Seeking Safety Across Borders:
*Battered Women’s Experiences with the Hague Convention in American Courts*

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What is the Hague Convention?

- Multi-lateral treaty between 85 countries
- Civil procedures, not criminal
- Protect children from harmful effects of abduction
- Procedure for “prompt return”
Hague Convention Application & Goal

Wrongful Removal \(\xrightarrow{\text{Return to}}\) Unlawful retention

Return to “Habitual Residence”
Increasing number of signatories and parties to the convention

U.S. has highest number of cases worldwide

Most U.S. cases involve Latin America or Europe
Administrative Process

- U.S. authorizing legislation: ICARA
- Each country must designate a central authority.
- US State Department
  - Office of Children’s Issues
New Zealand

- New Zealand and the United
  - treaty partners under the 1980 Hague Convention (Hague Abduction Convention) since October 1, 1991

- Central Authority - is located in the Ministry of Justice
  - has an administrative role in processing Hague Abduction Convention applications by reviewing applications received and,
  - if complete, forwarding to the nearest District Court
The New Zealand Central Authority

- Appoints an attorney for left-behind parents who are pursuing the return of or access to a child who was habitually resident.
- Provides legal assistance to applicants regardless of their financial situation.
- The U.S. Consulate General in Auckland, New Zealand, posts list of attorneys including those who specialize in family law.
- Respondent battered mothers?
How Hague cases may unfold

- Citizenship does not matter
- NZ couple living in the US for a job could be involved in a Hague case.
Key Defenses

12: Settled in a new place
13: Child is mature and objects
13a: Parent consents
13b: Grave risk of physical or psychological harm or places child in an intolerable situation
20: Violation of a child’s human rights
Barriers Facing Women & Children

- Linguistic & Cultural Isolation
- Citizenship
- Lack of DV Assistance in Other Country
- Attorneys & Judges Lack Experience with Hague
- High Cost & Fast Timeline of Cases
From Hague Convention Authorities

69% of “Taking Parents” Worldwide were Mothers

> 50% of Children are Returned to Left Behind Parent

Source: Lowe, 2011
Most Taking Parents are Mothers

Many Children Return to Fathers

Domestic Violence?

Europe (n = 16)

Latin America (n=4)

Middle East (n = 2)

17 U.S. citizens; 5 immigrant women
<table>
<thead>
<tr>
<th>Case Outcome</th>
<th>Battered Mother AND Child</th>
<th>Battered Mother ONLY</th>
<th>Psychological Abuse</th>
<th>Unclear Abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child remained in US with Mother</td>
<td>6</td>
<td>2</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Child returned to other country with Father</td>
<td>2</td>
<td>8</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>
Mothers and their children experience significant & severe DV

When women experience battering, but not their children, their children are more likely to be returned

Women have access to few resources in US or other country to support their safety

More children returned to abusive father (regardless of DV presence or severity)
International Child Abduction and Domestic Violence

ECHR Says Hague Rulings Must Consider Child's Best Interests

The European Court of Human Rights ruled in the case of NEULINGER AND SHURUK v. SWITZERLAND that the best interest standard applies to decisions on return of a child and that full consideration must be given to the merits of claims that the child will be at risk under Article 13(b) of the Convention. This decision is persuasive authority for countries around the world because the Court has argued that international human rights standards arising from the Convention on the Rights of the Child, the Declaration of the Rights of the Child and regional human rights instruments require that when risk is assessed under Article 13(b) reference to 'best interest of children' means that the interest of an individual child before the court must be taken into account and be paramount.

Hague Leader Supports Child's Domestic Violence Exposure as a Grave Risk

William Duncan, the deputy secretary-general of the Permanent Bureau of the Hague Conference on Private International Law, stated in an editorial on Japan’s Asahi Shimbun English language website on 22 June 2010 that 'Should there be evidence of serious domestic violence being committed in the presence of a child against the child's mother, for example, the presiding judge will most likely rule against sending the child back to his or her father, unless he can be assured that the return of the child can take place under safe conditions.' Read full editorial in Asahi Shimbun.

SAVE THE DATE: Friday, December 10, 2010, from 2pm to 4pm Central.
New book

What Can We Do?

- Recognize DV as a Risk to Children and Mothers
- Revise implementing legislation
- Educate Mothers about Transnational Issues
- Ensure Mother and Children’s Safety if Returned
- Provide Support & Resources to Mothers
- Educate Lawyers & Judges