

Multiple perspectives on battered mothers and their children fleeing to the United States for safety

A study of Hague Convention cases

Executive Summary

Jeffrey L. Edleson, Ph.D.
University of Minnesota

Taryn Lindhorst, Ph.D.
University of Washington

With
Gita Mehrotra, M.S.W.
William Vesneski, M.S.W., Esq.
University of Washington

Luz Lopez, Ph.D.
Boston University

Sudha Shetty, Esq.
University of Minnesota

November 2010

The full report is available online at <http://www.haguedv.org/>

EXECUTIVE SUMMARY

Mothers who flee with their children because of domestic violence may have few other options to ensure their safety and that of their children in the face of their partner's violence. Yet when their flight takes them across international boundaries, they become vulnerable to being legally treated as an "abducting" parent by the courts. This report focuses on the situations of women who experienced abuse in another country and came to the United States in an effort to protect themselves and their children, but who then faced civil actions in U.S. state or federal courts for child abduction under international legal agreements. We interviewed battered mothers around the world, their attorneys, their husbands' attorneys and examined published judicial decisions in cases involving the Hague Convention on the Civil Aspects of International Child Abduction where there were also allegations of domestic violence by one parent against the other. The research team interviewed 22 mothers who responded to Hague petitions in U.S. courts, 23 attorneys representing both mothers and fathers in these cases and five specialists, such as expert witnesses. The research team also analyzed 47 published U.S. Hague Convention court decisions involving allegations of domestic violence.

Battered mothers who fled across borders to the U.S. to receive help from their families were often victims of life threatening violence, and their children were frequently directly or indirectly exposed to the father's violence. The women sought but received little help from foreign authorities or social service agencies and received little help from U.S. authorities once they came to the U.S. In fact, these mothers – most of whom were U.S. citizens – often faced U.S. courts that were unsympathetic to their safety concerns and subsequently sent their children

back to the custody of the abusive fathers in the other country, creating potential serious risks for the children and mothers.

Summary of Key Findings

Below we summarize our key findings in seven areas. Chapter 11 includes a table that discusses the policy and practice implications for each of these findings.

1. Mothers and children often experienced severe violence from the left-behind fathers who filed Hague Convention petitions to have their children returned.

- Most of the mothers in this study faced serious physical and sexual assaults, coupled with life threatening behaviors by their husbands that led these mothers to believe that their and/or their children's lives were in danger.
- The children in these homes were often also physically assaulted or exposed to extensive violence against their mothers resulting in reported profound effects on the children, consistent with a growing social science literature on child exposure to violence.
- The majority of mothers in this study voluntarily resided in the other country but a significant number of mothers (40%) reported their choice of residence was coerced, forced or the result of deception by their husbands, leading to questions about the intentions of parents when establishing a child's habitual residence.
- A number of women followed through on expected steps such as leaving their violent husbands and receiving custody of their children from the other country's courts, only to face continued violence and threats from their husbands when they remained in the other country.

- The seriousness of the domestic violence the mothers faced was further reinforced by the fact even those who succeeded in retaining their children in the U.S. faced continued threats and extensive fear from their former husbands, consistent with the social science literature on post-separation violence.

2. Mothers were unable to access helpful resources in the other country, so they left with their children to seek safety and support of family members in the United States.

- Most mothers reported multiple attempts to seek informal and formal help in the other country, prior to leaving the country, with little success and sometimes resulting in further reinforcement of their violent husbands' positions by the authorities.
- The process of leaving to the U.S. was a difficult one for most women, some of whom planned their move and some of whom made the decision on short notice.
- In almost all cases, both for U.S. citizens abroad and for immigrant women, leaving the other country for the U.S. was a way to obtain the emotional and financial support of family members residing in this country.

3. U.S. authorities and courts were not receptive to mothers' safety concerns.

- The majority of women in this study had their children returned to the other country by U.S. courts, and most of the time this meant their children's return to a life with the mothers' violent husbands.
- The overwhelming social science evidence, developed over the last three decades since the Convention was established, indicates that children exposed to domestic violence are at risk of physical and psychological harm by living with a violent father. In only one of

the mother's cases did a U.S. court explicitly recognize a child's exposure to domestic violence as potentially harmful to the child.

4. Mothers and children faced great hardships after a Hague Convention decision.

- Fathers used U.S. court Hague decisions to leverage their positions in custody cases upon return of their children to their habitual residence.
- Women and children faced high levels of hardship when they returned, with many women unable to work in the other country because of their immigration status.
- Almost half of the women and/or children who returned to the other country were victims of renewed violence or threats by the fathers on their return to the other country.
- Mothers reported that *none* of the court ordered or voluntary undertaking aimed at protecting them and/or their children upon return to the other country were implemented.

5. Legal fees and representation were major barriers for women responding to Hague Convention petitions.

- The cost of litigating a Hague Convention case was a major barrier to legal representation for mothers and one that greatly concerned attorneys in these cases. Mothers did not have access to the same sources of legal representation as did left-behind fathers.
- Fathers were more often were represented by attorneys in the U.S. Department of State's Attorney Network who were more likely to have access to larger firm resources. Fathers could receive additional U.S. government assistance in locating their child, travelling to the U.S. for court appearances and in preparation of their attorneys.
- Mothers were more often likely to locate an attorney on their own in a legal assistance agency or a small family law practice.

6. *Hague Convention decisions have not considered two decades of research on child*

exposure to domestic violence when deciding on grave risk.

- Analyses of published judicial decisions reinforce both mothers' and attorneys' views that children exposed to extensive domestic violence by fathers against their mothers are seldom seen by U.S. courts as at grave risk of physical or psychological harm. The findings from mother interviews in this study and the extensive social science research on children's exposure to domestic violence are contrary to most of these published court rulings.
- Evidence of harm to children presented by attorneys through their briefs and through expert witness testimony, was a key factor in cases where grave risk was found.

7. *Safety for battered mothers and their children facing Hague petitions requires training for attorneys and judges on both domestic violence and the law surrounding Hague Convention cases.*

- Interviews with mothers and attorneys as well as an analysis of judicial rulings in published cases clearly indicates the need for greater awareness among and training of attorneys and judges in three primary areas:
 - 1) the meaning of all Articles in the Convention, including exceptions;
 - 2) the social science literature on domestic violence and the effects of child exposure to abuse in the family; and
 - 3) the experiences of mothers and children both before they leave to the U.S. and then after Hague case decisions are made whether they remain in the U.S. or return to the other country.

In the 30 years since the Hague Convention was completed a large body of research has shown the potential for grave harm to children if they are exposed to domestic violence. In fact, U.S. Attorney General Eric Holder has launched a major national initiative to reduce child exposure to violence, including domestic violence. In the last decade, legislation in states and training of judges has focused on the importance of considering evidence of child exposure to violence in domestic custody cases. Yet judges who are returning children to abusive fathers when deciding Hague Convention cases seem to be unaware that domestic violence exposure may create a grave risk to children and can be a reason to allow children to remain with their mothers in the U.S. after fleeing from violent husbands or partners.