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**Battered Mothers Seeking Safety Across International Borders:
Examining Hague Convention Cases involving Domestic Violence**

Jeffrey Edleson, PhD

Professor

University of Minnesota School of Social Work

jedleson@umn.edu

Taryn Lindhorst, PhD, LCSW

Associate Professor

University of Washington School of Social Work

tarynlin@u.washington.edu

Battered Mothers Seeking Safety Across International Borders: Examining Hague Convention Cases involving Domestic Violence

Transnational relationships have become more common in the past 30 years, and negotiating the dissolution of these relationships is increasingly complicated. Women whose husbands are abusive often turn to family members for assistance in coping with the abuse and repairing their lives. Mothers who flee with their children may have few other options to ensure their safety and that of their children in the face of their partner's violence, yet they remain vulnerable to being legally treated as an "abducting" parent when returning to family means leaving one nation for another. Our study, funded by the U.S. National Institute of Justice, focused on the situations of women who experienced intimate partner abuse in another country. They came to the United States in an effort to protect themselves and their children, but then faced U. S. court actions under the Hague Convention on the Civil Aspects of International Child Abduction.

Our research goal was to obtain perspectives from battered mothers, attorneys, judges and others involved in Hague petition cases heard in U.S. courts. In this article, we report a selection of the information we obtained from in-depth interviews with 22 battered women who had come to the U.S. with their children and subsequently had a Hague petition filed against them by a left-behind father. We also interviewed 14 of the mothers' attorneys, nine attorneys who had represented left-behind fathers, five other specialists such as expert witnesses and reviewed 47 published decisions issued by American judges. For full details on the complete study, please see our final report available at <http://www.haguedv.org>.

Description of Families Studied

The parents in this study were generally in their late 30's, most mothers were white, one was African American and six were Latina. Over half of the women had a college degree, and almost all of the left-behind fathers were highly educated. Parents had been in a relationship with each other for, on average, over 10 years. All but one of the women was legally married to the father of their children, however, six (27.3%) of the women were legally divorced from the men at the time their ex-husbands filed a Hague petition. Forty-five children were involved in the Hague petitions, of which almost two-thirds (63.2%) were boys. The children tended to be young, with an average age of 6.42 years and ranged from one to 15 years old.

Mothers in the study came to the U.S. primarily from countries on the northern and eastern coasts of the Mediterranean (n=11; 49.9%), from Northern European countries (n=6; 27.24%) and Latin America (n=5; 22.7%). Five women (22.7%) were immigrants to the United States, while 17 (77.3%) were U.S. citizens. The majority of the men were not U.S. citizens.

Mother and Child Exposure to Violence

The women in the study reported a variety of severe abusive experiences towards themselves, and sometimes towards their children. These experiences included emotional terrorizing, physical assault, threats to life, intentional isolation, economic control such as withholding finances, immigration threats (i.e., destroying passports) and rape. In the following excerpt, one of the mothers recalls a situation that exemplified the kind of emotional terrorizing and threat to life that many of the women experienced.

“One night, he put a weapon to my head. I saw it on my right temple. I saw from the corner of my eye, how he was pulling the trigger. When he put it to my head, I asked him to not to play around like that, please. I tried not to move an inch

because I thought that if I moved, he would shoot me. I closed my eyes and heard the 'click.' Then he took the weapon away from my temple and laughed. He said, 'You're so dumb. You're an ass. It's not even loaded.' I went up to my room crying, and for days after that I kept thinking what if the weapon would have had only one bullet?"

Violence in these families was not limited to the women, although all of the women experienced some combination of the types of abuse described above. In eight families, the children were themselves the intentional targets of their father's violence, or were harmed during a physical attack on their mother. The mother's story below illustrates the kinds of physical abuse experienced by the children in these families.

It must have been Christmas day, or just after Christmas. My older son did something to my daughter's doll and it got [my husband] into such a tirade that he went to go beat [my son] with that doll. I got in between him and [my son], and kept trying to push [my husband] away from [my son], and [my husband], then, beat me, beat [my son].

Regardless of whether they were the intended victims of their fathers' abuse, many children in these families experienced significant levels of fear, even long after they were physically separated from their fathers. Even those children who were not directly victimized by their fathers had ongoing emotional difficulties and fearfulness. The mothers attributed these reactions to their children's witnessing of the violence and of the mother's emotional response to the abuse.

Coercion, Violence and Habitual Residence

The purpose of the Hague Convention is to return children to their “habitual residence” as quickly as possible since the priority is to have courts in the country where the child has usually resided make decisions about issues of custody and visitation upon the dissolution of a marriage/partnership. An underlying assumption of the habitual residence concept is that both parents voluntarily agree to reside in another country with their children. U.S. courts are divided on whether to evaluate the shared intent between parents to reside in a certain place as indicative of habitual residence (Vivatvaraphol, 2009). Many judges have suggested that habitual residence must demonstrate some element of voluntary agreement between parents. However, forty percent of the U.S. citizens in this study were coerced in some manner to either return to their husband’s country, or to stay there once the family had relocated. For example, one mother described her relocation to the other country as follows:

“I moved with my husband and my two children to [his country] [...] and the day after we arrived there, I realized that I had made a mistake. Our marriage had been falling apart, and literally the day after we arrived, I told him that I had made a mistake and I wanted to go home, and I wanted a divorce. What I didn’t know was that before we had moved, he had set it up so that I couldn’t go home. [...] He had set up, with his family, a meeting with an attorney, which he did immediately, got a restraining order against me, and I could not leave the country. I was trapped.”

A few months later this mother and her children travelled to the U.S. on what was to be a vacation but what she secretly planned as a permanent return to the U.S. After a

Hague petition was filed, the U.S. court ordered the children returned to the other country.

The question of the child's habitual residence is far more complex than a simple calculus of time or a child's attachment to social institutions. Children may have spent several years in another country. However, these actions may be rooted in efforts of the father to entrap the mother and children in the other country. As a result, the issue of habitual residence in these families should be carefully explored. To determine the child's habitual residence without acknowledging the dynamics of abuse may further perpetuate harm to the women and children.

Relationship of Domestic Violence to the Hague Decision

The majority of mothers we interviewed had their children returned to the other country (n= 12; 54.5%). In seven of these cases, the return to the other country meant return to the father. In three remaining cases, the judge permitted the children to remain with their mothers on return to the other country; in two cases, it was unclear who had physical custody of the child after the return.

We compared whether a child was ordered returned to the left-behind parent's country or allowed to stay in the U.S. based on categorizing the violence experienced in the household into four groups: (1) mother and child both physically harmed (8 families), (2) mother physically harmed and child exposed to the violence (7 families), (3) mother physically harmed, child not exposed to the violence (3 families), and (4) emotional terrorizing with no or minimal violence (3 families). One other family's pattern was unclear. By grouping families in this way, a distinct pattern was seen in these cases. Families where women and children were both physically harmed were the most likely to be allowed to remain in the U.S. (6 of 8 had return denied). Judges were most likely to return the children to the other country (usually to the father) when

serious domestic violence had occurred and the child was exposed to it, but the physical abuse was only directed towards the mother (6 of 8 had children returned). Judges were also less likely to allow the children to remain in the U.S. with their mother when emotional terrorizing in the absence of physical violence occurred, and when the abuse situation was unclear.

Finally, in four cases where children were returned to the country of the left-behind father, undertakings agreed to by the father outlined steps for protecting the children and their mothers upon their return. Mothers reported that *none* of these undertakings were implemented. This is consistent with Reunite International's (2003) finding that in cases decided in the United Kingdom, none of the undertakings protecting children on return were implemented.

DISCUSSION

Women and children in this study usually faced severe and sustained exposure to domestic violence prior to the mothers' decision to flee the other country. For the majority of the women, this violence included serious physical assaults against them, coupled with a degree of threatening behavior that led the women to believe that their lives and/or those of their children were in danger. They were usually isolated from family members and friends, prevented by their husbands from having independent access to financial resources and/or exposed to threats based on their immigrant status. These patterns are consistent with the larger literature on the experience of woman battering and coercive control (see Stark, 2007).

Sometimes, children saw fathers assault mothers in ways that could have resulted in the mother's serious injury or death. Based on current definitions of children's exposure to domestic violence, 86.4% of the children in this sample were exposed to domestic violence. In most cases a child's exposure to domestic violence was not a sufficient reason to prevent their return to the other country, and the father. Despite the severity of abuse happening in these families, most

U.S. judges in these Hague cases did not acknowledge that exposure to this violence could constitute a grave risk of physical and especially psychological harm to the children, providing an exception to their return.

The majority of the women in this study had their children returned to the other country, and most of the time this meant return to the abusive husband. A sizable minority of mothers we interviewed indicated they were tricked into relocating, immediately prevented from returning when they arrived in the other country, or forced by potentially life-endangering threats to accompany their husband to the other country. Although the Hague Convention is clearly understood to deal with the jurisdictional issue of which court should hear cases regarding the child, and *not* as a child custody case, the fact that returned children are usually given to fathers in the other country means that these decisions act as *de facto* custody rulings. Fathers in the other country often used the fact that children were returned by a U.S. judge as proof that the mother was an unfit parent who had acted illegally in fleeing with the children.

Over the past two decades, numerous studies have indicated that children who are exposed to adult domestic violence – even when this exposure consists of witnessing or being aware of the violence, but not direct physical harm – can show similar levels of psychological problems as children who are the victims of direct physical abuse (Bogat et al., 2006; Kitzmann et al., 2003; Wolfe et al., 2003). The original framers of the Hague Convention provided for exceptions to the child's return based on a grave risk of physical or psychological harm to the child, return represents an intolerable situation for the child or a violation of the child's human rights, among others. Many judges appeared to take a narrow view of these exceptions despite two decades of mounting social science evidence regarding the grave psychological risks created for children exposed to domestic violence.

Battered women's flight across national borders raises two paradoxical issues. First, women are traditionally castigated for staying with battering husbands. Since the earliest writing on battered women many have asked, "Why does she stay?" For mothers who finally flee the batterer, but end up crossing an international border to do so, the ironic focus becomes the exact opposite: "Why did she leave?" Second, under the current policies and procedures emanating from the Hague Convention, the law indicates that women should stay in the country where they are residing with their children, even in the face of serious abuse, under the assumption that services and resources are available to assist her in the other country (services which were not available to the majority of women in this study). Ultimately, the implication of the Hague Convention is that women can either choose to save themselves and leave their children behind if they need to escape the violence, or stay in the other country and risk trauma, injury and potentially death at the hands of their abuser in order to seek custody of their children back in the country of habitual residence. As U.S. Supreme Court Justice Stephen Breyer asked in the recent *Abbott v. Abbott* hearing: "She has to choose between her life and her child -- is that what this convention is aimed at?"

REFERENCES

- Abbott v. Abbott*, __S.Ct. __, 2010 WL 1946730
- Bogat, G. A., DeJonghe, E., Levendosky, A. A., Davidson, W. S., & von Eye, A. (2006). Trauma symptoms among infants exposed to intimate partner violence. *Child Abuse & Neglect*, 30, 109-125.
- Evans, S.E., Davies, C. & DiLillo, D. (2008). Exposure to domestic violence: A meta-analysis of child and adolescent outcomes. *Aggression and Violent Behavior*, 13, 131-140.
- Kitzmann, K.M., Gaylord, N.K., Holt, A.R. & Kenny, E.D. (2003). Child witness to domestic violence: A meta-analytic review. *Journal of Consulting and Clinical Psychology*, 71(2), 339-352.
- Reunite International (2003). *The outcomes for children returned following an abduction*. Leicester, UK: Author.
- Stark, E. (2007). *Coercive control: The entrapment of women in personal life*. New York: Oxford University Press.
- Vivatvaraphol (2009). Back to basics: Determining a child's habitual residence in international child abduction cases under the Hague Convention. *Fordham Law Review*, 77, 3325 – 3368.
- Wolfe, D.A., Crooks, C.V., Lee, V., McIntyre-Smith, A., & Jaffe, P.G. (2003). The effects of children's exposure to domestic violence: A meta-analysis and critique. *Clinical Child and Family Psychology Review*, 6(3), 171-87.