



Hague Domestic Violence Expert Paper #10

Brazilian Supreme Court landmark ruling August 2025: Domestic abuse can prevent a return order under the 1980 Hague Convention

Janaina Albuquerque Gomes
Legal Coordinator, Revibra Europa

Biography

Janaina Albuquerque Azevedo Gomes is a dual-qualified lawyer practising between Brazil and Portugal. She specializes in high-complexity cross-border family matters, particularly cases involving children. Ms Albuquerque is also a certified international family mediator.

Ms Albuquerque has obtained a Master's degree in International Law from the University of Lisbon. During her post-graduate studies, she attended the Hague Academy of International Law and completed a research program at Ghent University. As an active contributor to academia, she collaborates as an external expert advisor at the Center for the Study of Gender, Family, and the Law at the NOVA School of Law.

Her diverse career includes previous roles at the Brazilian Ministries of Foreign Affairs and Human Rights, as well as the Hague Conference on Private International Law (HCCH). Apart from her private practice, she has been a Legal Coordinator at REVIBRA Europe (European Network of Support to Brazilian Victims of Domestic and Gender-based Violence) since 2021. She is currently a Research Associate at the NOVA Centre for the Study of Gender, Family, and the Law and is a member of FiLiA Hague Mothers' Human Rights Group.

The exception of grave risk to the child, provided for in Art. 13 (1)(b) of the 1980 Hague Convention, must be interpreted in a manner consistent with the principle of the best interests of the child (Art. 227, CF) and under a gender-based perspective, so as to allow its application when there are objective and concrete indications of domestic violence, even if the child is not a direct victim.

Brazil's Supreme Court judgment of August 2025 introduced three important innovations that will standardize and shape the interpretation of the Convention going forward.

- First, by recognizing domestic violence as an arguable exception under Art. 13(1)(b), the Court established that this ground can no longer be dismissed on the basis that it is not expressly mentioned in the Convention.
- Second, the clarification that children need not be the primary victims ensures that courts cannot disregard evidence showing that they merely witnessed the violence, since such exposure also constitutes harm.
- Third, the instruction to evaluate abduction cases through a gender-based lens acknowledges the multiple and intersecting vulnerabilities faced by migrant women and requires a contextual assessment of each situation.

Gender, domestic violence and the reframing of the 'best interests' principle

The deliberations revealed a broad consensus that gender inequalities are central to the evaluation of return requests under the Convention, particularly where domestic violence is raised. Justice Barroso, rapporteur of the case, underscored that most taking parents are mothers fleeing from abandonment or abuse, cautioning that automatic returns in such circumstances risk perpetuating cycles of violence. Justices Mendonça and Cármen Lúcia echoed this concern, stressing that intimate-partner violence destabilizes the family environment and thereby places the child in danger.

Justice Moraes added that the prevalence of taking mothers reflects structural patriarchy, requiring an interpretation of the Convention consistent not only with the standards inscribed in domestic law but also with international human rights instruments such as the UNCRC and the Convention of Belém do Pará. Justice Dias Toffoli supported this approach by grounding it in the Convention's own architecture, highlighting a combined interpretation of Arts. 13(1)(b) and 20, insofar as the latter provides that courts may refuse the return when such an order would conflict with the fundamental principles and freedoms of the requested State.

Taken together, these positions signalled a jurisprudential shift: the Convention's effectiveness in Brazil will henceforth be measured not solely by the speed of returns but by its capacity to reconcile international cooperation with the substantive protection of women and children.

Procedural and evidentiary standards

A central aspect of the debate revolved around the difficulties faced by migrant women and their intersecting vulnerabilities. Justice Barroso argued that imposing a standard of irrefutable proof in cases involving domestic violence is both inconsistent with the Convention's requirement of urgency and detrimental to the best interests of the child. He stressed that migrant mothers are frequently cut off from institutional resources and isolated from their support networks, which, compounded by linguistic and cultural obstacles, place them at a significant disadvantage in producing evidence. Justice Toffoli

further developed this argument, insisting that courts must apply a gender-based perspective and give decisive weight to victims' testimonies, precisely because these structural barriers cannot be overcome through procedural formalities.

Alongside evidentiary issues, the Justices devoted close attention to procedural safeguards. Justice Flávio Dino criticised the privileged role of the Attorney General's Office, noting that its authority to initiate proceedings produces inequality of arms. While the interests of left-behind parents are defended, even if representation is for the State, taking parents are not ensured access to legal aid. Building on this concern, Justice Cristiano Zanin drew attention to the absence of a specific law governing Hague cases in Brazil. In his view, this vacuum not only generates procedural uncertainty but also creates room for jurisdictional conflicts, especially when custody proceedings are initiated domestically in parallel with return requests.

A final strand of discussion was dedicated to the participation of children. Justice Cármen Lúcia stressed that they must be recognised as rights-bearing subjects and that procedural mechanisms should be developed to secure their direct involvement in return proceedings. At present, the law provides only for the hearing of children from the age of 12 and contains no guidance on the manner in which their statements are to be obtained. Ensuring that children's perspectives are effectively taken into account was thus deemed essential to aligning the Convention's operation with the principle of integral protection enshrined in the Constitution.

The following judgment thesis was established:

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"1. The 1980 Hague Convention on the Civil Aspects of International Child Abduction is compatible with the Federal Constitution and has supra-legal status in the Brazilian legal system due to its nature as an international treaty for the protection of children's rights.

"2. The application of the Convention in Brazil, in light of the principle of the best interests of the child (Art. 227, CF), requires the adoption of structural and procedural measures to ensure the swift and effective processing of actions for the international restitution of children.

"3. The exception of grave risk to the child, provided for in Art. 13 (1)(b) of the 1980 Hague Convention, must be interpreted in a manner consistent with the principle of the best interests of the child (Art. 227, CF) and under a gender-based perspective, so as to allow its application when there are objective and concrete indications of domestic violence, even if the child is not a direct victim."

Key elements of the decision (translated from [a summary](#))

The Court unanimously ruled partially in favour of the requests made in ADI 4.245 and, by majority vote, ruled partially in favour of the requests made in ADI 7.686, on the following grounds:

a) To interpret Art. 13(1)(b) of the 1980 Hague Convention in conformity with the Constitution, recognizing that the exception to the immediate return of the child due to grave risk to his or her physical or psychological integrity or intolerable situation applies in cases of domestic violence, even if the child is not a direct victim, provided that objective and concrete indications of the risk situation are demonstrated, in accordance with the principle of the best interests of the child (Art. 227, CF/1988) and under a gender-based perspective (Arts. 1, III, and 226, § 8, CF/1988);

b) To determine that the National Council of Justice (CNJ) should establish an inter-institutional working group to prepare, within 60 (sixty) days, a proposed resolution aimed at increasing the speed and efficiency of international child abduction return proceedings, ensuring, through adversarial proceedings and full defense, that the final decision on the return of the child is made within a period not exceeding 1 (one) year;

c) The resolution, which will bring CNJ Resolution No. 449/2022 into line with the terms of this decision, will establish the duty of the respondent to report the existence of any ongoing child custody proceedings in the national territory and will assign the management of such proceedings in the country to the CNJ's National Forum for Children and Youth (Foninj). The requirement for adversarial proceedings and full defense applies both in the cases of Art. 1 and Art. 12 of the Convention. Public and notorious facts and rules of experience (Civil Procedure Code, Arts. 374 and 375) will also serve as elements of conviction;

d) To determine that the Federal Regional Courts issue normative acts to promote the concentration of jurisdiction to process and judge actions related to the 1980 Hague Convention, with regard to restitution proceedings, in one or more courts in the capital and judging chambers, based on Art. 96, I, "d," CF/1988, aiming at procedural uniformity and celerity;

e) To determine the establishment of specialized support centers within the Federal Regional Courts to encourage conciliation, the adoption of restorative practices and methodologies, to qualify and coordinate the performance of psychosocial assessments, and to act as a source of technical and methodological support for judges;

f) To determine that the bodies of the Judiciary Branch, with the support of the CNJ, adjust the electronic case management systems to enable the inclusion of preferential processing tags for all cases that receive the subject code "10921 Child Restitution, 1980 Hague Convention," as established in Art. 27 of CNJ Resolution No. 449/2022;

g) To determine that the Executive Branch adopt structural and administrative measures to strengthen the work of the Federal Central Administrative Authority (ACAF), with the definition of goals, timelines, and performance indicators;

h) To determine that the Executive Branch evaluates the convenience of Brazil's accession to the 1996 Hague Convention (on jurisdiction, applicable law, recognition, enforcement, and cooperation in matters of parental responsibility and protection measures for children), with the preparation of a technical report to be forwarded to the heads of the three branches of the government;

i) To determine that the Executive Branch, through the Ministry of Foreign Affairs, shall prepare, within six months, a protocol for assisting women and children who are victims of domestic violence, to be adopted in all Brazilian consular units abroad, taking as a reference the pilot project developed by the Consulate General of Brazil in Rome;

j) To call on the Legislative Branch, in dialogue with the Executive Branch, to assess the need for specific legislation to regulate the 1980 Hague Convention, particularly with regard to the procedural and evidentiary aspects of its application;

k) To determine that Federal Regional Courts and Courts of Justice enter into judicial cooperation

agreements to establish protocols for coordinated action in cases of international child abduction, including, among other measures, the sharing of information relating to custody actions and actions based on the 1980 Hague Convention and the joint use of multidisciplinary structures and teams, especially for the production of expert reports;

l) Once it is recognized that the conditions set forth in the Convention for determining return are not met, that the Brazilian courts' jurisdiction, as the forum of the taking parent's domicile, is established to decide on the substantive issues involved in the case, including the custody of the child.