The 1980 Hague Convention:
left-behind parents and domestic violence

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This paper builds on work addressing the challenges faced by taking parents in Hague Convention cases who are domestic violence survivors and extends the analysis to another, largely invisible group: the left-behind parents who are victims of abuse. It argues that both cohorts are poorly served by the Convention, though for different reasons, and that framing the issue as a choice between child return and recognition of domestic violence obscures the real complexity of the problem. The paper calls for nuanced, fact-sensitive adjudication that engages directly with the dynamics of domestic violence and coercive control and prioritises the Convention's true purpose - the protection and best interests of children. Uniform, trauma-informed training of the judges tasked with the application and enforcement of the Convention is necessary to protect the survivors and the integrity of the Convention itself.

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The *1980 Hague Convention on the Civil Aspects of International Child Abduction* was established to protect children from the harmful effects of wrongful removal or retention across international borders. Its core aim is to ensure that custody disputes are determined in the child's country of habitual residence, thereby discouraging unilateral actions by either parent.

Over the past forty-five years, as the body of case law has grown, academics, advocates and practitioners have increasingly recognised that domestic violence is not a marginal issue in these cases. Instead, it is one that defines or outright dominates their context. Advocates have highlighted how survivors of abuse, often mothers, face impossible dilemmas when their own safety and that of their children come into conflict with rigid international legal processes. There is growing recognition that the existing mechanisms for addressing these concerns, particularly the application of Article 13(1)(b), are often inadequate to meet the realities of coercive control and the need for genuine safety of taking parents and their children. Recent initiatives, including the HCCH Forum on Domestic Violence and the Operation of Article 13(1)(b), have provided the much needed space for continued dialogue and reflection on how the Convention can respond more effectively to these challenges.

The growing focus on domestic violence within the Hague Convention proceedings marks a significant evolution in international family law. Much of this advocacy has, for good reason, concentrated on improving the Convention's application to better protect taking parents who flee across borders to escape violence. This is necessary and valuable work that has advanced understanding of how coercive control and safety concerns intersect with international child abduction.

This necessary focus has also shaped the broader discourse in ways that were perhaps unforeseen. As attention has centred on the experience of the taking parents, debate has increasingly been framed as a contest between protecting victims and preserving the integrity of the return mechanism. This polarisation has not arisen from advocacy alone. It has also been fuelled by some measure of institutional defensiveness on the part of those who are justly committed to maintaining the Convention's procedural consistency and international credibility. As in many areas of legal reform that touch on questions of gender, family, violence and state authority, the result has been a tendency to retreat into opposing positions rather than engage with complexity.

The outcome is a false binary that obscures the reality that both aims - effective operation of the Convention and meaningful protection from violence - can and must coexist within a coherent protective framework. Domestic violence is not an external consideration or a competing value; it is a feature of the Hague Convention cases in complex, multifaceted ways. It shapes the factual matrix of wrongful removals in many varied ways, not just of the taking parents but of the left-behind parents as well.

This paper focuses on this latter group: the left-behind parents who are themselves victims of domestic violence. It examines how their experiences are often rendered invisible within the Convention's procedural structure, and how this invisibility exposes the depth and complexity of the problem. The analysis is offered not to propose a simple solution, but to demonstrate that meaningful reform requires grappling with the full

spectrum of domestic violence and the role such violence plays in the Hague Convention proceedings.

The Legal Framework

The Hague Convention requires a prompt return of a child wrongfully removed or retained by one parent without the consent of the other parent to the child's state of habitual residence. The parent seeking the return must make a *prima facie* case, proving that (i) the child was a habitual resident of the country from which the child was removed, (ii) he or she had and was exercising custodial rights at the time of the removal or retention, and (iii) the removal or retention violated such custodial rights.

It is important to note that the Convention does not provide the parent seeking the return with an opportunity to explain the circumstances under which he or she is seeking such return, including, as relevant for the discussion here, whether such parent is a victim of domestic violence. There are many reasons for this, including, most fundamentally, the express purpose of the Convention, which is to achieve a prompt return and to discourage parental "abductions." Because of the Convention's emphasis on return, it is only the parent opposing the return -- whether through challenging the petitioning parent's *prima facie* case or by reliance on one of the Convention's narrow defences -- that the allegations of domestic violence are typically raised.

The Invisible Cohort: Left-Behind Parents as Victims of Domestic Violence

Because of the Convention's framework, most of the attention has been rightfully focused on the taking parents who flee for safety and must then defend themselves and their children in the return proceedings under the Hague Convention. Yet, there exists another group of parents, equally affected by domestic violence, but who are largely invisible in the framework of the Convention: the left-behind parents who are victims of domestic violence. Their experiences have received little recognition in the legal or policy discourse, exposing a significant gap in the protective reach of the Hague Convention.

The concern here is not with the simplistic -- and false -- notion that "every abduction is an act of domestic violence," but with those cases involving a clear pattern of coercive or abusive behaviour by the taking parent against the left-behind parent, where the removal of the child forms yet another, and often the final, part of that continuing pattern. In such situations, the abduction or retention is not a discrete event but a continuation of the same dynamics of power, fear, and control that have characterised the relationship. Understanding these cases requires moving beyond categorical assumptions about victim and perpetrator and recognising that violence can and does underpin conduct of both taking and left-behind parents.

For left-behind parents who are victims of domestic violence, the structure of the Convention allows no space to raise the abuse they have endured. Their burden lies in proving that the removal or retention was "wrongful," which depends on establishing habitual residence, rights of custody and their actual exercise. None of these elements allows an inquiry into coercion, control, or patterns of abuse. Unlike taking parents, they have no equivalent to the Article 13(1)(b) grave risk defence; the available exceptions

operate only in one procedural direction. As a result, violence against the left-behind parents is often rendered legally invisible.

This invisibility can often distort the factual record. Patterns of coercive control may confer procedural advantage to the abusive parent by shaping the very evidence before the court - creating apparent acquiescence, ambiguity about habitual residence or gaps in the exercise of custody rights. When courts interpret these outcomes as neutral facts rather than as products of coercion, the dynamics of abuse are transformed into procedural asymmetry, reinforcing rather than correcting the underlying power imbalance.

Case Studies

Emma and Aaron

Emma and Aaron have been together for several years and have two young children, aged six and four. They live in Emma's home country. Over time, Aaron becomes increasingly controlling and abusive. He monitors Emma's phone and email, restricts her access to money, and regularly threatens her with violence if she disobeys him. The abuse extends to the children, who witness frequent shouting and physical intimidation.

Aaron insists that the family relocate to his home country, arguing that it will provide better opportunities and support from his extended family. Emma fears that such a move will isolate her from her friends, cut her off from protection, and place her and the children in greater danger. However, aware of Aaron's volatility, she avoids open confrontation. When he sends her text messages about "their plans" to move, she does not contradict him, replying in neutral terms to avoid escalation.

One day Emma is at work, Aaron takes both children and leaves the country without informing her. When he arrives overseas, he sends a brief message stating, "Sorry you decided not to join us, the kids are happy and safe and we'll be staying here as planned". Emma's only visa eligibility for Aaron's country was dependent on her relationship status, and now she is unable to enter the country or contact her children. Aaron's severely limits her communication with the children and it becomes clear to Emma that he is telling the children that she does not love them. On occasional video calls with the children, she can see bruises on their faces and believes the Aaron is abusing them.

Emma applies for the children's return under the Hague Convention, arguing that their removal from their home country was wrongful. Aaron opposes the application. He submits copies of text messages, emails, and flight bookings and argues that Emma had consented to the relocation and simply changes. He maintains that the move was a joint decision and that Emma's communications demonstrate agreement.

The court accepts Aaron's evidence and concludes that Emma had consented to the relocation. It therefore finds that the removal was not wrongful. Because of this finding, the court does not go on to consider Emma's evidence of domestic abuse or the children's exposure to harm.

Sophie and David

Sophie and David live together with their young child in Sophie's home country. The relationship is marked by escalating domestic violence. David is controlling, verbally abusive, and increasingly isolates Sophie from friends and family. He manages the family finances, monitors Sophie's movements, and keeps all travel documents in his possession.

David persuades Sophie to travel with him and their child to his home country for what he describes as a short family holiday. Sophie agrees, as she does not feel like she has a choice and wishes to minimise conflict. After their arrival, David begins to extend the visit, offering a series of explanations for why they cannot yet return. Each delay is

presented as temporary: a family illness, pending paperwork, or the need to stay until a holiday passes.

As the weeks stretch into months, David insists that the child be enrolled in local daycare "for convenience." Sophie feels trapped and fearful. She does not speak the language fluently, has no access to money, and knows that David holds both passports. David's behaviour becomes more intimidating; he warns her that if she tries to leave, she will be arrested or lose her child.

Eventually, Sophie tells David that she wants to return home with the child. He refuses and becomes threatening. Sophie seeks help from a neighbour, who connects her with an NGO. Through them, she learns about the Hague Convention and obtains legal assistance to make a return application, arguing that the child's habitual residence remains in her home country and that David's actions constitute a wrongful retention.

David defends the application. He presents evidence that the child was enrolled in local daycare, that the family had been living in the new country for several months, and that Sophie had written messages to relatives describing their "time abroad." He argues that the family had relocated, and that the child was habitually resident in his country by the time Sophie sought to leave.

The court finds that the child's habitual residence had indeed shifted to David's country. It emphasises the passage of time, the child's attendance at daycare, and the family's apparent integration into local life. Sophie's claims of coercion and fear are acknowledged but treated as background context rather than determinative of habitual residence. The court concludes that no wrongful retention has taken place because by the determined date of retention, the habitual residence had shifted to the new country.

Conclusion

The reality of domestic violence in Hague Convention cases is complex and resists simple characterisations. It cannot be reduced to slogans such as "*every abduction is domestic violence"* or arguments that the Convention is *"just a weapon"* wielded against victims of violence. Both positions flatten the intricate ways in which abuse manifests in these cases.

The Convention remains an essential tool for protecting children from the disruption and harm of international abduction, and its goals are as laudable and important today as they were forty-five years ago. However, its application must reflect the social realities in which it operates and the growing awareness of the complexity and the prevalence of domestic violence. Domestic violence is not a marginal or exceptional issue within the Hague Convention cases. It is a recurring feature that underpins the parents' relationships and dictates how parents act, how consent is expressed and how children become tools of the power dynamic.

Despite a regrettable silence on domestic violence, the framework of the Convention is robust and essentially effective. It is how courts understand and interpret the parents' actions is where we must now dedicate our efforts. When the courts overlook these patterns, the purpose of Convention, to protect children, is frustrated and the Convention is misused to legitimise coercion and punish protective behaviour.

The challenge, therefore, is not to choose between the goals of the Convention and the recognition of abuse, but to integrate them. Protection for victims of violence cannot come in the form of weakening the Convention or reducing its impact, because victims of violence also rely on the Convention to secure the return of their children from abusers. Nor can the return mechanism be simply made stronger or swifter – this would place taking parents and children fleeing violence at even greater risk. There is no shortcut to resolving these tensions. No formula or default approach can substitute for careful, fact-sensitive engagement with the realities of each case. The complexities must be confronted rather than managed through abstraction or procedural rigidity.

What is called for is for courts to move beyond narrow or formulaic reasoning and to engage with the lived dynamics of coercive control. Comprehensive, uniform trauma-informed training is necessary to equip judges with the tools and understanding needed to recognise domestic violence, especially when it may not be immediately visible or consistent with common expectations. This includes understanding that victims may appear passive, compliant, unreasonable, overly dramatic, suffer from poor memory, provide inconsistent testimony, or act in other counter-intuitive ways. The reality is that these victims are responding and acting consistently appropriately *in the context of violence and abuse*. To be truly effective, such training must be uniform across the member states.

Recognising the complexity of domestic violence and taking the necessary steps to integrate such understanding into the court system tasked with enforcing the Convention will do far more than protect victims. It will also preserve the legitimacy of the Convention itself. A system that interprets consent, intention, resistance and risk of harm without attention to the dynamics of power and control risks distorting its own protective purpose. By confronting these realities directly, the Convention can remain a credible and effective instrument for safeguarding children and families across borders.