

Hague Domestic Violence Forum  
**Expert Paper #6**

Briefing on Protective  
Measures

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**Biography**

Professor Merle Weiner is the founder of the Domestic Violence Clinic at the University of Oregon School of Law, of which she was the faculty director for twenty years. She is an expert in domestic abuse law, family law, international and comparative family law, family law policy and the Hague Convention on the Civil Aspects of International Child Abduction. She co-wrote the first US casebook on international and comparative family law, entitled 'Family Law in the World Community', which is now in its third edition. Her latest article, 'You Can and You Should', was written to help trial courts apply the Hague Abduction Convention justly when the respondent is a domestic violence survivor.

Many people emphasize a 'return plus protective measures' approach in cases of domestic violence as an alternative to 'non-return' when an article 13(1)(b) exception applies. Those who take this approach generally recognize that protective measures must be effective, i.e., enforceable at a minimum.<sup>1</sup> Because there are cases in which protective measures have not protected the taking parent and child, some jurists desire more information about protective measures in each jurisdiction as well as how to make their own orders enforceable. They believe that such information will allow them, in advance of return, to require parties to obtain the necessary protective measures in the requesting state or to take steps to render their own order with protective measures enforceable in the requesting state. Their focus on ensuring enforceable measures prior to the child's return is wise because some protective measures can enhance danger unless 'on the spot' enforcement exists for their violation. As a Canadian expert at a HCCH meeting explained, '[A] time of high risk of violence or death for a victim or potential victim of violence occurs when the police have been called to the scene by an individual who feels threatened, and then leave if they are unable to enforce a protection order.'<sup>2</sup>

Despite the desire to protect the taking parent and child in the child's habitual residence, a focus on the availability and enforceability of protective measures does not address the core problems for adult and child victims of domestic violence at the heart of article 13(1)(b).

### Contingencies create a dangerous solution

Article 13(1)(b) is based on the premise that return should not occur when there is real danger to the child,<sup>3</sup> but returning the child with protective measures is an inherently less safe solution than non-return. When a judge returns a child with protective measures, the respondent's and child's safety depends upon the occurrence of multiple contingent conditions, none of which are in a judge's control. A simple example follows: Imagine a judge returns the child but beforehand subjects the petitioner/abuser (hereafter 'abuser') to a foreign or domestic order requiring no contact with the respondent/survivor (hereafter 'survivor'). Imagine further that the abuser violates the order and, for whatever reason, the police are not called. The order's enforcement may require action by the survivor (and perhaps her lawyer), and/or a prosecutor, and a foreign judge. However, the survivor may lack the capability and/or resources to obtain enforcement, a prosecutor may decline to prosecute (perhaps because of other pressing demands or because the police's investigation was too cursory), and, assuming the case is brought, a trial judge may make a reversible error in ruling for the abuser because of too little sleep.<sup>4</sup> In contrast, granting non-return automatically achieves the safety that comes from geographical distance, and that outcome depends upon no one else.

### Information reliability is itself a contingency

Judges who seek to return the child with protective measures require reliable information about protective measures and their enforceability; otherwise, there will be delay, wasted party resources, and potential harm to the survivor and child. A vast amount of information is required to operationalize a 'return plus protective measures' approach across all countries that are party to the Convention. Specifics about the law are essential. As Professor Heather Douglas correctly noted, there are 'dangers [in] assuming that a response that works or fails in one country will necessarily work or fail in another.'<sup>5</sup> Consequently, a universal 'return with protective measures' approach has very high transaction costs, whether they are borne by the Conference, countries, or parties themselves.

The volume of information on the *availability* of protective measures across all contracting state is

enormous because details matter. Consider, for example, the United States. Each of the fifty states has its own civil protective order regime (often with multiple types of orders, each with different requirements and remedies). Only some states allow restraining orders by consent, and those states sometimes require that there be an admission of violence sufficient to support the order<sup>6</sup> (subjecting the abuser to potential criminal prosecution). In the United States, consent orders that are separate from the standard restraining order system are potentially less efficacious; being nonstandard, police are less likely to enforce them 'on-the-spot,' clerks are less likely to enter them into state and national restraining order databases, and prosecutors are less likely to prosecute for violation of the automatic gun ban. Because these types of details are important, and because laws change over time, a judge must be vigilant. Information that is accurate today may be inaccurate tomorrow.

The quantity of information on the *enforceability* of foreign orders is similarly vast because the enforceability of protective measures differs dramatically across State Parties.<sup>7</sup> Following the correct rules for recognition and enforcement of a foreign order can be 'prohibitively expensive and subject [proceedings] to considerable delay,'<sup>8</sup> but mistakes about the process can cause additional expense, delay, and risk. For example, a person might reasonably think the United States would automatically enforce a 'foreign order' pursuant to federal law or the uniform law addressing restraining orders, but a close reading indicates that the term 'foreign order' only applies to restraining orders from other U.S. states, not foreign countries.<sup>9</sup> Instead, protective measures could be enforceable pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act.<sup>10</sup> Recently, the Letter from *Rio de Janeiro*, produced by Judges of the International Hague Network from Latin America and the Caribbean, states, 'some Latin American and Caribbean countries have not adhered to the 1996 Hague Convention ... in respect of parental responsibility and measures for the protection of children.'<sup>11</sup> While it is unclear whether noncompliant countries disregard the provisions on the enforceability of foreign protective measures, the statement raises questions and must be addressed in individual cases. Certainly, it is not hard to find Hague cases where courts have made incorrect assumptions about enforceability.<sup>12</sup> Yet, so long as judges ensure enforceability prior to return, mistakes about enforceability can be caught although they will cause unnecessary delay and expense.

For cases governed by special regimes, such as the 1996 Hague Protection Convention or the European Union's regulations, the enforceability of protective measures is less varied, but 'rather complicated.'<sup>13</sup> Assuming these instruments' enforcement provisions apply to orders that protect the parent accompanying the child to the habitual residence,<sup>14</sup> contingencies still exist. For example, 'urgent measures' ordered pursuant to article 11 of the 1996 Hague Protection Convention are 'recognised by operation of law in all other Contracting Parties,' but they still need to be 'declared enforceable ... in accordance with the procedure provided in the law of the State where enforcement is sought.'<sup>15</sup> Despite a legal requirement for a simple and rapid procedure to obtain a declaration of enforceability when registration is not sufficient,<sup>16</sup> 'court proceedings in many Contracting States are far from swift.'<sup>17</sup> And despite an order being enforceable, its ultimate enforcement depends upon the laws of the enforcing country 'taking into consideration the best interests of the child.'<sup>18</sup>

Similarly, the European Union's Regulation 2019/1111<sup>19</sup> facilitates enforcement, but it is 'convoluted and difficult to apply, even for expert legal practitioners.'<sup>20</sup> Protective measures still need a declaration of enforceability under article 36<sup>21</sup> and the order may need to be translated.<sup>22</sup> Enforcement depends on the law of the Member state,<sup>23</sup> and may be threatened if there is an appeal, or the time to appeal has not concluded,<sup>24</sup> or if, in exceptional cases, enforcement would expose the child to a grave risk of physical or psychological harm.<sup>25</sup> As one scholar noted, it is not yet clear whether these measures 'are effective

when applied to 'hard cases' such as those stemming from contexts of domestic violence.<sup>126</sup>

The European Union's Regulation 606/2013, on the recognition and enforcement of a protection orders, does not require a determination of enforceability to be enforceable, but only a detailed certificate. Yet the certificate may have to be officially translated and transliterated in the official language of the requesting state,<sup>27</sup> and the requested state's obligation to translate the order does not extend to all languages.<sup>28</sup> Nor does enforceability 'encompass the attribution of the family home,' an important protection measure.<sup>29</sup> The enforcing State's law governs enforcement, and recognition can be refused if the order is contrary to public policy or irreconcilable with a decision given or recognised in the State addressed.<sup>30</sup> This system was recently described by one scholar as 'untested.'<sup>31</sup>

Importantly, in addition to rules about enforceability, a judge in a requested state must know about the *modifiability* of orders. For example, even if a survivor obtained a US restraining order prior to a child's return to the US, the protection order might be modifiable and without a requirement that circumstances changed.<sup>32</sup> Professor Rhona Schuz describes an article 13(1)(b) case in which a child was to stay in the custody of the mother upon return, and this was entered as a mirror order in Belgium, but a leading expert said that a Belgian court 'would very quickly restore its original custody order in favor of the father, without giving any real consideration to the changed circumstances.'<sup>33</sup>

While some of the legal questions might be answered by a liaison judge from the Hague Judicial Network or from the Central Authority, there is some reason to be cautious: 'A government official's admission that his or her country has inadequate laws, processes, and protections for domestic violence would be embarrassing and tantamount to conceding that the country violates public international law.'<sup>34</sup> Moreover, even legal professionals occasionally make a mistake. In addition, a liaison judge or the Central Authority can't address whether the relevant actors downstream will actually enforce an order if it is violated. There are both systemic limitations, such as manpower shortages, and actors' unique views, and these indicia of enforcement are often unknown.

In sum, return with protection measures requires a level of detailed information that is both expensive to acquire and subject to error or incompleteness, and its acquisition, as well as the imposition of enforceable protective measures, inevitably delays resolution of the Hague matter.

### Enforcement differs from enforceability

While enforceability is important, an equally important question is whether the order embodying the protective measure will be enforced if violated. Unless the perpetrator believes it will be enforced, it will have no deterrent effect. Authors of a study on the civil protection order process concluded, '[e]nforcement is the Achilles' heel of the ... process, because an order without enforcement at best offers scant protection and at worst increases the victim's danger by creating a false sense of security.'<sup>35</sup>

A judge in the requested state who orders return with protective measures can *never* know the likelihood of enforcement if the order is violated, although a real likelihood exists that impediments to enforcement will emerge. Judge Posner, a prominent US jurist, noted in a Hague case, 'There is a difference between the law on the books and the law as it is actually applied, and nowhere is the difference as great as in domestic relations.'<sup>36</sup> The US case of *Town of Castle Rock v. Gonzales* reinforces the truth of that statement.<sup>37</sup> There a mother in Colorado contacted the police at least six times after her husband violated a domestic violence restraining order by removing their three children from her front

yard. After the police repeatedly ignored the mother's requests to act, the father killed the three girls.<sup>38</sup> The Inter-American Commission on Human Rights found that the US violated international law by failing to respond to the mother.<sup>39</sup> Recent cases against the police in the United States provide additional examples of police failures to enforce domestic restraining orders.<sup>40</sup>

Reports from other jurisdictions also reveal inconsistent responses to family violence by the police, with some officers being influenced by inappropriate cultural norms and attitudes. For example, in England and Wales, HM Inspectorate of Constabulary, Fire and Rescue Services (HMICFRS) and the College of Policing identified problems such as failure of the police to arrest perpetrators for breaches of non-molestation orders, failure to engage in evidence-based investigations, charges being down-crimes or dropped, poor victim care, inadequate management of offenders, and lenient sentences.<sup>41</sup>

Problems with on-the-spot enforcement (which is so critical to safety) undoubtedly increase when police encounter another country's order for protection, even if the order is accompanied by a declaration or certificate of enforceability, unless the police have been well trained and recall the training.

Enforcement also typically requires legal proceedings, and as mentioned at the outset of this paper, the willingness of the survivor or prosecutor to seek enforcement are additional contingencies. Consequently, an order with protective measures may not deter an abuser because he doubts repercussions for its violation, either because he doubts the survivor will cooperate (due to his threats or her own limitations, financial or otherwise), and/or because prosecutions are infrequent,<sup>42</sup> and/or because convictions only result in 'light and ineffective' sentences,<sup>43</sup> and/or because the system has responded inadequately to his violence in the past. He may even feel emboldened by his success using the legal system to return the child, and he may be more confident than ever in future legal outcomes because the system has now labeled the survivor as a wrongdoer.

### Enforceability differs from effectiveness

While the enforceability and enforcement of a measure will not depend on the goodwill of the abuser, effectiveness does. That is, abusers can violate protective measures.<sup>44</sup> An abuser doesn't even need to violate the order to abuse the survivor if the order contains exceptions for communications related to the children, which is often used as 'a pretext to ... harass.'<sup>45</sup> Similarly, ambiguities in the order's language create loopholes that allow batterers to violate the spirit, if not the text, of the protective measure. Abusers also try to modify orders, subjecting the victim to additional legal proceedings and stress.<sup>46</sup>

There is little empirical evidence regarding the efficacy of protective measures in Hague cases or what happens to survivors and children after return, but the existing research indicates that return promotes abuse and hardship.<sup>47</sup> Protective measures often fail to stop violence.<sup>48</sup> This is consistent with research about the efficacy of protective orders generally (See Expert Paper #5 by Edleson and Shaknes). A Spanish scholar, noting the lack of empirical evidence on effectiveness, concluded, '[W]e consider it essential to carry out a study of the comparative regulations in order to analyze what real protection the States offer after restitution. Unfortunately, on many occasions, we will have to conclude that geographical distance is the only safe formula to keep children safe.'<sup>49</sup>

Unfortunately, well-intentioned advocates of protective measures have proposed unsafe criteria for determining their likely effectiveness. The European Association of Private International Law, for

example, has said, 'In the light of concerns over the effectiveness of protective measures, protective measures should not be employed where credible allegations of severe violence have been made and there is a future risk of violence of such severity.'<sup>50</sup> Yet severity of past violence is a poor determinant of future risk when the perpetrator is only violent towards a partner, and not generally.<sup>51</sup> Nor is it reasonable to expect survivors and their children to endure moderate violence.

### Effectiveness differs from grave risk

Safety for a parent, even if likely, says nothing about what the child will understand or perceive as danger upon return to the habitual residence. This fear can constitute a grave risk.<sup>52</sup>

Similarly, if the survivor subjectively believes return would be unsafe, and if this causes her to have mental health issues that impact her parenting, return may be inappropriate even if effective protective measures exist.<sup>53</sup> However, even without mental health issues, a survivor's rational concern about her and her child's safety, fueled by the multiple contingent conditions that make it uncertain whether protective measures will be effective, can itself negatively impact her and her parenting.<sup>54</sup> As one author noted, '[O]rdering the return of the minor with the understanding that the State of habitual residence will guarantee sufficient protection can sometimes be ironic for those women who have fled precisely because the competent authorities have not necessarily protected them.'<sup>55</sup> The order for return can be experienced as betrayal trauma and itself causes harm.<sup>56</sup>

### Conclusion

It is important that countries implement article 13(1)(b) uniformly.<sup>57</sup> However, encouraging 'return with protective measures' will cause an enormous amount of inconsistency between cases as judges identify, and respond differently to, the various contingencies identified above. Justice and safety will depend upon lawyering (assuming the survivor even has an attorney) and the particular judge's tolerance of risk, and not the facts. It will cost a tremendous amount of time, energy, and money to implement the approach well throughout all contracting states. Inevitably, it will cause delay, thereby postponing the resolution of custody disputes on the merits and keeping children in a state of limbo.

Importantly, continued promotion of the 'return with protective measures' approach undermines the objectives of the Convention. The drafters thought the proper response to a *grave risk of exposure* to harm (that is danger) was non-return,<sup>58</sup> *not* return with protective measures that 'might' work.<sup>59</sup> After all, the drafters intended children to be returned to the status quo ante, which was an environment without a grave risk. Returning a child with protective measures is *not* a return to the status quo ante and there may still be a grave risk. Because reliance on protective measures is an inherently less safe option than non-return for both survivors and children, countries who adopt the approach arguably violate international human rights obligations to exercise due diligence to prevent and remedy gender-based violence.

It is important to end this short briefing paper with a reminder that the Hague proceeding *only* determines where the taking parent and child should be while a custody contest occurs. With technology and judicial cooperation,<sup>60</sup> there is no good reason to force a victim of domestic violence and her child back to a location where there are safety concerns even if that is the location of the custody adjudication. Because no judge has a crystal ball, survivors and children will be unnecessarily harmed.

## References

1. See Permanent Bureau of the Hague Conference on Private International Law, 1980 Child Abduction Convention Guide to Good Practice: Part VI – Article 13(1)(b) ¶¶ 36, 45, 47 [hereafter Guide to Good Practice].
2. Permanent Bureau, Report of the Meeting of The Experts' Group on The Recognition And Enforcement of Foreign Civil Protection Orders, Prelim. Doc. 4A, ¶ 48, March 2014, available at <https://www.hcch.net/en/publications-and-studies/details4/?pid=8999>.
3. Elisa Pérez-Vera, *Explanatory Report, reprinted in* Hague Conference On Private International Law, lii Actes Et Documents De La Quatorzième Session October 426, 432 ¶ 29 (1980) (“Thus, the interest of the child in not being removed from its habitual residence without sufficient guarantees of its stability in the new environment, gives way before the primary interest of any person in not being exposed to physical or psychological danger or being placed in an intolerable situation.”).
4. Kyoungmin Cho et al., *Sleepy Punishers Are Harsh Punishers: Daylight Saving Time and Legal Sentences*, 28 *Psychological Science* 242, 245 (2017), available at <https://www.jstor.org/stable/26170206> (“our finding demonstrates that sleep deprivation has a detrimental effect on complex yet rule based judgment [the judges] had”).
5. Heather Douglas, *Domestic Violence Protection Orders and their Role in Ensuring Personal Security*, in *Intimate Partner Violence, Risk and Security* 230 (2018).
6. *Franklin v. Sloskey*, 897 A.2d 1113 (N.J. App. Div. 2006).
7. See generally Katarina Trimmings & Onyoja Momoh, *Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings*, *International J. L., Policy & The Fam.* 1, 13-19 (2021).
8. Report of The Meeting of The Experts' Group, *supra* note 2 ¶ 64. See also *Id.* at ¶ 29.
9. In the U.S., the primary laws that govern enforcement of “foreign protective orders” do not apply to orders from foreign countries, with the exception of protective orders from Canada. *Compare* Violence Against Women Act, 18 U.S.C. 2265, 2266(8) (2022) and Unif. Interstate Enforcement of Domestic Violence Protection Orders Act (amended 2002), 9 U.L.A. 28, §2(1) (Supp. 2003) with Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act (2015).
10. Unif. Child Custody Jurisdiction & Enforcement Act §§302, 305, 9 U.L.A. 657 (1999).
11. Judges of the International Hague Network from Latin America and the Caribbean, Letter from Rio de Janeiro (2024)(on file with author).
12. See Danaipour v. McLarey, 286 F.3d 1, 23 (1st Cir 2002) (noting Sweden's refusal to enter mirror order). See Stephanie L. Tang, *Consideration Of Ameliorative Measures In International Child Abduction Cases Post-Golan*, 54 *Seton Hall L. Rev.* 687, 739 (2024) (“Reliance on mirror orders or safe harbor orders is optimistic at best and, as evidenced from prior studies, largely ineffective.”).
13. Anatol Dutta, *Cross-border Protection Measures in the European Union*, 12 *J. Priv. Int'l L.*, 169, 184 (2016), at <http://dx.doi.org/10.1080/17441048.2016.1143689175>
14. Costanza Honorati, *Protecting Mothers against Domestic Violence in the Context of International Child Abduction: Between Golan v Saada and Brussels II-ter EU*, 12 *Laws* 79, 95-96, at <https://doi.org/10.3390/laws12050079>.
15. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, art. 11 (entered into force Dec. 1, 2002) [hereafter 1996 Hague Convention]. See also Guide to Good Practice on Article 13(1)(b), *supra* note 1, at ¶ 48.
16. 1996 Hague Convention, *supra* note 15, art 26(2).
17. Trimmings & Monoh, *supra* note 7, at 15.
18. 1996 Hague Convention, *supra* note 15, art. 28.
19. Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) [2019] OJ L178/1) [hereafter EU Regulation 2019/1111].
20. Maria Caterina Baruffi, *The Interaction of the 1980 Child Abduction Convention with the Brussels II-ter Regulation: A Focus on the Regime of Recognition and Enforcement*, 12 *Laws* 76, 84 (2023), at <https://doi.org/10.3390/laws12050076>.
21. See EU Regulation 2019/1111, *supra* note 19, art. 35(2)(b).
22. See *id.* art. 35(3), (4).
23. See *id.* art. 51(1).
24. See *id.* art. 56(2)(a), (b)
25. See *id.* art. 56(4)-(6).
26. Baruffi, *supra* note 20, at 84.
27. Regulation No. 606-2013 of the European Parliament and the Council of 12 June 2013 on Mutual Recognition of

- Protection Measures in Civil Matters, 2013 O.J. (L 181) 4 (EU) [hereafter EU Regulation 606/2013]
28. EU Regulation 606/2013, art. 5(1).
  29. Anatol Dutta, *Cross-border Protection Measures in the European Union*, 12 J. Priv. Int'l L. 169, 175 (2016). See EU Regulation 606/2013, art. 2(3).
  30. See Report of The Meeting of The Experts' Group, *supra* note 2, para. 57.
  31. Onjoya Momoh, *The Challenges of the Hague Convention on International Child Abduction, Cases Involving Domestic and Family Violence, in Changing Families*, Changing Family in Europe 217, 234 (Konrad Duden and Denise Wiedemann eds. 2023).
  32. See 25 Am. Jur. 2d Domestic Abuse and Violence § 34 (May 2024 update).
  33. Rhona Schuz, *The Relevance of Religious Law and Cultural Considerations in International Child Abduction Disputes*, 12 J. L. and Fam. Stud. 453, 490 (2010).
  34. Merle H. Weiner, *You Can and You Should: How Judges Can Apply the Hague Abduction Convention to Protect Victims of Domestic Violence*, 28 UCLA Women's L. Rev. 223, 285-86 (2021).
  35. Peter Finn & Sarah Colson, U.S. Dep't of Justice, Civil Protection Orders: Legislation, Current Court Practice, and Enforcement 43-44 (1990).
  36. Van de Sande v. Van de Sande, 431 F.3d 567, 570-71 (7th Cir. 2005).
  37. 545 U.S. 748, 757-66, 125 S.Ct. 2796, 162 L.Ed.2d 658 (2005).
  38. *Id.* at 754.
  39. Jessica Lenahan (Gonzales) v. United States, Case 12.626, Inter-Am. Comm'n H.R., Report No. 80/11 (2011).
  40. In *Bauer as next friend of E.B. v. Chronister*, 618 F. Supp. 3d 1334 (M.D. Fla. 2022), the police allegedly failed to protect a domestic violence victim despite the fact that she had a restraining order. The woman divorced her husband in 2011 after he engaged in controlling behavior. At the time, he said he would "get [her] back for [the divorce] when [she] least expected it." Six years later, he attempted to kill her. She obtained a domestic violence injunction. The sheriff's office obtained an arrest warrant for the ex-husband, but allegedly failed to execute it reasonably. Although notified that the ex-husband was seen outside the woman's workplace, the police allegedly took no reasonable steps to locate him. Two months later, the ex-husband found her and killed her in front of her two young daughters. The court rejected the civil rights and negligence claims because even if the county "intentionally gave unreasonably low attention and resources to apprehending" perpetrators of domestic violence, that was a discretionary decision that did not "shock the conscience" for purposes of substantive due process. Similarly, in *Axt v. Hyde Park Police Department*, 162 A.D.3d 728, 80 N.Y.S.3d 72 (2d Dep't 2018), the police allegedly failed to enforce a restraining order. The woman's restraining order was issued after her husband threatened to kill her and her children. After the husband was released from jail for that incident, he texted the wife in violation of the order. The wife reported it to the police, and the police merely contacted the husband's mother and asked her to tell the husband not to contact the woman. The police took no further action and the husband shot her to death several hours later. The police were not liable for negligence because of the public duty doctrine: that is, the duty to protect was owed to the general public and created no duty to a particular individual.
  41. Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), Police response to violence against women and girls: Final inspection report 25 (2021), available at <https://www.justiceinspectrates.gov.uk/hmicfrs/wp-content/uploads/police-response-to-violence-against-women-and-girls-final-inspection-report.pdf>.
  42. Douglas, *supra* note 5, at 222.
  43. Kristin Diemer et al., *Safe at home? Housing Decisions for Women Leaving Family Violence*, 52 Aust J Soc Issues 32, 40, 44 (2017).
  44. LRR v. COL [2020] NZCA 209 at [128].
  45. M. Kristen Hefner et al., *Legal Consciousness and Intimate Partner Violence Survivors' Perceptions of Protection Order Violations*, 37 J. Fam. Viol. 1379, 1387 (2022), at <https://doi.org/10.1007/s10896-021-00336-8>.
  46. See generally David Ward, *In Her Words: Recognizing and Preventing Abusive Litigation Against Domestic Violence Survivors*, 14 Seattle J. For Soc. Just. 429, 438 (2016) ("Most of the survivors that we interviewed reported excessive and often frivolous court filings by their abusers.").
  47. See Marilyn Freeman, Reunite International, *International Child Abduction: The Effects 27-28* (2006), available at [http://takeroot.org/ee/pdf\\_files/library/freeman\\_2006.pdf](http://takeroot.org/ee/pdf_files/library/freeman_2006.pdf); Jeffrey L. Edleson & Taryn Lindhorst, *Multiple Perspectives On Battered Mothers And Their Children Fleeing To The United States For Safety: A Study Of Hague Convention Cases 160-61, 179-87* (2010); Gina Masterton et al., *Dislocated Lives: The Experience of Women Survivors of Family and Domestic Violence After Being 'Hagued,' 44 J. Soc. Welfare 369-90* (2022). See also Briefing Paper by GlobalAARK.
  48. See *supra* note 47.



49. Mercedes Soto Moya, *Retorno de menores sustraídos por sus madres víctimas de violencia de género algunos apuntes de Derecho comparado*, in *Retos de las migraciones de menores, jóvenes y otras personas vulnerables en la UE y España: respuestas jurídicas desde la perspectiva de género* 313-332 (Eds. Francisco Javier Durán Ruiz, et al., 2021) (translated).
50. European Association of Private International Law, Position Paper in Response to the Hague Conference on Private International Law's invitation to participate as an Observer in the Eighth Meeting of the Special Commission on the Practical Operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention ¶ 49(VI) (10 October 2023), at <https://eapil.org/wp-content/uploads/2023/10/EAPILPosition-Paper-in-view-of-the-8th-SC-on-the-1980-and-1996-Hague-Conventions.pdf>.
51. Chris Dyke, *How do Parole Board Members In England and Wales Decide Whether to Release Men Who Have Perpetrated Domestic Violence Against Women?*, A Dissertation Submitted in Satisfaction of a Ph.D. in Social Science, University College London, at 34, available at [https://discovery.ucl.ac.uk/id/eprint/10146386/15/Dyke\\_10146386\\_thesis\\_revised\\_sigs\\_removed.pdf](https://discovery.ucl.ac.uk/id/eprint/10146386/15/Dyke_10146386_thesis_revised_sigs_removed.pdf); A. Myhill & K. Hohl, *The "Golden Thread": Coercive Control and Risk Assessment for Domestic Violence*, 34 *Journal of Interpersonal Violence*, 4477-4497 (2019), at <https://doi.org/10.1177/0886260516675464>; Evan Stark, *Reframing Child Custody Decisions in the Context of Coercive Control*, in *Domestic Violence, Abuse, And Child Custody: Legal Strategies and Policy Issues* § 11-14 (Mo T. Hannah & Barry Goldstein eds., 2010).
52. See Briefing Paper by Dr. Stephanie Brandt.
53. *Guide to Good Practice*, *supra* note 1, at 47 n.105.
54. Peter G. Jaffe, Ph.D. & Claire V. Crooks, Ph.D., *Understanding Women's Experiences Parenting in the Context of Domestic Violence*, 4 *Violence Against Women Online Resources* (2005); Ravi K. Thiara & Cathy Humphreys, *Absent Presence: The Ongoing Impact Of Men's Violence On The Mother-Child Relationship*, 22 *Child & Fam. Soc. Work* 137 (2017).
55. See Soto Moya, *supra* note 49.
56. See Carly Parnitzke Smith & Jennifer J. Freyd, *Institutional Betrayal*, 69 *Am. Psych.* 575, 578 (2014) ("Institutional betrayal occurs when an institution causes harm to an individual who trusts or depends upon that institution."); Carly P. Smith et al., *The Psychology of Judicial Betrayal*, 19 *Roger Williams Univ. L. Rev.* 451, 455 (2014) (describing the effects of such betrayal, including "poorer physical health, anxiety, depression, dissociation, borderline personality disorder characteristics, shame, hallucinations, self-harm, and revictimization," and PTSD).
57. *C v. C*, 2 All E.R. 465, 472 (Eng. C.A. 1989) ("The whole purpose of [the Convention] is to produce a situation in which the courts of all contracting states may be expected to interpret and apply it in similar ways.").
58. Weiner, *supra* note 34, at 316-21.
59. *S (A Child) (Abduction: Article 13(b): Mental Health)*, 2023 WL 02246277 (Eng. Court of Appeal (Civil Division), Feb. 28, 2023) (rejecting return because the fact that a grave risk "might" be ameliorated was insufficient).
60. See EU 2019 Regulation, *supra* note 19, recital 53 ("Without prejudice to other Union instruments, where it is not possible to hear a party or a child in person, and where the technical means are available, the court might consider holding a hearing through videoconference or by means of any other communication technology unless, on account of the particular circumstances of the case, the use of such technology would not be appropriate for the fair conduct of the proceedings.").

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## FiLiA Hague Mothers

[FiLiA Hague Mothers](#) is a MVAWG project. Our overarching aim is to end the injustices created by The Hague Convention on the Civil Aspects of International Child Abduction, specifically for mothers and children who are victims of domestic abuse.