



Briefing paper

The 1980 Hague Convention Inequality of arms: mothers' experiences

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My PhD research looked at the experience that abused women who fled with their children had with the Hague Convention's legal process. They said that after escaping domestic abuse and violence, they were catapulted into a situation where they were abused by those who administer the Hague Convention's legal process. This particular type of abuse is called legal systems abuse.

This is not a new phenomenon. It has been described as 'domestic abuse perpetrated through litigation.' In such cases, instead of a woman receiving 'equality of access to justice and fair hearing', the legal system is used by her abusive ex-partner to further torment and traumatise her. Legal systems abuse is perpetrated by the Central Authorities, judges, Legal Aid agencies, community legal organisations and privately retained lawyers and the courts. This abuse made the woman I interviewed feel helpless to protect themselves and their children, and the legal process itself led to more anxiety, depression and fear.

Gina Masterton | October 2022

When the Hague Convention was ratified, it was no doubt envisaged that it would assist in protecting children from harm.

However, in practice, it is often having the effect of preventing women and children from escaping violent fathers.

Like many protective measures introduced by the legal system, these provisions are now being used as a weapon against women and are infringing their human rights.

Australian Lawyers Alliance

The 1980 Hague Convention

Inequality of arms: mothers' experience

Since the Central Authority is the first agency to become involved in a Hague matter, I will explore its role in the Hague legal process first. I will then discuss how the courts administer the Hague legal process, the status of Legal Aid funding for Hague cases, community legal centres, and private lawyers who represent 'Hagued' mothers.

The Central Authority

The role of the central authority is to aid the parties, the lawyers and the courts, and to generally advance the Convention's goals. They are supposed to act objectively. Despite this requirement, the women I interviewed said they felt Central Authority lawyers did not act impartially.

Joan felt that the Central Authority lawyers she encountered were ambivalent about her personal safety and that of her child:

... the federal government authorities who tracked me down, served me with papers, built their case and then 'prosecuted' me are not legally required to have any regard for the future safety or protection of the children involved, or their abused mothers. And from my experience they don't seem to have any problem whatsoever prosecuting mothers and returning their young children, even by force, if necessary. I would even say that they actually enjoyed their work.' [They were] '... so cold, and showed zero compassion for me or my son.

She felt bullied by all the lawyers involved in her case, even her own lawyers, to return her child. So much so that she gave up fighting the return application, thereby giving up the opportunity to demand a trial so that she could explain why she had fled. She said:

The Central Authority also employed one of the best family law barristers in Brisbane, who was preparing to tear me apart on the stand, until the pressure from my own lawyers built up and I broke down and I agreed to return my son. The [Central Authority] barrister had the nerve to try to shake hands with my sister afterwards, like this whole traumatic experience we'd been through was no big deal to him.

Alice also had a traumatic experience when dealing with Central Authority lawyers in the United Kingdom, after she was served with Hague documents:

...the lawyer [my ex] had in England was horrible. Wouldn't listen to a word I said. Yelled at me all the time ... Constantly made me cry and then she would laugh at me for crying. Just treated me like an absolute criminal. It was a

woman ... from the Central Authority ... She was just really aggressive. Just really horrible to me.

These women were the victims of Central Authority systems abuse, which further traumatised them. The mothers also felt that the Central Authority and the Hague judges worked too closely together, and thus that judges were inclined to find reasons to rule in favour of Central Authority lawyers. So, how do Central Authority lawyers treat the mothers?

I interviewed a male barrister who was often retained by the Central Authority to prosecute mothers. Not surprisingly, he supported the strict enforcement of the Convention. When I asked him what he thought abused women who are afraid for their own and their child's safety should do to escape their abusive partners, he had no empathy:

'My answer to your question is to engage in the country you went to ... You met this bloke, you married the bloke, you had a kid with the bloke, you had a tiff with the bloke, you lived in a country. Sorry, you just can't say 'I'm going to take my bat and ball and go home the moment things get tough.'

This barrister also believed that 'most women in Hague cases fabricate DV for their own purposes.' When I asked if he thought allegations of DV deemed to be false by the Hague authorities taint all cases where DV is alleged, he said, 'Of course they do. Same story as with rape. Same sort of situation.'

He was a privileged white man, and one of the worst misogynists I've ever met! But my research found that Hague judges were not much better when dealing with abused mothers.

The Courts

There is a widely-held expectation that judges will use their common sense, their understanding, their knowledge of society and the expectations of the community to inform their decision-making. However, with Hague matters, judges are so fixated on upholding the law that, even when dealing with obvious evidence of domestic abuse and family violence, strict application of the Hague Convention can take precedence over a desire to protect abused women and their children.

When discussing their initial court hearings, most women felt that the judges seemed eager to discount or dismiss their account of domestic abuse. Antonia told me:

'The judge didn't listen to me about being bashed and raped by my husband. They didn't care. They said the law was only interested in my daughter. She had seen me being hit and bleeding and crying, but they didn't care about that either.'

Similarly, Rachael said that the judges did not take her allegations of child abuse seriously:

'[The child] was made a ward of court and ... she was almost taken off me and put into care ... because they said the abuse didn't happen and that it was me being emotionally manipulative ... I have recordings of her saying these things ... but the judge said it was emotional abuse and that I was coaching her to say things.'

In general, the courts did not appear to want to deal with DV evidence:

'The male Magistrates didn't understand the cycle of violence at all ... Whenever I had a male Magistrate, I thought 'I'm screwed.'

'Being in court is just like in an abusive relationship cos you're silenced. It's just such a cruel process because so many times I'd think 'Why did I speak out? Why do we stand up for all this and try and make our life better? Because life is so shit when you speak out and the courts just don't believe or support you.'

Even if a mother can prove one or more of the exceptions contained in the Convention, judges remain keen to use their discretion to order the return of their children to a potentially dangerous situation, putting their safety and their mother's life in jeopardy. This approach by judges can be disastrous, even deadly, for women. Several women are murdered in such circumstances each year around the world, but no statistics are kept by Hague authorities.

For example, Cassandra Hasanovic was ordered by a Sydney Family Court judge to return her two young sons to the U.K. She was murdered by her ex-partner not long after she returned with her children. He continued to breach all the DV orders she had against him and police failed to protect her. Her abuser pulled her from a car and stabbed her to death in front of their children and her mother, when she was trying to flee to a shelter.

Legal Aid

Another issue for the women I interviewed was the lack of access to free expert legal representation, while their abusive ex-partners were being fully supported by expert government lawyers.

'[my ex] had investigators, process servers, solicitors, barristers, and judges who order that our children be sent back to their abusive fathers – and it costs the abusive father nothing. It would take a pretty sick mind to make all this up, and yet it's the reality of several mothers every week in Australia.'

The Hague Convention mandates that governments are responsible for providing legal aid and advice when a parent files a return application (unless the parent chooses to pay for private lawyers). In comparison, respondent mothers have four avenues for obtaining legal representation:

1. applying for Legal Aid funding;
2. trying to obtain free legal representation;
3. borrowing money from family and/or friends to fund a private lawyer; or
4. representing themselves.

In Australia it is difficult to pass all of Legal Aid's funding tests, especially the Reasonable Prospects of Success test, which is met only if it appears to Legal Aid that, on the legal and factual merits, the proposed action or defence is more likely than not to succeed. Since Hague defences rarely succeed, this is an impossible hurdle.

'I was trying to get help with the domestic violence and all that stuff, and this is what really pisses me off ... when I spoke with Legal Aid, they told me that 'you don't have merit in the case' ... and I'm like, 'but hang on a minute if there's so much violence that we're not safe ... to return, why would you do this?'

Community Legal Centres

Clearly, when challenging a return application, it can be impossible to obtain Legal Aid funding. It is also be hard to get sufficient assistance from community legal centres (CLCs). CLCs are independent, non-profit, non-government organisations. They focus on helping people who don't qualify for legal aid and mainly help people with civil and family law issues. But, because Hague cases can be complex and run for a long time, these centres are generally not equipped to represent respondent mothers.

I found only one example of an Australian community legal organisation which took on the defence of a return application for an Australian mother. However, they had not previously handled a single Hague case. The mother described her experience thus:

'I went ... to a family lawyer ... He said he didn't know a lot about Hague cases, but told me straight out that I had no chance of winning because the courts were strict about enforcing the law ... Then I had a phone conference with a barrister, and he said that I'd have to send my son back. ... I was devastated. Not even my own lawyers were on my side ... They had very little Hague experience and seemed to be scared of the Hague judge. I knew they weren't even going to try to fight for me.'

Private Lawyers

The women I interviewed were left feeling powerless in these situations, left with no choice but to struggle to find money for private legal representation. Some borrowed money from family or friends to pay for private lawyers to represent them in defending the return application, however, they were still ordered to return their children.

'I owe people. My friends ... gave me fifty thousand dollars ... and my Mum went bankrupt 'cos she sold her house in New Zealand. I paid [a barrister] and a solicitor ... they got nearly four hundred thousand dollars of my Mum's money.'

Those who retained private lawyers found them very expensive, unsupportive and professionally indifferent.

'I think that my lawyer didn't want to fight for me. She said, 'Oh no there's not enough danger', and I thought there was more than enough danger to fight the return application.'

The women I interviewed were abused by the Hague legal process from the beginning until the very end when they were ordered to return their children. And the systems abuse continued post-Hague, when they lost significant contact with their children or lost their parental rights completely due to family court orders made in the jurisdiction they returned to.

This abuse needs to stop.

Gina Masterton is a feminist and an activist for women's human rights. A former solicitor and barrister in Queensland, Australia, she is currently an Indigenous Post-Doctoral Researcher with the Queensland University of Technology Centre for Justice in Australia. Her research includes investigating how domestic and family violence affects women and children, specifically Indigenous women. Gina's PhD looked at how The Hague Child Abduction Convention affects abused women and children. She is a member of the Hague Mothers' Australia/New Zealand Steering Group.

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