



## **Briefing paper**

# **The 1980 Hague Convention & the flight from domestic abuse**

**Hague Mothers**

**Brunel University Global Lives Research Centre**

**UCL Institute for Risk & Disaster Reduction**

**Durham University Gender & Law Research Centre**

*With the endorsement of:*

*Survivor Family Network*

*SHERA Research Group*

## The 1980 Hague Convention and the flight from domestic abuse

- The Convention on the Civil Aspects of International Child Abduction (the [1980 Hague Convention](#)) has been signed by over 100 countries including the UK, where it came into force in August 1986. It enables the speedy return to the state of habitual residence of children under 16 who have been taken to another contracting state.
- The 1980 Hague Convention was intended to ensure the quick and safe return of children removed from their primary carers (usually the mother) and taken abroad by their non-custodial parents (usually the father) (see [Explanatory Report](#)). In that regard, the Convention is highly effective.
- Now, however, [around 75%](#) of the parents who are brought before the courts are mothers with primary care of their children, most of whom are fleeing domestic abuse or trying to protect their children from abuse.
- There are very limited options under the Convention for mothers to oppose orders for the return of their children and in most cases the courts decide that the child must return.
- The only defence available under the Convention that could apply to domestic abuse is the Article 13(b) defence which provides that the court may not order return of a child if the person opposing return establishes that *“there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”* The courts of most contracting states interpret what constitutes a ‘grave risk’ very strictly.
- Most cases of domestic abuse are *not* considered to give rise to a grave risk or intolerable situation for a child. In particular, it is almost impossible for mothers to prove that coercive and controlling behaviour, which since 2015 is a criminal offence in England and Wales, constitutes the basis for an Article 13(b) defence. And despite the Domestic Abuse Act 2021 stipulating that children who see or experience the effects of domestic abuse are victims in their own right, those same children can and are returned to the country and often the care of the abusive parent.
- Mothers escaping domestic abuse across borders are therefore left in the terrible position of having to choose whether to return with their children or send their children back on their own. Most mothers decide to return, and face continued or worse post-separation abuse, destitution, homelessness, isolation or even criminal proceedings. They frequently have no family, social, financial or legal support which provides a perfect context for continued abuse.
- Mothers can also suffer inequality of arms. In many contracting states including England and Wales, legal aid is automatically available for left behind parents but not for taking parents.

- **Case study: Cassandra Hasanovic:** Cassandra had escaped to Australia from England because she feared being killed by her children’s father, a man who had sexually assaulted and abused her. She had told police: “He said he was going to chop me up in little pieces and post me piece by piece to my family.” Nevertheless, an Australian judge ordered her children to return to England and, as a loving mother, she accompanied them back. Soon after her return to Australia, and just hours after begging the police in England to drive her to a safe house, she was stabbed to death by her ex-partner in front of her children and her own mother.
- **Case Study: [Anita Gera](#):** Anita Gera, a British mother, moved back to the UK from Arizona in 2013 with her children, with the consent of her abusive and controlling ex-husband. Almost a year later, her ex-husband deployed the Hague Convention to force their children to return to Arizona. Anita said: “The first time we tried to get on a plane the children barricaded themselves in my son’s bedroom where he screamed until he passed out, saying ‘I’d rather die than go back to America’.” Because she was seen as an ‘abducting mother’ rather than a parent seeking to protect her children, they were forced to live with her abusive ex and, destitute and homeless in the US, she had to return to the UK. She has not seen her children since August 2015.
- **What needs to change**  
We are calling on the UK Parliament to amend the Child Abduction and Custody Act 1985 (which implemented the 1980 Hague Convention in the UK) to provide for:
  - a rebuttable presumption of no return in domestic abuse cases
  - a stay on return orders in domestic abuse cases to enable welfare hearings to be held remotely to permit the taking parent to litigate in a safe location
  - restrictions on the circumstances in which it is appropriate to rely on ‘protective measures’ and ensure that courts cannot accept undertakings as a means of defeating the Article 13(1)(b) defence in domestic abuse cases
  - proper risk assessment in cases involving domestic abuse and child abuse, including exploring the views, wishes and feelings of the child
  - the compatibility of the Child Abduction and Custody Act 1985 with the Domestic Abuse Act 2021 (including the definition of domestic abuse and the recognition that children living with domestic abuse are victims in their own right).

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*Hague Mothers* is a [FiliA](#) legacy project that aims to end the injustices which arise from the implementation of the 1980 Hague Convention.

Brunel University’s [Global Lives Research Centre](#) leads and promotes interdisciplinary research around key issues that societies at local, national and global levels face in the 21st century.