



# 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**

**Unlawful retention**

**Return to “Habitual Residence”**





# Increasing Cases

- 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<sup>1</sup>**
- **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**



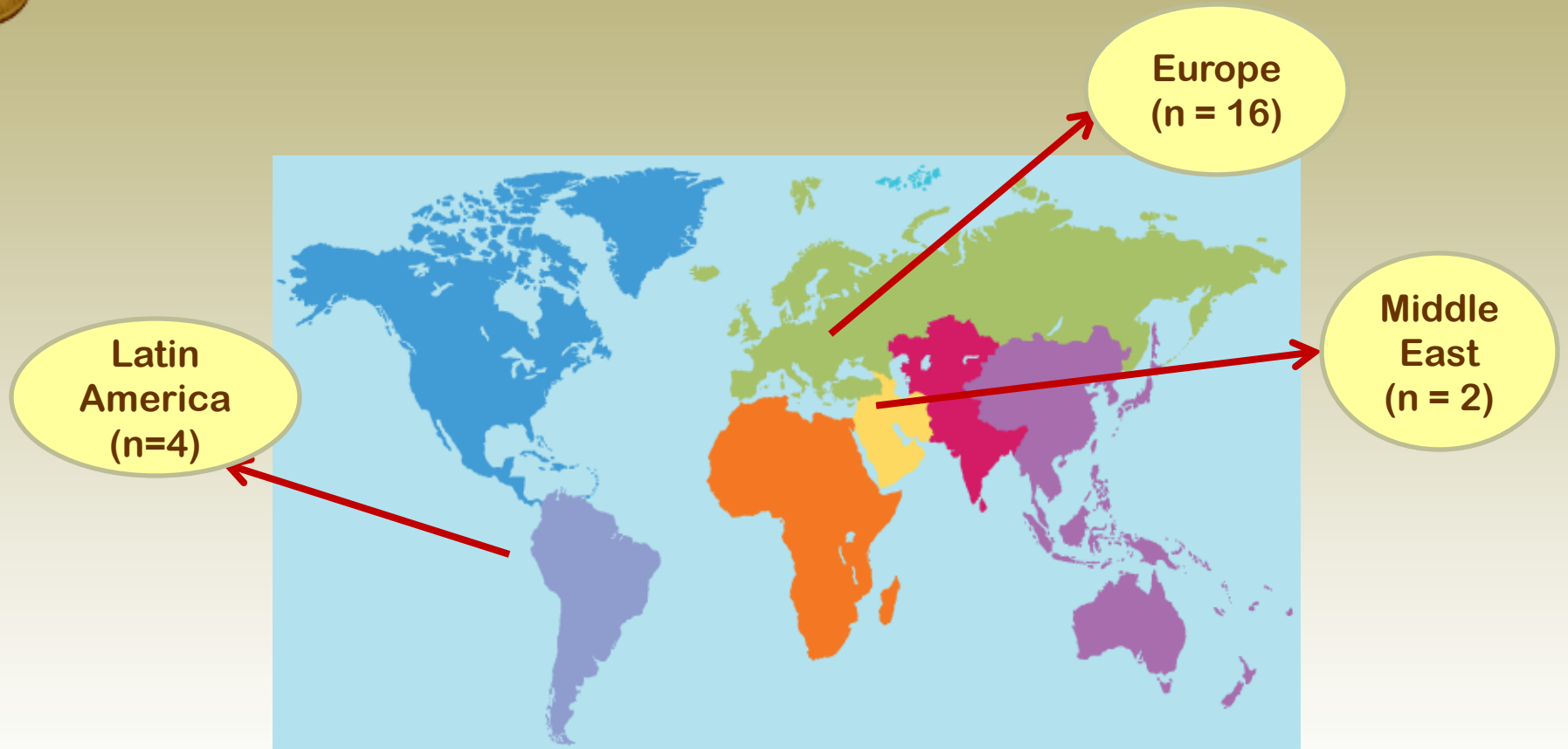
**Many  
Children  
Return  
to  
Fathers**



**Domestic  
Violence  
?**



# Hague Case Information (1995 – 2007)




**17 U.S. citizens; 5 immigrant women**



# Hague Outcomes & Violence

Case Outcome	Battered Mother AND Child	Battered Mother ONLY	Psychological Abuse	Unclear Abuse
Child remained in US with Mother	6	2	1	1
Child returned to other country with Father	2	8	1	1



Mothers and their children experience significant & severe DV

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



**Key  
Take-Aways**

More children returned to abusive father (regardless of DV presence or severity)

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

# Hague DV Project Website

<http://www.haguedv.org>



THE HAGUE DOMESTIC  
VIOLENCE PROJECT

## The Hague Domestic Violence Project

[Home](#) [Mothers](#) [Advocates](#) [Attorneys](#) [Judges](#) [Project Reports](#) [Contact Us](#)

### 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.

#### RECENT REPORTS

[The Hague DV team presented initial findings in Seattle.](#)

[Pointed questions on the Hague and DV at the U.S. Supreme Court](#)

[DV-LEAP Brief in the Supreme Court case](#)

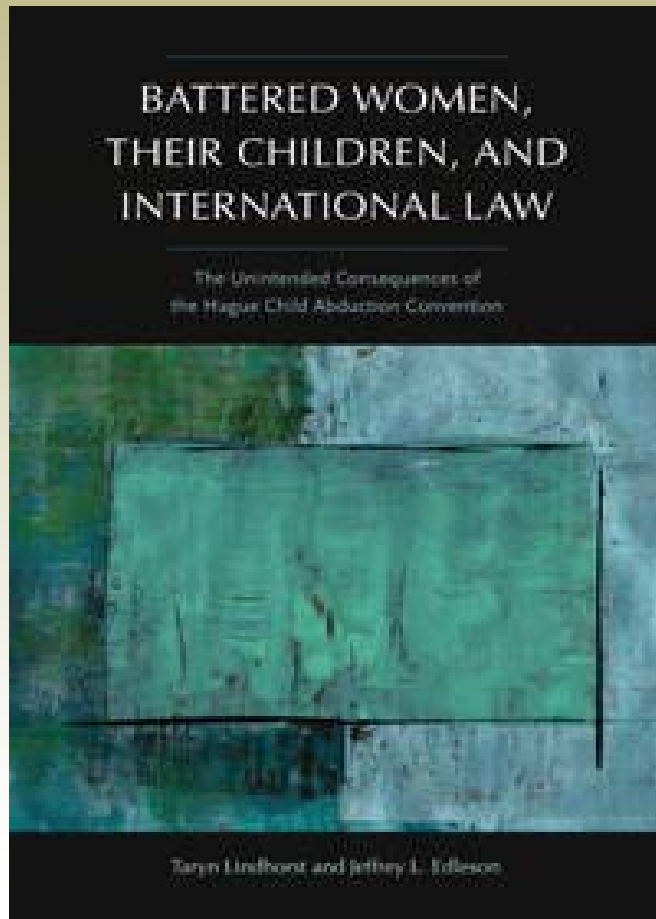
[NCJFCJ story on UCAPA and DV by Weiner & Mitchell](#)

[Law review article on Hague solutions by Prof. M.H. Weiner](#)





# New book



Lindhorst, T. &  
Edleson, J.L. (2012).  
Northeastern  
University Press.



# 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**