



HAGUE Mothers

Hague Domestic Violence Forum Expert Paper #7

The aftermath of Hague
Convention decisions.
An international survey
on the effectiveness of
court-ordered protective
measures.

GlobalARRK and Hague Mothers

GlobalARRK and FiLiA Hague Mothers

GlobalARRK is a UK charity, registered in 2016, supporting 300 new stuck parents each year. 30% go through a Hague Convention case. Our support services include: a call-back helpline; legal network; legal clinic; peer-support groups; domestic abuse recovery courses, and befriending calls. GlobalARRK also supports research and raises awareness.

FiLiA Hague Mothers is a volunteer-led international campaign working to amplify the voices of the women who are further abused as a result of decisions made under the Convention to return their children; to raise awareness of the issues; and to work with Hague mothers, lawyers, domestic violence and children's rights experts, to end the injustices caused by the Hague Convention.

Introduction

This Expert Paper focuses on an international survey of mothers who have been respondents to petitions under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (hereafter the Convention). The results presented in this paper specifically focus on protective measures ordered by courts when returning children to their country of habitual residence.

Currently, most taking parents are mothers (75%) who are primary caregivers (94%) of their children (Lowe & Stephens, 2023). Many taking mothers (78%) raise allegations of domestic violence by the left-behind father on appeal (Weiner, 2021).

The Permanent Bureau's Guide to Good Practice on Article 13(1)(b) strongly recommends protective measures be used when returning children to their habitual residence, especially when grave risk may be evident (HCCH, 2020). Protective measures often take the form of voluntary undertakings by a left-behind parent, with limited value for cross-border legal enforcement, or 'mirror' orders issued by the courts in the country of habitual residence, theoretically enforceable in that state on return. Because so little is known about the effectiveness of these protective orders, the 2017 HCCH Experts' Meeting held in London called for more data to be gathered on the short- and long-term outcomes for children involved in Convention proceedings and the impact and effectiveness of post-return protective measures (University of Westminster, 2017).

The little research to date on the effectiveness of protective orders, either domestically or internationally, is not encouraging. For example, the Reunite International Child Abduction Centre's study of cases in the UK revealed that two-thirds (67%) of the undertakings issued - including all those focused on a child's safety upon return - were not implemented in the country of habitual residence. Even when judges issued mirror orders, only one in five of those mirror orders was implemented as planned (Reunite, 2003). Lindhorst and Edleson's (2012) research on U.S. incoming cases also revealed that both judges and attorneys were sceptical of the enforcement of these orders by another country's courts and that mothers who returned with their children to the country of habitual residence would frequently face violations of previously agreed undertakings by their abusive ex-husbands or mirror orders that were seldom enforced. In England and Wales around one quarter of DVPOs issued have been breached every financial year between 2018/19 and 2020/21.¹ Breaching a non-molestation order is a criminal offence in the UK, subject to up to five years in prison. There are no such consequences for Undertakings abroad.

This Expert Paper seeks to shed light on this issue by providing empirical data as reported by mothers in an anonymous international survey jointly conducted in early 2024 by GlobalARRK and the FiLiA Hague Mothers Project.

Method

Sample

The initial sample consisted of 69 fully completed responses to the online questionnaire described below. Respondents came from 22 countries with the largest number from the United Kingdom (n=32), followed by the United States (n=11) and New Zealand (n=8). This sample of 69, however, included six responses from respondents who were not subject to a Hague return petition (one lawyer; three petitioning parents - one father and two mothers), one was a child, and one was a stuck parent who

had never moved. One mother had obtained leave to remove the child through lawful relocation. One hundred individual children were identified within the sample (n=100).

Of the 63 mothers who were respondents to Hague petitions, four had settled without court proceedings, one mother obtained leave to remove the child through lawful relocation, and one is still involved in proceedings. Ninety-one children were identified in this remaining sample as subject to Hague proceedings. The eldest child was aged 16 at the time of removal/retention; the youngest child was aged two months. The average age of the taken child in sample was 5.5 years but the average age of a taken child subjected to protective measures was slightly younger, at 5.3 years.

Survey

An anonymous online survey consisting of 21 questions was developed by a working group in the UK and US.³ The questions included both multiple choice and open-ended items. Questions asked for demographic information and the how the respondent experienced a Hague proceeding. It then asked for demographics of the children involved and any socio-economic factors the survey respondent experienced, such as homelessness, poverty, violence victimization, etc. Next, survey respondents were asked about their Hague proceeding, the outcome of their case and whether any protective orders were given by the presiding judge. The final two sections asked about the types of protective orders put in place and whether they were enforced in the country of return. Finally, they were asked if they and/or their children experienced additional abuse upon return.⁴

Procedure

The survey was widely distributed through snowball sampling with global networks of mothers who have been respondents to Convention petitions. The survey was made available through a Google form that started with an introduction to the survey stating:

'Thank you for taking the time to respond to this survey which will be open for just 1 month from April-May 2024. The aim is to find out more about what happens after children return under the Hague Abduction Convention 1980 and to produce a report which will be published and submitted to the HCCH Forum on Domestic Abuse and the Hague Convention in June 2024. Results of the survey and the report will be available on the GlobalARRK and FiLiA Hague Mothers websites.'

Participation in the survey was completely voluntary and all responses were anonymous. Participants had the right to stop the survey at any time and not submit their answers. They were informed that only aggregate responses were to be summarized in order to protect participants in the survey and also given information on how to receive additional support should the survey raise any discomfort or concerns. The resulting anonymous data were summarized in a Google form report and downloaded with no identifiable information available in the dataset.

Results

The results presented here focus on protective orders issued by the returning court and the experience of mothers both with and without protective orders in place.

Protective orders

Of the respondent mothers whose children were returned by the Convention, just over a third (n=21; 37.5%) identified that protective orders were issued by the returning court as an aspect of the proceedings. Thirteen (23.2%) of the applications for return resulting in protective measures were made in the UK.⁵ This reflects the overall sample, where the UK was the most frequent destination country. It may also reflect the use of protective measures in the English court and the fact that the survey was developed and widely circulated by UK-based charities. The remaining states making protective orders on return were: Canada; Belgium; USA (2); South Africa, and Argentina.

On return, the 21 mothers who had protective measures in place, and 32 who had their child returned under the Convention but did not have protective measures in place, reported varied experiences as shown in Table 1 below.

Table 1: Percentages of mothers who reported the following experiences in conjunction with their Hague proceedings.

Experience	Percentage of Mothers with Protective Orders (n=21)	Percentage of Mothers without Protective Orders (n=32)
Further abuse	71.4% (15)	87.5% (28)
Financial difficulties	80.9% (17)	87.5% (28)
Custody hearing	57.1% (12)	62.5% (20)
Visa issues	42.8% (9)	25.0% (8)
Relocation request	42.8% (9)	46.8% (15)
Criminal proceedings	23.8% (5)	34.3% (11)

These data indicate roughly comparable experiences for mothers with or without protective orders in place. However, about 16% more mothers without protective orders reported further abuse of themselves or their children as well as 10.5% more experienced criminal proceedings related to taking their children. On the other hand, almost 18% of mothers with protective orders experienced issues obtaining visas in the country of return when compared to mothers without protective orders.

The impact of protective measures

At most, respondents to the survey reported that there was only partial or no compliance with protective orders on return:

R.21: removal from southern Europe to Canada of a young boy:

'He did as he pleased. He did not respect any rules. He continued abusing use, and tormenting us and ruining our lives quite effectively...'

R.63: Removal from southern Europe to the UK of two children:

'Not all measures have been implemented, still ongoing. This was financial support for housing and child support, the spousal support has not been implemented ... it is with the lawyers regarding financial support.'

There was some evidence of compliance with protective orders when the left-behind parent wanted to be perceived as a potential carer in the child's life in custody proceedings:

R.19: Removal from Pacific country to the UK of a toddler:

'Upon returning ex husband demanded 50/50 care and agreed to alcohol counselling. For the most part he behaved and wanted to be seen as a good parent.'

This was the only evidence cited of the influence of protective measures, it was far more common for the presence of protective measure discounted post-return, against implications of the parent being identified as an 'abductor' in subsequent legal proceedings:

R.23 removal from USA to UK of a young child. The child was subsequently returned to the USA under Hague proceedings:

'It has been shocking how the undertakings were effectively meaningless. If I had known this, I would have opted for a voluntary return as then I would not have the 'abduction image' against me as I have now.'

Technical problems associated with mirrored orders

Of the 21 mothers with protective orders on return, seven respondents (33%) specifically identified that these protective orders were mirrored in the court of the country to which the child was returned. Despite the protective orders being mirrored, rather than relying on enforcement of a foreign order on return, mirror orders were problematic because of the practical and legal difficulties associated with the procedure having the order mirrored and this order subsequently enforced in the return jurisdiction:

R.33: removal from USA to UK and return was ordered but not enforced:

'It was hard to get the orders registered as there were problems with them recognising the seal and the way our names were worded.'

R.21: removal from southern Europe to Canada of a young child:

'They were accepted as suggestions. I had to file lawsuits and fight tooth and nail for every last bit of them.'

R.46: removal from southeast Asia to the UK of one child.

'There was non compliance by the other parent and I had to mirror the court order in foreign country despite the father agreeing to do this during the UK proceedings, and still there wasn't compliance. I then applied for enforcement order but nothing was done! They did not help me.'

Some of the practical difficulties arose from the reality that legal systems do not address domestic abuse in the same way, with broadly equivalent legal measures, or methods of appropriate enforcement (see *Opuz v Turkey*). This can remain highly problematic, even if the measures had been mirrored in the country to which the child was returned, so they have effect under national law.

R.53: removal from South America to UK of two children. Return was voluntary with mirrored protective orders:

'... It turns out that they were not enforceable at all, mainly due to failures in the justice system here [in South America].'

R.21: removal from southern Europe to Canada of a young child:

'It's important to have them, because at least you have a chance to get them or some, but it's an uphill battle because each country has their own views on what family violence or child abuse, or custody arrangements should look like and for example I was never able to get a state supervisor to supervise the visits [in Southern Europe] because they don't have the infrastructure there...'

It could not be assumed that the order, even if mirrored by the applicant or respondent, would be effectively enforced on return. Where there were undertakings in place, if these were breached by the left behind parent on return, there was no means of enforcing them. Mothers found that the only recourse was to apply for further legal orders in the country to which the child had been returned, initiating a new legal process:

R.40: removal from South Pacific to the UK of two toddlers:

'I had undertakings in place and father breeched [sic] the undertakings but police could not do anything as it was through the courts not the police so had to apply (for a protection order).'

Creation of unfulfilled expectations

The labelling of 'protective orders' created an expectation in respondents that the legal process would help to provide some measure of safety when their child was returned under the Convention. The reality offered by the measures available and their enforcement after return did not meet this expectation, undermining their faith in the legal process and the protection available from further abuse, which continued in 71.4% of cases (see Table 1 above).

R.48: removal from the USA to Africa of a young child.

'No, they [the protective orders] did nothing they overturned it all before i [sic] entered the country unbeknown to me.'

R.14: removal from Africa to the UK of three children. Return was voluntary after Hague proceedings were initiated but protective orders were put in place and partially enforced in relation to financial support:

'The emotional abuse continued and although not living together he still has full access to where I live.'

R.23: removal from USA to UK one young child:

'Instead of a 'soft landing', it has been over 6 months of hell as I have been without a permanent home (ex refused to be a guarantor for a new place even though he was ordered to do so)...'

Conclusion

Our sample included 21 mothers who had judges' order protective measures as part of their Hague proceedings. This is a small sample but reinforces data from earlier studies and points to the need for a much larger survey of respondent mothers' experiences with the impact of court-ordered protective measures.

The qualitative data reveals that the existence and protection provided by protective measures was negative with clear problems in their use and enforcement on return.

Our data demonstrates that:

- The suggestion that protective measures will be available on return can create unrealistic expectations for the returning parent about the extent to which such orders can support and provide for their needs.
- There remain technical difficulties in having protective measures recognised and enforced across legal systems especially when it is an Undertaking
- It can be hard for parents to mirror protection orders after they have returned.

However, there is some evidence that protective orders can provide some support for parents on return following Hague Convention proceedings especially if they are set up in advance of a return. If protective measures are to be used they should be mirrored in advance of a return, and the timeframe of the protective order must allow for the returning parent to access a best interests assessment/relocation.

In general, it is clear that further, international, research is required into the impact and efficacy of providing protective measures as an aspect of return applications; and their use and compliance on return to the destination state.

1. <https://www.bbc.co.uk/news/uk-england-62726384>
2. One mother was pregnant at the time of the elder child's removal but the younger child could not made subject to the Hague return proceedings.
3. The authors wish to acknowledge feedback from Professor Jeffrey Edleson and Dr Ruth Lamont.
4. The full survey is available from GlobalARRK by email at info@globalarrk.org
5. Identified either as UK; England; Scotland or Northern Ireland in the dataset.

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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.