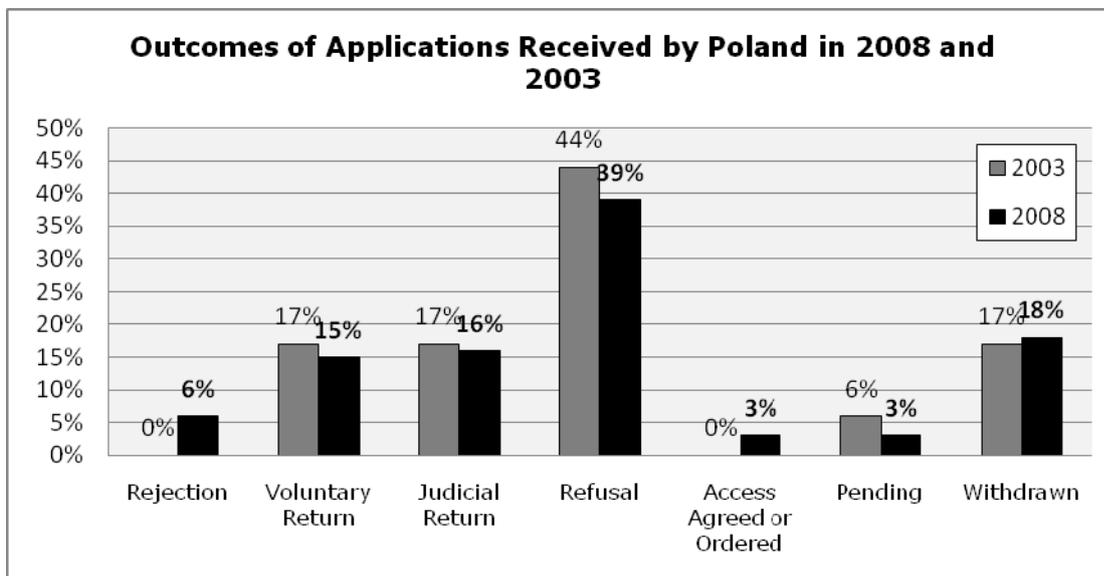
26 applications received by Poland (39%) were judicially refused compared with 15% globally and 4 were rejected by the Central Authority (6%) compared with 5% globally.

Exactly the same proportion of applications were withdrawn in Poland (18%, 12 applications) as there were globally and a lower proportion of applications were pending (3%, 2 applications, compared with 8% globally).

<sup>60</sup> An additional 5% of applications globally ended with a judicial return but the consent, or lack of consent, of the parties was unknown.



The graph below compares the outcomes of applications received by Poland in 2008 to those in 2003.



The overall return rate of 31% (21 applications) in 2008 has decreased from 33%<sup>61</sup> (6 applications) in 2003. However, in 2008, 2 additional applications ended with an order for access (3%). In both 2008 and 2003 a high proportion of applications were judicially refused (39%, 26 applications, in 2008 and 44%, 8 applications, in 2003). In 2008, 12 applications (18%) were withdrawn, compared with 3 applications (17%) in 2003, and 2 applications (3%) were pending, compared with 1 application (6%) in 2003. No applications were rejected in 2003 compared with 4 in 2008 (6%).

<sup>61</sup> The figures for voluntary returns and judicial returns in the graph have been rounded up.

## 10. The reasons for rejection

In 2008, 4 applications were rejected by the Central Authority. 2 were rejected because the child was located in another State and 1 because the applicant had no rights of custody. The reason for rejection of the other application was missing. Globally, the reason for 14% of rejected applications was that the child was located in another State and 21% because the applicant had no rights of custody.

No applications were rejected by the Polish Central Authority in 2003.

## 11. The reasons for judicial refusal

Out of the 39 cases decided in court, 26 (67%) were refused compared with 33% globally. In 2003, 73% of the applications that went to court were refused.

Information on the reasons for refusal was available in 25 out of the 26 refused applications. In the table below compares these reasons with the reasons for refusal globally<sup>62</sup>.

**The Reasons for Refusal in Applications Received  
by Poland and Globally in 2008**

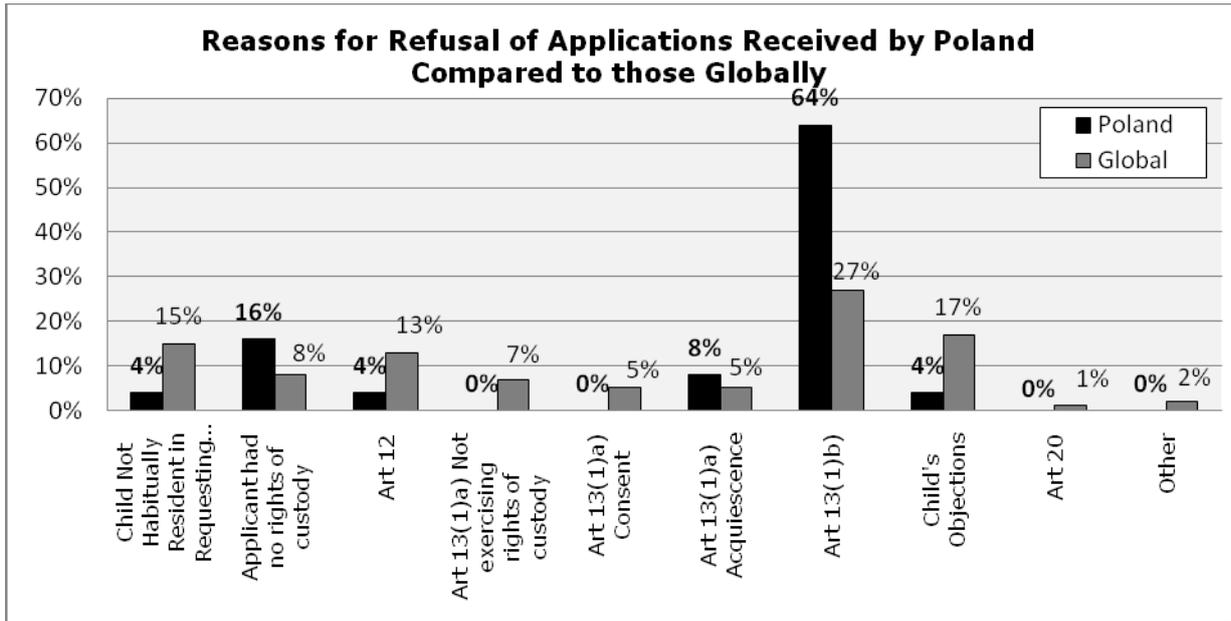
|   | Poland    |             | Global      |
|---|-----------|-------------|-------------|
|   | Frequency | Percentage  |             |
| Child Not Habitually Resident in Requesting State | 1         | 4%          | 13%         |
| Applicant had no rights of custody                | 4         | 16%         | 10%         |
| Art 12  | 1         | 4%          | 13%         |
| Art 13(1)a Not exercising rights of custody       | 0         | 0%          | 6%          |
| Art 13(1)a Consent                                | 0         | 0%          | 6%          |
| Art 13(1)a Acquiescence                           | 2         | 8%          | 6%          |
| Art 13(1)b)                                       | 16        | 64%         | 29%         |
| Child's Objections                                | 1         | 4%          | 14%         |
| Art 20  | 0         | 0%          | 1%          |
| Other   | 0         | 0%          | 2%          |
| <b>Total</b>                                      | <b>25</b> | <b>100%</b> | <b>100%</b> |

The table above and the graph below show that the majority of applications judicially refused in Poland were based on Article 13(1) b). 64% of refusals, 16 applications, were based on Article 13(1) b) compared with 27% globally. Proportionately more applications received by Poland were refused based the applicant having no rights of custody (4 applications, 16%, compared with 10% globally) and Article 13(1) a) acquiescence (2 applications, 8%, compared with 5% globally).

A lower proportion of applications were refused based on the child not being habitually resident in the requesting State (1 application, 4%, compared with 15% globally); Article 12 (1 application, 4%, compared with 13% globally); or the child's objections (1 application, 4%, compared with 17% globally).

No applications received by Poland were rejected based on Article 13(1) a) consent or the applicant not exercising rights of custody, or on Article 20.

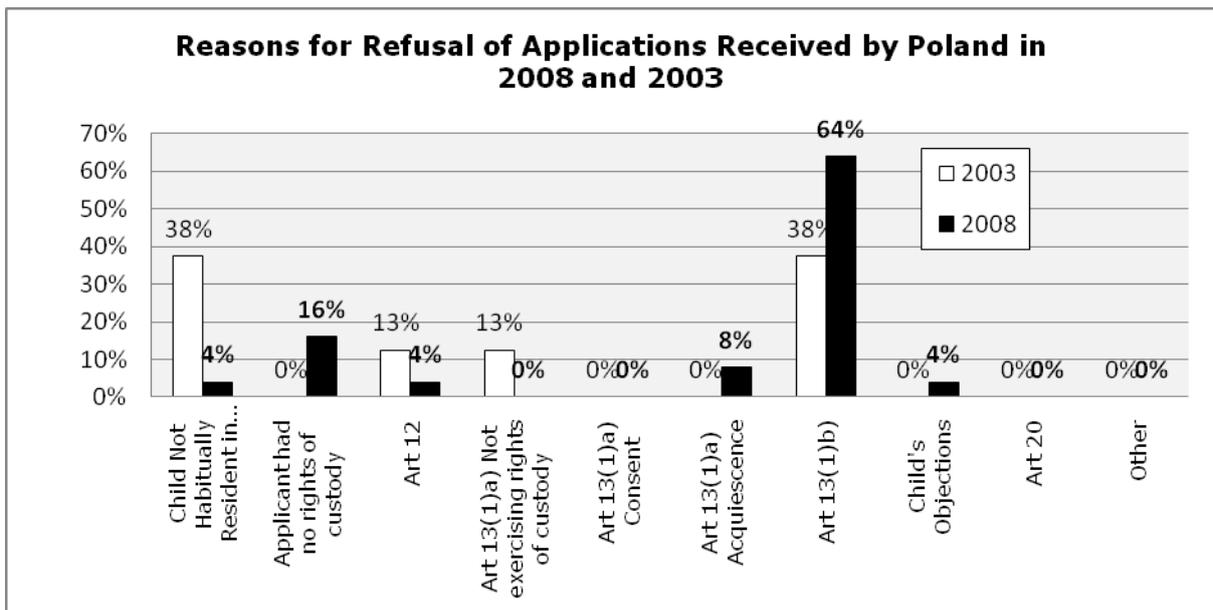
<sup>62</sup> The global reasons for refusal include all the reasons given in applications refused for more than one reason.



In 2003, 8 applications were judicially refused. Information on the reasons for refusal was available in 6 of these applications and 2 were decided for more than one reason making a total of 8 reasons for refusal. The reasons for refusal in 2008 and 2003 are compared in the graph below. Although, in both years Article 13(1) b) was a common reason for refusal, the 64% (16 applications) in 2008 was a significantly larger proportion than the 38% (3 applications) in 2003.

In 2003 proportionately more applications were refused based on the child not being habitually resident in the requesting State (38%, 3 applications, in 2003 compared with 4%, 1 application, in 2008); Article 12 (13%, 1 application, in 2003 compared with 4%, 1 application, in 2008); and Article 13(1) a) not exercising rights of custody (13%, 1 application, compared with no applications in 2008).

In 2003, no applications were refused based on Article 13(1) a) consent or acquiescence; the child's objections; or Article 12.



## 12. The reasons for judicial refusal and the taking person

Of the 26 applications refused, 22 involved taking mothers, 1 a taking father, 1 a grandparent and 1 other relatives (an uncle and a grandmother). Where the taking person was the mother of the child the most common reason for refusal was based on Article 13(1)b) (68%, 15 out of 22 reasons), followed by Article 13(1) a) acquiescence and the applicant having no rights of custody (both 9%, 2 out of 22 reasons).

In the one refused application where the taking person was the father of the child the reason for refusal was based on Article 13(1) b).

## 13. Timings

The overall average time taken to reach a final settlement in the return applications received by Poland was 195 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, voluntary returns were generally resolved more quickly, in an average on 57 days, whereas judicial refusals took 240 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Poland<sup>63</sup>.

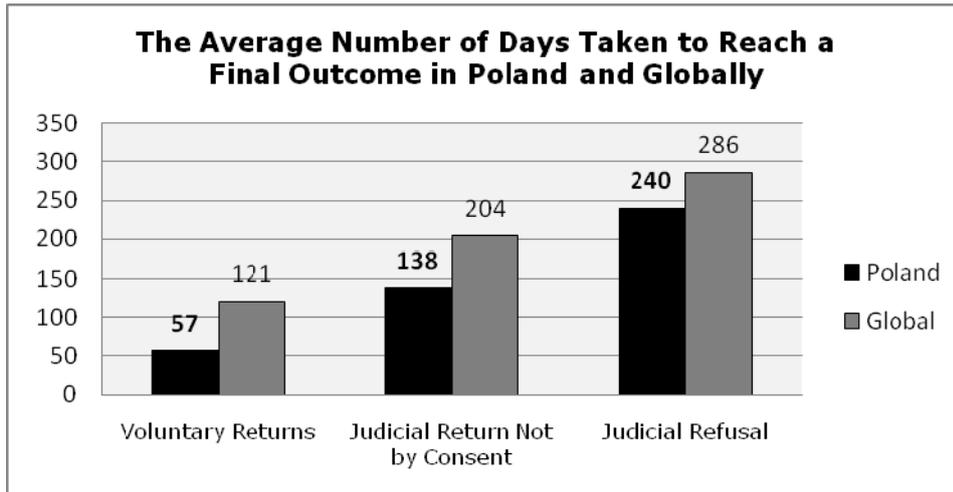
**The Number of Days Taken to Reach an Outcome**

|                 | <b>Voluntary Returns</b> | <b>Judicial Return Not by Consent</b> | <b>Judicial Refusal</b> |
|-----------------|--------------------------|---------------------------------------|-------------------------|
| Mean            | 57                       | 138                                   | 240                     |
| Median          | 46                       | 109                                   | 230                     |
| Minimum         | 2                        | 35                                    | 52                      |
| Maximum         | 131                      | 403                                   | 651                     |
| Number of Cases | 5 <sup>64</sup>          | 10                                    | 26                      |

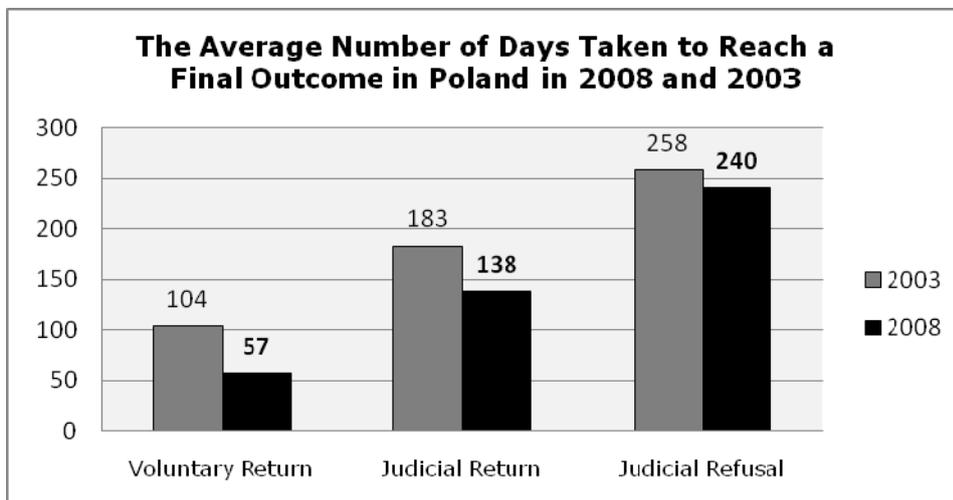
The graph below compares the time taken from the date the application was received by the Central Authority to the date it was concluded in applications received by Poland with the global averages. Each outcome was resolved more quickly than the global average. Voluntary returns took 57 days to conclude compared with 121 days globally, judicial returns without consent took 138 days compared with 204 days globally and judicial refusals took 240 days compared with 286 globally. Information regarding the timing of the judicial return by consent was unavailable but the global average was 163 days.

<sup>63</sup> Dates were not available for the application ending in a judicial return by consent order.

<sup>64</sup> Dates were not available for 5 of the applications ending in a voluntary return.



The graph below compares the timings of applications received by Poland in 2008 with those in 2003. All outcomes were resolved more quickly in 2008 than in 2003.



### Time taken to send application to court

In 2008 the length of time that the Central Authority held the application was recorded for the first time. In Poland it took an average of 15 days before the application was sent to court and the court then took an average 206 days to conclude it<sup>65</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### Appeals

In 2008, 39 return applications went to court and 18 of these decisions (46%) were appealed, higher than the global average of 28%. The time taken to reach a final decision is obviously affected by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 173 days compared with 279 days to finalise a case that was appealed. The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

<sup>65</sup> These figures are based on 61 applications where the date sent to court was recorded and 44 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

## IV. Incoming access applications

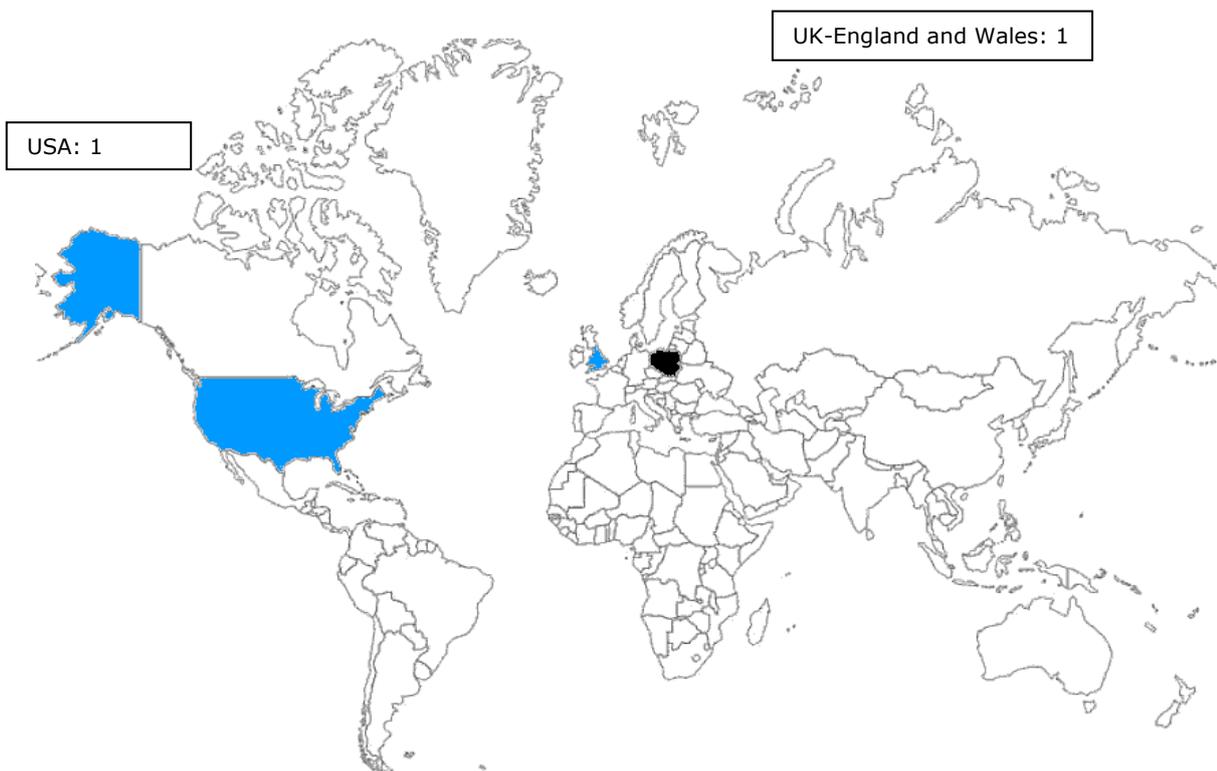
### 1. The Contracting States which made the application

Poland received 2 access applications in 2008, a 75% decrease from the 8 applications received in 2003. 1 of these applications came from the USA and 1 from the UK-England and Wales. In 2003 3 applications came from Germany; 2 from Canada; and 1 from Italy, Netherlands and UK – England and Wales.

#### The Contracting States which made the Most Access Applications to Poland in 2008 Compared with 2003 and 1999

|                      | 2003     | 2008      |
|----------------------|----------|-----------|
| UK-England and Wales | 1 (13%)  | 1 (50%)   |
| USA                  | 0 (0%)   | 1 (50%)   |
| Other States         | 7 (88%)  | 0(0%)     |
| <b>Total</b>         | <b>8</b> | <b>25</b> |

#### Map of Contracting States which Made Access Applications to Poland in 2008



### 2. The Respondent

Both of the applications received by Poland in 2008 involved respondent mothers compared with the global average of 79% of applications. In 2003 the respondent was the mother in all 8 applications received by Poland.

### **3. The status of the respondent as carer in relation to the child**

The Polish Central Authority did not provide information on the status of the respondent as carer.

### **4. The nationality of the respondent**

Globally, 52% of respondents in access cases had the same nationality as the requested State. In 2008 the respondent in both applications received by Poland was a Polish national. In 2003 all 8 respondents were Polish nationals.

### **5. The relationship and nationality of the respondent combined**

As mentioned previously, in 2008 and 2003, all respondents moving to Poland were mothers and Polish nationals. Globally, 52% of taking mothers and 45% of taking fathers had the same nationality as the requested State.

### **6. The Children**

In 2008, 1 child was involved in each applications to Poland compared with the global average of 1.32 children per application. In 2003 10 children were involved in the 8 access applications making an average of 1.25 children per application.

### **7. The age of the children**

In 2008, the 2 children involved in access applications to Poland were aged 4 and 11 years compared with the global average of 7.8 years.

In 2003 the average age of a child involved in an access application to Poland was 7.3 years.

### **8. The gender of the children**

In 2008, 1 child was female and 1 child male. Globally, 49% of children involved in access applications were female and 51% male. In 2003, 3 children were female and 7 male.

### **9. The overall outcomes**

In 1 application received in 2008 access was judicially granted and the other application was withdrawn. The overall global rate at which access was agreed or ordered was 22%. In 2003 access was granted in 3 out of the 8 applications (38%), refused in 1 (13%), withdrawn in 1 (13%) and pending in 2 (25%). The outcome of the final application was described as 'other'.

### **10. The reasons for rejection by the Central Authority**

No access applications were rejected by the Polish Central Authority in 2008 or 2003. Globally, 13% of access applications were rejected.

## **11. The reasons for judicial refusal**

No applications were judicially refused in 2008. Globally, 3% of access applications were judicially refused. In 2003 one application was refused in Poland but there is no available information on the reasons for this refusal.

## **12. Timing**

In 2008 the application in which access was granted was concluded in 537 days compared with the global average of 357 days for access to be granted. In 2003 dates were available for 3 applications. The 2 applications where access was granted took 227 days and 236 days to conclude and the application ending with a judicial refusal took 487 days.

Neither of the applications received in 2008 was appealed. Globally, 95 of the applications decided in court were appealed. In 2003, 2 out of the 4 applications that went to court were appealed.

## **V. The Impact of the Brussels II a Regulation**

### **1. Brussels II a Regulation proportion**

The Brussels II a Regulation applies to 26 EU Member States (Brussels II a States) i.e. all such States except for Denmark. Brussels II a States who have responded to the questionnaire received a total of 988 return applications. 705 of these applications came from fellow Brussels II a States (71%) and the remaining 283 applications came from what will be termed non-Brussels II a States (29%). In 2003, 62% of all applications received by what would now be Brussels II a States were from what would now be fellow Brussels II a States.

Poland received 115 return applications in 2008 and 76 of these came from Brussels IIa States (66%). This is a lower proportion than in 2003 where 68% came from what is now a Brussels IIa State and 56% in 1999.

### **2. Brussels II a Regulation and Outcomes**

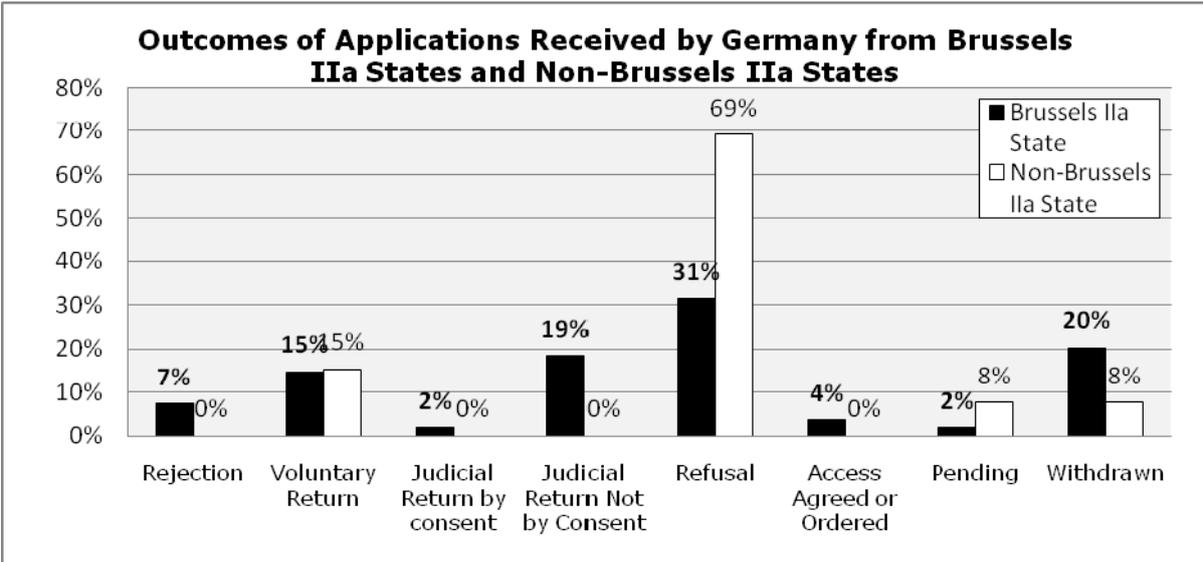
The graph below shows the outcomes of 54 applications from Brussels IIa States and the 13 applications from non-Brussels IIa States that were received by Poland in 2008.

The overall return rate was higher where the application came from a Brussels IIa State (35%<sup>66</sup>, 19 out of 54 applications) than from a non-Brussels IIa States (15%, 2 out of 13 applications). A further 2 applications (4%) from Brussels IIa States ended in an agreement or order for access. The proportion of applications judicially refused or withdrawn was higher if the application came from a non-Brussels IIa State (69%, 9 applications, compared with 31%, 17 applications, if the requesting State was a Brussels II a State) and more applications were pending (8%, 1 application, compared with 2%, 1 application).

By contrast, if the application came from a Brussels II a State then proportionately more applications were rejected by the Central Authority (7%, 4 applications, compared with no applications from non-Brussels II a States) and more were withdrawn (20%, 11 applications, compared with 8%, 1 application from a non-Brussels II a State).

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<sup>66</sup> The figures in the graph for judicial return by consent and not by consent have been rounded up.



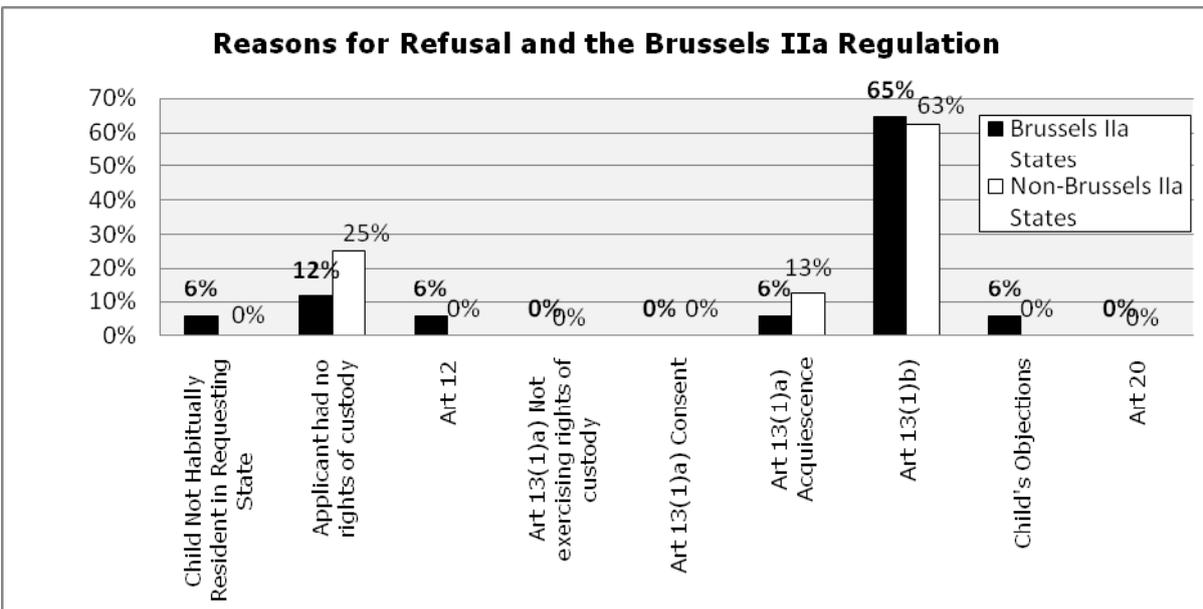
For the main part, these results are reflective of the overall picture where applications involved two Brussels IIa States with proportionately more returns and fewer refusals.

### 3. Refusals and Reasons for Refusal

Proportionately fewer applications received by Poland were judicially refused if the requesting State was a Brussels IIa State (31%, 17 applications) than if it was not (69%, 9 applications).

As shown in the graph below, the most commonly relied upon reason for refusal was Article 13(1) b) for applications from both Brussels II a States (65%, 11 applications) and non-Brussels II a States (63%, 5 applications). Proportionately more applications from non-Brussels II a States were refused based on the applicant having no rights of custody (25%, 2 applications compared with 12%, 2 applications, from Brussels II a States) and Article 13(1) a) acquiescence (13%, 1 applications compared with 6%, 1 applications, from Brussels II a States).

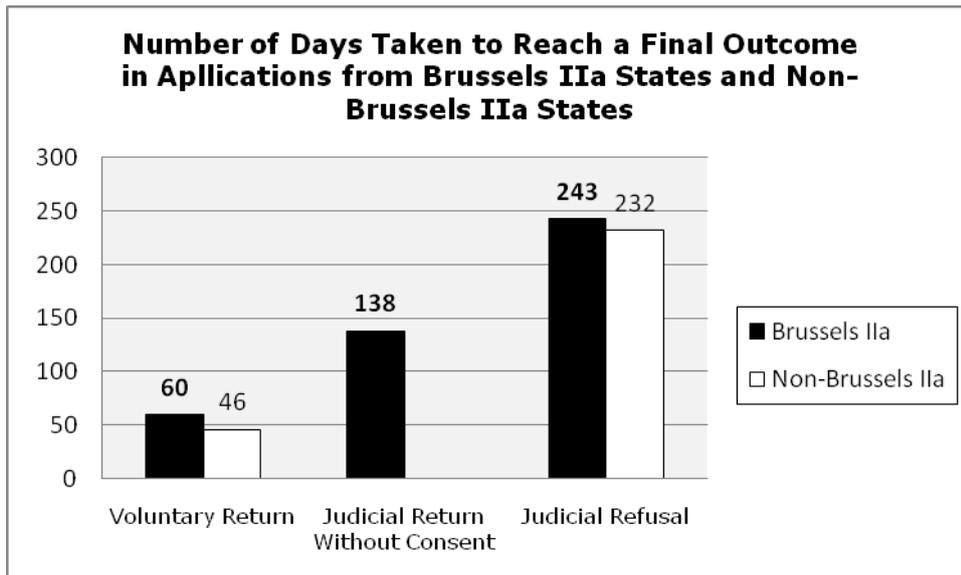
No applications from non-Brussels II a States were refused based on Article 12, the child not being habitually resident in the requesting State or the child’s objections.



#### 4. Brussels IIa and Timing

Overall, the applications received by Poland in 2008 in which the Brussels II a Regulation applied were resolved more quickly than those received from non-Brussels II a States. The overall average time taken to reach a final settlement was 190 days if the requesting State was a Brussels II a State and 214 days if it was not.

However, as the graph below shows, if we break these results down into the time taken to reach different outcomes the applications from non-Brussels II a States were resolved quicker for voluntary returns (46 days compared with 60 days in applications from Brussels II a States) and judicial refusals (232 days compared with 243 days for applications from Brussels II a States).



Additionally, applications from Brussels II a States ending in a judicial return without consent took an average of 138 days to conclude and access orders 133 days. No applications from non-Brussels II a States ended with a judicial return or order for access.

No applications from non-Brussels IIa States were resolved within 6 weeks compared with 3 applications (8%) from a Brussels IIa State<sup>67</sup>.

32% of Brussels IIa applications (12 applications) were resolved in 12 weeks and 47% in 18 weeks (18 applications) compared with 20% of applications from non-Brussels IIa States being resolved in 12 weeks (2 applications) and 30% in 18 weeks (3 applications). 16 applications (42%) from Brussels IIa States took over 24 weeks to conclude and 4 (11%) took over 54 weeks. This can be compared with 6 applications (60%) from on-Brussels IIa States taking over 24 weeks and 1 application (10%) taking over 54 weeks.

These findings can be compared with the overall findings relating to applications to which the Brussels II a Regulation applied, namely, that 15% all applications to which the Brussels II a Regulation applied were resolved in 6 weeks compared with 16% of applications received by Brussels II a States from non-Brussels II a States. 51% of Brussels II a applications were resolved in 18 weeks compared with 58% of applications received by Brussels II a States from non-Brussels II a States

<sup>67</sup> The dates were known in 38 applications from Brussels II a States and 10 applications from non-Brussels II a States.

## SPAIN

### I. Overall Summary

In 2008 Spain received 88 return and 25 access applications. This amounted to a 1% increase in return applications from the 87 received in 2003 and a 32% increase in access applications from the 19 received in 2003. In total, the Spanish Central Authority dealt with 204 applications which was a 33% increase on the 153 incoming and outgoing applications in 2003.

Of the return applications received<sup>68</sup>, 49% ended with the return of the child compared with the global average of 46%. This is an increase from the 43% return rate in Spain in 2003 but a decrease from 50% in 1999. Overall, compared with the global figures, more applications received by Spain were refused or withdrawn and fewer were rejected or pending.

Overall, applications received by Spain took longer to conclude compared with the global average. Judicial returns by consent order were resolved in 127 days compared with 163 globally, judicial returns without consent in 265 days compared with 204 days globally and judicial refusals in 319 days compared with 286 globally.

With regard to access applications, the rate at which access was agreed or ordered was 8%, lower than the global average of 22%. The majority of access applications received by Spain were rejected by the Central Authority (67% compared with 13% globally). Fewer applications were withdrawn (17% compared with 32% globally), and none were pending or ended with voluntary agreements for access.

Where the Brussels II a Regulation applied to return applications received by Spain the rate of return was higher at 59% compared with 33% if the requesting State was a non-Brussels II a State. There were fewer judicial refusals (23% compared with 25% if the requesting State was a non-Brussels II a State), withdrawals (13% compared with 33%) and no applications were pending compared with 4% of applications from non-Brussels II a States. Overall, applications from Brussels II a States were resolved faster in an average of 255 days compared with 282 days if the application came from a non-Brussels II a State.

### II. The number of applications received and sent in 2008

|                 | 1999 | 2003 | 2008      |
|-----------------|------|------|-----------|
| Incoming Return | 36   | 87   | <b>88</b> |
| Incoming Access | 6    | 19   | <b>25</b> |
| Outgoing Return | 27   | 38   | <b>79</b> |
| Outgoing Access | 9    | 9    | <b>12</b> |

In 2008 the Central Authority of Spain received 88 return applications and 25 access applications, making a total of 113 incoming applications. This is a 7% increase on the 106 incoming applications dealt with in 2003 and a 169% increase on the 42 applications received in 1999.

The ratio of return to access in 2008 was 78% to 22%, respectively. This can be compared with 82% to 18% in 2003 and 86% to 14% in 1999.

<sup>68</sup> Based on the outcomes of 63 of the 88 return applications.

In addition, the Central Authority made 91 outgoing applications made up of 79 return and 12 access applications. This is a 94% increase on the 47 outgoing cases in 2003 and a 153% increase on the 36 in 1999.

In total, the Central Authority dealt with 204 incoming and outgoing applications. A 33% increase from 153 applications handled in 2003 and a 162% increase from 78 applications in 1999. The Spanish Central Authority was the fifth busiest Central Authority behind the USA, UK - England and Wales, Germany and Mexico.

### III. Incoming Return Applications

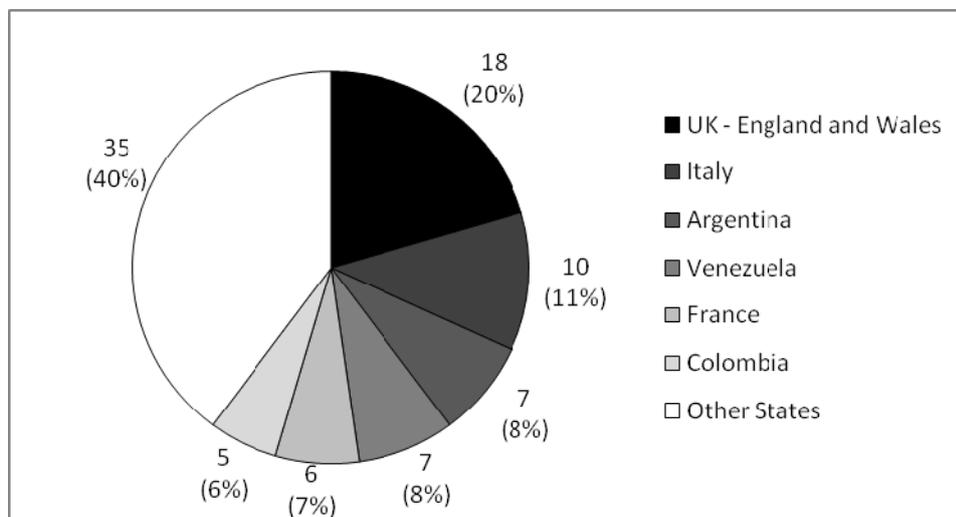
#### 1. The contracting States which made the application

In 2008, Spain received return applications from 25 different Central Authorities – compared with 24 requesting States in 2003 and 14 in 1999.

#### The Contracting States which made the most applications to Spain

|                      | 1999      | 2003      | 2008            |
|----------------------|-----------|-----------|-----------------|
| UK-England and Wales | 9 (25%)   | 21 (24%)  | <b>18 (20%)</b> |
| Italy                | 5 (14%)   | 1 (1%)    | <b>10 (11%)</b> |
| Argentina            | 1 (3%)    | 11 (13%)  | <b>7 (8%)</b>   |
| Venezuela            | 0 (0%)    | 2 (2%)    | <b>7 (8%)</b>   |
| France               | 2 (6%)    | 6 (7%)    | <b>6 (7%)</b>   |
| Colombia             | 1 (3%)    | 3 (3%)    | <b>5 (6%)</b>   |
| Dominican Republic   | 0 (0%)    | 0 (0%)    | <b>4 (5%)</b>   |
| Netherlands          | 1 (3%)    | 6 (7%)    | <b>4 (5%)</b>   |
| Romania              | 0 (0%)    | 0 (0%)    | <b>4 (5%)</b>   |
| Paraguay             | 0 (0%)    | 0 (0%)    | <b>3 (3%)</b>   |
| Other States         | 17 (47%)  | 37 (43%)  | <b>20 (23%)</b> |
| <b>Total</b>         | <b>36</b> | <b>87</b> | <b>88</b>       |

#### The Requesting States for Return Applications Received by Spain in 2008

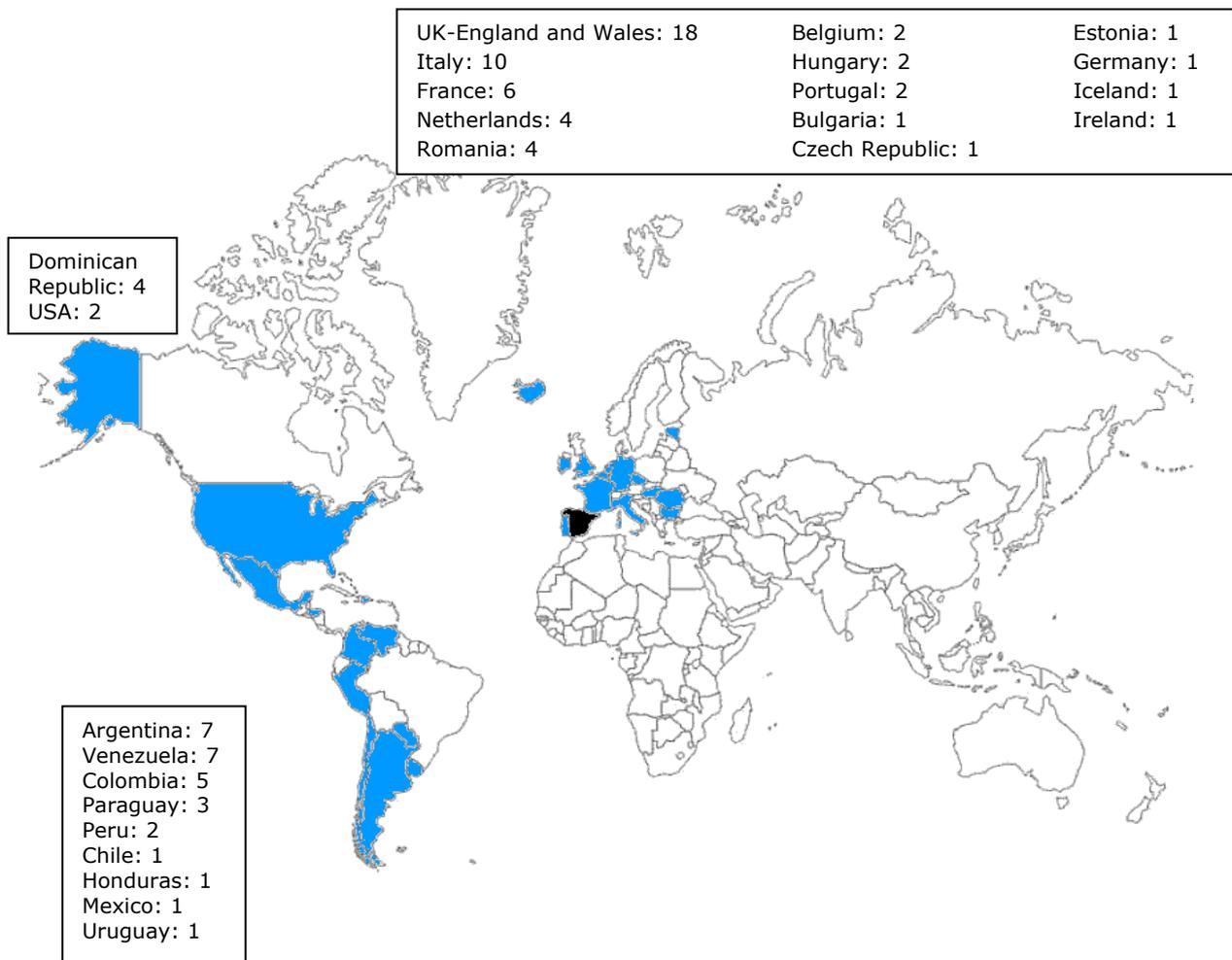


In 2008, 60% of applications to Spain (53 out of 88 applications) came from EU States. In 2003, 66% of applications came from what would now be EU States (57 out of 87 applications) and in 61% in 1999 (22 out of 36 applications).

As in 2003 and 1999, the greatest number of applications received from a single State in 2008 came from England and Wales making 18 applications (20% of all applications received) compared with 21 in 2003 (24%) and 9 in 1999 (25%).

The second highest number came from Italy (10 applications, 11%) compared with only 1 application in 2003 (1%) and 5 applications in 1999 (14%).

### Map of Contracting States which made return applications to Spain in 2008



## 2. The Taking Person

In 2008 a large majority, 67%, of the taking persons were mothers and 30% were fathers. The remaining 3% was made up of 1 application which involved both parents taking the child to Spain, 1 application where the taking person was the aunt and 1 application where the taking person was the minor's boyfriend. This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

In past surveys taking persons moving to Spain have been mostly mothers, making up 71% of taking persons in 2003 and 61% in 1999<sup>69</sup>.

### 3. The status of the taking person as carer in relation to the child

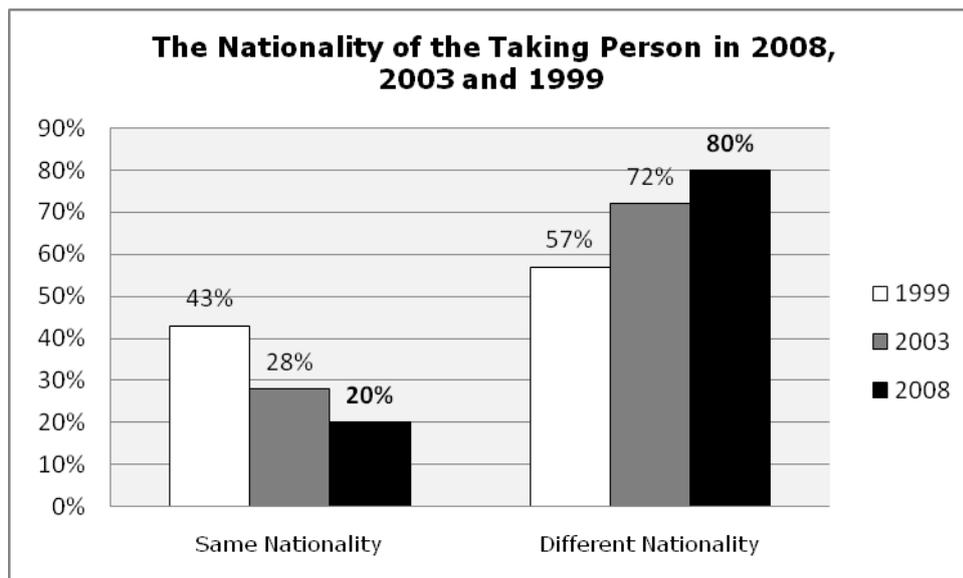
The Spanish Central Authority was unable to provide information regarding the status as carer of the taking person.

### 4. The nationality of the taking person<sup>70</sup>

In 2008, 20% of applications received involved a taking person who was a Spanish citizen (17 applications, including 4 taking persons with dual nationality) compared with the global 51% of taking persons who went to a State of which they were a national.

In 2003, 28% of taking persons were Spanish citizens and in 1999, 43%. These proportions can be compared with the global averages 55% in 2003 and 52% in 1999.

The chart below compares the 2008 findings on nationality with the 2003 and 1999 surveys. It shows that a decreasing number of taking persons moving to Spain are Spanish nationals.

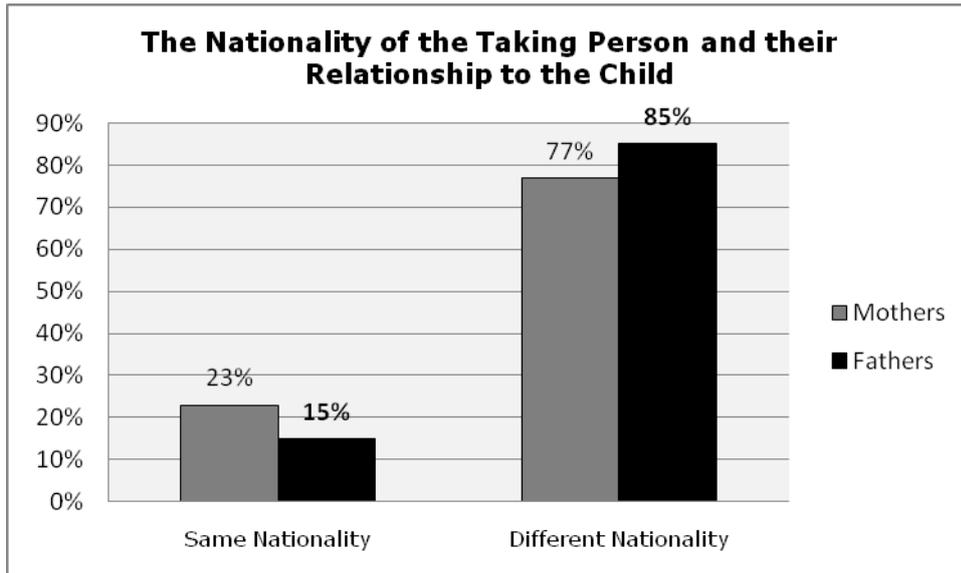


### 5. The relationship and nationality of the taking person combined

The graph below shows that, in 2008, a higher proportion of mothers taking children to Spain were found to be Spanish citizens than fathers.

<sup>69</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication. In 1999, 64% of taking persons in applications received by Spain were female and so probably mothers.

<sup>70</sup> Information regarding the nationality of the taking person was not available in 2 applications.



23% of mothers (13 applications) were Spanish nationals compared with 15% of fathers (4 applications). Globally, 53% of taking mothers were found to have the same nationality as the requested State and 48% of fathers.

In 2003, 27% of taking mothers and 29% of taking fathers were Spanish citizens. In 1999, the figures were closer to those in 2008 with 52% of females having Spanish citizenship and 29% of males.

## 6. The Children

In 2008, at least 111 children were involved in the 88 return applications received by Spain<sup>71</sup>. This makes an average of 1.26 children per application which is slightly lower than the global average of 1.38 children. In 2003 there was an average of 1.37 children per application and in 1999 this was 1.37 children.

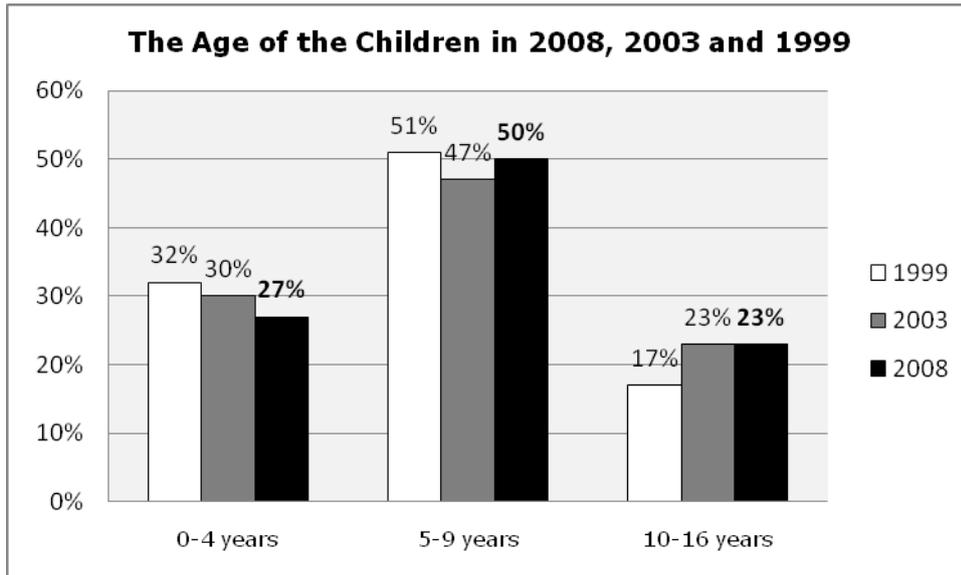
77% of applications received were for the return of a single child, compared with the global average of 69%. This is an increase from 69% in 2003 and 72% in 1999.

## 7. The age of the children

The average child involved in a return application to Spain was 7.1 years compared with the global average of 6.4 years.

In 2003 the average age of a child involved in a return application to Spain was 6.5 years. In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. Over the past three surveys the proportion of children falling into the 0-4 year age group has decreased whilst the proportion in the 10-16 year group has increased.

<sup>71</sup> In two applications the number of children involved was missing.



### 8. The gender of the children

In 2008 the Spanish Central Authority was unable to provide information regarding the gender of the children involved. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003 and 1999, 55% and 57% of children were female respectively.

### 9. The overall outcomes

The table below shows all the outcomes of return applications received by Spain in 2008 compared with the global findings. Out of the 88 applications received information regarding outcomes was unavailable for 25 applications<sup>72</sup>.

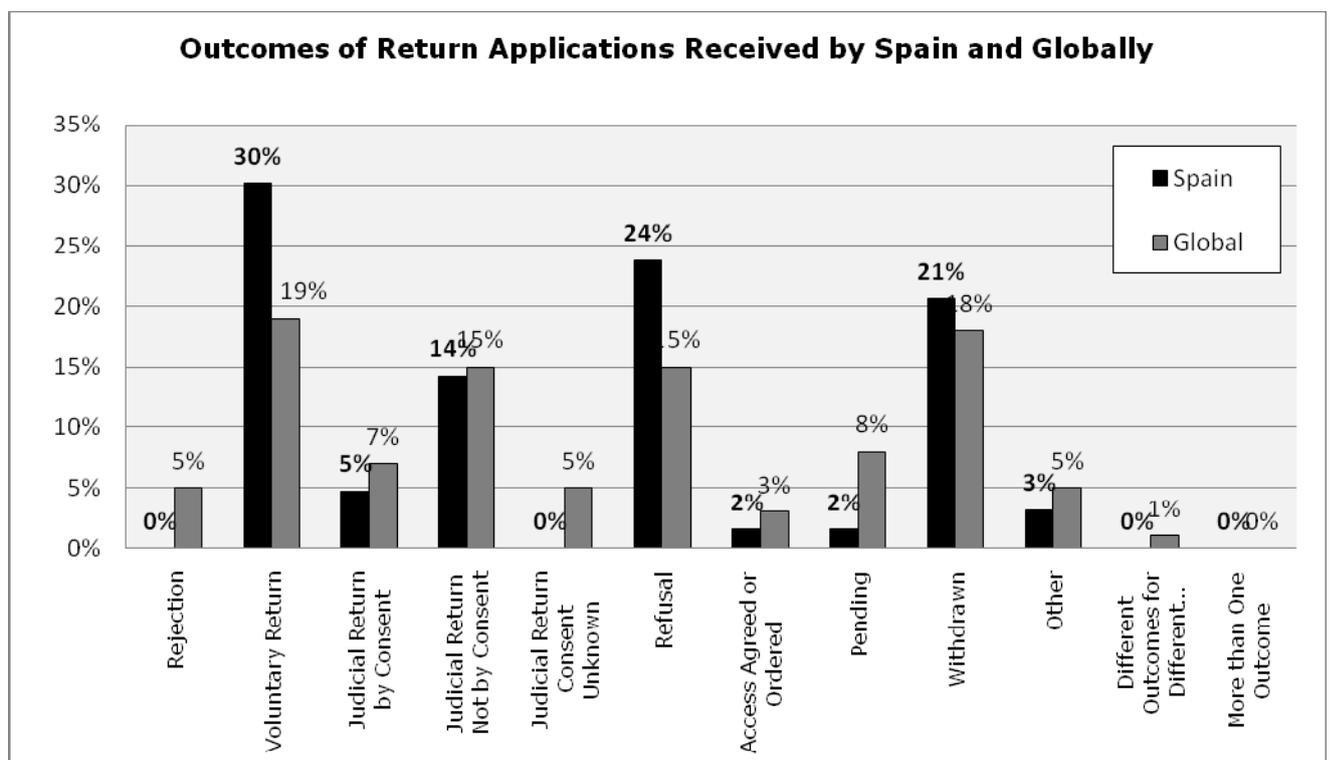
#### The Outcomes of Return Applications in 2008

|   | Spain             | Global        |
|---|-------------------|---------------|
| Rejection                                 | 0 (0%)            | 4%            |
| Voluntary Return                          | 19 (30%)          | 19%           |
| Judicial Return by consent                | 3 (5%)            | 7%            |
| Judicial Return Not by Consent            | 9 (14%)           | 20%           |
| Judicial Return, Consent Unknown          | 0 (0%)            | 1%            |
| Refusal                                   | 15 (24%)          | 15%           |
| Access Agreed or Ordered                  | 1 (2%)            | 3%            |
| Pending                                   | 1 (2%)            | 8%            |
| Withdrawn                                 | 13 (21%)          | 18%           |
| Other                                     | 2 (3%)            | 5%            |
| Different Outcomes for Different Children | 0 (0%)            | 1%            |
| More than One Outcome                     | 0 (0%)            | <1%           |
| <b>Total</b>                              | <b>63 (≈100%)</b> | <b>(100%)</b> |

<sup>72</sup> Due to the large proportion of applications missing information on their outcomes the following findings should be taken with some caution.

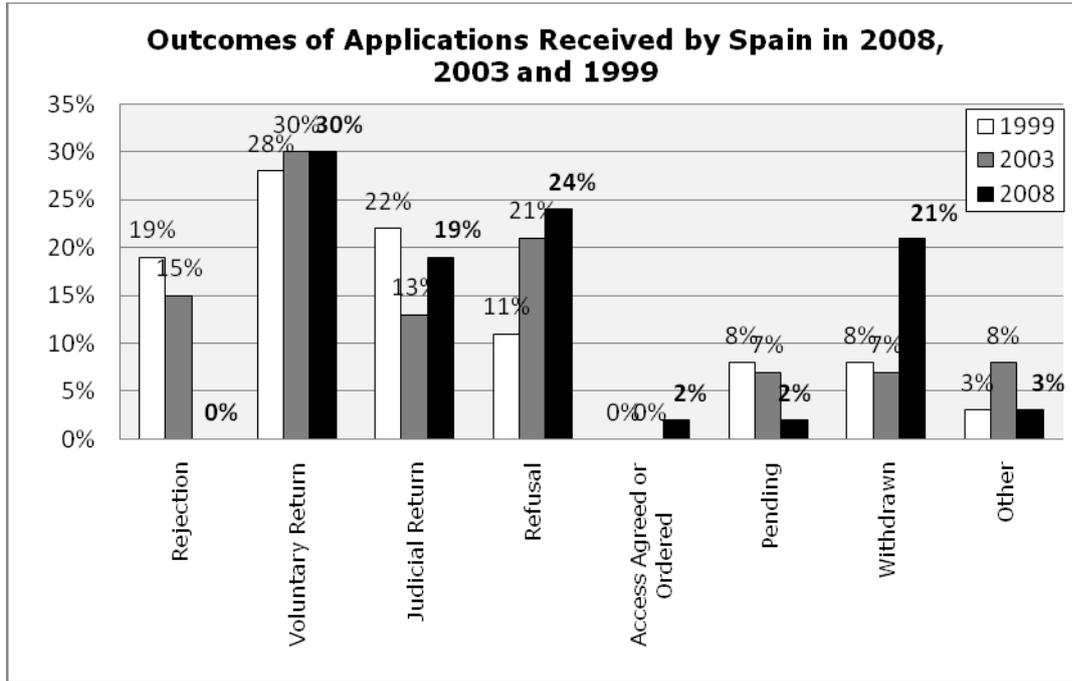
The graph below shows more clearly how the recorded outcomes in applications received by Spain compare with those globally. In 2008, 49% of applications received by Spain ended with a return compared with the global return rate of 46%. This 49% judicial return rate can be broken down into 30% voluntary returns (19% globally), 5% judicial returns by consent order (7% globally) and 14% judicial returns without consent (15% globally<sup>73</sup>). One application ended in an access order compared with 3% of applications ending in some form of agreement or order for access globally, and a further application ended with some form of agreement between the parties and was recorded as 'other'.

The Spanish Central Authority did not reject any of the applications they received in 2008 compared with 5% globally and proportionately but more applications received by Spain were judicially refused (24% compared with 15% globally). More applications were withdrawn (21% compared with 18% globally) but proportionately fewer were pending at the cut off date of 30<sup>th</sup> June 2010 (2% compared with 8%).



The graph below compares the outcomes of applications received by Spain in 2008 to those in 2003 and 1999.

<sup>73</sup> An additional 5% of applications globally ended with a judicial return but the consent, or lack of consent, of the parties was unknown.



The overall judicial return rate of 49% in 2008 has increased from 43% in 2003, but is a decrease on the 50% in 1999. The proportion of voluntary returns has increased (from 28% in 1999 to 30% in 2003 and 2008) but the proportion of judicial returns has fluctuated from 22% in 1999 to 13% in 2003 and 19% in 2008).

The rate of rejection by the Central Authority has fallen significantly from 19% in 1999 and 15% in 2003 to no rejections in 2008. Similarly, proportionately fewer applications were recorded as 'pending' in the 2008 survey, 2%, compared with 7% in 2003 and 8% in 1999. By contrast, the proportion of judicial refusals has increased steadily from 11% in 1999 to 21% in 2003 and 24% in 2008 and the number of withdrawals increased significantly in 2008 to 21% from 7% in 2003 and 8% in 1999.

## 10. The reasons for rejection

In 2008, no applications were rejected by the Spanish Central Authority compared with 13 applications in 2003 and 7 applications in 1999.

## 11. The reasons for judicial refusal

Out of the 28 cases decided in court, 15 (54%) were refused compared with 33% globally. In 2003, 62% of the applications that went to court were refused and in 1999, 33%.

A further application in 2008 was pending an appeal at the cut off date of 30<sup>th</sup> June 2010 but was refused at first instance based on a finding that the applicant had no rights of custody.

Of the 15 applications which were judicially refused, 5 were decided for more than one reason. In the table below all 22 reasons for refusal are compared with the reasons for refusal globally<sup>74</sup>.

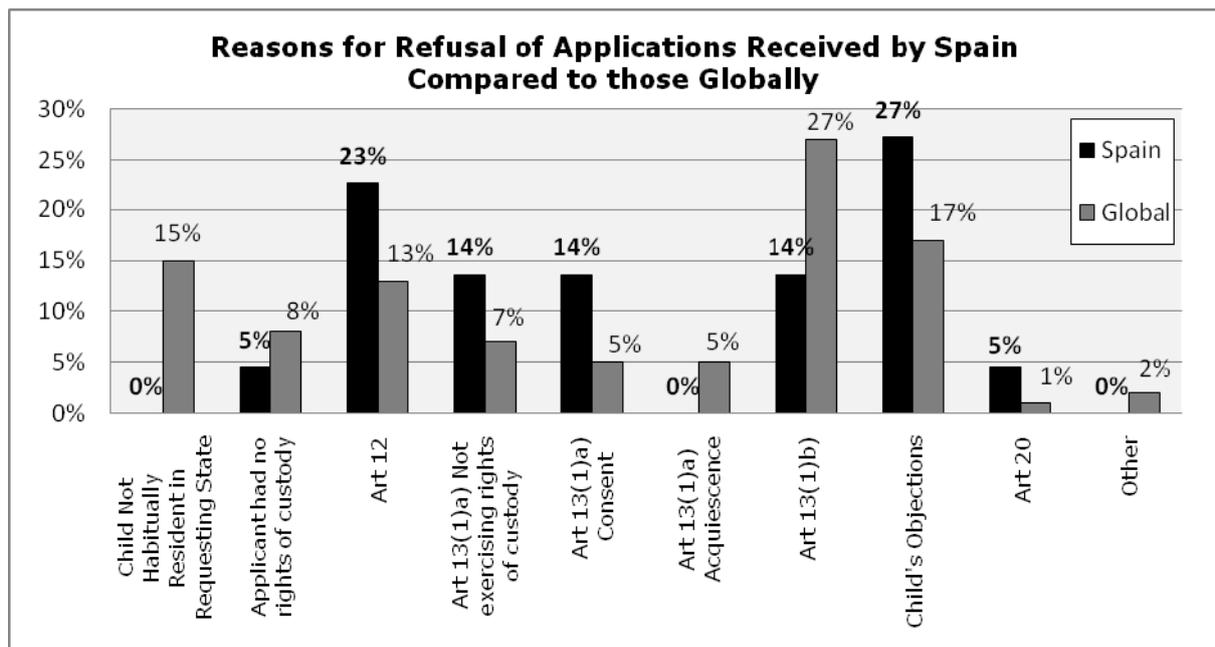
<sup>74</sup> The global reasons for refusal include all the reasons given in applications refused for more than one reason.

**The Reasons for Refusal in Applications Received  
by Spain and Globally in 2008**

|   | Spain     |              | Global      |
|---|-----------|--------------|-------------|
|   | Frequency | Percentage   |             |
| Child Not Habitually Resident in Requesting State | 0         | 0%           | 13%         |
| Applicant had no rights of custody                | 1         | 5%           | 10%         |
| Art 12  | 5         | 23%          | 13%         |
| Art 13(1)a) Not exercising rights of custody      | 3         | 14%          | 6%          |
| Art 13(1)a) Consent                               | 3         | 14%          | 6%          |
| Art 13(1)a) Acquiescence                          | 0         | 0%           | 6%          |
| Art 13(1)b)                                       | 3         | 14%          | 29%         |
| Child's Objections                                | 6         | 27%          | 14%         |
| Art 20  | 1         | 5%           | 1%          |
| Other   | 0         | 0%           | 2%          |
| <b>Total</b>                                      | <b>22</b> | <b>≈100%</b> | <b>100%</b> |

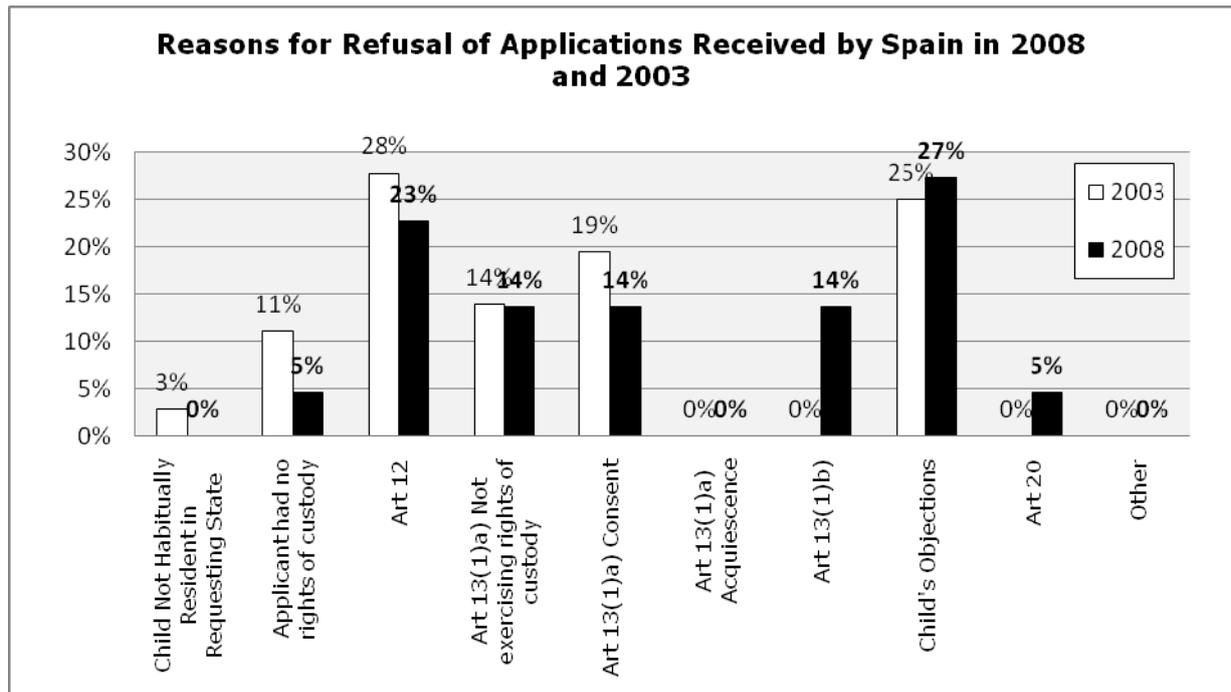
The table above and the graph below show that proportionately more applications received by Spain were refused based on the child's objections (27% compared with 17% globally) and Article 12 (23% compared with 13% globally). 14% were refused based on Article 13(1) a) not exercising rights of custody and consent compared with the global averages of 7% and 5% respectively. One application was refused based on Article 20 (5%) compared with 2% globally.

By contrast, proportionately fewer were refused under Article 13 (1) b) (14% compared with 27% globally) or based on the child not being habitually resident in the requesting State (4% compared with 15% globally). No applications were refused based on a finding that the child was not habitually resident in the requesting State or on Article 13(1) a) acquiescence.



In 2003, 18 applications were judicially refused. 10 applications were decided for more than one reason making a total of 36 reasons for refusal. The reasons for refusal in 2008 and 2003 are compared in the graph below. In both years the most common reasons for refusal were the child's objections (27% in 2008 and 25% in 2003) and Article 12 (23% in 2008 and 28% in 2003). In 2008 the proportion of applications refused based on Article 13(1) b) in Spain was lower than the global average and in 2003 no applications were refused for this reason.

In 1999, 4 applications were refused, 1 based on a finding that the applicant had no rights of custody and 3 based on the objections of the child.



## 12. The reasons for judicial refusal and the taking person

Of the 15 applications refused, 13 involved taking mothers and 2 taking fathers. Where the taking person was the mother of the child the most common reason for refusal was based on Article 12 (22%, 5 out of 19 reasons), followed by the child's objections (21%, 4 out of 19 reasons).

In the 2 applications where the taking person was the father one application was refused based solely on the child's objections and one was based on both the child's objections and Article 13(1) a) consent.

## 13. Timings

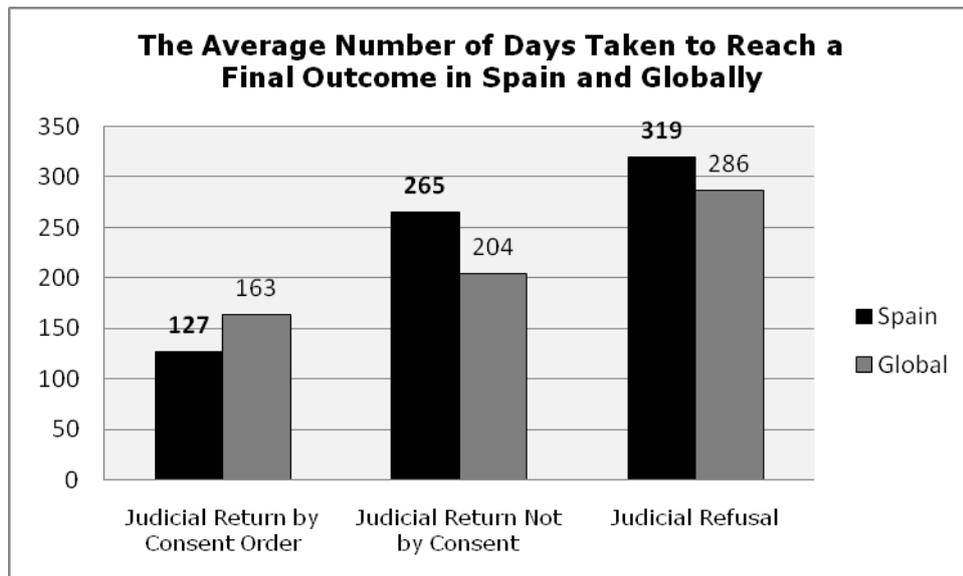
The overall average time taken to reach a final settlement in the return applications received by Spain was 265 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, judicial returns by consent order were generally resolved more quickly, in an average on 127 days, whereas judicial refusals took 319 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Spain.

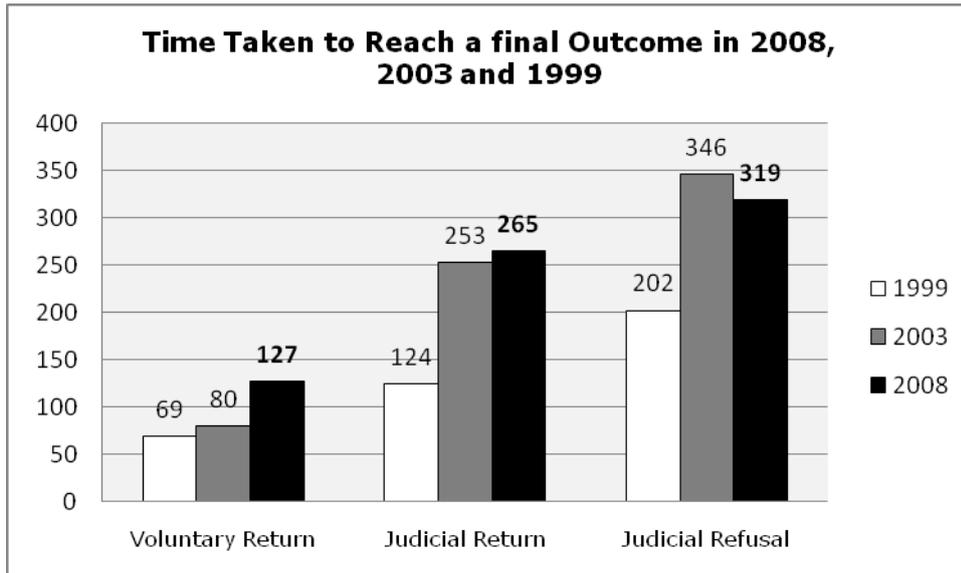
### The Number of Days Taken to Reach an Outcome

|                 | Judicial Return by Consent Order | Judicial Return Not by Consent | Judicial Refusal |
|-----------------|----------------------------------|--------------------------------|------------------|
| Mean            | 127                              | 265                            | 319              |
| Median          | 38                               | 257                            | 284              |
| Minimum         | 31                               | 55                             | 74               |
| Maximum         | 185                              | 436                            | 878              |
| Number of Cases | 3                                | 9                              | 15               |

The graph below compares the time taken from the date the application was received by the Central Authority to the date it was concluded in applications received by Spain with the global averages. Judicial consent orders for return were resolved in 127 days on average in Spain compared with 163 days globally and judicial returns without consent in 265 days compared with 204 days globally. Judicial refusals took an average of 319 days to conclude in Spain compared with 286 globally. Information regarding the timing of voluntary returns was unavailable but the global average was 121 days.



The graph below compares the timings of applications received by Spain in 2008 with those in 2003 and 1999. Both voluntary and judicial returns took longer, on average, to conclude in 2008 than in previous surveys and judicial refusals were resolved faster than in 2003 but slower than in 1999.



### Time taken to send application to court

The Spanish Central authority was unable to provide information on the date the applications were sent to court.

### Appeals

In 2008, 28 return applications went to court and 10 of these decisions (36%) were appealed, higher than the global average of 28%. A further application was pending an appeal. The time taken to reach a final decision is obviously affected by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 206 days compared with 339 days to finalise a case that was appealed. The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

## IV. Incoming access applications

### 1. The Contracting States which made the application

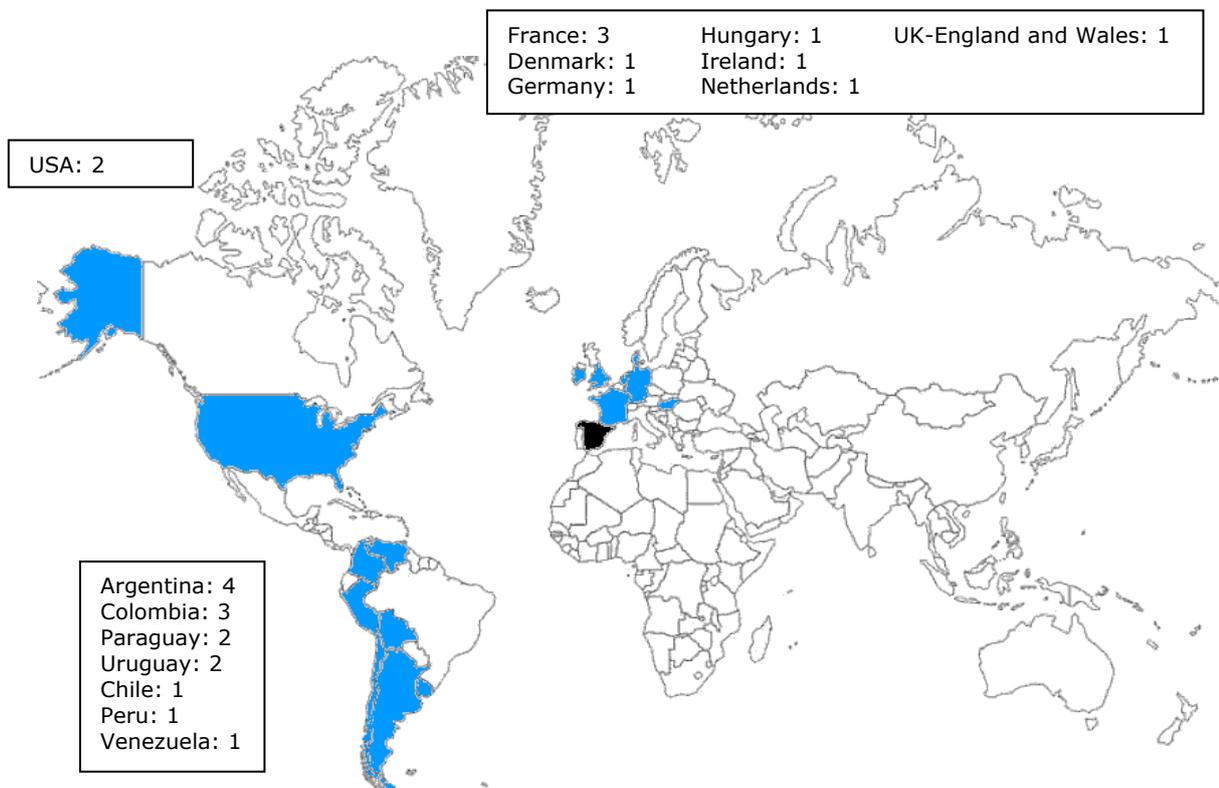
Spain received 25 access applications in 2008. The most applications received from a single State in 2008 came from Argentina (4 applications, 16%). In 2003 Argentina made 1 application to Spain (5% of all received) but made none in 1999. The second highest number of applications came from Colombia and France, each making 3 applications (12%). Neither State made access applications to Spain in 2003 or 1999.

Only 1 application came from England and Wales in 2008 compared with 5 in 2003 (26%) and 2 in 1999 (33%).

**The Contracting States which made the Most Access Applications to Spain in 2008 Compared with 2003 and 1999**

|              | <b>1999</b> | <b>2003</b> | <b>2008</b> |
|--------------|-------------|-------------|-------------|
| Argentina    | 0 (0%)      | 1 (5%)      | 4 (16%)     |
| Colombia     | 0 (0%)      | 0 (0%)      | 3 (12%)     |
| France       | 0 (0%)      | 0 (0%)      | 3 (12%)     |
| Paraguay     | 0 (0%)      | 0 (0%)      | 2 (8%)      |
| USA          | 0 (0%)      | 0 (0%)      | 2 (8%)      |
| Uruguay      | 0 (0%)      | 0 (0%)      | 2 (8%)      |
| Other States | 6 (100%)    | 18 (95%)    | 9 (36%)     |
| <b>Total</b> | <b>6</b>    | <b>19</b>   | <b>25</b>   |

**Map of Contracting States which Made Access Applications to Spain in 2008**



## 2. The Respondent

Of the 31 access applications received by Spain in 2008, in 27 (87%) the respondent was the mother, higher than the global average of 79%. In the remaining 4 applications (13%) the respondent was the father. This can also be compared with the past averages of Spain with 83% of respondents being mothers in 2003 and 96% in 1999<sup>75</sup>.

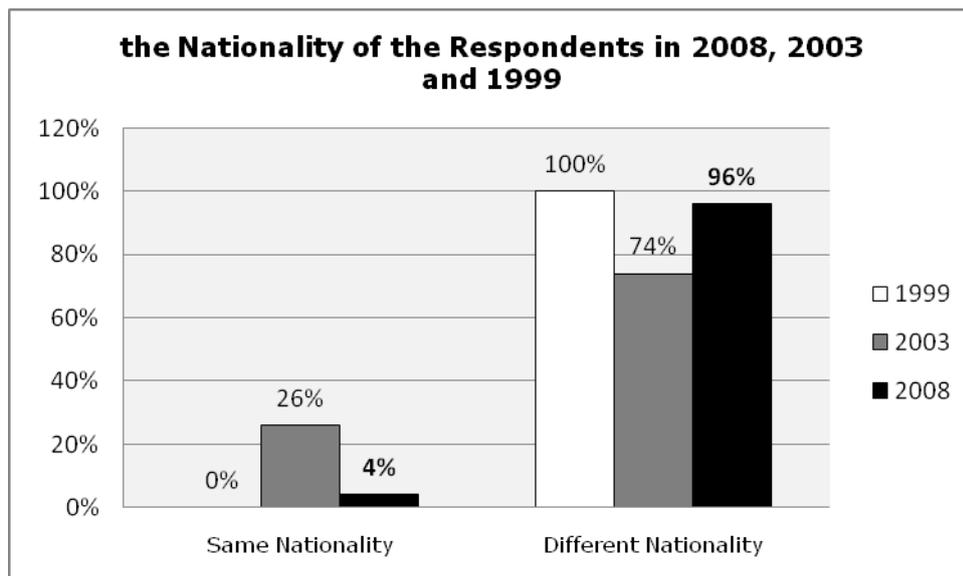
<sup>75</sup> The relationship between the respondent and the child was not recorded in the 1999 survey but this figure has been estimated from the gender of the respondent.

### 3. The status of the respondent as carer in relation to the child

The Spanish Central Authority did not provide information on the status of the respondent as carer.

### 4. The nationality of the respondent

Globally, 52% of respondents in access cases had the same nationality as the requested State. In Spain, the respondent was a Spanish national in only 1 application (4%). This can be compared with 26% of respondents being Spanish nationals in 2003 (5 respondents) and none 1999.



### 5. The relationship and nationality of the respondent combined

Of the 18 respondents who were mothers only 1 was a Spanish national compared with none of the respondent fathers. Globally, 52% of taking mothers and 45% of taking fathers had the same nationality as the requested State.

In 2003, 5 out of 13 respondent mothers and no respondent fathers were Spanish nationals. In 1999 no respondents at all were Spanish nationals.

### 6. The Children

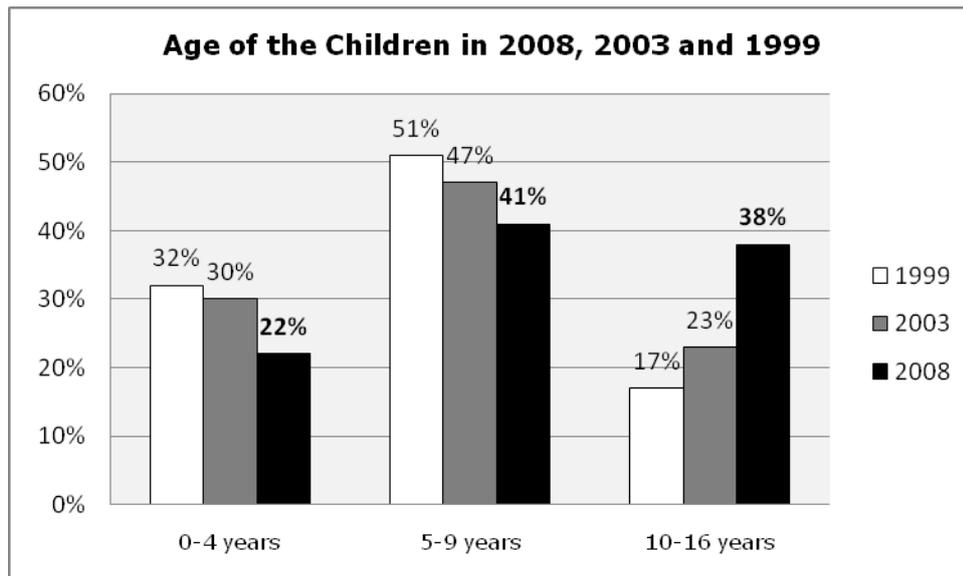
In 2008, 32 children were involved in the 25 access applications to Spain making an average of 1.28 children per application compared with the global average of 1.32 children. This can be compared with an average of 1.37 children in 2003 and 1.33 children in 1999.

In 2008, 72% of applications involved only one child compared with 72% globally. In 2003, 69% of applications received were single child applications and 72% in 1999.

## 7. The age of the children

The average child involved in an access application to Spain was 8.3 years compared with the global average of 7.8 years.

In 2003 the average age of a child involved in an access application to Spain was 6.6 years. In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups in the graph below. The graph shows that a lower proportion of children fell within the 0-4 years and 5-9 years age groups in 2008 than in previous surveys and a higher proportion were between 10-16 years.



## 8. The gender of the children

The Spanish Central Authority was unable to provide information regarding the gender of the children involved in 2008. Globally, 49% of children involved in access applications were female and 51% male.

In 2003, 58% of children involved in applications made to Spain were female and, in 1999, only 13%.

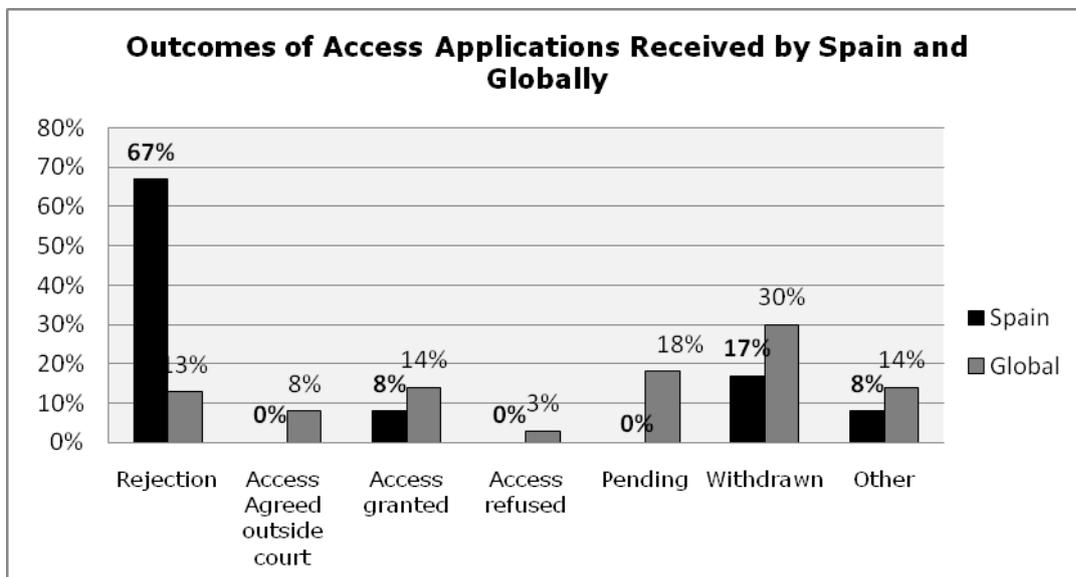
## 9. The overall outcomes

The table and graph below show the outcomes of the access applications received by Spain in 2008 compared with the global averages. The overall rate at which access was agreed or ordered was 8% in Spain compared with 22% globally. However, in the 2 applications (8%) recorded as having 'other' outcomes the child was voluntarily returned.

The rate of rejection was significantly higher than the global average (67% compared with 13% globally), and most applications ended in this way. A lower proportion of applications were withdrawn (17% compared with 32% globally) and no applications were pending at the cut off date of 13<sup>th</sup> June 2010.

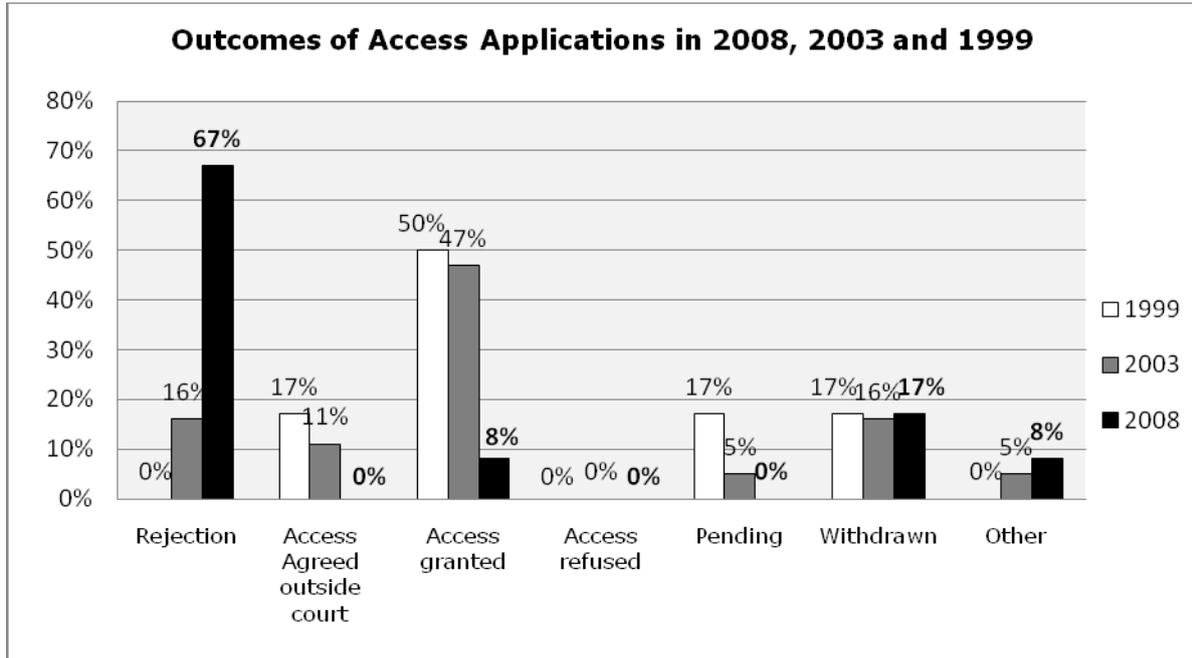
### Outcomes of Access Applications Received by Spain in 2008

|                             | Spain            | Global       |
|-----------------------------|------------------|--------------|
| Rejection                   | 16 (67%)         | 13%          |
| Access Agreed outside court | 0 (0%)           | 8%           |
| Access granted              | 2 (8%)           | 14%          |
| Access refused              | 0 (0%)           | 2%           |
| Pending                     | 0 (0%)           | 17%          |
| Withdrawn                   | 4 (17%)          | 32%          |
| Other                       | 2 (8%)           | 14%          |
| More than One Outcome       | 0 (0%)           | <1%          |
| <b>Total</b>                | <b>24 (100%)</b> | <b>≈100%</b> |



The graph below shows how the outcomes in 2008 compare with those of previous surveys. The proportion of applications in which access was agreed or ordered is significantly lower in 2008 (8%, 2 applications) than 58% in 2003 (11 out of 19 applications) and 67% in 1999 (4 out of 6 applications). The proportion of applications rejected by the Spanish Central Authority was high in 2008 at 67% (16 applications) compared with 16% in 2003 (3 applications). No applications were rejected by the Central Authority in 1999.

No applications were pending at the cut off date in the 2008 survey compared with 1 application (5%) in 2003 and 1 application (17%) in 1999.



### 10. The reasons for rejection by the Central Authority

In 2008, 16 applications were rejected by the Spanish Central Authority. 9 because the applicant had no rights of custody, 2 because the child was over the age of 16 and 5 for 'other' reasons<sup>76</sup>. Globally, 33% of access applications were rejected because the applicant had no rights of custody and 9% because the child was over 16.

In 2003, 3 applications were rejected: 1 because the child was not located, 1 because the applicant had no rights of custody and 1 based on a finding that the habitual residence of the child was in Spain. No applications were rejected by the Central Authority in 1999.

### 11. The reasons for judicial refusal

No applications were judicially refused in 2008, 2003 or 1999.

### 12. Timing

No dates were available for the access applications received in 2008. In 2003 the average time taken to resolve an access application in Spain was 297 days and in 1999 both applications where dates were available took over 6 months to conclude.

<sup>76</sup> These 'other' reasons included 2 applications found to have 'no urgency' as the minor had been living in Spain for a number of years, 1 application where the family's habitual residence was in Spain and 2 because the applicant was not abiding by or wished to modify their access rights.

## The Impact of the Brussels II a Regulation

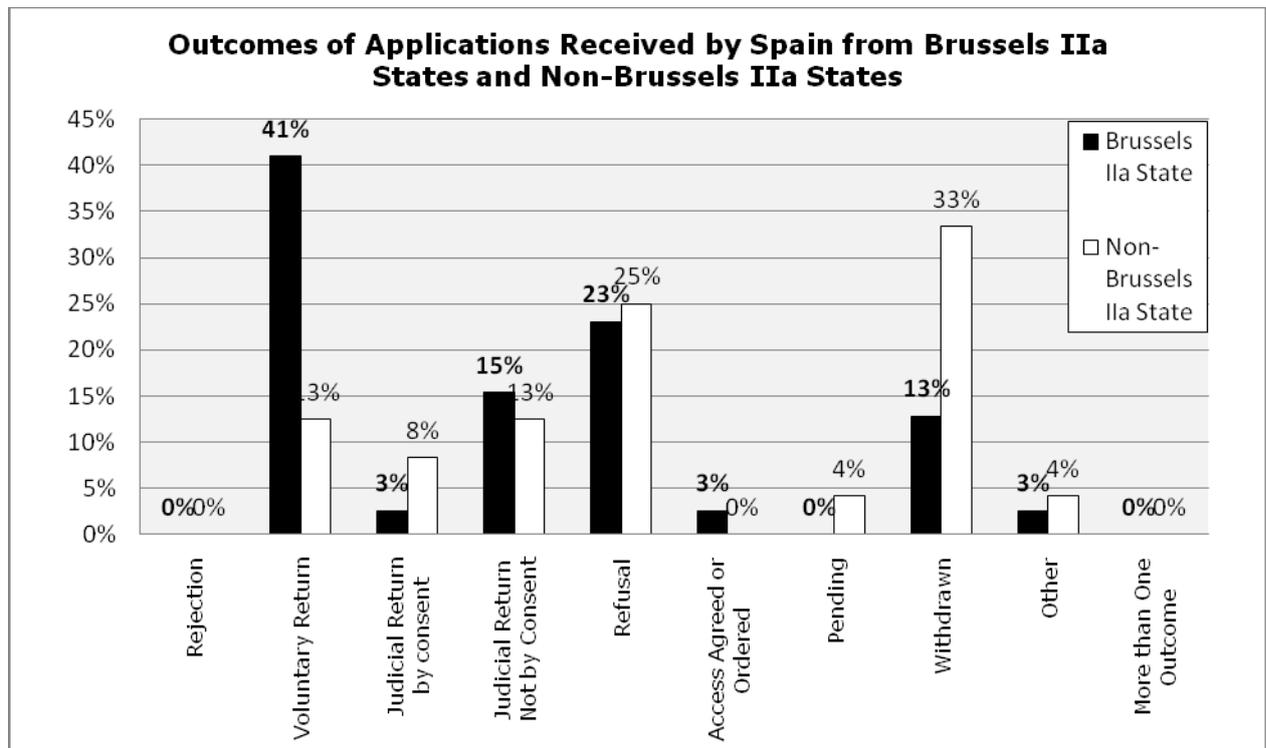
### 1. Brussels II a Regulation proportion

The Brussels II a Regulation applies to 26 EU Member States (Brussels II a States) i.e. all such States except for Denmark. Brussels II a States who have responded to the questionnaire received a total of 988 return applications. 705 of these applications came from fellow Brussels II a States (71%) and the remaining 283 applications came from what will be termed non-Brussels II a States (29%). In 2003, 62% of all applications received by what would now be Brussels II a States were from what would now be fellow Brussels II a States.

Spain received 115 return applications in 2008 and 76 of these came from Brussels IIa States (66%). This is a lower proportion than in 2003 where 68% came from what is now a Brussels IIa State and 56% in 1999.

### 2. Brussels II a Regulation and Outcomes

The graph below shows the outcomes of applications from Brussels IIa States and non-Brussels IIa States that were received by Spain in 2008. The overall return rate was higher where the application came from a Brussels IIa State (59%, 23 out of 39 applications) than from a non-Brussels IIa State (33%, 8 out of 24 applications). A further 3% of applications from Brussels IIa States ended in an agreement or order for access. The proportion of applications judicially refused or withdrawn was higher if the application came from a non-Brussels IIa State and more applications were pending.

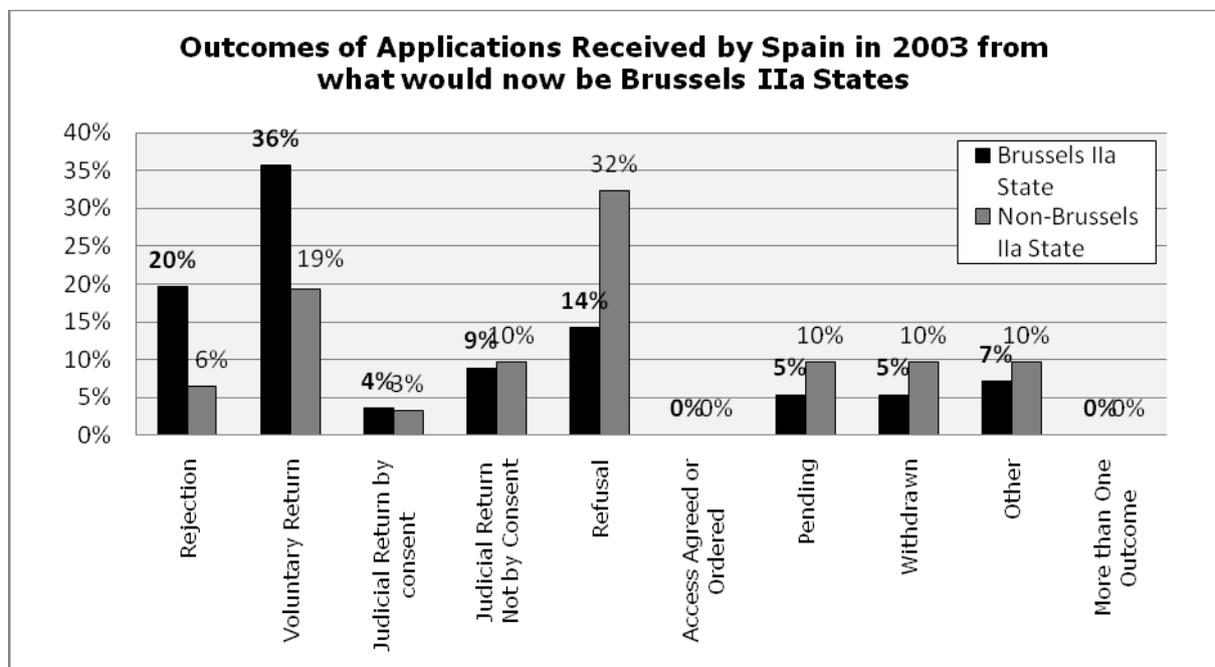


For the main part, these results are reflective of the global picture where applications involved two Brussels IIa States with more returns and fewer refusals and withdrawn applications.

These results can also be compared with the 2003 survey by looking at the outcomes of cases received by Spain from States that would now be subject to the Brussels IIa Regulation. Any applications between what are now Brussels IIa States would not have been subject to the Revised Brussels II a Regulation in 2003 as it was not yet in force. But, by looking at the outcomes of what would now be Brussels IIa States and Non-Brussels IIa States, it is possible to ascertain whether the Brussels II a Regulation has had an impact, for example in increasing the return rate between Brussels IIa States, or whether there has always been a higher proportion of returns between them.

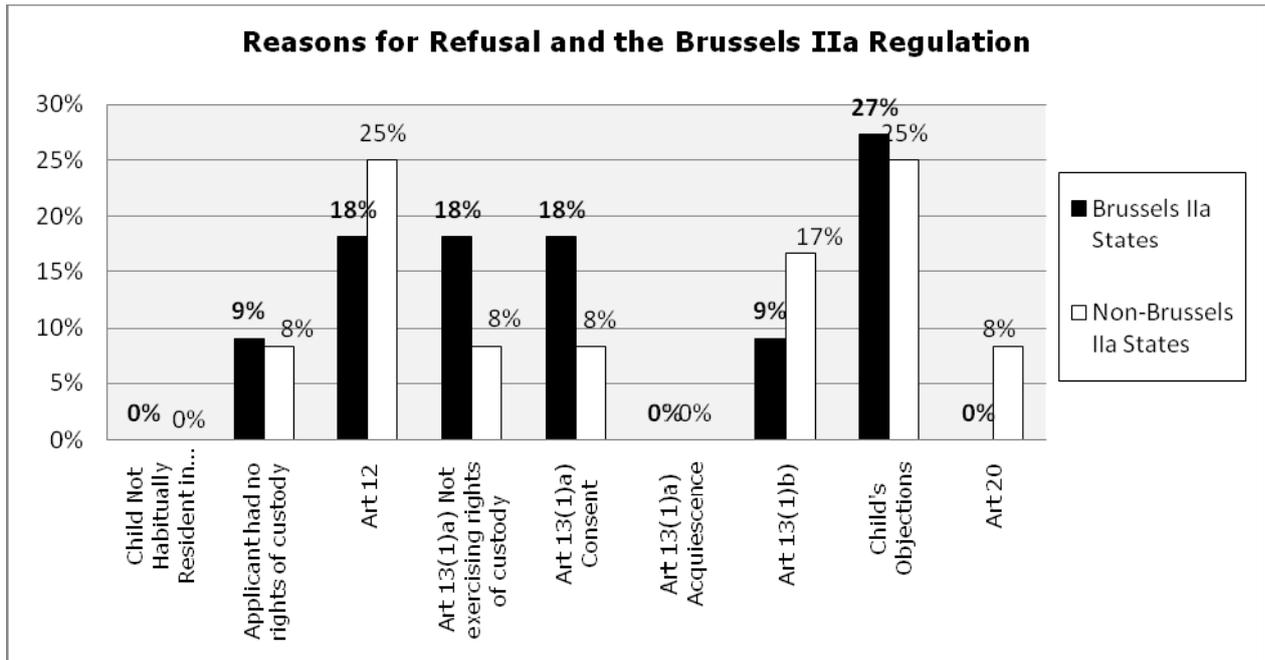
In line with the findings of the 2008 survey, in 2003 there was a higher overall return rate for applications that came from Brussels IIa States (48%) than from non-Brussels IIa States (29%). As in 2008, there were proportionately fewer judicial refusals (14% compared with 32%), withdrawals (5% compared with 10%) and pending applications (5% compared with 10%) if the application came from what would now be a Brussels IIa State.

By contrast, a higher proportion of applications from what would not be Brussels II a States were rejected by the Central Authority (20% compared with 6%).



### 3. Refusals and Reasons for Refusal

Fewer applications received by Spain were refused if the requesting state was a Brussels IIa State (23%, 8 applications) than if it was not (25%, 10 applications).



Where the requesting State was a Brussels II a State the most commonly relied upon reason for refusal was the child's objections (27%, 3 applications) followed by Article 12, Article 13(1) a) the applicant not exercising rights of custody and Article 13(1) a) consent (each 18%, 2 applications). Where the requesting State was a non-Brussels II a State the most common reasons for refusal were Article 12 and the child's objections (both 25%, 3 applications).

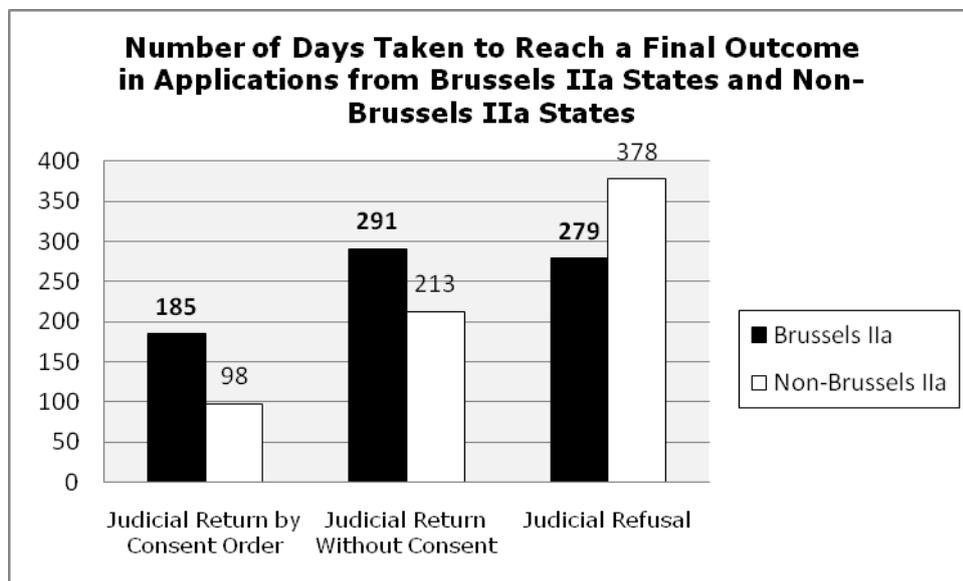
Contrary to the overall impact of the Brussels II a Regulation, fewer refusals were based on Article 13(1) b) if the requesting State was a Brussels II a State (9%, 1 application, compared with 17%, 2 applications, if the requesting State was not a Brussels II a State).

#### 4. Brussels IIa and Timing

Overall, the applications received by Spain in 2008 in which the Brussels II a Regulation applied were resolved more quickly than those received from non-Brussels II a States. The overall average time taken to reach a final settlement was 255 days if the requesting State was a Brussels II a State and 282 days if it was not.

Breaking these results down into the time taken to reach different outcomes, the table and graph below show that applications from Brussels IIa States were resolved slower in applications ending in a judicial return by consent but judicial returns without consent compared with applications from non-Brussels II a States but that judicial refusals were resolved significantly quicker. In addition to the figures in the table and graph below, one application from a Brussels II a State ended with an order for access and was resolved in 57 days.

|                 | Judicial Return by Consent Order |                  | Judicial Return Without Consent |                  | Judicial Refusal |                  |
|-----------------|----------------------------------|------------------|---------------------------------|------------------|------------------|------------------|
|                 | Brussels IIa                     | Non-Brussels IIa | Brussels IIa                    | Non-Brussels IIa | Brussels IIa     | Non-Brussels IIa |
| <b>Mean</b>     | <b>185</b>                       | <b>98</b>        | <b>291</b>                      | <b>213</b>       | <b>279</b>       | <b>378</b>       |
| Median          | 185                              | 98               | 318                             | 153              | 267              | 349              |
| Minimum         | 185                              | 38               | 55                              | 57               | 183              | 74               |
| Maximum         | 185                              | 158              | 436                             | 428              | 459              | 878              |
| Number of cases | 1                                | 2                | 6                               | 3                | 9                | 6                |



No applications from Brussels IIa States were resolved within 6 weeks compared with 1 application (9%) from a non-Brussels IIa State.

11% of Brussels IIa applications (2 applications) were resolved in 12 weeks and 17% in 18 weeks (3 applications) compared with 27% of applications from non-Brussels IIa States being resolved in 12 weeks (3 applications) and the 27% in 18 weeks. 15 applications (85%) from Brussels IIa States took over 24 weeks to conclude and 3 (17%) took over 54 weeks. This can be compared with only 6 applications (55%) from on-Brussels IIa States taking over 24 weeks and 3 applications (27%) taking over 54 weeks.

Overall, only 15% of all applications to which the Brussels II a Regulation applied were resolved in 6 weeks compared with 16% of applications received by Brussels II a States from non-Brussels II a States. 51% of Brussels II a applications were resolved in 18 weeks compared with 58% of applications received by Brussels II a States from non-Brussels II a States

## TURKEY

### I. Overall Summary

In 2008 Turkey received 66 applications comprising 63 applications for return and 3 for access. This was an 89% increase on the 35 incoming applications in 2003. In total the Turkish Central Authority dealt with 77 incoming and outgoing applications in 2008 which is an 88% increase on the 41 in 2003.

The overall rate of return in the 63 return applications was 51% compared with 46% globally. This can be compared with the 2003 return rate of 57%. Proportionately more applications were rejected by the Central Authority, judicially refused or pending compared with the global figures but proportionately fewer applications received by Turkey were withdrawn.

A judicial return by consent took an average of 204 days to conclude (compared with 163 days globally), a judicial return without consent took 392 days (compared with 204 days globally) and a judicial refusal took 317 days (compared with 286 days globally) .

Turkey received 3 access applications in 2008. 1 of these applications was withdrawn, 1 was closed by the Central Authority of the requesting State and 1 was pending.

### II. The number of applications received in 2008

|                 | <b>2003</b> | <b>2008</b> |
|-----------------|-------------|-------------|
| Incoming Return | 35          | <b>63</b>   |
| Incoming Access | 0           | <b>3</b>    |
| Outgoing Return | 6           | <b>7</b>    |
| Outgoing Access | 0           | <b>4</b>    |

The Turkish Central Authority received 66 applications in total comprising 63 incoming return and 3 incoming access applications. This was an 89% increase on the 35 incoming applications received in 2003, all of which were for return. Turkey did not participate in the 1999 survey as it was not yet a Contracting State<sup>77</sup>.

The ratio of return to access in 2008 was 95% to 5%, respectively compared with the global average of 84% to 16%.

In addition, the Central Authority made 11 outgoing applications comprising 7 return and 4 access applications. This is a 83% increase on the 6 outgoing cases in 2003.

In total, the Central Authority dealt with 77 incoming and outgoing applications. An 88% increase from 41 applications handled in 2003.

<sup>77</sup> The Convention came into force in Turkey in 2000.

### III. Incoming Return Applications

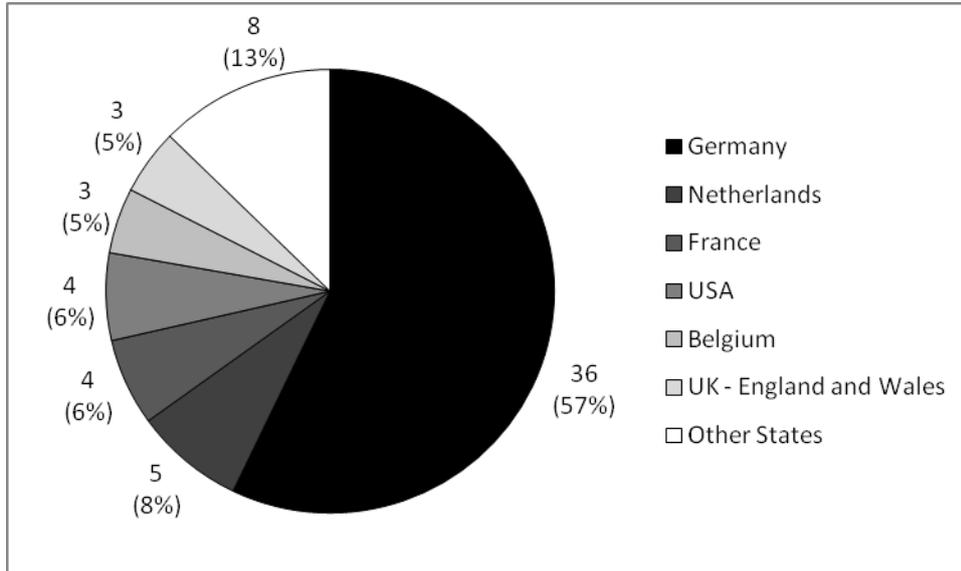
#### 1. The Contracting States which made the application

In 2008 Turkey received applications from 12 different Central Authorities – compared with 11 requesting States in 2003. As in past surveys, Turkey received a high number of applications from Germany, 36 applications, compared with 16 in 2003.

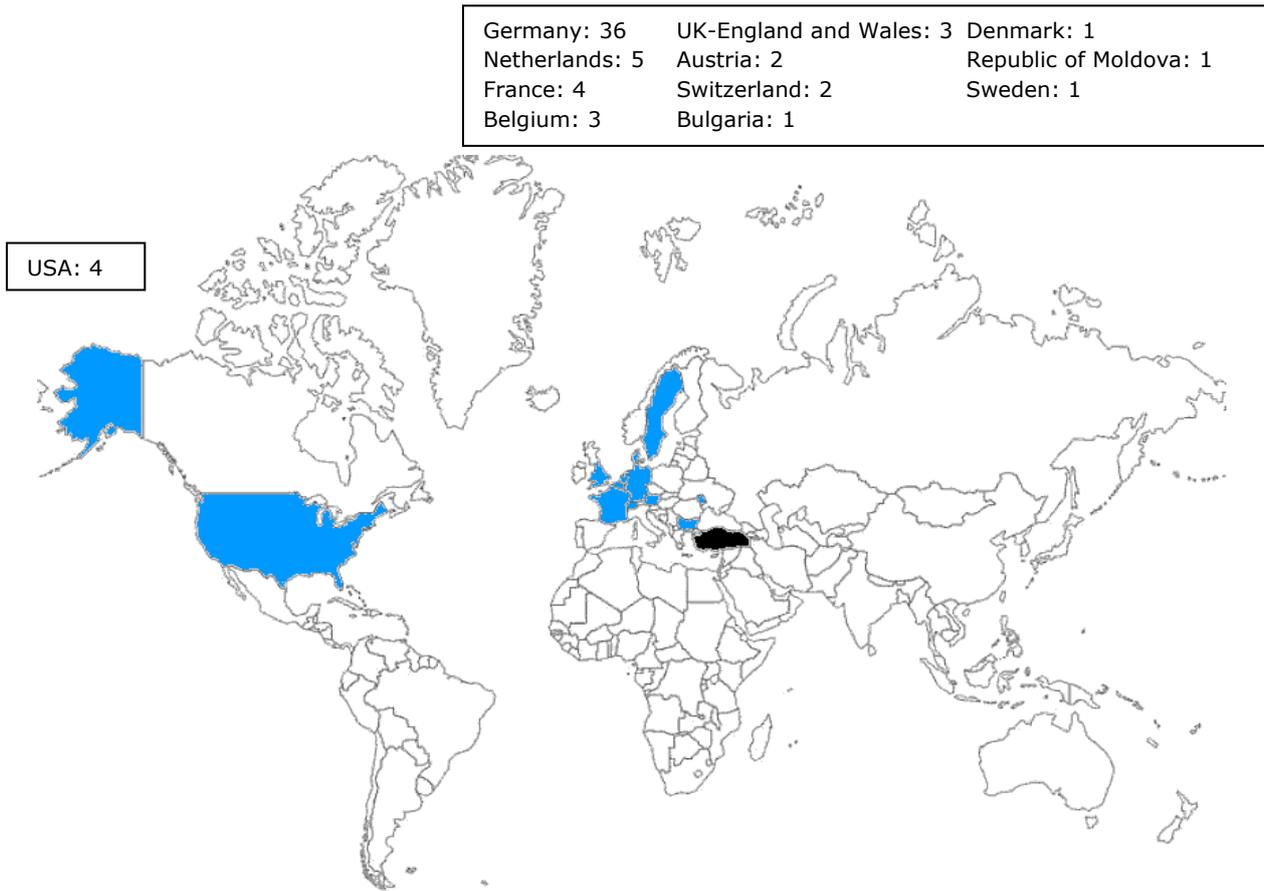
#### The Contracting States which made the most applications to Turkey

|                       | <b>2003</b> | <b>2008</b> |
|-----------------------|-------------|-------------|
| Germany               | 16 (46%)    | 36 (57%)    |
| Netherlands           | 4 (11%)     | 5 (8%)      |
| France                | 4 (11%)     | 4 (6%)      |
| USA                   | 2 (6%)      | 4 (6%)      |
| Belgium               | 0 (0%)      | 3 (5%)      |
| UK- England and Wales | 1 (3%)      | 3 (5%)      |
| Austria               | 0 (0%)      | 2 (3%)      |
| Switzerland           | 0 (0%)      | 2 (3%)      |
| Other States          | 8 (23%)     | 4 (6%)      |
| <b>Total</b>          | <b>35</b>   | <b>63</b>   |

#### The Requesting States for Return Applications Received by Turkey in 2008



## Map of Contracting States which made return applications to Turkey in 2008



### 2. The Taking Person

In 2008 a majority of the taking persons were mothers (54%, 34 applications). The remaining 46% comprised 43% fathers (27 applications) and 1% grandparents (1 application where one grandparent was the taking person and 1 application where two grandparents were joint taking persons). This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

In 2003 the taking persons moving to Turkey were mostly fathers, making up 60% of taking persons in 2003.

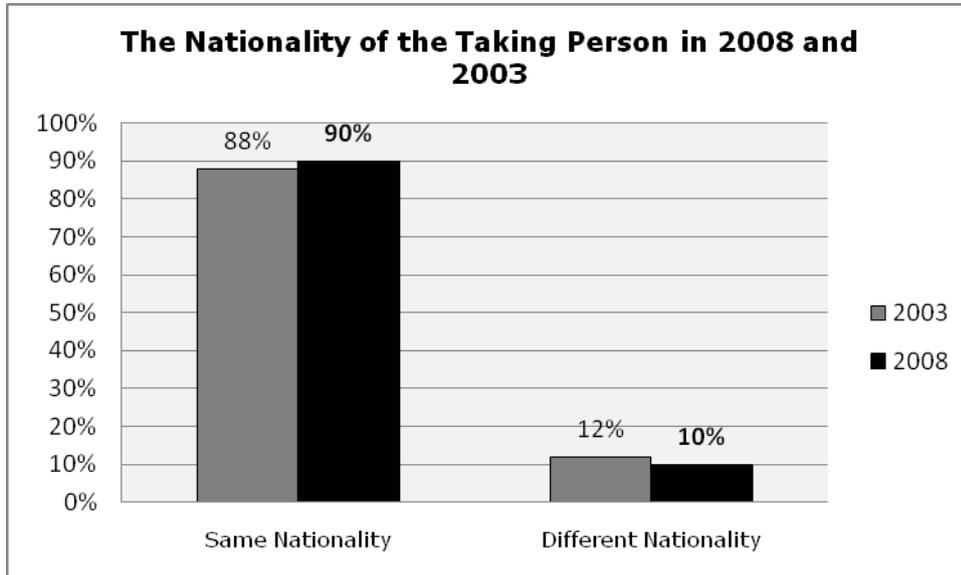
### 3. The status of the taking person as carer in relation to the child

The Turkish Central Authority was unable to provide information on the status as carer of the taking person.

### 4. The nationality of the taking person

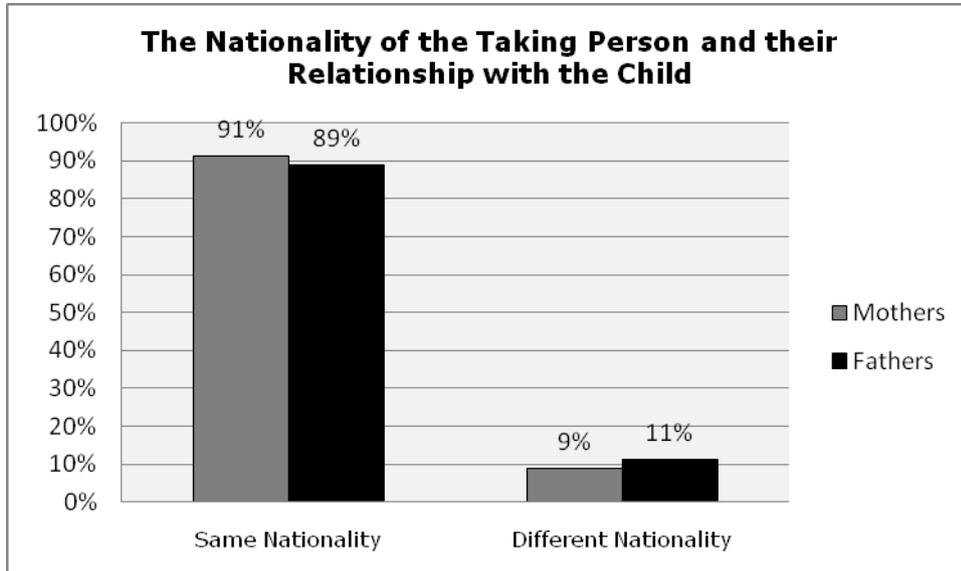
In 2008, 57 taking persons (90%) were Turkish citizens (including 10 taking persons with dual nationality). This is a high proportion compared with the global 51% of taking persons who went to a state of which they were a national.

The chart below compares the 2008 findings on nationality with the 2003 survey. In 2003, 88% of taking persons were Turkish citizens only slightly lower than the 90% in 2008.



### 5. The relationship and nationality of the taking person combined

The graph below shows that, in 2008, a high proportion of both taking mothers and taking fathers were Turkish citizens.



91% of both taking mothers and 88% of taking fathers were Turkish nationals. Globally, 53% of taking mothers were found to have the same nationality as the requested state and 48% of fathers.

In 2003, all of the 14 taking mothers and 80% of taking fathers (16 out of 20 applications) were Turkish citizens.

## 6. The children

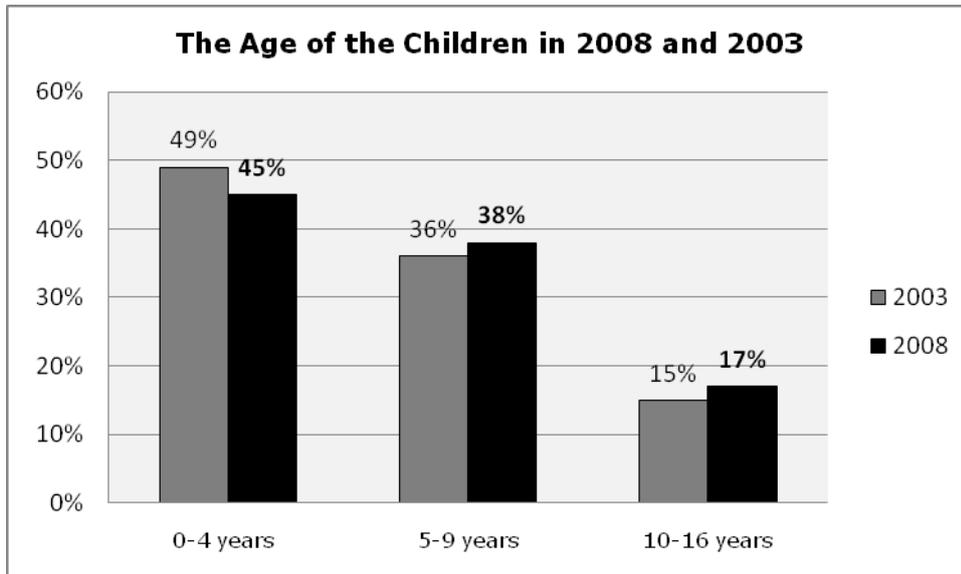
In 2008, 92 children were involved in the 63 applications making an average of 1.46 children per application compared with the global average of 1.38 children. In 2003 an average of 1.34 children were involved in each application to Turkey.

63% of applications received were for the return of a single child, compared with the global average of 69%. This is a decrease from 66% of applications to Turkey in 2003.

## 7. The age of the children<sup>78</sup>

The average child involved in a return application to Turkey was 5.8 years compared with the global average of 6.4 years.

In 2003 the average child involved was 5.1 years. The graph below shows the distribution of the ages of the children in 2008 and 2003. In both years the largest proportion of children were aged between 0-4 years, then 5-9 years and then 10-16 years. In 2008 proportionately more children were aged between 5-9 years and 10-16 years compared with 2003.



## 8. The gender of the children

In 2008, exactly 50% of the children involved were female and 50% male. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003, 62% of the children taken to Turkey were female and 38% male.

<sup>78</sup> This information was not available for one application.

## 9. The overall outcomes

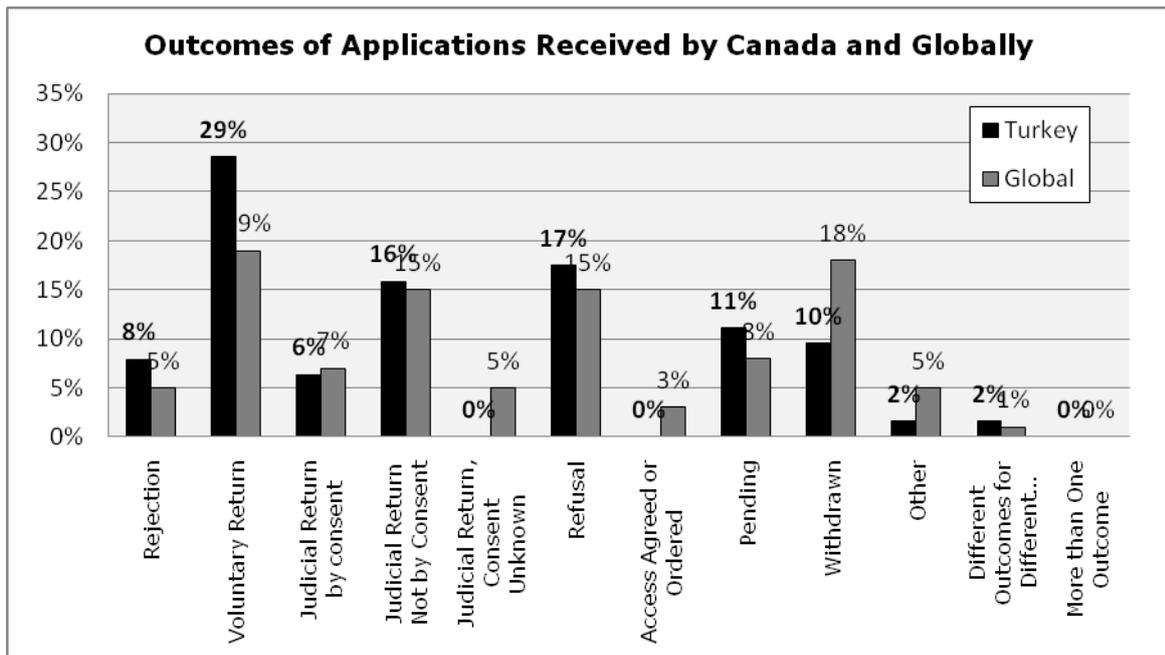
The table below shows all the outcomes of return applications received by Turkey in 2008 compared with the global findings.

|   | <b>Turkey</b> | <b>Global</b> |
|---|---------------|---------------|
| Rejection                                 | 5 (8%)        | 5%            |
| Voluntary Return                          | 18 (29%)      | 19%           |
| Judicial Return by consent                | 4 (6%)        | 7%            |
| Judicial Return Not by Consent            | 10 (16%)      | 15%           |
| Judicial Return, Consent Unknown          | 0 (0%)        | 5%            |
| Refusal                                   | 11 (17%)      | 15%           |
| Access Agreed or Ordered                  | 0 (0%)        | 3%            |
| Pending                                   | 7 (11%)       | 8%            |
| Withdrawn                                 | 6 (10%)       | 18%           |
| Other                                     | 1 (2%)        | 5%            |
| Different Outcomes for Different Children | 1 (2%)        | 1%            |
| More than One Outcome                     | 0 (0%)        | <1%           |

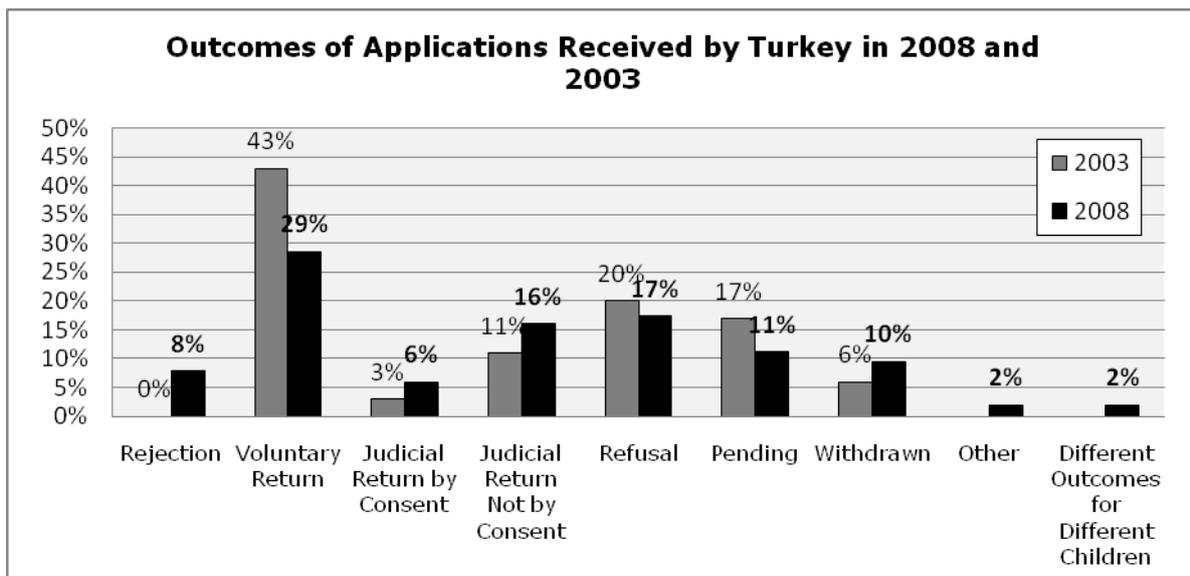
One application received by Turkey was recorded as 'other' as the applicant took the child back to the requesting State and one was recorded as ending with different outcomes for different children. In this application 2 children were judicially returned by consent order but the return of a third was refused based on Article 13(1) b) and the child's objections.

The graph below shows more clearly how the results in applications received by Turkey compare with those globally. In 2008, 51% of applications received by Turkey ended with a return compared with the global judicial return rate of 46%. This 51% judicial return rate can be broken down into 29% voluntary returns (compared with 19% globally), 6% judicial returns by consent order (7% globally) and 16% judicial returns without consent (15% globally with an additional 5% of applications ending with a judicial return but where the consent of the parties was unknown).

The Turkish Central Authority rejected proportionately more applications (8%) than the global average of 5% and proportionately more applications were judicially refused (17% compared with the global average of 15%) and pending (11% compared with 8% globally). A lower proportion of applications were withdrawn (10% compared with 18% globally).



The graph below compares the outcomes of applications received by Turkey in 2008 to those in 2003 and 1999.



The overall return rate of 51% (32 applications) in 2008 decreased from 57% (20 applications) in 2003. The proportion of voluntary returns increased to 29% (18 applications) in 2008, from 43% (15 applications) in 2003. Judicial returns have increased: judicial returns by consent to 6% (4 applications) from 3% (1 application) in 2003 and judicial returns without consent to 16% (10 applications) from 11% (4 applications) respectively.

The proportion of applications rejected by the Central Authority was 8% (5 applications) in 2008. No applications were rejected by the Central Authority in 2003. The rate of judicial refusals decreased from 20% (7 applications) in 2003 to 17% (11 applications) in 2008 and the proportion of pending in 2008 was lower at 11% (7 applications) compared with 17% (6 applications) in 2003. By contrast, the proportion of withdrawn applications increased to 10% (6 applications) in 2008 from 6% (2 applications) in 2003.

## 10. The reasons for rejection

In 2008, 5 applications were rejected by the Turkish Central Authority compared with no applications in 2003. 2 applications were rejected because the child could not be located, 2 because the applicant had no rights of custody and 1 because the child was habitually resident in Turkey. Globally, the reason for 18% of rejections was that the child could not be located and 21% were rejected because the applicant had no rights of custody.

## 11. The reasons for judicial refusal

Out of the 26 applications that were decided in court, 12 (46%) were refused compared with 33% globally<sup>79</sup>. In 2003, 58% of the applications received by Turkey that went to court were judicially refused.

Of the 12 applications refused, information on the reasons for refusal was missing in 2 applications. 2 of the applications where information on the reasons for refusal were known were decided for more than one reason making a combined total of 12 reasons for refusal. One further application was pending an appeal at the cut off date of 30<sup>th</sup> June 2010 but was refused at first instance based on Article 13(1) a) consent and Article 13 (1) b), this application has not been included in the analysis below.

The most common reason for refusal was Article 13(1) b) (67%, 8 applications, compared with 27% globally) followed by Article 13(1) a) acquiescence (17%, 2 applications, compared with 5% globally) and the child's objections (17%, 2 applications, compared with 17% globally).

No applications were refused based on the child not being habitually resident in the requesting State, the applicant having no rights of custody, Article 12, Article 20 and Article 13(1) a) not exercising rights of custody or consent.

### The Reasons for Refusal in Applications Received by Turkey and Globally in 2008

|   | Turkey    |              | Global      |
|---|-----------|--------------|-------------|
|   | Frequency | Percentage   |             |
| Child Not Habitually Resident in Requesting State | 0         | 0%           | 15%         |
| Applicant had no rights of custody                | 0         | 0%           | 8%          |
| Art 12  | 0         | 0%           | 13%         |
| Art 13(1) a) Not exercising rights of custody     | 0         | 0%           | 7%          |
| Art 13(1) a) Consent                              | 0         | 0%           | 5%          |
| Art 13(1) a) Acquiescence                         | 2         | 17%          | 5%          |
| Art 13(1) b)                                      | 8         | 67%          | 27%         |
| Child's Objections                                | 2         | 17%          | 17%         |
| Art 20  | 0         | 0%           | 1%          |
| Other   | 0         | 0%           | 2%          |
| <b>Total</b>                                      | <b>12</b> | <b>≈100%</b> | <b>100%</b> |

<sup>79</sup> Including one application recorded as 'different outcomes for different children' where two children were the subject of a judicial return by consent and the return of one child was judicially refused.

In 2003, the reasons for refusal were known for 3 applications and all of these were based on Article 13(1) b).

## 12. The reasons for judicial refusal and the taking person

Of the 12 applications refused, 11 involved taking mothers and 1 a taking father.

Where the taking person was the father the reason for refusal was missing. In an additional application that was pending an appeal the taking person was the father and the application was refused at first instance based on Article 13(1) a) consent and Article 13 (1) b).

Information on the reasons for refusal was unavailable in one application involving a taking mother but the remaining 10 applications were refused for 12 reasons. Article 13(1) b) made up 8 out of these 12 reasons (67%), Article 13(1) a) 2 out of 12 (17%), and the child's objections 2 out of 12 (17%).

In 2003, 2 of the 3 refused applications where the reasons for refusal were available involved taking fathers and 1 a taking mother. All of the applications were refused based on Article 13(1) b).

## 13. Timing

Overall, the average time taken to reach a final settlement in the return applications received by Turkey was 314 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, judicial returns by consent order were generally resolved quicker, in an average on 204 days, whereas judicial returns without consent took 392 days to conclude.

The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in Turkey.

**The Number of Days Taken to Reach an Outcome**

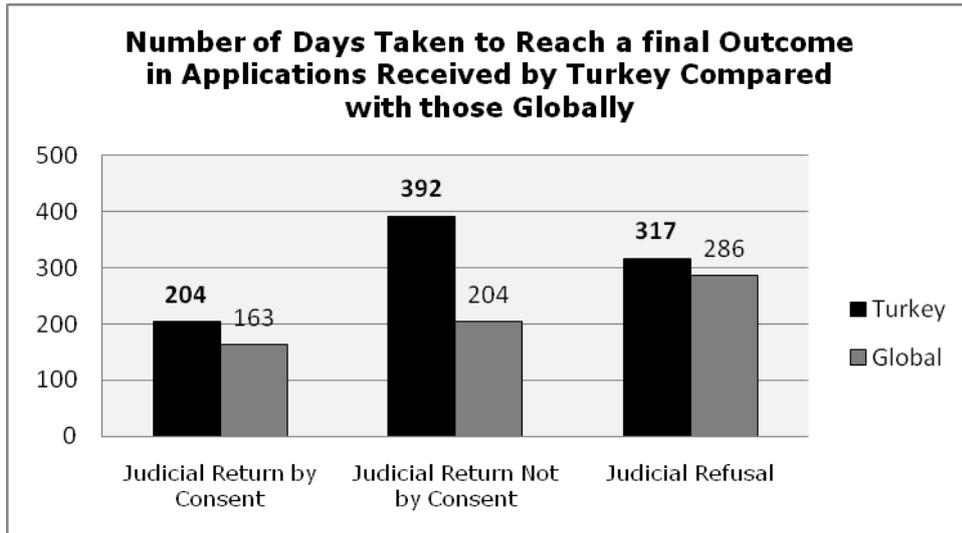
|                 | <b>Judicial Return by Consent Order</b> | <b>Judicial Return Not by Consent</b> | <b>Judicial Refusal</b> |
|-----------------|---|---------------------------------------|-------------------------|
| Mean            | 204                                     | 392                                   | 317                     |
| Median          | 197                                     | 300                                   | 308                     |
| Minimum         | 111                                     | 138                                   | 84                      |
| Maximum         | 311                                     | 735                                   | 634                     |
| Number of Cases | 4                                       | 9 <sup>80</sup>                       | 9 <sup>81</sup>         |

The table above and graph below show that, in Turkey, applications were resolved more slowly compared with the global averages. Judicial returns by consent order were resolved in 204 days compared with 163 days globally and judicial returns without consent in 392 days compared with 204 days globally. Overall, a judicial return took 334 days to conclude in Turkey compared with 166 days globally<sup>82</sup>. Judicial refusals took an average of 317 days to conclude in Turkey compared with 286 globally.

<sup>80</sup> Dates were not available for 1 application.

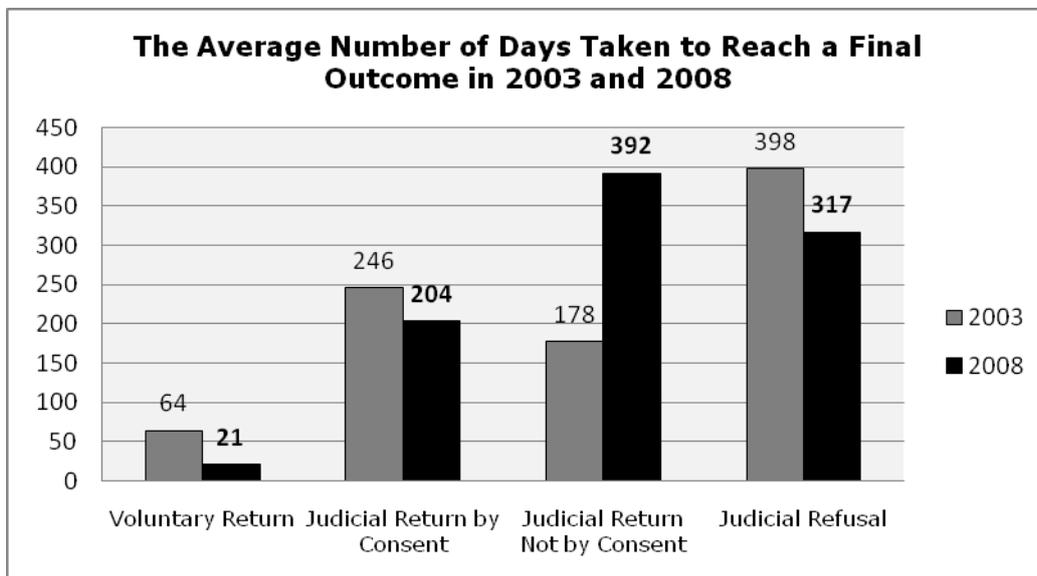
<sup>81</sup> Dates were not available for 2 applications.

<sup>82</sup> This figure includes the 5% of applications globally which ended with a judicial return but where the consent of the parties was not known.



Additionally, dates were available for 1 out of the 18 applications ending in a voluntary return which took 21 days to conclude and 1 application ending in different outcomes for different children took 328 days.

The graph below compares the timings of applications received by Turkey in 2008 with those in 2003. In 2008 voluntary returns and judicial returns by consent were resolved more quickly than in 2003 but it should be noted that the 2008 figure for voluntary returns and the 2003 figure for judicial returns by consent were each based on only 1 application. Judicial returns without consent took significantly longer to resolve in 2008 compared with 2003 (392 days compared with 178 days) but judicial refusals were resolved more quickly in an average of 317 days compared with 398 days in 2003.



### **Time taken to send application to court**

In 2008 the length of time that the Central Authority held the application was recorded for the first time. In Turkey it took an average of 126 days before the application was sent to court and the court then took an average 224 days to conclude it<sup>83</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### **Appeals**

In 2008, 26 return applications went to court and 21 of these decisions (81%) were appealed, significantly higher than the global average of 28%. The average time taken to reach a first instance decision in Turkey was 272 days compared with 401 days to finalise the case that was appealed. The global averages were 168 days for a first instance decision and 324 days to conclude an appeal.

## **IV. Incoming access applications**

### **1. The Contracting States which made the application**

In 2008 Turkey received 3 access applications from France, Germany and the Netherlands. Turkey received no access applications in 2003.

#### **The Contracting States which made Access Applications to Turkey in 2008 Compared with 2003 and 1999**

|              | <b>2008</b> |
|--------------|-------------|
| France       | 1 (33%)     |
| Germany      | 1 (33%)     |
| Netherlands  | 1 (33%)     |
| <b>Total</b> | <b>3</b>    |

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<sup>83</sup> These figures are based on 30 applications where the date sent to court was recorded and 24 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

### Map of Contracting States which Made Access Applications to Turkey in 2008



#### 2. The Respondent

Of the 3 access applications received by Turkey, 2 of the respondents were mothers and 1 was a father. This can be compared with the global average of 79% of respondents being mothers.

#### 3. The status of the respondent as carer in relation to the child

The Turkish Central Authority was unable to provide information regarding the status as carer of the respondent.

#### 4. The nationality of the respondent

In 2 applications the respondent was a Turkish national (67%). Globally, 50% of respondents in access cases had the same nationality as the requested State.

#### 5. The relationship and nationality of the respondent combined

Both of the respondent mothers were Turkish nationals but the respondent father was not. Globally, 52% of mothers were nationals of the requested State and 45% of respondent fathers.

#### 6. The Children

In 2008, 5 children were involved in the 3 access applications to Turkey making an average of 1.67 children per application, compared with the global average of 1.32 children. Only 1 of the 3 applications involved a single child (33%), compared with the global average of 72%.

**7. The age of the children<sup>84</sup>**

The average child involved in an access application to Turkey was 9.0 years compared with the global average of 7.8 years. 1 child was aged between 0-4 years, 1 between 5-9 years and 3 children were aged between 10-16 years.

**8. The gender of the children<sup>85</sup>**

In 2008, 4 out of the 5 children involved in access applications received by Turkey were female (80%) and 1 was male (20%). Globally, 49% of children involved in access applications were female and 51% male.

**9. The overall outcomes**

Of the 3 applications received, 1 was pending, 1 was withdrawn and 1 was closed by the requesting State after a lack of response from the applicant (recorded as 'other'). Globally, 18% of applications were pending and 30% withdrawn.

**11. The reasons for rejection by the Central Authority**

No applications were rejected by the Turkish Central Authority in 2008.

**12. The reasons for judicial refusal**

No applications were judicially refused in 2008.

**13. Timing**

Dates were not available for any of the access applications received.

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<sup>84</sup> Information regarding the age of the children was unavailable for 2 children (2 applications).

<sup>85</sup> Information regarding the gender of the children was unavailable for 2 children (2 applications).

## UNITED KINGDOM – ENGLAND AND WALES

### I. Overall Summary

In 2008 there was a large increase in the number of cases received by the Central Authority of England and Wales with incoming cases up 50%. England and Wales is still the second busiest Central Authority behind the United States of America (USA) in terms of incoming applications with 238 in 2008 (the USA received 329) and is followed by Germany who received 146 incoming applications.

There is a clear trend of more applications being received from EU states. In past surveys, the single largest State making applications to England and Wales was the USA but these applications have declined (from 23% in 1999, to 18% in 2003, to 12% in 2008). In 2008, the greatest proportion of applications received by England and Wales from a single State were from Poland who made 13% of all applications – a dramatic increase from the 1% they made in both 2003 and 1999. England and Wales also received increasing numbers from Spain (20 applications, 10%, in 2008; from 11 applications, 8%, in 2003; and 5 applications, 3%, in 1999) and has always received a large number from Ireland (19 applications, 10%, in 2008; 17 applications, 12%, in 2003; and 13 applications, 9%, in 1999).

Broadly speaking the pattern of abduction remains the same as in previous studies and is in line with global findings.

The outcomes of cases received by England and Wales showed a high *judicial* return rate (47% compared with 27% globally). As would be expected from the system in England and Wales, there were slightly less voluntary returns than the global average (13% compared with 19% globally) but more than in previous surveys (13% compared with 9% in 2003 and 5% in 1999).

Applications were resolved relatively quickly with all outcomes having an average time that was lower than the global findings.

The Brussels II a Regulation does not appear to have had a dramatic impact of the workings of the convention in England and Wales. A large proportion of applications (131 applications, 66% of all applications received) were from other States affected by the Regulation (Brussels II a States) and it seems that such cases had more returns and fewer refusals. However, the average time taken to reach a final settlement was longer if the application was made to England and Wales by a Brussels II a State.

### II. The number of applications received and sent in 2008

|                 | 1999 | 2003 | <b>2008</b> |
|-----------------|------|------|-------------|
| Incoming Return | 149  | 142  | <b>200</b>  |
| Incoming Access | 25   | 17   | <b>38</b>   |
| Outgoing Return | 126  | 148  | <b>183</b>  |
| Outgoing Access | 29   | 43   | <b>45</b>   |

In 2008 the Central Authority of England and Wales received 200 return applications and 38 access applications, making a total of 238 incoming applications. This is a 50% increase on the 159 incoming applications dealt with in 2003 and a 37% increase on the 174 applications received in 1999.

The ratio of return to access in 2008 was 84% to 16%, respectively. This can be compared with 89% to 11% in 2003 and 86% to 14% in 1999.

In addition, the Central Authority made 228 outgoing applications made up of 183 return and 45 access applications. This is a 19% increase on the 191 outgoing cases in 2003 and a 47% increase on the 155 in 1999. In total, the Central Authority dealt with 466 incoming and outgoing applications. A 33% rise from the 350 applications handled in 2003 and 425 more than the 329 in 1999.

### III. Incoming Return Applications

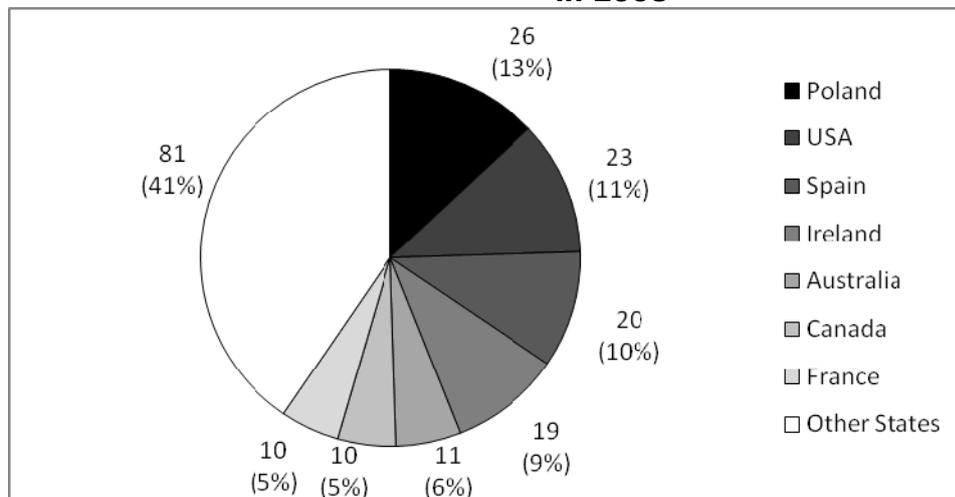
#### 1. The Contracting States which made the application

In 2008, England and Wales received return applications from 36 different Central Authorities – an increase on the 23 requesting states in 2003 and 24 in 1999.

#### The Contracting States which made the most applications to England and Wales

|              | 1999       | 2003       | 2008            |
|--------------|------------|------------|-----------------|
| Poland       | 1 (1%)     | 1 (1%)     | <b>26 (13%)</b> |
| USA          | 34 (23%)   | 25 (18%)   | <b>23 (12%)</b> |
| Spain        | 5 (3%)     | 11 (8%)    | <b>20 (10%)</b> |
| Ireland      | 13 (9%)    | 17 (12%)   | <b>19 (10%)</b> |
| Australia    | 16 (11%)   | 16 (11%)   | <b>11 (6%)</b>  |
| Canada       | 5 (3%)     | 0 (0%)     | <b>10 (5%)</b>  |
| France       | 13 (9%)    | 13 (9%)    | <b>10 (5%)</b>  |
| Lithuania    | 0 (0%)     | 0 (0%)     | <b>9 (5%)</b>   |
| Germany      | 8 (5%)     | 9 (6%)     | <b>8 (4%)</b>   |
| South Africa | 5 (3%)     | 10 (7%)    | <b>6 (3%)</b>   |
| Other States | 49 (33%)   | 40 (28%)   | <b>58 (29%)</b> |
| <b>Total</b> | <b>149</b> | <b>142</b> | <b>200</b>      |

#### The Requesting States for Return Applications Received by England and Wales in 2008



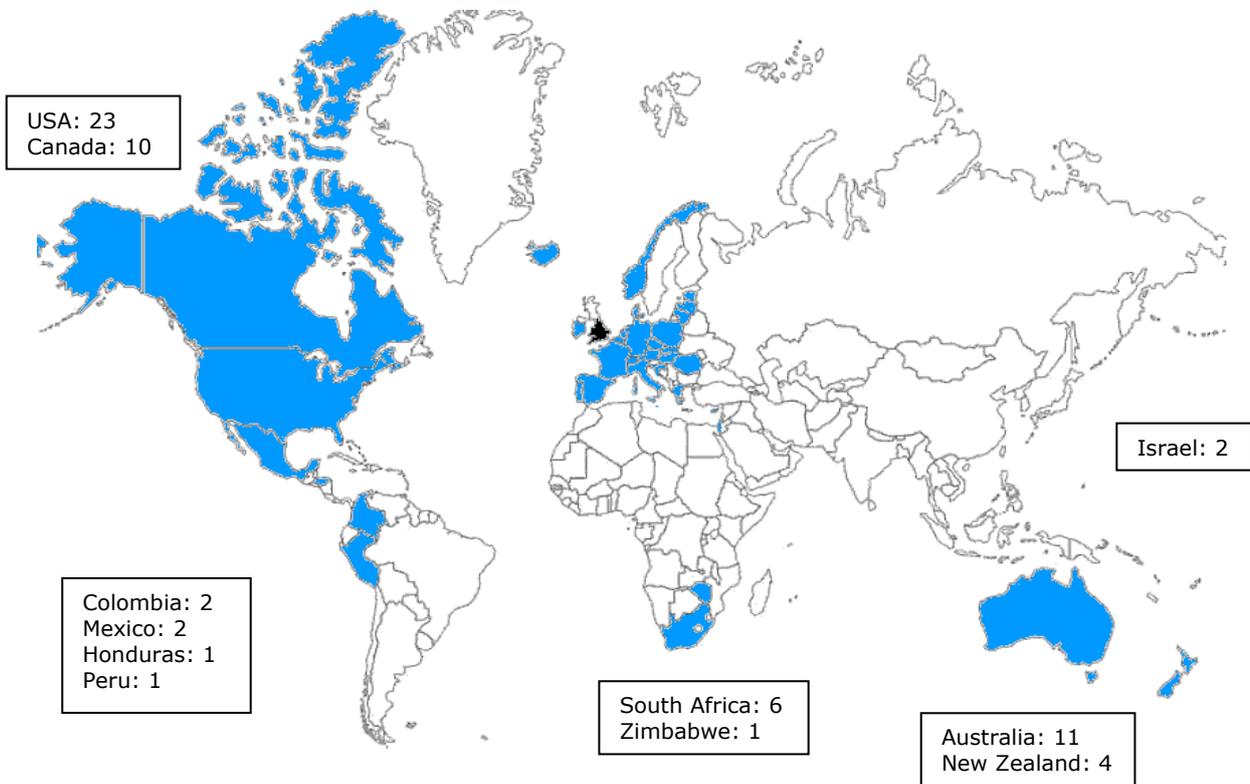
In 2008, 66% of applications to England and Wales came from EU States. In 2003, 54% of applications came from EU States and in 1999 the proportion was only 47%.

The greatest number of applications from a single State came from Poland, making 26 applications - 13% of all return applications received. This is a dramatic increase from the 1 application from Poland making up 1% of all applications received in both 2003 and 1999.

In previous years the USA had made the most applications to England and Wales but the proportion of such applications has decreased from 23% in 1999 to 18% in 2003 and 12% in 2008. The actual number of applications from the USA has also decreased from 34 applications in 1999 and 25 applications in 2003, to 23 in 2008.

**Map of Contracting States which made return applications to England and Wales in 2008**

|                |                   |                |            |
|----------------|-------------------|----------------|------------|
| Poland: 26     | Portugal: 5       | Cyprus: 2      | Hungary: 1 |
| Spain: 20      | Slovakia: 5       | Greece: 2      | Iceland: 1 |
| Ireland: 19    | Belgium: 4        | Latvia: 2      | Malta: 1   |
| France: 10     | Czech Republic: 3 | Romania: 2     | Norway: 1  |
| Lithuania: 9   | Italy: 3          | Switzerland: 2 |            |
| Germany: 8     | Austria: 2        | Denmark: 1     |            |
| Netherlands: 5 | Croatia: 2        | Estonia: 1     |            |



## **2. The taking person**

In 2008 a large majority of the taking persons were mothers (81%). 16% were fathers, two cases involved an institution and in one case the child was taken by her stepfather. This can be compared with the global average of 69% of taking persons being mothers and 28% fathers.

In past surveys taking persons coming to England and Wales have been mostly mothers, making up 77% of taking persons in 2003 and 79% in 1999<sup>86</sup>.

## **3-5. The nationality of the taking person and their status as carer in relation to the child**

The Central Authority of England and Wales did not provide information on the nationality of the taking person or on their status as carer of the child.

## **6. The children**

In 2008, 291 children were involved in the 200 applications received by England and Wales. This makes an average of 1.46 children per application which is very slightly higher than the global average of 1.38 children. The average of 1.5 children is the same as in the 2003 and 1999 surveys.

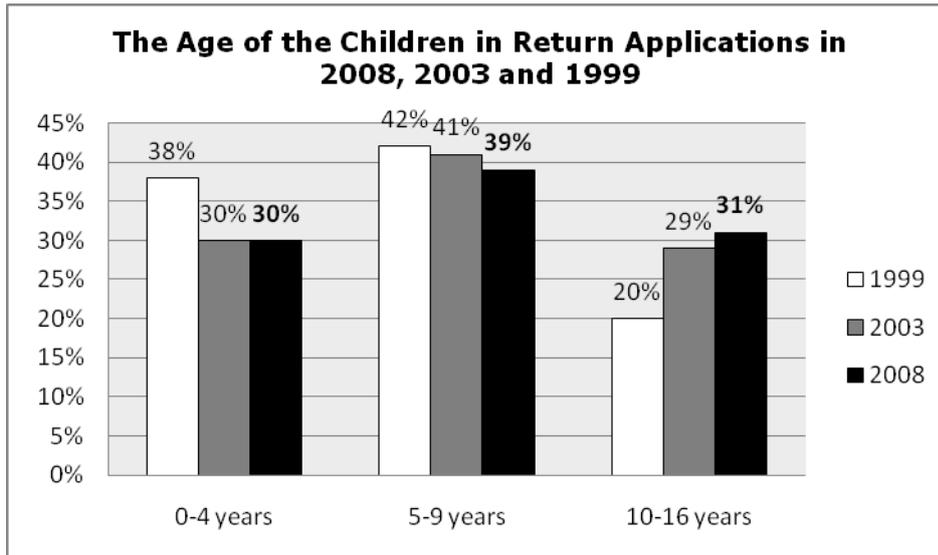
60% of applications received were for the return of a single child. This is lower than the global average of 69% but in line with the results of the 2003 and 1999 survey where single children applications made up 59% and 63% of all applications, respectively.

## **7. The age of the children**

The average child involved in a return application to England and Wales was 7.0 years compared with the global average of 6.6 years. In 2003 the average age was 6.9 years. In the 1999 survey this level of detail was not recorded and so to compare the results in all 3 surveys the data has been reorganised into age groups. In the graph there appears to be a slight trend older children being involved with less abductions in the younger age groups and more in the 10-16 year group.

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<sup>86</sup> In 1999 the relationship between the taking person and the child was not recorded but, as the vast majority of taking persons are parents, the gender of the taking person gives a good indication. In 1999, 79% of taking persons in applications received by France were female and so probably mothers.



### 8. The gender of the children

In 2008, 53% of the children involved were male and 47% female. Globally, the proportions of male and female children in 2008 were 51% and 49% respectively. In 2003 there were slightly more female children involved (52%) but, in 1999, 54% were male.

### 9. The overall outcomes<sup>87</sup>

The table below shows the outcomes of return applications received by England and Wales in 2008 compared with the global results. In 2008 the overall return rate was 47% globally compared with 60% in UK – England and Wales. Of the cases that were decided in court 76% ended in a return order compared with 59% globally.

#### The Outcomes of Return Applications in 2008

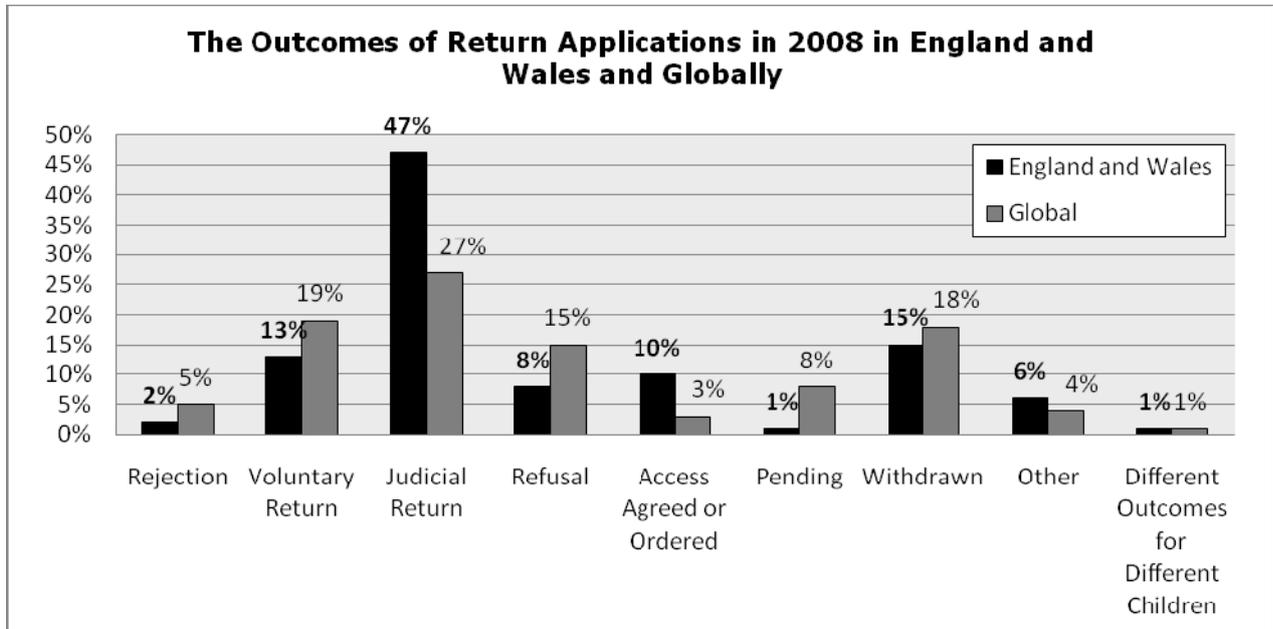
|   | England and Wales |              | Global      |
|---|-------------------|--------------|-------------|
|   | Frequency         | Percentage   |             |
| Rejection                                 | 3                 | 2%           | 5%          |
| Voluntary Return                          | 25                | 13%          | 19%         |
| Judicial Return                           | 93                | 47%          | 27%         |
| Refusal                                   | 15                | 8%           | 15%         |
| Access Agreed or Ordered                  | 20                | 10%          | 3%          |
| Pending                                   | 1                 | 1%           | 8%          |
| Withdrawn                                 | 30                | 15%          | 18%         |
| Other                                     | 11                | 6%           | 4%          |
| Different Outcomes for Different Children | 1                 | 1%           | 1%          |
| <b>Total</b>                              | <b>199</b>        | <b>≈100%</b> | <b>100%</b> |

The graph below shows more clearly how the results in cases received by England and Wales compare to those received globally. More cases ended in a judicial return or an order or agreement for access (70% compared with 49% globally). Fewer cases received

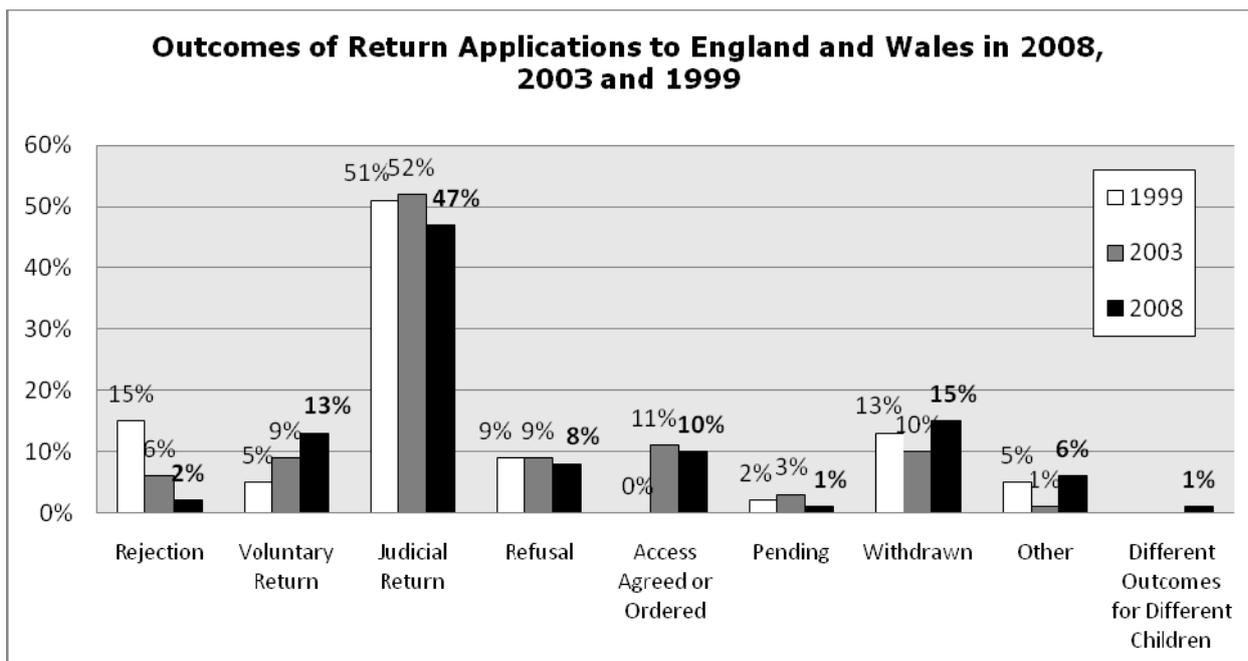
<sup>87</sup> Information on the outcome of one application received by England and Wales was missing.

by England and Wales ended in a voluntary return but the overall return rate for England and Wales was 60% comprising 13% voluntary returns and 47% judicial returns. This is higher than the overall global rate of 46% comprising 19% voluntary returns and 27% judicial returns.

England and Wales made only 15 judicial refusals making up 8% of all applications compared with 15% globally. There were also fewer rejections and withdrawals. Only one case was left pending at the cut off date of 30<sup>th</sup> June 2010.



The graph below compares the outcomes of applications received in 2008 to those in 2003 and 1999. Overall the results from all three surveys show a fairly steady pattern. There is a trend of increasing voluntary returns and decreasing rejections by the Central Authority. The proportion of judicial returns also decreased in 2008.



## 10. The reasons for rejection

In 2008 only 3 cases (2%) were rejected by the Central Authority of England and Wales. Two of these cases were rejected because the applicant had consented to the child leaving the requesting State and one because the child involved was over 16.

Globally, the rate of rejection was higher at 5%. The most common single reasons for rejection of an application were that the applicant was found to have no rights of custody (21%) or that the child could not be located (18%).

## 11. The reasons for judicial refusal

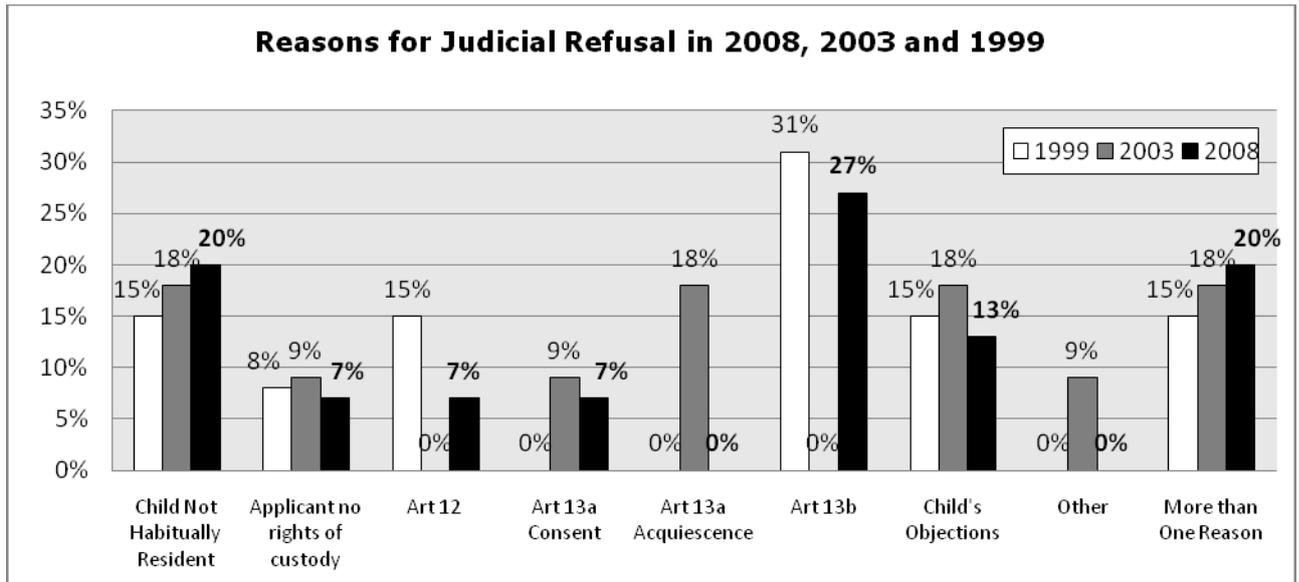
In 2008, 15 cases ended in judicial refusal (8%). This is lower than the global average of 15%. Of the 15 cases refused, 3 were decided for more than one reason and the table below combines all 18 reasons to give a more accurate picture of why applications were judicially refused.

As can be seen in the table below, the most common reason for refusal in England and Wales was Art 13(1) b) making up 33% of all reasons for refusal compared with 27% globally. A greater proportion of cases were refused due to the child's objections in England and Wales making up 22% of all reasons compared with 17% globally. More cases were refused in England and Wales under Article 12 and because it was found that the child was not habitually resident in the requesting state. Fewer cases were refused because the applicant had no rights of custody and no cases were decided on Art 13(1) a) not exercising rights of custody or acquiescence.

|   | England and Wales |              | Global      |
|---|-------------------|--------------|-------------|
|   | Frequency         | Percentage   |             |
| Child Not Habitually Resident in Requesting State | 3                 | 17%          | 15%         |
| Applicant had no rights of custody                | 1                 | 6%           | 8%          |
| Art 12  | 3                 | 17%          | 13%         |
| Art 13a Not exercising rights of custody          | 0                 | 0%           | 7%          |
| Art 13a Consent                                   | 1                 | 6%           | 5%          |
| Art 13a Acquiescence                              | 0                 | 0%           | 5%          |
| Art 13b   | 6                 | 33%          | 27%         |
| Child's Objections                                | 4                 | 22%          | 17%         |
| Art 20  | 0                 | 0%           | 1%          |
| Other   | 0                 | 0%           | 2%          |
| <b>Total</b>                                      | <b>18</b>         | <b>≈100%</b> | <b>100%</b> |

The graph below shows the reasons for judicial refusal of applications received by England and Wales in 2008 compared with the applications they received in 2003 and 1999.

In all three surveys no cases were refused under Art 13(1) a) because the applicant was not exercising rights of custody. There appears to be a trend of more cases being refused because the child was not habitually resident in the requesting state and for refusal on more than one reason. In both 1999 and 2008 the most common reason for refusal was Art 13(1) b) but no cases were refused in this way in 2003.



## 12. The reasons for judicial refusal and the taking person

In 2008 no applications for return received by England and Wales were refused if the taking person was the father of the child. Globally, 80% of refusals occurred where the taking person was the mother and only 17% where it was the father. Of the cases that were refused one involved an institution as the 'taking person' and was refused as the applicant mother was found to have no rights of custody. In the remaining 14 cases ending in refusal the taking person was the mother of the child. The most common single reason for refusal was Art 13(1) b) which was successful in 4 cases and was the reason alongside the child's objection in a further case.

These results can be compared with the 2003 findings where 4 out of the 12 judicial refusals involved taking fathers (33%) and the 1999 survey where 20% of taking persons were fathers but they made up only 85 of refusal cases.

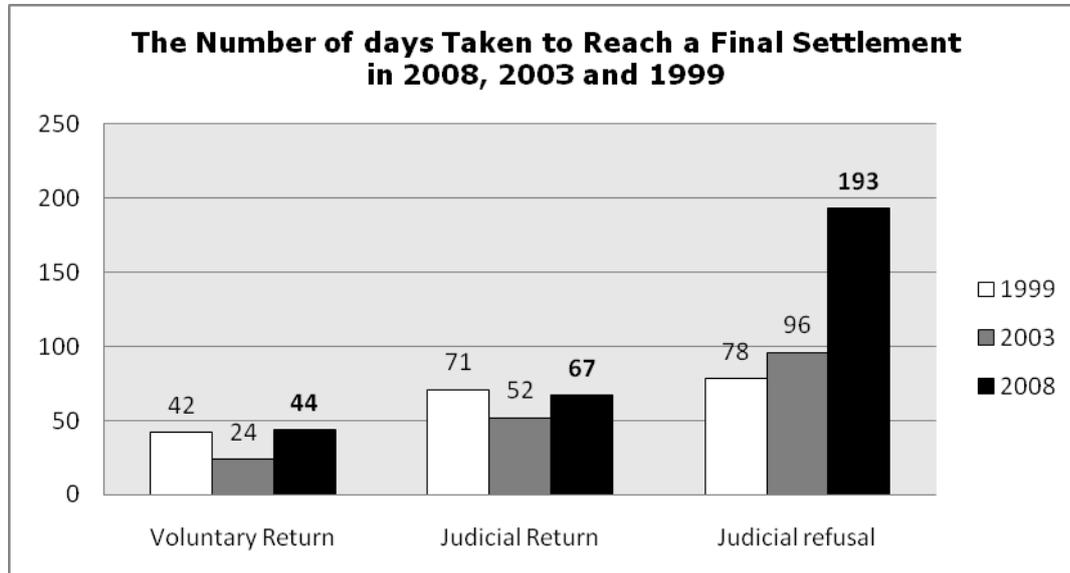
## 13. Timing

The average time taken for a case received by the Central Authority of England and Wales to be concluded was 88 days

The table below shows the average time taken in days to reach a final settlement depending on the outcome. The table shows the mean, median and the number of cases where the dates were available.

|                        | <b>Voluntary Return</b> | <b>Judicial Return</b> | <b>Judicial Refusal</b> |
|------------------------|-------------------------|------------------------|-------------------------|
| Mean                   | 44                      | 67                     | 193                     |
| Median                 | 34                      | 55                     | 123                     |
| Minimum                | 2                       | 8                      | 60                      |
| Maximum                | 178                     | 207                    | 547                     |
| <i>Number of Cases</i> | 25                      | 92                     | 15                      |

Compared with the global results, applications to England and Wales were resolved far quicker for every outcome. Globally, judicial return orders took an average of 166 days compared with 67 days in England and Wales. Judicial refusals took 286 days to conclude globally, compared with 193 days and voluntary returns took more than twice as long with an average of 121 days compared with 44 days within England and Wales.



Looking at the results from past surveys, the time taken to reach a voluntary agreement for return or for a judicial return order to be made have stayed fairly constant. The time taken to conclude a judicial refusal, however, has shown a dramatic increase, especially since the 2003 survey.

### **Time taken to send application to court**

In 2008 the length of time that the Central Authority held the application was recorded for the first time. This information was not routinely recorded by the Central Authority of England and Wales and was only available in 18 cases. In these 18 cases it took an average of 14 days before the application was issued in court and then a further 48 days before the case was concluded.

Globally, it took an average of 76 days for the Central Authority to send the application to court and a further 153 days for the court to conclude the application.

### **Appeals**

Only 5 return applications involved an appeal in 2008 (3%) which is far lower than the global rate of 12%. These cases took an average of 249 days to conclude, compared with 324 days globally.

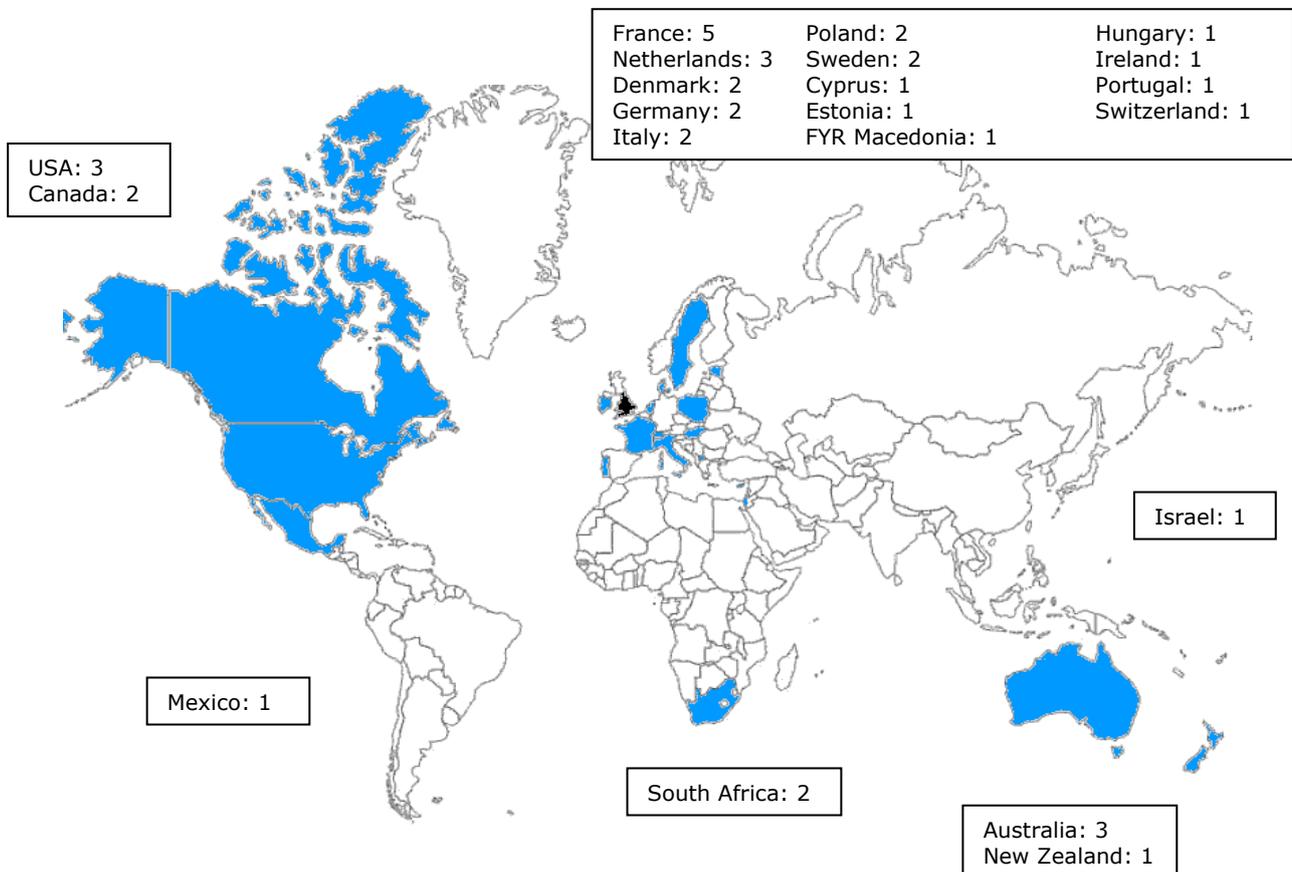
#### IV. Incoming Access Applications

##### 1. The Contracting States which made the application

##### The Requesting States for Access Applications in 2008

|                 | 1999             | 2003             | 2008             |
|-----------------|------------------|------------------|------------------|
| France          | 2 (8%)           | 2 (12%)          | <b>5 (13%)</b>   |
| Australia       | 2 (8%)           | 1 (6%)           | <b>3 (8%)</b>    |
| Netherlands     | 1 (4%)           | 2 (12%)          | <b>3 (8%)</b>    |
| USA             | 3 (12%)          | 0 (0%)           | <b>3 (8%)</b>    |
| Canada          | 3 (12%)          | 0 (0%)           | <b>2 (5%)</b>    |
| Denmark         | 4 (16%)          | 0 (0%)           | <b>2 (5%)</b>    |
| Germany         | 0 (0%)           | 1 (6%)           | <b>2 (5%)</b>    |
| Italy           | 2 (8%)           | 1 (6%)           | <b>2 (5%)</b>    |
| Poland          | 0 (0%)           | 1 (6%)           | <b>2 (5%)</b>    |
| South Africa    | 0 (0%)           | 0 (0%)           | <b>2 (5%)</b>    |
| Sweden          | 0 (0%)           | 0 (0%)           | <b>2 (5%)</b>    |
| Other Countries | 8 (32%)          | 9 (53%)          | <b>10 (26%)</b>  |
| <b>Total</b>    | <b>25 (100%)</b> | <b>17 (100%)</b> | <b>38 (100%)</b> |

##### Map of Contracting States which Made Access Applications to England and Wales in 2008



## 2. The Respondent

Of the 38 access applications received by England and Wales, in 2008, in 87% the respondent was the mother of the child. This is higher than the global average where 79% of respondents were mothers.

The number of respondent mothers was found to be higher than the global average in both past surveys with 81% of taking persons arriving in England and Wales being mothers in 2003 and 96% female in 1999.

## 3-5. The nationality and status of the respondent as carer in relation to the child

The Central Authority of England and Wales did not provide information on the nationality of the taking person or on their status as carer of the child.

## 6. The children

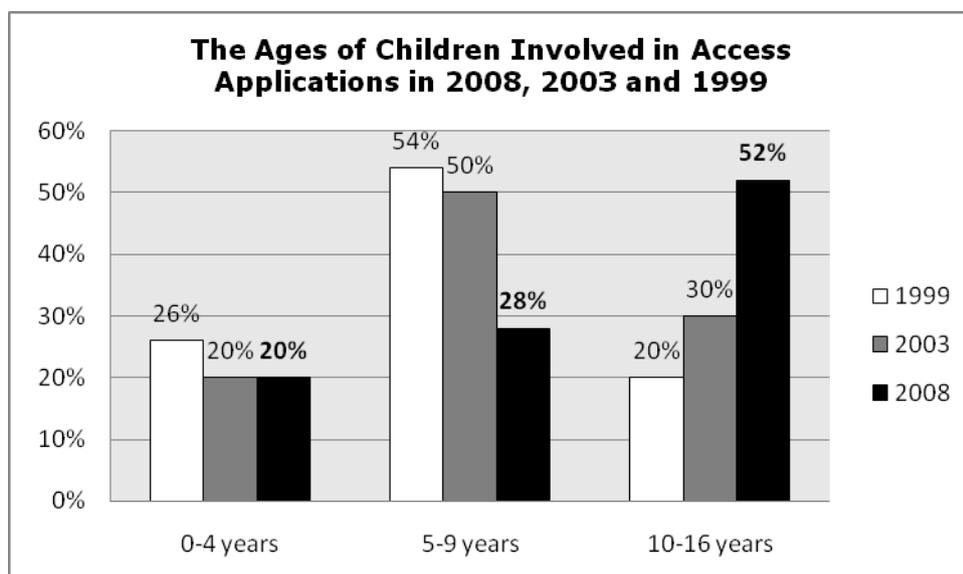
A total of 55 children were involved in the 38 access applications received by the Central Authority of England and Wales in 2008, making an average of 1.45 children per application, compared with the global average of 1.32 children. 61% of the applications received involved a single child, slightly lower than the 72% found globally.

## 7. The age of the children

The average age of a child involved an access application was 9.1 years compared with the global average of 7.8 years.

To make a comparison with past studies the ages of the children have been arranged into three age groups to correspond with the way in which the data was collected in 1999.

The graph shows that an increasing number of older children have been involved in the access applications to England and Wales with fewer children falling into the 0-4 years and 5-9 years bracket and more being between 10 and 16 years old.



## 8. The gender of the children

45% of the children involved in the access applications were female and 55% were male. Globally, 49% of children were female and 51% male.

## 9. The overall outcomes

### Outcomes of Access Applications Received by England and Wales in 2008

|                             | England and Wales |              | Global      |
|-----------------------------|-------------------|--------------|-------------|
|                             | Frequency         | Percentage   |             |
| Rejection                   | 0                 | 0%           | 14%         |
| Access Agreed outside court | 3                 | 8%           | 10%         |
| Access granted              | 1                 | 3%           | 13%         |
| Access refused              | 0                 | 0%           | 2%          |
| Pending                     | 29                | 76%          | 17%         |
| Withdrawn                   | 4                 | 11%          | 30%         |
| Other                       | 1                 | 3%           | 14%         |
| <b>Total</b>                | <b>38</b>         | <b>≈100%</b> | <b>100%</b> |

The number of cases that were still pending at the cut off date of 30<sup>th</sup> June 2010 is striking at 76% compared with 18% globally.

This was not the case in past surveys. In 2003 and 1999, 13% and 16% of cases were pending, respectively.

However, this seems to be balanced by the withdrawal rate (11%) which is lower than the global rate (30%). In 2003, 69% of cases were withdrawn and in 1999 this figure was 52%.

## 10. The reasons for rejection by the Central Authority

The Central Authority did not reject any applications in 2008.

## 11. The reasons for judicial refusal

No cases were judicially refused in 2008.

## 12. Timing

Out of the 38 cases received only 9 had reached a final settlement by the cut off date and only 8 of these had recorded dates. Out of these 8 cases the average time taken to reach a final settlement was 171 days compared with 339 days globally. This rose to 181 days if the application was finalised in court and was 154 days if it resulted in a voluntary agreement compared with 343 days for a judicial decision and 309 days for a voluntary agreement, globally.

Of the cases that were judicially determined, 60% took over 6 months to resolve compared with 74% globally. Agreements tended to be reached more quickly with 33% taking over 6 months and a global average of 75%.

## V. The Impact of the Brussels II a Regulation

### 1. Brussels II a Regulation proportions

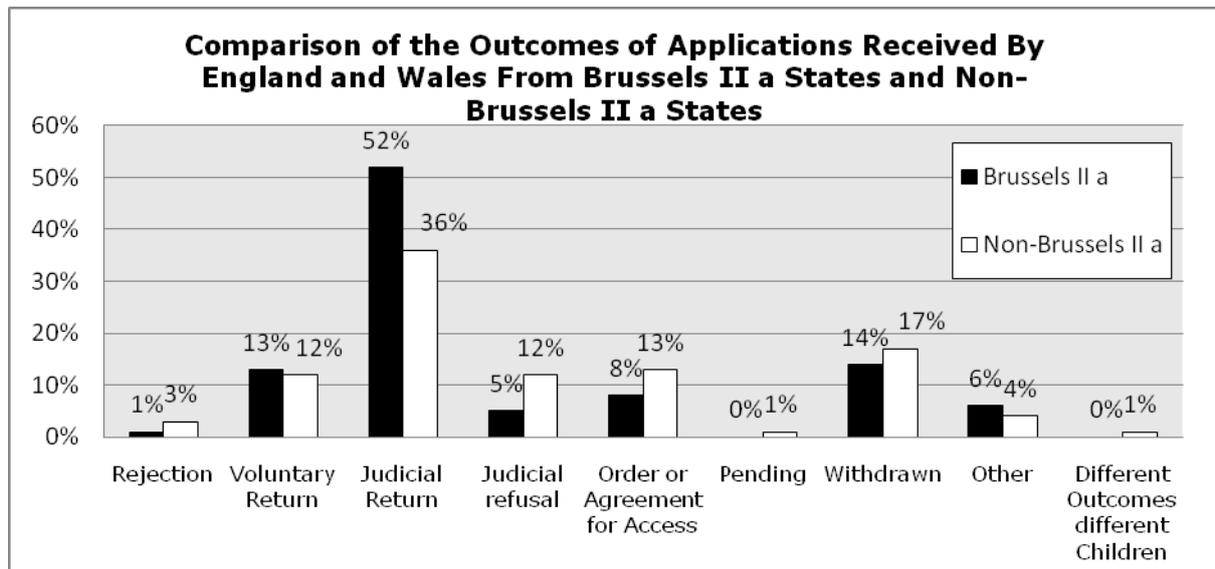
The Revised Brussels II a Regulation affects 26 European States (Brussels II a States). Brussels II a States who have responded to the questionnaire so far received a total of 988 return applications. 705 of these applications came from fellow Brussels II a States (71%) and the remaining 283 applications came from what will be termed Non-Brussels II a States (29%). In 2003, 62% of all applications received by what would now be Brussels II a States were from what would now be fellow Brussels II a States.

England and Wales received 200 return applications in 2008 and 131 of these came from Brussels II a States (66%). This is higher than in 2003 where 54% came from what is now a Brussels II a State and 1999 where the proportion was only 48%<sup>88</sup>. In 2008 England and Wales received 26 applications (13%) from Poland alone compared with 1 application (1%) in both 2003 and 1999.

### 2. Brussels II a Regulation and outcomes

The graph below shows the outcomes of applications from Brussels II a States and non-Brussels II a States that were received by England and Wales in 2008.

When the application came from a Brussels II a State there were proportionately more returns and less refusals or rejections. There were also slightly less withdrawals and no cases were still pending at the cut off date of 30<sup>th</sup> June 2010. There were also proportionately fewer agreements or orders of access.



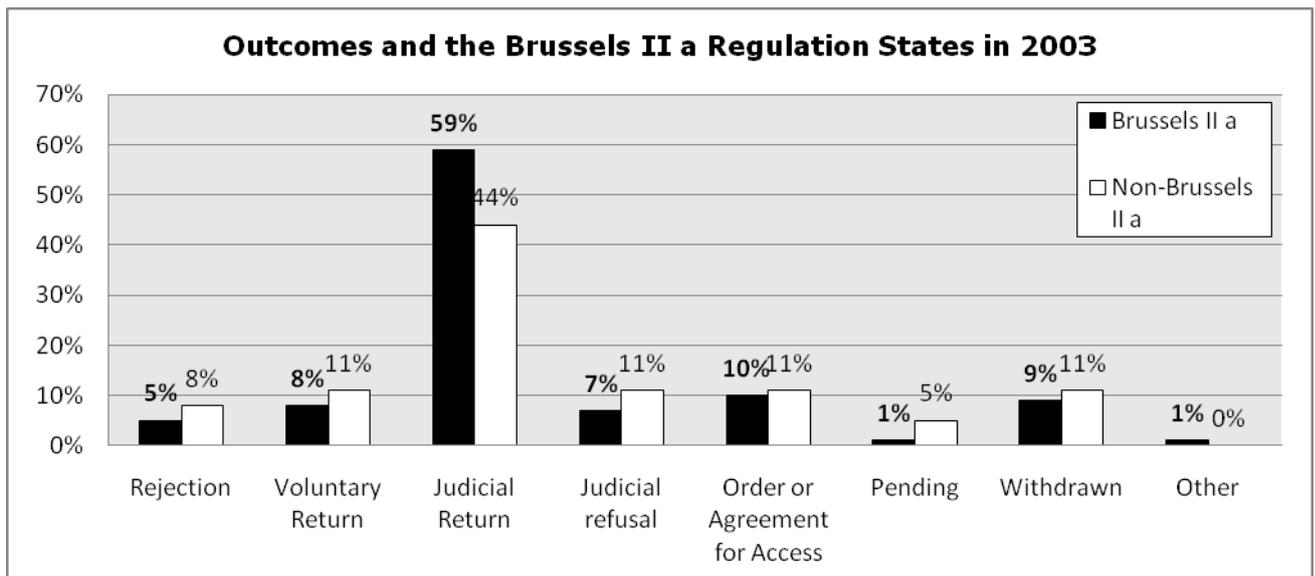
<sup>88</sup> In 2008 the most applications received by England and Wales from a single state were from Poland, making up 13% of all applications compared with only 1% in 2003 and in 1999. This goes some way to explaining the large increase in applications received from Brussels II a States. If Poland is excluded from all calculations then the proportion of applications received from Brussels II a States was 60% in 2008, 54% in 2003 and 47% in 1999.

For the main part, these results are reflective of the global picture of applications to which the Brussels II a Regulation applied which displayed similar patterns of more returns and fewer rejections, refusals, withdrawals and pending cases.

These results can also be compared with the 2003 survey by looking at the outcomes of cases received by England and Wales from States that would now be subject to the Brussels II a Regulation. Any applications between what are now Brussels II a States would not have been subject to the Revised Brussels II a Regulation in 2003 as it was not yet in force. But, by looking at the outcomes of what would now be Brussels II a States and Non-Brussels II a States, it is possible to ascertain whether the Brussels II a Regulation has had an impact, for example in increasing the return rate between Brussels II a States, or whether there has always been a higher proportion of returns between EU States.

In 2003 there was a higher return rate between what would now be Brussels II a States at 67% compared with 55% if the requesting state was one that is not now a Brussels II a State. In 2008 there was a 65% return rate between Brussels II a States and a 48% rate where the requesting state was Non-Brussels II a State.

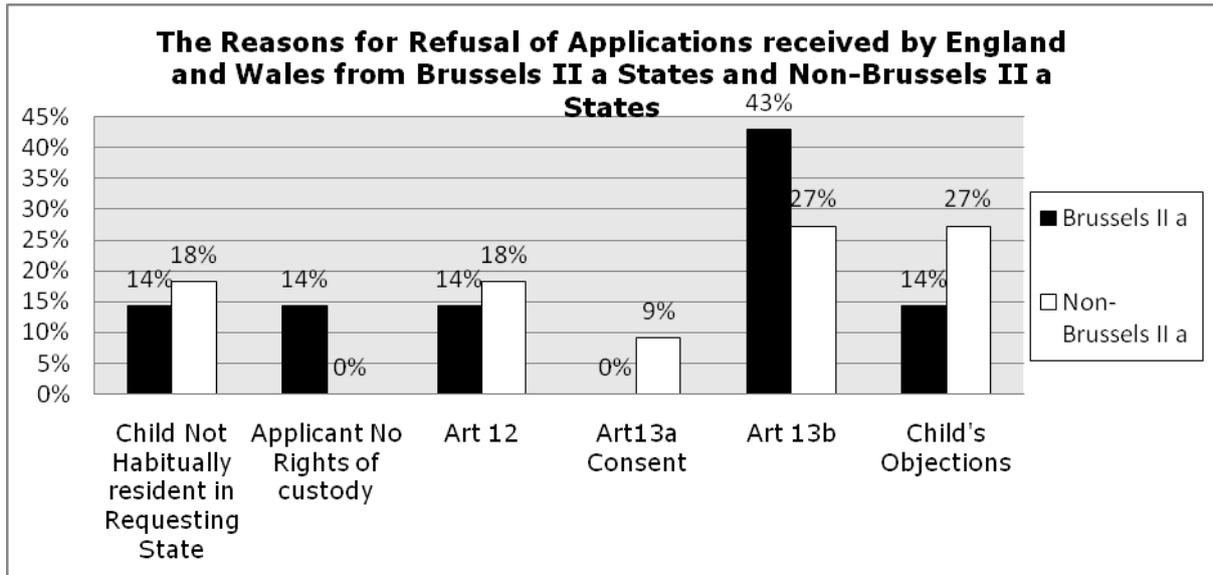
The 2003 statistics also display a similar pattern to the 2008 findings as there were also fewer judicial refusals, rejections by the Central Authority and cases pending between what would now be Brussels II a States as against what would be Non-Brussels II a States. The proportion of cases ending in withdrawal or some form of access was very slightly lower where the requesting state would today be Brussels II a State.



### 3. Brussels II a Regulation, refusals and reasons for refusal

Fewer applications received by England and Wales were refused if the requesting state was a Brussels II a State than if it was not (the proportions were 5% of applications to 12%, respectively).

Surprisingly the most frequent reason for refusal of an application from a Brussels II a State was Art 13(1) b) making up 43% of such refusals compared to only 27% of refusals where the application was not from a Brussels II a State. Furthermore, fewer applications from Brussels II a States were refused due to the objections of the child involved.



This fits with the overall analysis of the impact of the Revised Brussels II a regulation which also found that a far greater proportion of cases were refused under Art 13(1) b) where the application was subject to the regulation. Globally, 38% of all reasons for refusal were Art 13(1) b) where the application involved two Brussels II a States but was 27% where only the requested state was a Brussels II a State.

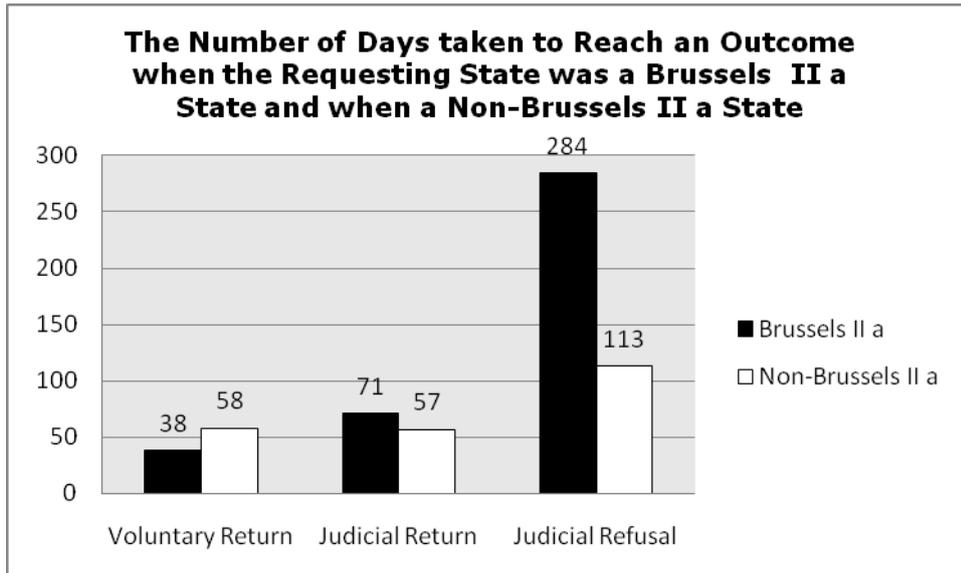
#### 4. Brussels II a Regulation and timing

The applications received by England and Wales in 2008 in which the Brussels II a Regulation applied were not resolved quicker than those from non-Brussels IIa States. The overall average time taken to reach a final settlement was 94 days if the requesting state was a Brussels II a State and 77 days if it was not.

Breaking these results down into the time taken to reach different outcomes, Brussels II a Regulation cases were resolved more quickly in applications ending in voluntary returns but judicial cases took longer, especially cases ending in a judicial refusal which took, on average, over double the time for a refusal where the Brussels II a Regulation was not invoked. The table below shows the time taken to reach a final outcome for applications received from Brussels II a States and non-Brussels II a States.

#### The Number of Days Taken to Reach a Final Outcome and the Brussels II a Regulation

|                     | Voluntary Return    |                         | Judicial return     |                         | Judicial Refusal    |                         |
|---------------------|---------------------|-------------------------|---------------------|-------------------------|---------------------|-------------------------|
|                     | Brussels II a State | Non-Brussels II a State | Brussels II a State | Non-Brussels II a State | Brussels II a State | Non-Brussels II a State |
| <b>Mean</b>         | <b>38</b>           | <b>58</b>               | <b>71</b>           | <b>57</b>               | <b>284</b>          | <b>113</b>              |
| Median              | 27                  | 54                      | 55                  | 55                      | 247                 | 109                     |
| Minimum             | 2                   | 5                       | 10                  | 8                       | 101                 | 60                      |
| Maximum             | 178                 | 154                     | 207                 | 151                     | 547                 | 193                     |
| <i>No. of Cases</i> | 17                  | 8                       | 68                  | 24                      | 7                   | 8                       |



The disparity between the number of days taken to reach a decision of judicial refusal is striking. Looking more closely at the figures, of the 7 applications between two Brussels II a States that were refused, there were two cases that took a long time to conclude (521 and 547 days, with the latter case involving an appeal). Discounting these two cases, the time taken fell to 183 days.

Of the 130 applications from Brussels II a States where dates were available, 37 were resolved in less than 6 weeks (28%). 83 were resolved in 12 weeks (64%) and 99 in 18 weeks (76%). This can be compared with the 67 applications from non-Brussels II a States, 21 of which were concluded in 6 weeks (31%), 44 in 12 weeks (66%) and 59 in 18 weeks (88%).

20 applications from Brussels II a States took over 24 weeks to conclude (15%) and 2 over 54 weeks (2%). This can be compared with 3 applications from non-Brussels II a States taking over 24 weeks (4%) and 1 taking over 54 weeks (1%).

## UNITED STATES OF AMERICA

### I. Overall Summary

In 2008, the United States of America (USA) received a total of 329 applications under the 1980 Hague Convention. It was in the minority of countries that did not receive a higher number of applications than in 2003.

Combining return and access, the USA received the largest proportion of its applications from Mexico, making up 31% of all applications received. This was followed by the UK (8%), Canada (4%), Germany (4%), Australia (4%) and France (4%).

In both return and access applications a smaller majority of the taking persons going to the USA were mothers compared with the global average. Looking at return applications between the USA and the UK, where the taking person was going to the USA 63% were mothers but when the application was made to the UK 83% were mothers.

In return applications fewer taking persons were the same nationality as the requested state, and so US citizens, than the global average. This was not true of access applications where the proportion was slightly higher than the global average.

With regard to the outcomes of cases, similar features were evident in both return and access applications. The rate at which an application ended in return or access was lower than the global average and there were far more withdrawals. Fewer applications were rejected by the Central Authority and fewer cases were judicially refused than the global average.

It took far longer to conclude a case than the global average and this was found to be true for all outcomes in both return and access applications.

### II. The number of applications received and sent in 2008

#### The Number of Applications Received and Sent by the USA in 2008, 2003 and 1999

|                 | 1999 | 2003 | 2008       |
|-----------------|------|------|------------|
| Incoming Return | 210  | 286  | <b>283</b> |
| Incoming Access | 44   | 59   | <b>46</b>  |
| Outgoing Return | 183  | 85   | <b>258</b> |
| Outgoing Access | 29   | 21   | <b>11</b>  |

In 2008 the USA received 283 return applications and 46 access applications, making a total of 329 incoming applications. This is a 5% decrease on the 345 applications that were received in 2003 but still a 14% increase on the number of cases in 1999. The ratio of incoming return to access applications was 86% to 14% respectively. In 2003 and in 1999 this ratio was 83% to 17%.

Additionally, 258 outgoing return applications were made and 11 outgoing access applications. This is a dramatic increase in outgoing return applications of 202% since 2003 and 87% since 1999.

Combining incoming and outgoing applications, the Central Authority handled a total of 598 cases. This is a 33% increase on the 466 applications in 2003 and a 28% increase on the 466 applications in 1999.

### III. Incoming Return Applications

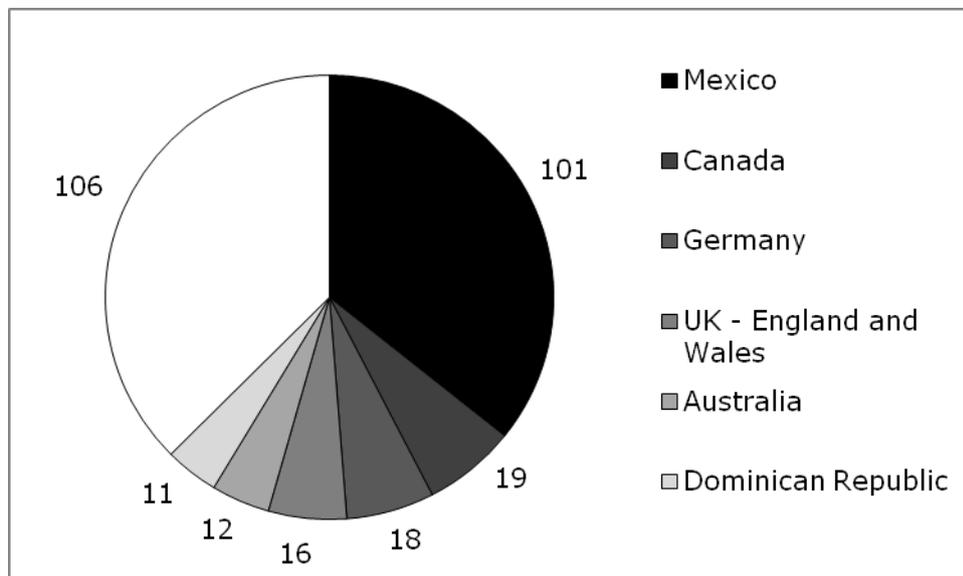
#### 1. The Contracting States which made the application

In 2008 the USA received return applications from 47 different central authorities – an increase on the 37 requesting Central Authorities in 2003 and 34 in 1999.

#### The Contracting States which made the most applications to the USA in 2008

|                        | 1999       | 2003       | 2008             |
|------------------------|------------|------------|------------------|
| Mexico                 | 57 (27%)   | 97 (34%)   | <b>101 (36%)</b> |
| Canada                 | 25 (12%)   | 28 (10%)   | <b>19 (7%)</b>   |
| Germany                | 21 (10%)   | 13 (5%)    | <b>18 (6%)</b>   |
| UK - England and Wales | 19 (9%)    | 33 (12%)   | <b>16 (6%)</b>   |
| Australia              | 9 (4%)     | 12 (4%)    | <b>12 (4%)</b>   |
| Dominican Republic     | 0 (0%)     | 0 (0%)     | <b>11 (4%)</b>   |
| Italy                  | 3 (1%)     | 12 (4%)    | <b>10 (4%)</b>   |
| France                 | 5 (2%)     | 7 (2%)     | <b>8 (3%)</b>    |
| Sweden                 | 5 (2%)     | 2 (1%)     | <b>6 (2%)</b>    |
| Colombia               | 2 (1%)     | 8 (3%)     | <b>5 (2%)</b>    |
| South Africa           | 2 (1%)     | 0 (0%)     | <b>5 (2%)</b>    |
| Spain                  | 4 (2%)     | 5 (2%)     | <b>5 (2%)</b>    |
| Other States           | 58 (28%)   | 69 (24%)   | <b>67 (24%)</b>  |
| <b>Total</b>           | <b>210</b> | <b>286</b> | <b>283</b>       |

#### The Requesting States for Return Applications Received by the USA in 2008



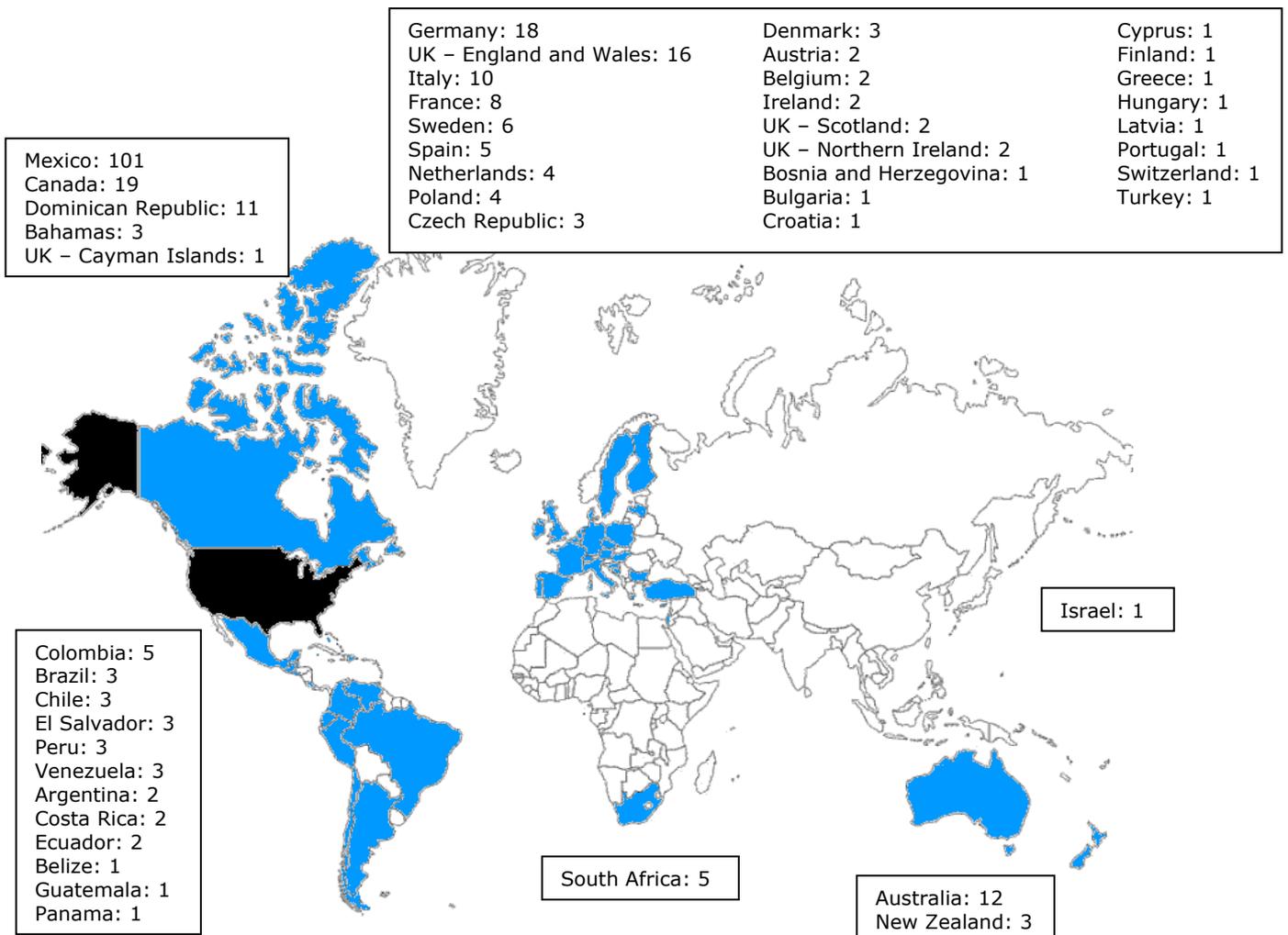
As in previous studies, the state that made the greatest number of return applications to the USA was Mexico. In 2008, 101 return applications were received from Mexico, making up 36% of all of applications received, compared with 97 (34%) of applications received in 2003 and 57 (27%) in 1999.

42% of applications received by the USA came from its two geographically proximate neighbours, Canada and Mexico, compared with 44% in 2003 and 39% in 1999. There were also a significant proportion of applications received from England and Wales and Germany both making 6% of applications. This can be compared with 12% and 5% respectively in 2003 and 9% and 10% in 1999.

Proportionately, the proportion of applications received from Australia has remained virtually constant with 12 applications (4%) in both 2008 and 2003 and 9 applications (4%) in 1999.

The Dominican Republic acceded to the Convention in 2004 and so was not included in previous surveys. It made up 4% of all applications received by the USA in 2008.

**Map of Contracting States which made return applications to the USA in 2008**



## **2. The Taking Person**

The majority of the taking persons going to the USA were mothers of the children involved. However, this is less pronounced in abductions to the USA than globally. In 2008, 59% (168) of persons taking children to the USA were mothers and 38% (108) fathers, compared with the global average of 69% and 28% respectively. The remaining 3% of taking persons in 2008 was made up of two cases involving a grandparent, two 'other relatives', one involving both parents, one adoptive parent and one case where the relationship was described as 'Other'.

In 2003, 64% of taking persons were the mother and 32% the father. The relationship between the taking person and the child was not recorded in 1999 but, since the vast majority of taking persons are the parent of the child, the gender of the taking person provides a good indication. In 1999, 67% were female and so probably mothers and 33% male and likely to be fathers.

## **3. The status of the taking person as carer in relation to the child**

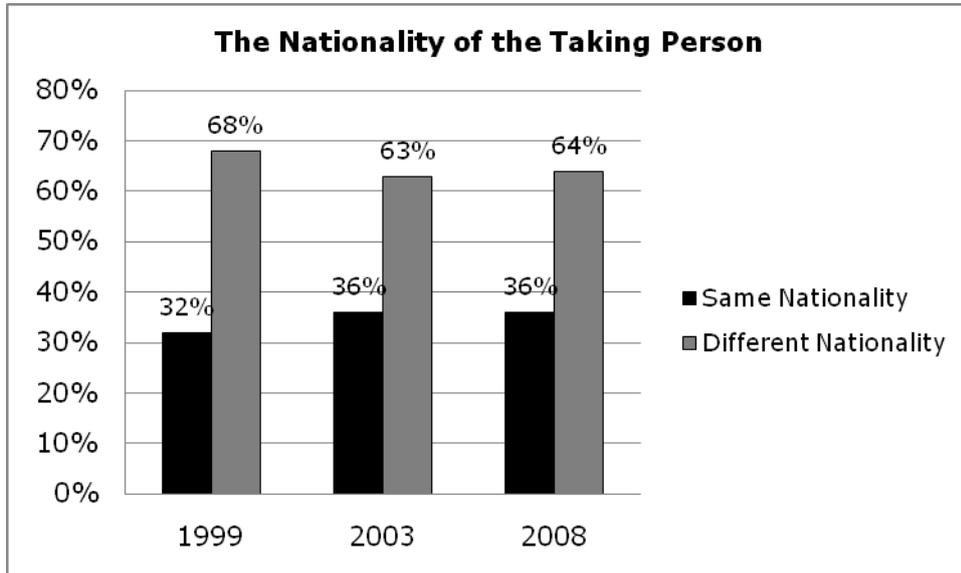
The USA did not provide information on the status of the taking person as carer.

## **4. The nationality of the taking person**

In 2008, 36% of applications received involved a taking person who was a US citizen (including 14 taking persons with dual nationality). This is a low proportion compared with the global 49% of taking persons who went to a state of which they were a national.

In 2003 the proportion of taking persons who were US nationals was the same at 36% whereas in 1999 this was lower at 32%. In each year the proportion of taking persons in applications received by the USA who had the same nationality as the requested State has been appreciably lower than the global average of 51% in 2008, 55% in 2003 and 52% in 1999.

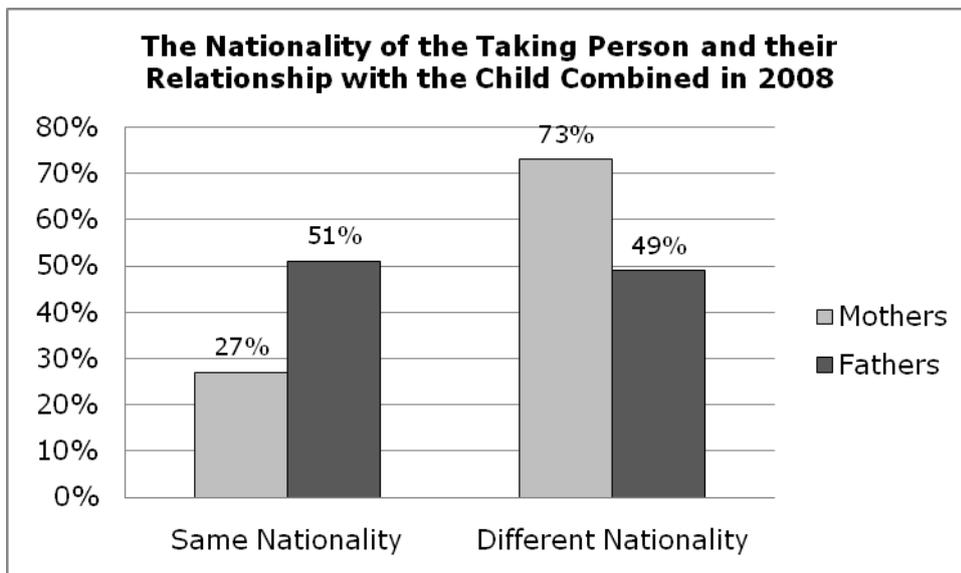
The chart below compares the 2008 findings on nationality with the 2003 and 1999 surveys. A clear pattern of abduction can be seen where close to two-thirds of taking persons coming to the USA are not a US citizen.



#### 5. The relationship and nationality of the taking person/respondent combined

In 2008, a higher proportion of fathers taking children to the USA were found to be US citizens than mothers. 51% of fathers were US nationals compared with 27% of mothers. Globally, 53% of taking mothers were found to have the same nationality as the requested state and 48% of fathers.

In 2003 the figures were 35% of mothers and 36% of fathers being US citizens. In 1999, the figures were closer to those in 2008 with 28% of females having US citizenship and 42% of males.



## 6. The Children

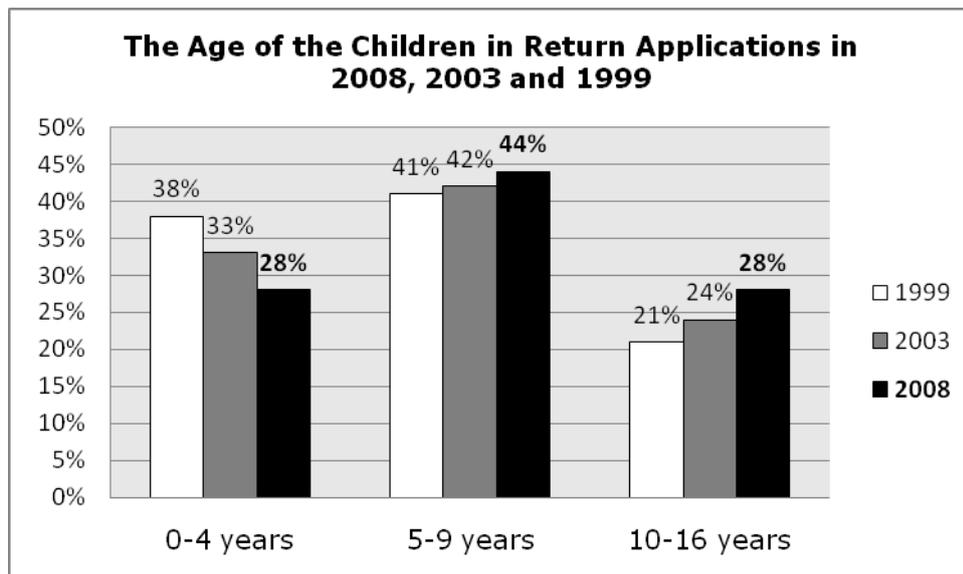
In 2008, 399 children were involved in the 283 return applications, making an average of 1.40 children per application, compared with the global average of 1.38 years. Proportionally, this is similar to past surveys with averages of 1.44 children in 2003 and 1.45 in 1999.

67% of applications received by the USA involved single children which has increased slightly from past surveys (65% in 2003 and 62% in 1999) but is in line with the global average of 69%.

## 7. The age of the children

The average age of a child involved in a return application received by the USA in 2008 was 7.2 years which is slightly higher than the global average of 6.4 years.

In 2003 the average age of a child involved was 6.3 years. In 1999 the ages of the children were recorded in age groups and so the 2003 and 2008 data will be displayed in this way so that it may be compared more easily. As can be seen from the graph below, there is a clear trend moving towards older children being involved in abductions with more falling into the 5-9 years and 10-16 years age brackets and less into the 0-4 years.



## 8. The gender of the children

In 2008, 49 % of children involved in return applications were female and 51% male. This is similar to the results of past surveys (51% were male in 2003 and 53% in 1999).

Globally, the proportions of male and female children in 2008 were 51% and 49% respectively.

## 9. The overall outcomes

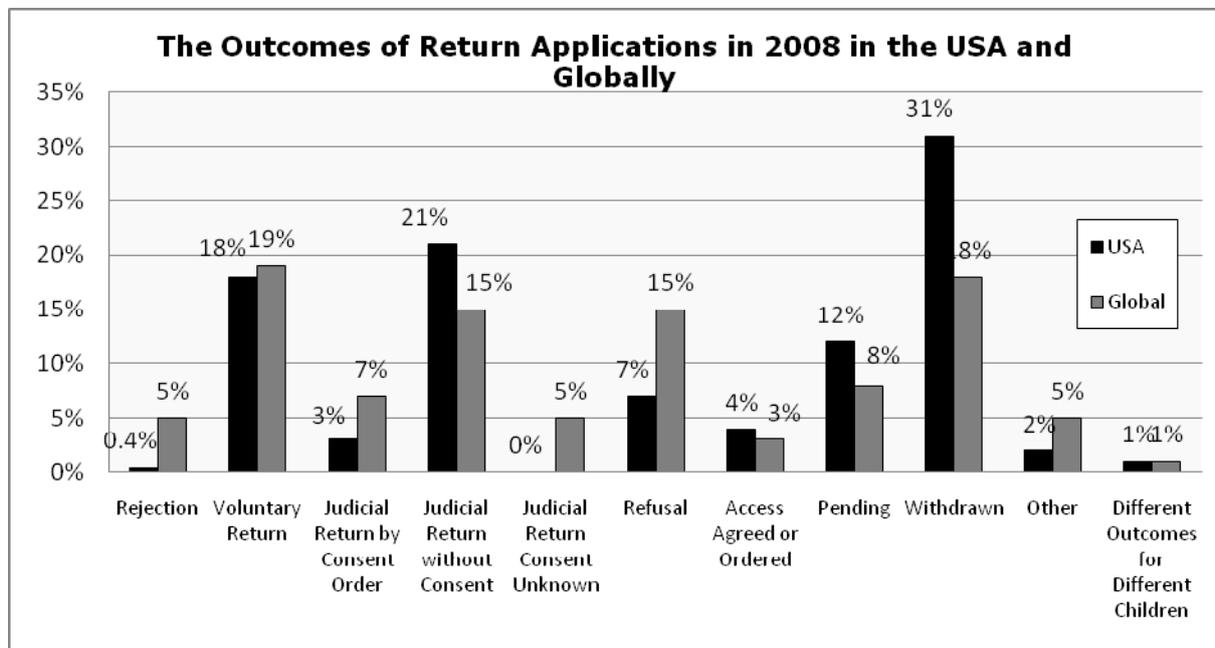
The table below shows all the outcomes of return applications received by the USA in 2008.

### The Outcomes of Return Applications in 2008

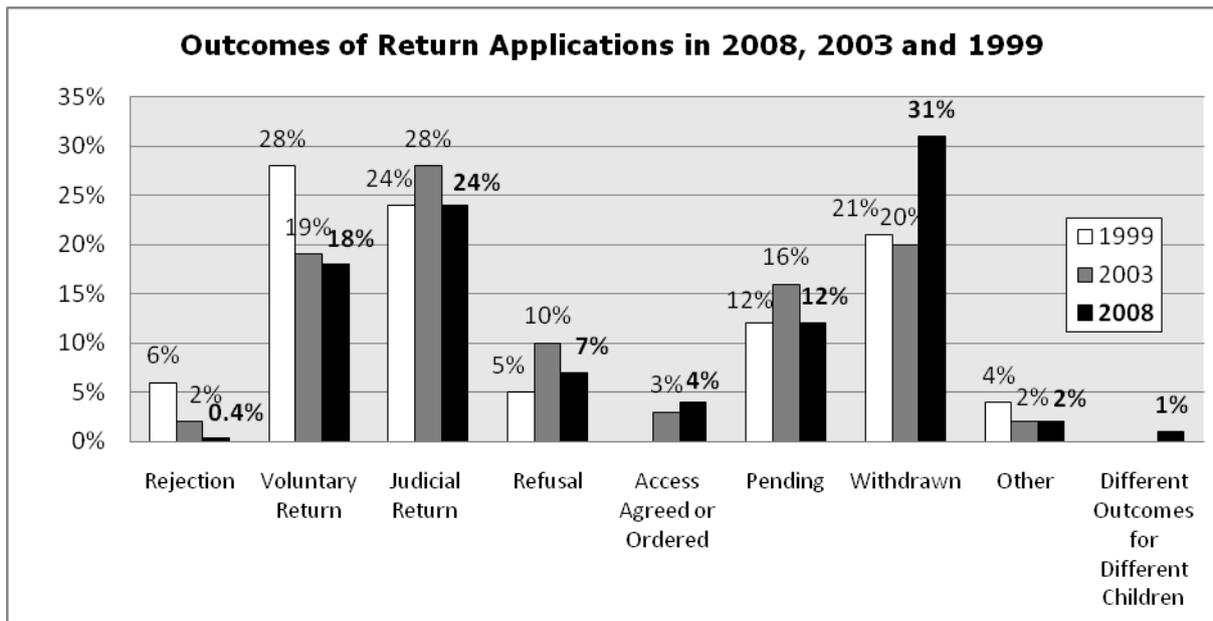
|   | USA      | Global |
|---|----------|--------|
| Rejection                                 | 1 (<1%)  | 5%     |
| Voluntary Return                          | 51 (18%) | 19%    |
| Judicial Return by Consent Order          | 8 (3%)   | 7%     |
| Judicial Return without Consent           | 60 (21%) | 15%    |
| Judicial Return consent Unknown           | 0 (0%)   | 5%     |
| Refusal                                   | 20 (7%)  | 15%    |
| Access Agreed or Ordered                  | 12 (4%)  | 3%     |
| Pending                                   | 34 (12%) | 8%     |
| Withdrawn                                 | 87 (31%) | 18%    |
| Other                                     | 6 (2%)   | 5%     |
| Different Outcomes for Different Children | 4 (1%)   | 1%     |

The graph below compares the outcomes of applications in 2008 made to the USA to those made globally. The overall return rate of applications received by the USA in 2008 was 42% compared with the overall global return rate of 46%. Of the cases that were decided in court, 63% ended with a decision for return compared with 59%, globally.

The most frequent outcome was a withdrawal with 31% of applications ending in this way, higher than the global withdrawal rate of 18% of cases. There was also a higher proportion of cases pending in the USA at 12% compared with the global figure of 8%. The proportion of cases judicially refused in the USA was lower at 7% than 15% globally.



To compare the 2008 results to the outcomes of past surveys the results have been regrouped with only one category for judicial returns. This is to remain in line with the inquiries made in 1999.



Adding the 2008 data to that of previous surveys there is a marked trend of fewer rejections with 6% of cases ending this way in 1999, 2% in 2003 and only 0.4% in 2008.

The overall return rate has also fallen from 52% in 1999 to 47% in 2003 and 42% in 2008. One of the reasons for this is the reduced number of voluntary returns which also displays a declining trend. 28% of applications ended in a voluntary return in 1999 compared with 19% in 2003 and 18% in 2008. The judicial return rate is lower than was recorded in 2003 but the same as in 1999. It must also be noted that access was agreed in a further 4% of cases, slightly higher than the 3% recorded in 2008.

In 2008 there were far more withdrawn cases than recorded in previous studies at 31% compared with 20% in 2003 and 21% in 1999. In many withdrawn cases the reasons were not given but where they were the most common reason recorded was that the applicant stopped participating in the case.

The proportion of cases still pending was lower than in 2003 but the same as in 1999 and still higher than the global average of 10%.

In 2008, 28% of cases were decided in court which is lower than the global average of 44% and the 2003 USA figure of 40% and 38% in 1999. As mentioned previously, the rate of return of cases that went to the US court in 2008 was 62% which is lower than the 68% in 2003 and 83% in 1999.

Of the 4 applications where there were different outcomes for different children two involved one or more of the children reaching the age of 16 and the remaining children being returned voluntarily. In one case one child was returned voluntarily and the application was withdrawn in relation to the second child. In the final case the application was rejected for one child due to their objections and their two siblings were returned voluntarily.

## 10. The reasons for rejection

In 2008 only one incoming return application was rejected. The reason for this rejection was that there was 'no prima facie case' and has been recorded as 'Other'.

### 11. The reasons for judicial refusal

Out of the 80 cases that went to court, 20 (25%) were refused compared with 33% globally. A further case resulted in different outcomes for different children and the return of one child was refused due to their objections and the other two children were voluntarily returned. The proportion of judicial refusals is exactly the same as in 2003 but an increase on the 17% (10 out of 60) applications in 1999.

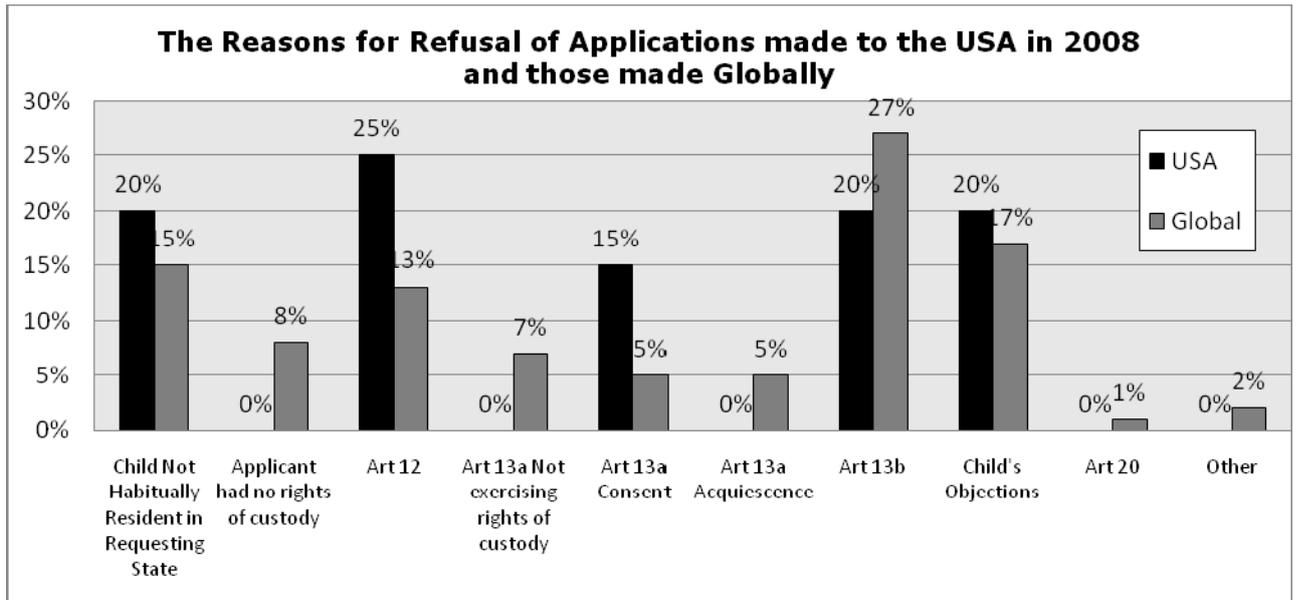
In the table below the reasons for the 20 applications in which a return order was refused in the USA are compared with the reasons for refusal globally<sup>89</sup>.

**The Reasons for Refusal in Applications Received  
by the USA and Globally in 2008**

|   | Frequency | Percentage  | Global Percentage |
|---|-----------|-------------|-------------------|
| Child Not Habitually Resident in Requesting State | 4         | 20%         | 15%               |
| Applicant had no rights of custody                | 0         | 0%          | 8%                |
| Art 12  | 5         | 25%         | 13%               |
| Art 13(1) a) Not exercising rights of custody     | 0         | 0%          | 7%                |
| Art 13(1) a) Consent                              | 3         | 15%         | 5%                |
| Art 13(1) a) Acquiescence                         | 0         | 0%          | 5%                |
| Art 13(1) b)                                      | 4         | 20%         | 27%               |
| Child's Objections                                | 4         | 20%         | 17%               |
| Art 20  | 0         | 0%          | 1%                |
| Other   | 0         | 0%          | 2%                |
| <b>Total</b>                                      | <b>20</b> | <b>100%</b> | <b>100%</b>       |

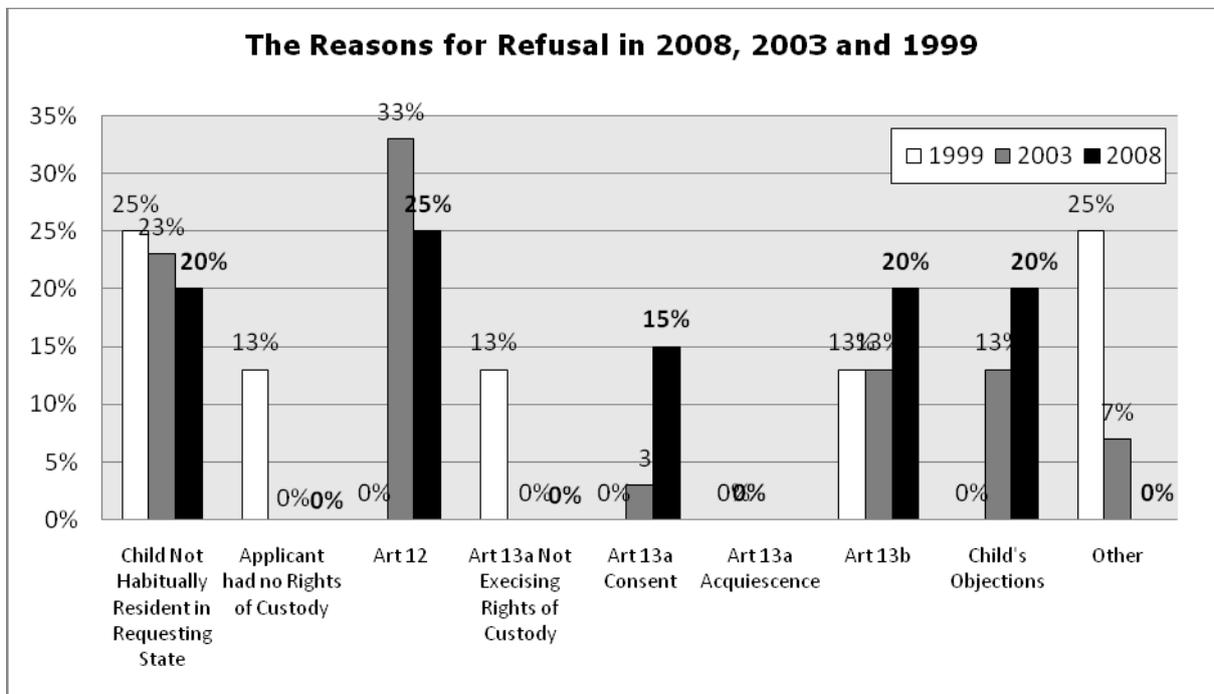
The reasons for refusal of applications to the USA are quite well spread. A high proportion of cases were refused under Art 12 (25%) compared with only 13% globally. The same can be said for a finding that the child was not habitually resident in the requesting state (20% compared with 15% globally), Art 13(1) a) consent (15% compared with 5% globally) and for refusals due to the child's objections (20% compared with 17% globally). Less cases were refused under Art 13(1) b) (20% compared with 27% globally) and none were refused because the applicant was not exercising rights of custody, had no rights of custody, had acquiesced or under Art 20.

<sup>89</sup> The global reasons for refusal include all the reasons given in applications refused for more than one reason.



As in 2003, the most commonly recorded reason for judicial refusal was Art 12 (25%), although slightly lower in 2008 than the proportion in 2003, no cases were refused for this reason in 1999. A lower proportion were refused because the child was not found to be habitually resident in the requesting state and none because the claimant had no rights of custody or was not exercising them for the purposes of Art 13(1)(a). In all three statistical surveys no application received by the USA has been judicially refused due to the acquiescence of the applicant.

More cases were refused for reasons of Art 13(1) consent, Art 13(1) b) or due to the child's objections.



## 12. The reasons for judicial refusal and the taking person

In the 21 cases that were judicially refused (including the one case where there were different outcomes for different children), 12 involved a taking mother and 9 a taking father. Where the taking person was the mother of the child then the most common reason for refusal was Art 13(1) b) (33%) followed by a finding that the child was not habitually resident in the requesting state (25%).

Where the taking person was the father of the child then the most common reason for refusal was the child's objections (38%) or under Art 12 (38%).

These findings are in line with those globally where Article 13(1) b) was the sole reason for refusal in 27% of refused applications where the taking person was the mother of the child and only 6% where the taking person was the father and the child's objections were followed in 22% of applications where the taking person was the father compared with only 7% where the taking person was the mother.

## 13. Timing

The overall average time taken to reach a final settlement in the return applications received by the USA was 227 days. The average time taken depended heavily on the outcome which was reached. As can be seen in the table below, voluntary returns were generally resolved more quickly, in an average on 160 days whereas judicial refusals took 421 days to conclude.

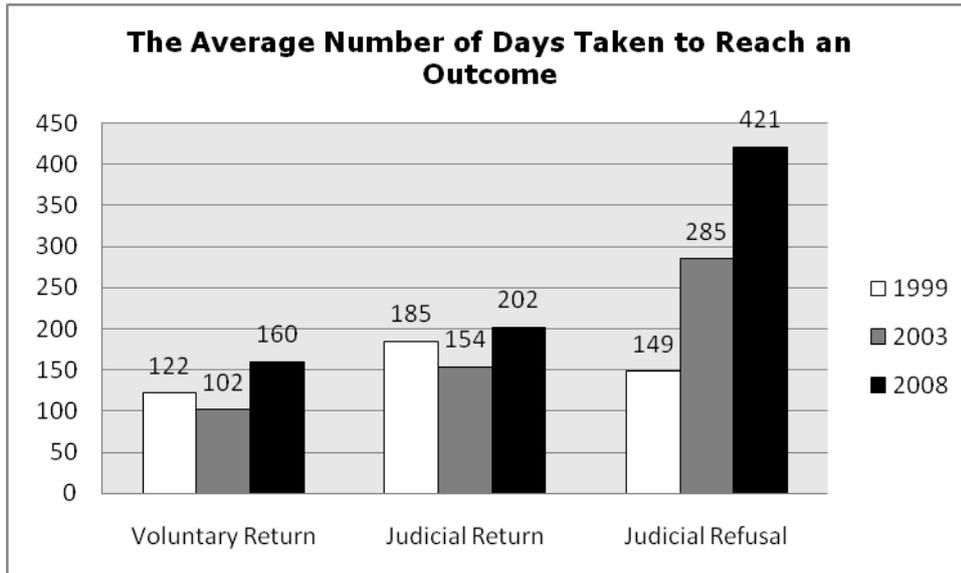
The table below demonstrates the variation in time taken to reach an outcome and gives a more informative picture of the system in the USA.

**The Number of Days Taken to Reach an Outcome**

|                        | <b>Voluntary Return</b> | <b>Judicial Return by Consent Order</b> | <b>Judicial Return without Consent</b> | <b>Judicial Refusal</b> |
|------------------------|-------------------------|---|--|-------------------------|
| Mean                   | 160                     | 135                                     | 209                                    | 421                     |
| Median                 | 95                      | 113                                     | 172                                    | 445                     |
| Minimum                | 6                       | 44                                      | 2                                      | 19                      |
| Maximum                | 648                     | 245                                     | 765                                    | 880                     |
| <i>Number of Cases</i> | 31                      | 6                                       | 55                                     | 20                      |

Globally, applications were resolved more quickly with judicial return order being reached in 166 days compared with 202 days in the USA. A judicial refusal took an average of 286 days to conclude compared with 421 in the USA and a voluntary return took 121 days compared with 160 days.

To compare these outcomes with those of past surveys, judicial returns have been combined to correspond with how the data was recorded in 1999. All outcomes took longer to conclude than in both 2003 and 1999.



### Time taken to send application to court

In 2008 the length of time that the central authority held the application was recorded for the first time. In the USA it took an average of 207 days before the application was sent to court and then a further 106 days for the court to conclude it<sup>90</sup>. This can be compared with the global averages of 76 days to send the application to court and a further 153 days before a final decision.

### Appeals

In 2008, 80 return applications went to court and 12 of these decisions (15%) were appealed, considerably lower than the global average of 28%. The time taken to reach a final decision is obviously affected heavily by whether that decision was reached at first instance or appellate level. In 2008 the average time taken to reach a first instance decision was 209 days compared with 441 days to finalise a case that was appealed. Globally first instance decisions took 168 days and appealed decisions 324 days.

In 2003 and 1999 there were remarkably few appeals and information regarding speed was available only in two cases: a judicial refusal and a judicial return which took 502 and 23 days respectively to reach a final outcome.

## III. Incoming access applications

### 1. The Contracting States which made the application

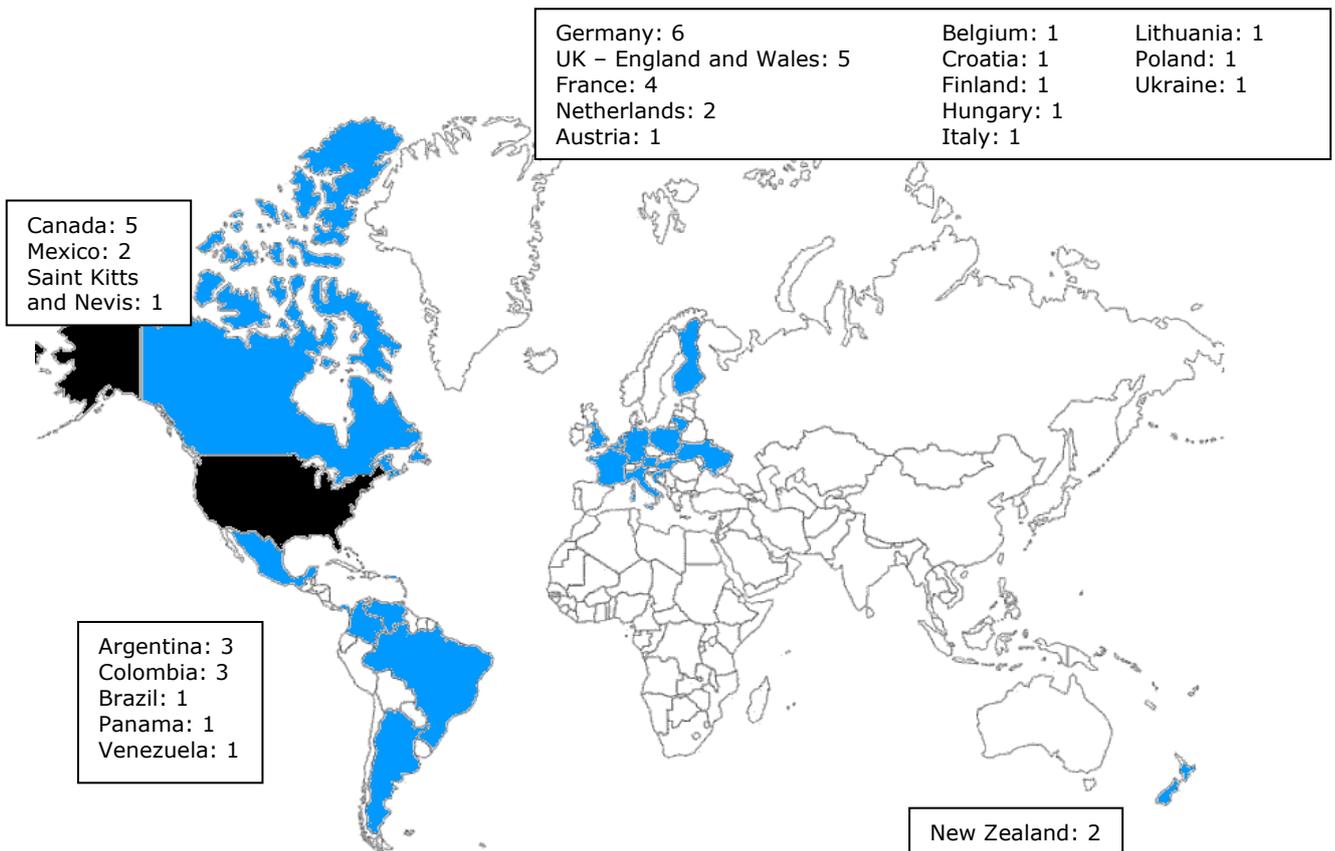
In contrast to the large number of return applications received from Mexico, they were the requesting state in only 2 access applications in 2008. Germany transmitted the most access applications to the USA making up 13% of the total applications, followed by Canada and England and Wales (both 11%).

<sup>90</sup> These figures are based on 73 applications where the date sent to court was recorded and 62 applications where the time taken for the court to conclude the case was calculated from the date sent to court and the date the case was concluded.

### The Requesting States for Access Applications in 2008

|                        | 1999      | 2003      | 2008            |
|------------------------|-----------|-----------|-----------------|
| Germany                | 5 (11%)   | 2 (3%)    | <b>6 (13%)</b>  |
| Canada                 | 2 (5%)    | 3 (5%)    | <b>5 (11%)</b>  |
| UK - England and Wales | 7 (16%)   | 15 (25%)  | <b>5 (11%)</b>  |
| France                 | 5 (11%)   | 5 (8%)    | <b>4 (9%)</b>   |
| Argentina              | 1 (2%)    | 6 (10%)   | <b>3 (7%)</b>   |
| Colombia               | 2 (5%)    | 2 (3%)    | <b>3 (7%)</b>   |
| Mexico                 | 5 (11%)   | 5 (8%)    | <b>2 (4%)</b>   |
| Netherlands            | 0 (0%)    | 1 (2%)    | <b>2 (4%)</b>   |
| New Zealand            | 2 (5%)    | 0 (0%)    | <b>2 (4%)</b>   |
| Other States           | 15 (34%)  | 20 (34%)  | <b>14 (30%)</b> |
| <b>Total</b>           | <b>44</b> | <b>59</b> | <b>46</b>       |

### Map of Contracting States which Made Access Applications to the USA in 2008



## 2. The Respondent

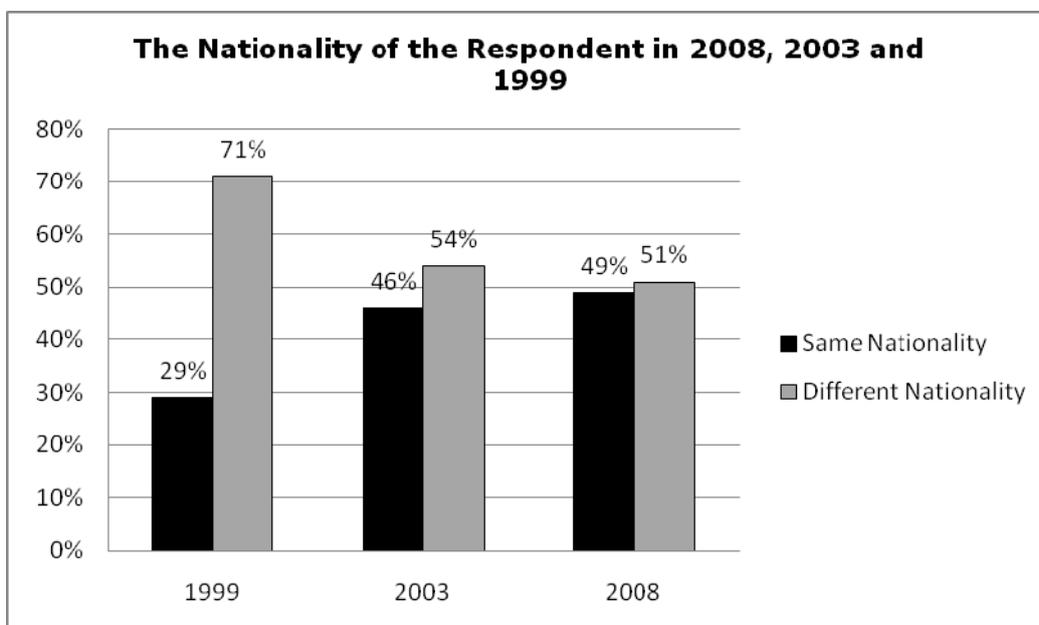
In 73% of the access applications received the respondent was the mother, lower than the global average of 79%. 25% of respondents were fathers and one case involved a grandparent. This can also be compared with the past averages of the USA with 69% of respondents being mothers in 2003 and 81% in 1999<sup>91</sup>.

## 3. The status of the respondent as carer in relation to the child

The USA did not provide information on the status of the taking person or respondent as carer.

## 4. The nationality of the respondent

Globally, 50% of respondents in access cases had the same nationality as the requested state. In the USA this figure was 49%, higher than previous surveys where 46% had the same nationality in 2003 and 29% in 1999.

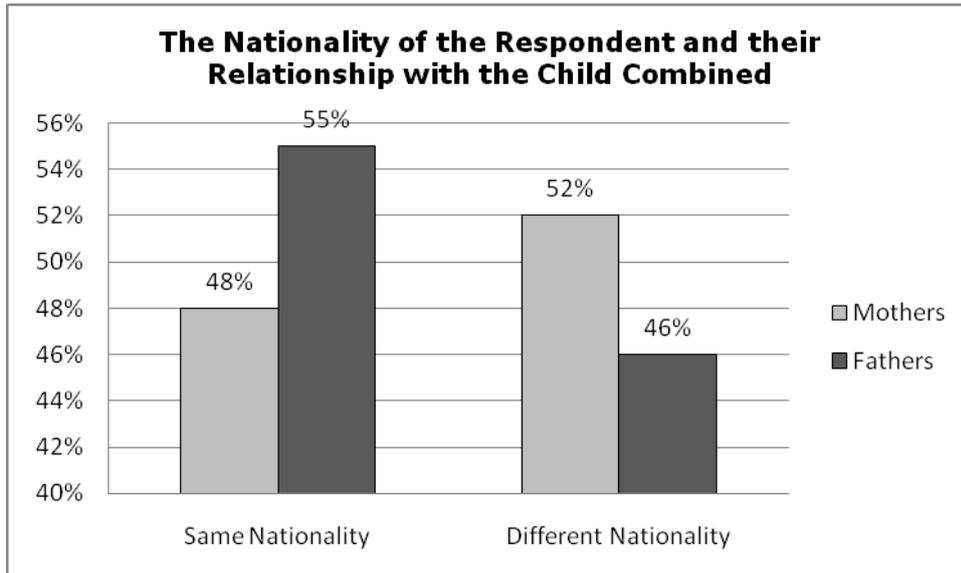


## 5. The relationship and nationality of the respondent combined

More respondents in access applications who were fathers were US citizens than respondents that were mothers – a similar pattern to return applications. In 2008, 48% of respondent mothers held US citizenship and 55% respondent fathers. Globally, 52% of respondent mothers were found to have the same nationality as the requested state and 45% of fathers.

This was also found in past surveys with 37% of mothers and 75% of fathers having US nationality in 2003 and 28% of mothers and 43% of fathers in 1999.

<sup>91</sup> The relationship between the respondent and the child was not recorded in the 1999 survey but this figure has been estimated from the gender of the respondent.

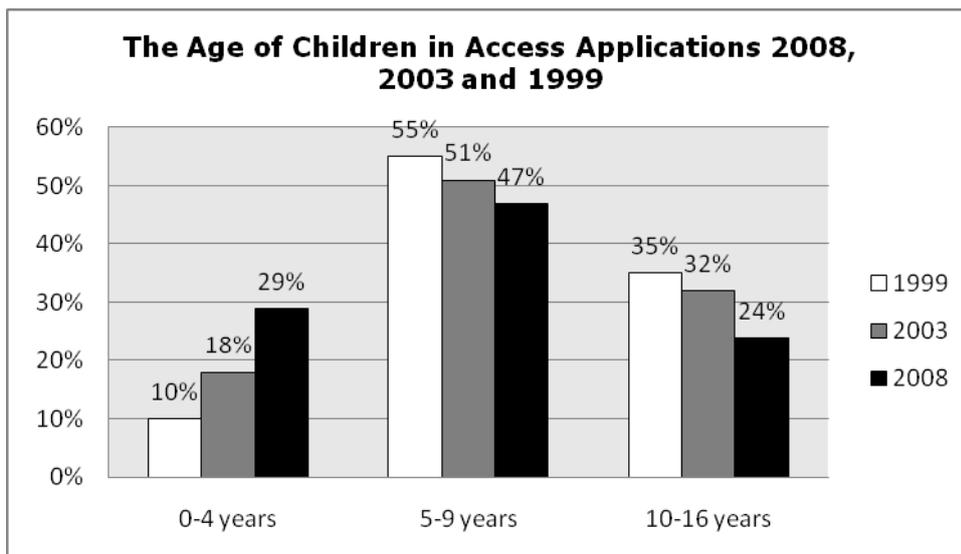


## 6. The Children

In 2008, 58 children were involved in the 46 access applications to the USA making an average of 1.26 children per application compared with the global average of 1.32 children. This evidences a decreasing trend in the USA figures from an average of 1.44 children in 2003 and 1.61 children in 1999. Unsurprisingly, the number of single child applications has risen to 76% from 63% in 2003 and 57% in 1999 and is now higher than the global average of 71%.

## 7. The age of the children

The average child involved in an access application was 7 years, lower than the global average of 7.8 years. Looking at the graph below it seems that the children involved in access applications to the USA are getting gradually younger with more applications falling within the 0-4 years bracket.



## 8. The gender of the children

In 2008, exactly 50% of children involved in access applications received by the USA were male and 50% female. Globally, 49% of children involved in access applications were female and 51% male.

In 2003, 44% of children involved in applications made to the USA were female and 56% male and in 1999 49% female and 51% male.

## 9. The overall outcomes

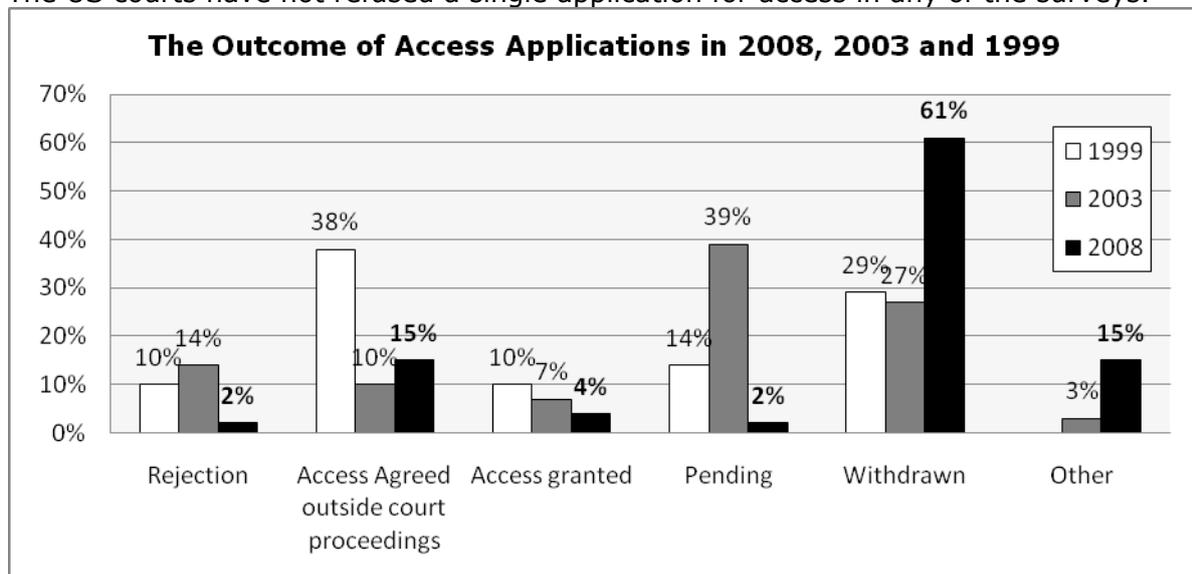
The table below shows the outcomes of the 46 access applications received by the USA in 2008. The majority of applications were withdrawn with 61% of applications ending this way, double the global average of 30%. Access was agreed or judicially granted in 19% of cases which is lower than the global average of 22%. The USA did not judicially refuse any access applications and the Central Authority rejected only one application. The number of cases still pending at the cut off date of 30<sup>th</sup> June 2010 was a low 2% compared with the global figure of 17%.

### Outcomes of Access Applications Received by the USA in 2008

|                             | USA      | Global |
|-----------------------------|----------|--------|
| Rejection                   | 1 (2%)   | 13%    |
| Access Agreed outside court | 7 (15%)  | 8%     |
| Access granted              | 2 (4%)   | 14%    |
| Access refused              | 0 (0%)   | 3%     |
| Pending                     | 1 (2%)   | 18%    |
| Withdrawn                   | 28 (61%) | 30%    |
| Other                       | 7 (15%)  | 16%    |

The graph below shows how the outcomes in 2008 compare with those of previous surveys. Withdrawals have increased and rejections and pending cases have decreased. Overall the rate of access being agreed or ordered has risen slightly to 19% from 17% in 2003 but is still lower than the 48% recorded in 1999.

The US courts have not refused a single application for access in any of the surveys.



**10. The reasons for rejection by the Central Authority**

In 2008, one access case was rejected by the District Attorney's office in California because there was 'no legal basis for the case'.

**11. The reasons for judicial refusal**

No applications were judicially refused in 2008.

**12. Timing**

In 2008, information about timing was recorded in only 6 access applications and in all of these cases access was either granted or agreed outside of court. Overall it took an average of 529 days to reach an outcome, a lot longer than the global average of 339 days. Voluntary agreements took an average of 544 days and the two applications in which access was granted took 139 days and 860 days. This can be compared with the global averages of 309 days for a voluntary agreement, 357 days for a judicial order for access and 276 days for a refusal.

Applications took significantly longer than in 2003 where it was recorded that voluntary decisions took 301 days and access orders 330 days. In 1999, four access applications (25%) took 0-6 weeks, three (19%) took 6-12 weeks, three (19%) took 3-6 months and six (38%) took longer than 6 months. In 2008 five cases took over 6 months and only one was resolved in 3-6 months.