

# Putting Child Welfare at the Centre of Hague Policy

## Executive Summary

The Hague Convention on Child Abduction outlines a legal process for requesting the repatriation of abducted children to their home country. This is coordinated through an international agreement with 103 countries (as of 2022) as signatories of the convention, and is implemented through legal proceedings. Whilst the convention aims to safeguard children from the damaging effects of parental abduction, a key challenge with this is that it fails to protect children from domestic violence, and excludes them from a highly impactful decision-making process that will affect their livelihoods. Overlooking children as a stakeholder can have detrimental impacts on their well-being. This policy brief proposes three key recommendations targeted at governments to address this challenge:

1

### Children must know their rights

A mandatory child-friendly human rights education programme should be implemented in all cases.

2

### Assess for abusive behaviour

It is crucial that the existence and severity of alleged abuse be more thoroughly evaluated and heard during court proceedings.

3

### Improve CAFCASS System

Amendments must be made to address the monetary and logistical challenges the organisation faces, to ensure children's voices are heard.

## Refuse to Return Children to Violence



# Research & Background

The Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (HCCH 1980 Child Abduction Convention), aims to protect children from the damaging effects of unjustified removal and retention across international borders (1). The "Child Abduction Section" offers details on how the Convention functions, and provides a process to ensure their repatriation and the protection of access rights.

However, it is not without its challenges. Notably, how a child's voice can be overshadowed or even overlooked during decision making.

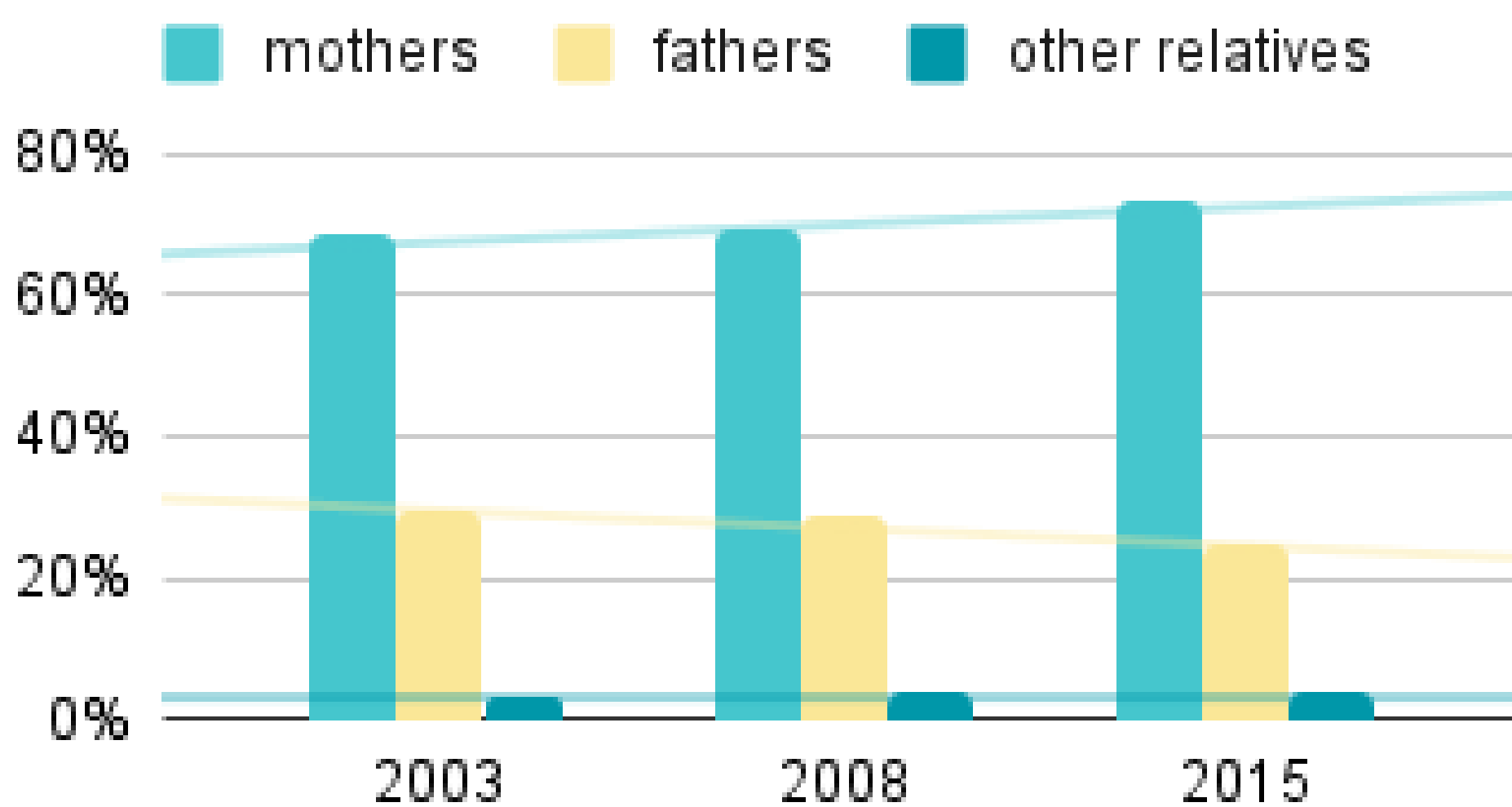
Equally, although there are detailed statistics on the number of cases going through each country, there is a significant lack of data surrounding how children benefited from "returns". Indeed, it appears that the number of "taking" mothers is increasing, while many claim to be fleeing domestic violence.

How can we address the implementation of Hague policy in order to reduce violence against children and better defend their human rights?

We found that the most common defence for "taking" mothers was article 13b, which accounted for 27% of the 243 applications that ended in a judicial refusal (i.e., the child was not returned).



Relationship Of "Taking" Adult To Child



Using data from the World Health Organisation (3), we can see that the proportion of cases that took domestic violence into consideration is therefore much lower than the actual proportion of women experiencing domestic violence (1 in 3 globally), and thus is likely to cause children to be returned to harmful living situations, hence our recommendations.

The data used to support these recommendations was obtained from a 2017 research study (2), funded by the International Centre for Missing and Exploited Children (ICMEC), that reviewed the operation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. Of the 93 contracting states that were party to the 1980 convention as of 2015, 76 provided information for the study. Thus, statistical analyses were conducted on a total of 2652 applications, which represents an estimated 97% of all applications made in 2015.

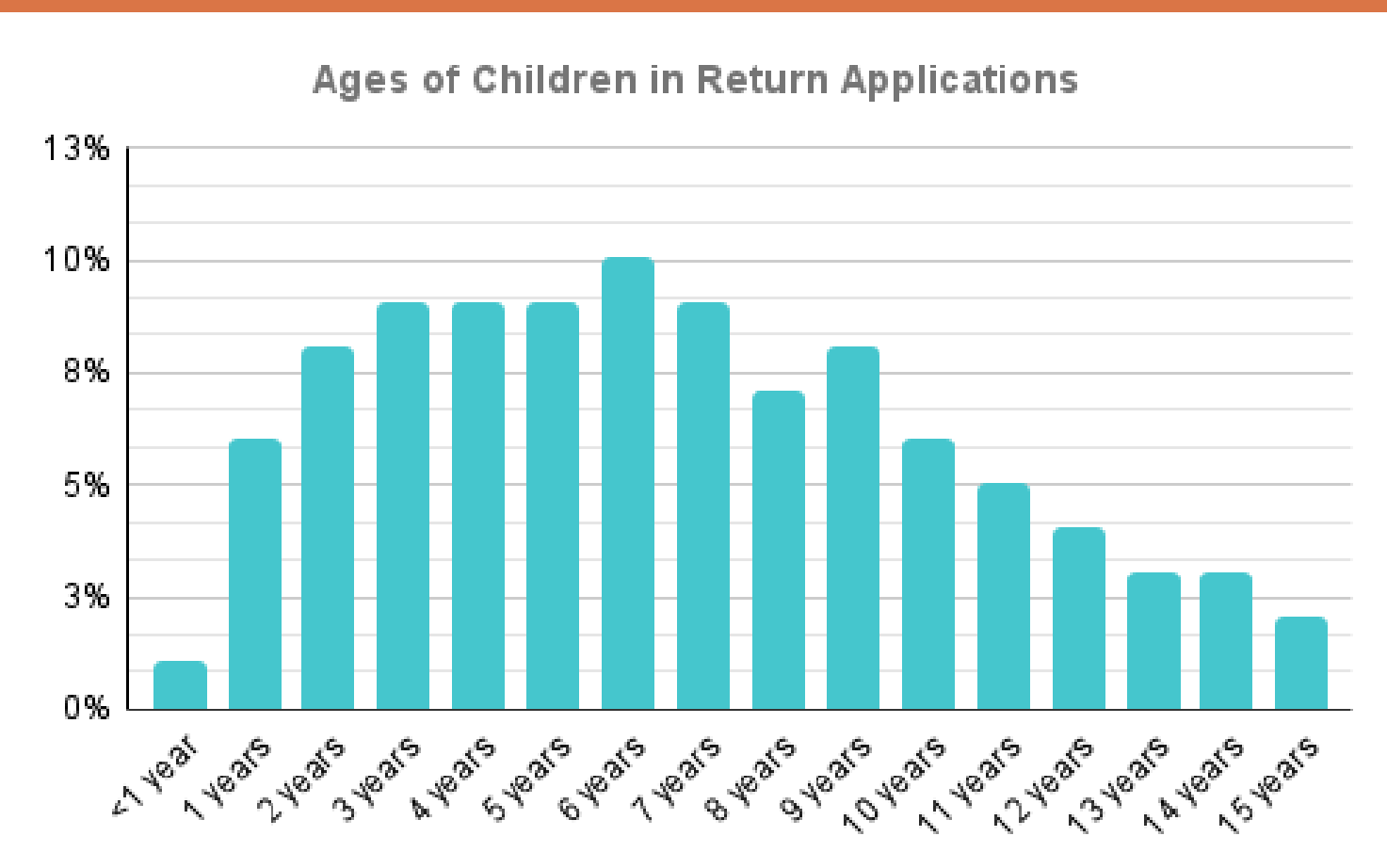




# Discussion of Recommendations



## Children Must Know Their Rights



The child’s objection is only considered when they have “attained an age and degree of maturity at which it is appropriate to take account of their views” (4). Our policy aims to increase the number of cases where a child’s objection is taken into account by increasing the child’s level of maturity when it comes to understanding their rights.

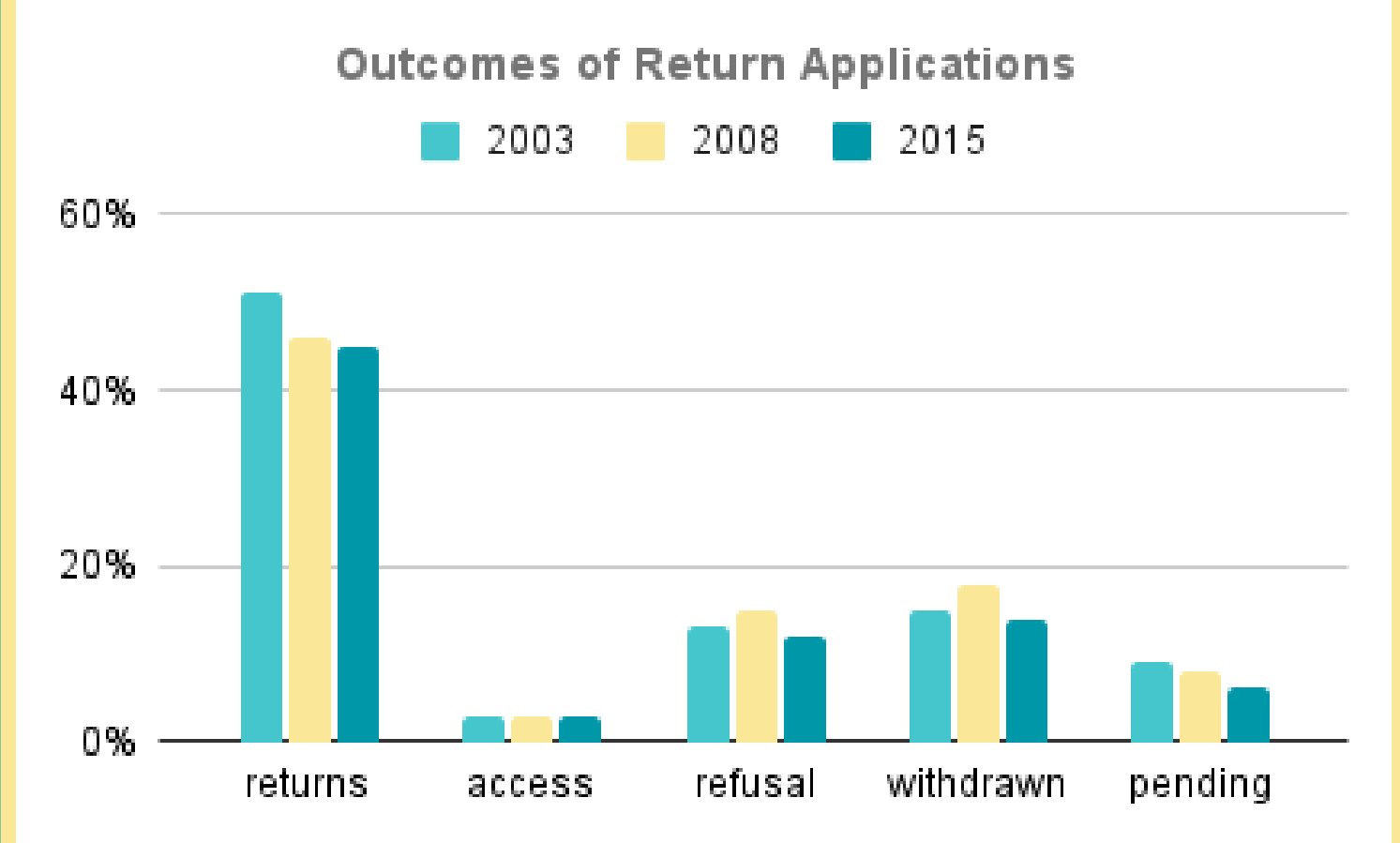
The best way to do this is by implementing a mandatory human rights education programme for all children involved in relevant cases. This programme will be conducted during mandatory sessions with an assigned social worker, and modelled on pre-existing activity packs created by Amnesty International (5).

## Assess for Abuse

Judges may feel torn, as standards for Article 13b may only be met by the most severe forms of domestic violence (6). This policy, in conjunction with CAFCASS representatives, will help to give the court a holistic overview of the home environment.

Children cannot and must not wait until they return to their state of habitual residence for allegations of domestic violence to be investigated. Such claims must be automatically and robustly investigated by professionals specialising in domestic abuse and coercive behaviour. Parents may be interviewed during cases, but this is not enough. Equally, our understanding of domestic violence is changing, as reflected by the UK criminalisation of coercive behaviour in 2015.

We must know more about the child's environment and apply the convention to protect them from violence.



# CAFCASS

The Children and Family Court Advisory and Support Service (CAFCASS) is a non-departmental public body established under the Ministry of Justice in England.

Its role is to:

- “Represent children in family court cases in England and advise the family courts about what is safe for children and in their best interests.” (9)

Improvements to the CAFCASS system are essential, as each child deserves to have their voice heard and represented in court.

## Problems

- Limited social service workers
- Lack of training
- Budget constraints
- Inadequate quality of service (7)

## Solutions

- Limit the number of cases taken by CAFCASS workers
- Scenario training for workers
- Improved budget
- Internal report training (8)

# Conclusion

The Hague Convention establishes some brilliant infrastructure to help protect children from parental abduction. Yet the policy, as it currently stands, fails to place sufficient emphasis on the rights and autonomy of the very figure it purports to protect – the child themselves. As a result, human rights are violated and families are torn apart. Those with the power to correct this can and *should* do everything in their power to embolden the voices of children through improved education, monitoring and support services.

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## Acknowledgement Section

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