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Via Email: hrc-sr-vaw@un.org

Re: Submission to the report of the Special Rapporteur on violence against women and girls to the 62nd session of the United Nations Human Rights Council on Violence against mothers

Ms. Alsalem:

Sanctuary for Families, Revibra!, FiLiA Hague Mothers, and GlobalARRK, by and through their counsel in this matter, Duane Morris LLP, submit this comment to address the ways in which the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (“Hague Convention”), as currently applied, penalizes mothers who relocate to protect themselves and their children from domestic violence. This comment urges reforms that will help the Hague Convention operate more effectively in light of contemporary understandings about protective takings and gender-based violence.

I. SIGNATORIES

Sanctuary for Families is a New York-based nonprofit organization dedicated to serving survivors of domestic violence and other forms of gender-based violence. Through the Narkis Golan International Child Abduction Initiative (“Initiative”), Sanctuary provides legal and technical assistance as well as advocacy to improve outcomes for survivors facing Hague Convention litigation in the United States. The Initiative’s clients are typically primary caretaker mothers who escape domestic abuse to protect themselves and their children.



Nicole Fidler, Senior Project Director on behalf of Sanctuary for Families

Revibra! is a European network of support to Brazilian victims of domestic and gender-based violence.

FiLiA Hague Mothers is a global campaign aiming to end the injustices created by the Hague Convention, specifically for mothers and children who are victims of domestic abuse.

GlobalARRK is a United Kingdom-based charity, which supports “stuck” parents worldwide and advocates for legislative change.

II. HISTORY OF THE HAGUE CONVENTION ON CHILD ABDUCTION

A. The “Problem” Hague Convention Drafters Sought to Address

When the Hague Convention was drafted in 1980, the drafters did not contemplate domestic violence as a dominant motivating factor for many parents moving their children abroad.¹ Instead, drafters believed the foremost problem was noncustodial fathers kidnapping children and taking them to a foreign jurisdiction seeking a more favorable outcome in a custody dispute.² Accordingly, drafters crafted the Hague Convention to prevent noncustodial parents from abducting children to forum shop for venues with more favorable custody dispute outcomes.³

B. Framework of the Hague Convention

The primary purpose of the Hague Convention is to provide a mechanism for the prompt return of children to their countries of habitual residence. Notably, the Hague Convention is not a mechanism to determine underlying custody or visitation disputes. To that end, the Hague Convention’s goals are (i) prompt return of children to the country of habitual residence; and (ii) ensuring parents’ custodial rights are respected by all signatory countries (“Contracting States”), or stated another way, promotion of international comity.⁴

At the outset of Hague Convention litigation, a petitioning parent must make a *prima facie* showing (i) the child is younger than 16 years old; (ii) both countries are Contracting States; (iii) the child was taken from, or retained outside, their habitual residence; (iv) the petitioning parent has rights of custody under the Convention; and (v) the petitioning parent actually exercised custody rights or would have exercised such rights.⁵

Once the petitioning parent establishes a *prima facie* case, the removal is deemed “wrongful” and the child typically will be returned to their country of habitual residence unless the respondent parent can establish a defense. In the context of domestic violence, the two most relevant defenses are: (i) whether there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation (“Grave Risk Defense”),⁶ and (ii) whether the child’s return violates fundamental principles of human rights and fundamental freedoms of the state where they are presently located (“Human Rights Defense”).⁷ These defenses are the most difficult defenses on which to prevail in some Contracting States. For instance, in the United States, the respondent parent must prove these defenses under the heightened standard of “clear and convincing evidence” while other defenses

¹ Patricia Álvares, *Exclusive: The 1980 Hague Convention’s rapporteur proposes “to reinterpret” the treaty, considering GBV*, La Diaria, Feb. 10, 2024 (recognition from rapporteur involved with drafting Hague Convention that “[g]ender-based violence was not taken into account,” and that the “[the Hague Convention’s drafters] had not become aware that it was a phenomenon”).

² *Id.* See also Olivia Gentile, *Nowhere in the World to Run: The International Law Ripping Children from Their Mothers*, The 19th, June 17, 2025.

³ Although this Comment refers to “parents,” the Hague Convention applies outside the parent-child relationship to provide a remedy to any person who has custodial rights over the child.

⁴ Hague Convention, Art. 1.

⁵ *Id.* at Arts. 1-4.

⁶ *Id.* at Art. 13(b).

⁷ *Id.* at Art. 20.

available under the Hague Convention need only be proved by a “preponderance of the evidence” standard.⁸

III. ADVERSE CONSEQUENCES FOR MOTHERS ESCAPING DOMESTIC VIOLENCE UNDER THE HAGUE CONVENTION

Hague Convention drafters were mistaken when they assumed that most international child custody disputes would involve noncustodial fathers wrongfully kidnapping children from custodial mothers.⁹ Since the Hague Convention was adopted, data instead shows that custodial mothers reporting domestic violence constitute the overwhelming majority of taking parties in return applications. For instance, 75% of taking persons were mothers in 2021.¹⁰ In published cases from the United States between July 2022 through June 2024, 79% of respondent mothers alleged domestic violence or child abuse, yet only 17% of those who raised a Grave Risk Defense at trial succeeded in proving it.¹¹

The drafters’ mistaken understanding about why parents flee with their children led to a treaty solving for the wrong problem. As implemented, the Hague Convention inadvertently produces numerous adverse consequences for mothers seeking to escape domestic violence.

A. The Hague Convention makes it difficult for respondent parents to prevail on defenses grounded in domestic violence.

It is exceedingly difficult for respondent parents to be successful in Hague Convention defenses, as interpreted through the Hague Convention’s plain language, accompanying good practice guides and enabling legislation in Contracting States, when their taking was motivated by domestic violence.

i. The Hague Convention’s expectation that proceedings resolve within six weeks prioritizes the prompt return of the child over adequate consideration for the child’s and parent’s safety.

Article 11 of the Hague Convention proscribes that Contracting States “shall act expeditiously in proceedings for the return of children” and warns that a Contracting State may have to account for any delay in proceedings lasting longer than six weeks.¹² The drafters’ presumption that international abductions are inherently harmful and should be remedied immediately results in accelerated proceedings where it is unlikely that courts will have a chance to adequately consider the child or respondent parent’s safety if the child is ordered returned to their country of habitual residence.

As a practical matter, the accelerated proceedings make it difficult for respondent parents to hire an attorney and present a fulsome defense. It can be difficult to locate a trauma-informed

⁸ 22 U.S.C. § 9003(e)(2)(A). Other defenses may include the well settled defense, the child’s objection, and the custodial rights of petitioning parent were not exercised.

⁹ Permanent Bureau of the Hague Conference on Private International Law, Nigel Lowe & Victoria Stephens, *Global Report – Statistical study of applications made in 2021 under the 1980 Child Abduction Convention* (2023).

¹⁰ *Id.* Further, 73% of taking persons were mothers in 2015, and 69% were mothers in 1999.

¹¹ Gentile, *supra* note 2. See also Merle H. Weiner, *You Can and You Should: How Judges Can Apply the Hague Abduction Convention to Protect Victims of Domestic Violence*, 28 *UCLA Women’s L. J.* 223 (2021).

¹² Hague Convention, Art. 11.

attorney who has experience navigating the complexities of the Hague Convention combined with a history of domestic violence. Evidence of the domestic violence also may be tied up with bureaucratic institutions that have long processing times for any records requests, such as law enforcement, government agencies, hospitals and schools. Evidence may also need to be translated from a foreign language. The Hague Convention’s prioritization on resolving cases within six weeks undermines a court’s ability to receive and consider the evidence that is necessary to determine how domestic violence may play a role in any raised defenses.

When children are ordered to return to their country of habitual residence, mothers—usually the protective, primary caretaker parent—may choose to follow. Doing so presents a myriad of challenges for mothers. They may return to a default custody order favorable to the abusive parent, or worse, pending criminal charges. They may return to countries where they have no immigration status, and as a result, have difficulty accessing housing, public benefits and work permits. Together, these circumstances present formidable obstacles to mothers’ and children’s safety and stability, perpetuating the cycle of domestic violence.

Consider the case of Sanctuary’s client, Loana Noguera, who is a survivor of domestic violence and protective taking parent. The accelerated pace of her Argentinian Hague Convention litigation prevented her from presenting a full picture of the domestic violence she indicated that she and her child endured by the child’s father in the United States.¹³ Ms. Noguera submitted what little evidence she had on hand, namely, copies of her restraining orders and a few photographs on her phone of injuries sustained by her son.¹⁴ The truncated timeframe prevented Ms. Noguera from providing evidence of the serious psychological abuse that she and her son endured or associated witness testimony.¹⁵ As a result, the court summarily ordered her son to return to his father in the United States.¹⁶ Ms. Noguera was not even given a chance to say goodbye to her child.¹⁷ Once in the United States, his father’s abuse would continue for years until, as a teenager, her son fought to leave and was finally reunited with his mother.¹⁸

ii. Some Contracting States imposes a high burden of proof for defenses grounded in domestic violence that is difficult to satisfy.

The enabling legislation for some Contracting States, and through case law in others, the standard of proof for defenses grounded in domestic violence is higher than other defenses.¹⁹ In the United States, respondent parents must prove the Human Rights and Grave Risk Defenses by “clear and convincing evidence” whereas the remaining defenses may be proven by the “preponderance of the evidence.”²⁰

The higher standard of proof is particularly problematic since many judges adjudicating Hague Convention petitions may not have experience handling domestic violence cases that could help them understand the pervasive and wide-ranging types of abuse, many of which are

¹³ Telephone interview with Loana Noguera, in Boston, M.A. (January 23, 2026).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ See e.g., 22 U.S.C. § 9003(e)(2)(A).

²⁰ *Id.*

not physical. For instance, in the United States, Hague Petitions typically are filed in federal courts, while most civil and criminal cases involving domestic violence typically are adjudicated in state courts. As a result, federal judges lack regular exposure to domestic violence cases that would help them understand the realities of domestic violence and why it can be so difficult to prove.

The higher standard of proof also is difficult because judges often lack the benefit of trauma-informed training and domestic violence risk assessments, which would keep judges apprised of recent developments in domestic violence research. Such recent developments include the understanding that children often are victimized when domestic violence is perpetrated against a parent,²¹ and the recognition that coercive and controlling behavior is frequently employed as a type of domestic violence.²² Moreover, trauma-informed training would allow judges to better understand why a survivor may delay separating from her abuser, may never report the abuse, and may find testifying at trial difficult.

The lack of trauma-informed training was particularly detrimental in Ms. Noguera’s case. Despite Ms. Noguera’s testimony that her son’s father physically and psychologically abused the family for years, Ms. Noguera reported that the Argentinian judge presiding over her case did not credit her testimony, instead relying on the fact that she chose to have a child with the father.²³ Ms. Noguera reported that the judge treated Ms. Noguera as a kidnapper and a criminal from the outset of her case, not considering that she may have been a victim fleeing domestic violence.²⁴

iii. When a respondent parent establishes the Grave Risk Defense, the Guide to Good Practice endorses returning the child if accompanied by an order for protective measures.

Even when a respondent parent proves the Grave Risk Defense, a court still may return the child if the court believes there are protective measures that could keep the child safe.²⁵ Such protective measures are not proscribed by the Hague Convention, but the HCCH’s 1980 Child

²¹ Studies show that children are psychologically traumatized by witnessing domestic violence perpetrated against a parent. See Everytown, *Guns and Violence Against Women* (2025). Moreover, in households reporting adult domestic violence, there also often exists various forms of child maltreatment. At the very least, where a mother is being abused, children may be inadvertently injured during violence—sometimes even fatally so. For example, nearly one-third of gun homicides in children under age 13 are connected to intimate partner or family violence. See Everytown, *Guns and Violence Against Women* (2025).

²² There is no mention of coercive and controlling behavior – which can include patters of threatening or intimidating behavior that interferes with another’s free will – in the Hague Convention and the Guide to Good Practice, despite its recognition by many Contracting States as a tool to perpetrate domestic violence. See, e.g., Serious Crime Act 2015, c. 9, § 76 (UK law criminalizing coercive control in intimate or family relationships); Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) (Canadian law requiring courts to consider coercive control when making the best interest determination for a child in the context of divorce); M.G.L. c. 209A, § 1 (Massachusetts law defining “abuse” in the context of domestic violence as including coercive control).

²³ Noguera *supra* note 15.

²⁴ *Id.*

²⁵ Guide to Good Practice, § II(1)(b).

Abduction Convention Guide to Good Practice Part VI Article 13(1)(b) (“Guide to Good Practice”)²⁶ and the Brussels II-ter Regulation²⁷ nevertheless endorse the use of such measures.

Protective measures are unable to keep children and mothers safe. Respondent parents seeking to enforce protective measures in the country of habitual residence face major challenges navigating foreign legal and support systems, often without language, cultural or legal assistance. Respondent parents further report that protective measures either have no enforcement mechanism or are very difficult to enforce after the child is ordered returned to the country of habitual residence.²⁸ A 2024 U.K. study reports that two-thirds of protective measures were not implemented in the left-behind country.²⁹ Indeed, even where both countries enter reciprocal court orders (“mirror orders”) including the same protective measures, such mirror orders still fail to keep victims safe. Abusers frequently breach court orders³⁰ and resume abusive behavior even after law enforcement or social services intervention.³¹

For example, GlobalARRK’s client Ann,³² another survivor of domestic violence who faced a Hague petition by her abuser, experienced first-hand the devastating consequences of failed protective measures.³³ A European court entered an order imposing a variety of so-called protective measures to keep Ann and her son safe in returning to Australia.³⁴ The order required the father to provide financial support and pay for a hotel upon return.³⁵ Even though a mirror order was entered in Australia and the European court, the father disregarded his obligation to provide financial support.³⁶ Ann and her son were unable to afford any housing or legal assistance to seek relief.³⁷ On their first night in Australia, they slept in a hotel garage under cardboard boxes.³⁸

By contrast, some Contracting States have begun taking positive steps to move beyond the Guide to Good Practice’s and Brussels II-ter Regulation’s promotion of protective measures. In *Golan v. Saada*, the United States Supreme Court’s landmark decision recognized that courts are not required to consider protective measures as the risk is so high in some situations that no

²⁶ Judges, attorneys and parties involved in Hague Convention petitions may rely on the Guide to Good Practice when making decisions on Hague Convention petitions.

²⁷ This Regulation applies to all European Union member states with the exception of Denmark.

²⁸ GlobalARRK and Hague Mothers, *The Effectiveness of Court-Ordered Protective Measures in the Aftermath of Hague Convention Decisions: An International Survey* (June 2024) (Expert Paper presented at the HCCH Forum on Domestic Violence and the Operation of Article 31(1)(b) of the 1980 Child Abduction Convention).

²⁹ reunite International Child Abduction Centre, *The Outcomes for Children Returned Following an Abduction*, (2003).

³⁰ See Andrew R. Klein & Terri Tobin, *A Longitudinal Study of Arrested Batterers, 1995–2005: Career Criminals*, 14 *Violence Against Women* 136 (2008); see also Julian Farzan-Kashani et al., *Anger Problems Predict LongTerm Criminal Recidivism in Partner Violent Men*, 32 *J. Interpersonal Violence* 3541 (2015).

³¹ See Edward W. Gondolf, *Evaluating Batterer Counseling Programs: A Difficult Task Showing Some Effects and Implications*, 9 *Aggression and Violent Behavior* 605 (2004).

³² Ann’s last name is omitted to protect her privacy and safety.

³³ Interview with Ann, <https://www.youtube.com/watch?v=PhU2i74G15s> (last visited Nov. 6, 2026).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

protective measures could ameliorate the possible danger.³⁹ This is the norm in cases of domestic violence, but the Guide to Good Practice suggests that nonreturn defenses should be applied restrictively. Consequently, the current emphasis is that protective measures should be used, not that they are ineffective, unreliable, and/or otherwise inappropriate.

iv. The Hague Convention and its enabling legislation result in an inequity of arms between the petitioning parent and respondent parent.

Respondent parents (usually mothers) face disproportionately higher costs to defend Hague Convention petitions compared to left-behind parents who prosecute such petitions (usually fathers). The Hague Convention requires countries to provide free representation to petitioners. Some Contracting States who entered a reservation to that obligation still provide the petitioning parent with legal aid or assistance funding low/no cost attorneys. In the United States, for instance, the Office of Children’s Issues in the Department of State helps connect petitioning parents with attorneys who have self-identified as having Hague Convention expertise and who may take the case pro bono or for a reduced fee.⁴⁰ The Department of State does not provide the same service to the respondent parent.

The inequities a respondent parent may face in bearing a disproportionate cost to retain counsel and litigate a Hague Convention petition is further compounded by large financial disparities between a mother and father due to the dynamics of financial abuse, immigration abuse (*e.g.*, preventing migrant mothers from obtaining work permits), and isolation tactics perpetrated against a mother/abused partner. As a result, respondent mothers often cannot afford the core resources—such as competent legal counsel, expert witnesses, translations of evidence—to fairly and fully defend a Hague Convention petition.

In Ms. Noguera’s case, she had to take out a private loan, seek contributions from family, and give up her apartment to move in with her great aunt to afford a private counsel’s \$60,000 legal fee to defend against the father’s Hague Convention petition.⁴¹ This inequitable division of resources revictimizes respondent parents simply seeking to defend their decision to take their child and flee domestic violence.

IV. RECOMMENDATIONS

The Hague Convention must be updated to ensure it is addressing the needs of domestic violence survivors and their children, ensuring it is in full compliance with international human rights instruments protecting the rights of women and children. Recommended updates include:

- New defenses specifically addressing domestic violence, acknowledging that domestic violence perpetrated by one parent against the other parent inherently causes harm to children and presents a significant risk to return.

³⁹ *Golan v. Saada*, 596 U.S. 666 (2022).

⁴⁰ United States Department of State, *Join the Hague Convention Attorney Network*, available at <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/attorneys/join-the-attorney-network.html> (last visited Feb. 5, 2026).

⁴¹ Noguera *supra* note 15.

- A clear distinction between harmful abductions and protective moves, including acknowledging that domestic violence is a dominant motivating factor when primary caretaking parents remove children from their habitual residence.
- A definition of domestic violence grounded in social science that includes coercive control, including financial control and isolation, and acknowledges that psychological abuse can be just as harmful as physical abuse.
- The elimination of the protective measures paradigm and a strong statement that protective measures cannot circumnavigate a finding of the Grave Risk or Human Rights Defenses.
- A statement that courts' decisions should be focused on a fulsome safety assessment of the child and the child's primary caretaker parent, rather than on the prompt return of the child.
- Attorneys fee recovery available to the prevailing respondent, not just a prevailing petitioner.
- Recommendations that Contracting States (i) provide free specialist legal services to respondents who engage in protective moves; (ii) impose ordinary civil burdens of proof for respondent parents to establish all defenses, including the Grave Risk and Human Rights Defenses; (iii) establish protocols for trauma and domestic violence training for judges handling Hague Convention petitions; and (iv) establish protocols for a trauma-informed risk assessment to be conducted when domestic abuse is raised to ascertain the actual level of risk if children are returned to the country of habitual residence.

Amending the Hague Convention may be challenging and time-consuming. Nonetheless, if the Convention is to stay relevant and useful it must be re-examined to ensure it is not a weapon against mothers and children survivors of domestic violence.

Updating the Hague Convention, however, is a long-term solution. In the immediate future, state and non-state actors can begin to implement the recommended updates noted above with strong policy statements. The HCCH should amend its Guide to Good Practice, Central Authorities should promulgate clear guidance, and Contracting States should amend statutory law implementing the Convention. These changes hopefully will catalyze a paradigm shift in the way survivors and their children seek protection and justice in courts, even while the HCCH works on amending the Hague Convention to ensure its just application.