

Research Report

# Where International Child Abduction Occurs Against a Background of Violence and/or Abuse

A project investigating the effects and outcomes of abduction on children where the abduction occurred against a background of violence and/or abuse to the taking parent and/or the abducted child(ren)

**April 2024**

**Marilyn Freeman  
Nicola Taylor**

The International Centre for Family Law Policy and Practice



# Table of Contents

<b>Introduction</b>	<b>3</b>
Introduction	3
Why the use of Article 13(1)(b) matters in relation to domestic violence claims under the Convention?	3
<b>Methodology</b>	<b>7</b>
Participant Recruitment	7
Sample	7
Data Analysis	8
Limitations of the Study	8
<b>Findings</b>	<b>9</b>
Gender, Age and Highest Educational Level	9
Professional Roles	10
Jurisdictions	10
Length of Time Working in the International Child Abduction Field	11
Number of International Child Abduction Cases Worked On	12
Knowledge of and Experience with International Child Abduction Cases Involving Domestic Violence	12
Effects on the Taking Parent	18
Effects on the Abducted child(ren)	24
Effects on the Left-Behind Parent	31
Difference Between Abductions for Protective Reasons Compared with Those Where Violence and/or Abuse is Not Involved	38
Frequency With Which This Exception is Argued	46
How Well the Article 13(1)(b) Exception is Operating	47
How Often Abducted Children are Returned Despite the Article 13(1)(b) Exception Being Argued	47
Comments on the Article 13(1)(b) Exception	48
Whether the Number of Cases is Increasing	55
How Effectively the 1980 Hague Convention Deals with Abductions Where Domestic Violence has been Alleged	55
What is Working Well with the Convention	56
Changes or Improvements Suggested to the Convention	63
<b>Final Comments</b>	<b>71</b>
<b>Discussion and Conclusion</b>	<b>77</b>
<b>Appendix One: Online Survey Questionnaire</b>	<b>82</b>
Introduction	82

# Introduction

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## Introduction

This research project was undertaken for, and partially funded by, The International Centre for Family Law, Policy, and Practice (ICFLPP),<sup>1</sup> and was led by Principal Investigator, Professor Marilyn Freeman, Co-Director of the ICFLPP and Principal Research Fellow, School of Law, University of Westminster, London.<sup>2</sup> The project has benefitted from the invaluable input of Co-Investigator, Professor Nicola Taylor, Director of the Children's Issues Centre, Faculty of Law, University of Otago, New Zealand. The research was conducted under the ethical approval (ETH2122-3167) of the University of Westminster College of Liberal Arts and Sciences Research Ethics Committee.

Very welcome advice, particularly regarding design of the project's international survey questionnaire and use of Qualtrics, was provided by Dr. Anna Cheshire, Research Fellow in Psychology, School of Social Sciences, University of Westminster, and Alan Porter, Head of the School of Social Sciences, University of Westminster. Funding generously provided by the Quintin Hogg student internship scheme enabled a postgraduate research assistant, Taylor MacDonald Plummer, to assist with survey management and preliminary data analysis.

The project builds on the earlier research of Professor Freeman in the international child abduction field including a study entitled 'Parental Child Abduction: The Long-Term Effects' (2014)<sup>3</sup> (hereafter Long-Term Effects) in which the participants highlighted the serious, long-term effects of the abduction they had experienced as children. The aim of the current project was to probe a hitherto unanswered question: whether the effects of abduction on children are the same, or different, where the abduction has taken place against a background of violence and/or abuse to the taking parent and/or the abducted child, that is for protective reasons, and how well the 1980 Hague Convention on the Civil Aspects of International Child Abduction<sup>4</sup> (hereafter the Convention) is operating in these circumstances.

## Why the use of Article 13(1)(b) matters in relation to domestic violence claims under the Convention?

The Convention, which is the main **international** instrument dealing with child abduction, does not distinguish between abductions that occur where the taking parent is escaping violence, and those abductions which occur for other reasons. In both situations, there is a duty<sup>5</sup> on the court in the country to which the child has been abducted to return the abducted child unless one (or more) of the small number of exceptions in the Convention to that duty apply to the case. There is no exception which directly applies to domestic violence or abuse, and the only possibility of raising this issue in Convention proceedings is through the permissive, rather than mandatory, provision in Article 13(1)(b). This states that the judicial or administrative authority of the requested State is not bound to order the return of the child where there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The child may still be returned, notwithstanding the establishment of an Article 13(1)(b) 'defence' if the judicial or administrative authority orders it (Article 18).

As can be seen from the wording of Article 13(1)(b), it is the exposure to harm on return of the child, not the taking parent, which is relevant in this provision. Social science research has revealed not only the risk of

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1 <https://www.icflpp.com/>

2 Marilyn Freeman is also academic door tenant at 4PB, a specialist set of barristers' chambers in London.

3 Marilyn Freeman, *Parental Child Abduction: The Long-Term Effects* (International Centre for Family Law, Policy and Practice, London, 2014): [https://www.icflpp.com/wp-content/uploads/2017/01/ICFLPP\\_longtermeffects.pdf](https://www.icflpp.com/wp-content/uploads/2017/01/ICFLPP_longtermeffects.pdf)

4 1980 Hague Convention on the Civil Aspects of International Child Abduction <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

5 Ibid, see Article 12.

violence occurring to children where there is adult family violence, but also the harm which children suffer from exposure to such violence between their adult family members.<sup>6</sup> However, there has been ‘considerable divergence between the approaches of the courts to Article 13(1)(b) in domestic violence cases, including in relation to the question of whether the exception can be established in cases where there is no proven violence directly against the children.’<sup>7</sup> Such divergence is unsurprising given the different viewpoints and legal systems within the Convention’s current 103 Contracting States.<sup>8</sup> It was hoped that publication in 2020 by the Hague Conference on Private International Law of The Guide to Good Practice, Part VI, on Article 13(1)(b)<sup>9</sup> (hereafter the Guide) would bring clarity and certainty to this issue. Paragraph 57 of The Guide states:

‘Assertions of a grave risk resulting from domestic violence may take various forms. The taking parent may claim that there is a grave risk of direct harm because of physical, sexual or other forms of abuse of the child. **It may also be asserted that the grave risk results from the child’s exposure to domestic violence by the left-behind parent directed to the taking parent.** In some situations, the grave risk to the child may also be based on potential harm to the taking parent by the left-behind parent upon return including where such harm may significantly impair the ability of the taking parent to care for the child.’ (emphasis added)

However, the Guide goes on to state in paragraph 58:

Evidence of the existence of a situation of domestic violence, in and of itself, is therefore not sufficient to establish the existence of a grave risk to the child.

Professors Rhona Schuz and Merle Weiner criticised this latter sentence as being prone to misinterpretation as they believed it could be understood ‘as meaning that domestic violence against the taking parent will not be sufficient to establish the exception, irrespective of the impact that it might have on the child’.<sup>10</sup> As such, they argued, it ‘is liable to provide support for the approach taken by some judges that the grave risk exception cannot be established in cases of domestic violence in the absence of evidence of violence against the child or unless direct harm has already been caused to him or her, and so lead to a perpetuation of the inconsistencies in the application of Art 13(1)(b), demonstrated in the Reflection Paper’.<sup>11</sup> This would, in their view, defeat the original purpose of the Guide, ‘including promotion of consistency and recognition of the harm caused to children by violence between their parents’.<sup>12</sup>

The chairperson of the Working Group which produced the Guide, the Hon. Diana Bryant AO KC, published a response to this criticism in which she explained that the drafters of the Guide concurred with ‘the scientific literature which has established that, in some cases, exposure to violence itself creates a grave risk to the child, as can the taking parent’s inability to care for the child as a result of the violence’.<sup>13</sup> However,

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6 For discussion on the link between spousal violence and abuse of children, and harm to children from parental violence, see *Domestic and Family Violence and the Article 13 “Grave Risk” Exception in the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Reflection Paper*, Preliminary Document No. 9 of May 2011 for the Attention of the Special Commission of June 2011 on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, at 9: <https://assets.hcch.net/docs/ce5327cd-aa2c-4341-b94e-6be57062d1c6.pdf>

7 See Rhona Schuz and Merle Weiner, ‘A Mistake Waiting to Happen: The Failure to Correct the Guide to Good Practice on Article 13(1)(b)’ (2020) *IFL*, 87.

8 <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>

9 *Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, Part VI, Article 13(1)(b)* (HCCH, The Hague, 2020): <https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf>

10 Schuz and Weiner (n 7) at 89.

11 Schuz and Weiner (n 7) at 91; Reflection Paper (n 6).

12 Schuz and Weiner (n 7) at 92.

13 See Diana Bryant, ‘Response to Professors Rhona Schuz and Merle H Weiner (“The Authors”)', A Mistake Waiting to Happen: The Failure to Correct the Guide to Good Practice on Article 13(1)(b)’ (2020) *International Family Law Journal* 207-208, at 207.



she suggested that Schuz and Weiner had focused ‘too rigidly on one sentence of the Guide with the risk of taking it out of context, when other sentences and paragraphs give meaning to the intention of the drafters of the Guide’.<sup>14</sup> She cited several paragraphs in the Guide in support of her assertion, in particular paragraph 33 which states:

But harm to a parent, whether physical or psychological, could, in some exceptional circumstances, create a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The Article 13(1)(b) exception does not require, for example, that the child be the direct or primary victim of physical harm if there is sufficient evidence that, because of a risk of harm directed to a taking parent, there is a grave risk to the child.

Bryant concluded that the relevant sentence in paragraph 58 will not be misunderstood and that, ‘if there were any concern that it could be misunderstood, then it requires only reference to the paragraphs above to dispel such concern’.<sup>15</sup>

So, the Guide, which took eight years to develop, has had a controversial reception from the international child abduction community, and debate has continued about the efficacy of the Convention in the context of abduction and domestic violence. It has therefore become increasingly important to understand how use of the Convention is perceived in this context by family justice professionals working in the field of international child abduction. The research project was designed to shed light on the issues of concern which have been raised about domestic violence in the context of international child abduction, including whether the family justice professionals working in the field of international child abduction perceived any increase in cases where domestic violence and/or abuse are alleged; how common it was for Article 13(1)(b) to be argued in such cases; and whether children are being returned to their States of habitual residence notwithstanding the Article 13(1)(b) exception being argued in their cases.

It is highly unlikely that the Convention will ever be amended,<sup>16</sup> but this does not preclude other initiatives being possible. It is noteworthy in this regard that there has been much concern expressed over many years regarding the lack of provision in the Convention for victims of domestic violence, and the perception that they are being forced to return, with their children, to the situations of violence and abuse from which they have escaped.<sup>17</sup> Following representations from concerned groups before and during the Eighth Special Commission, held in The Hague from 10-17 October 2023, support for an important initiative proposed by the HCCH Secretary-General was recorded by delegates in Conclusion and Resolution No. 26:

... to hold a forum that would allow for discussions amongst organisations representing parents and children, and those applying the Convention. The importance of ensuring a balanced representation of all interested parties was emphasised. The agenda of the forum, which would focus on the issue of domestic violence in the context of Article 13(1)(b), would be prepared by

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14 Ibid, at 207.

15 Ibid, at 208.

16 See Peter McEleavy, ‘A Protocol for the 1980 Hague Convention?’ (2010) *International Family Law* (1), 59-65.

17 For example, see Merle Weiner, ‘International Child Abduction and the Escape from Domestic Violence’ (2000) *Fordham Law Review* 69, 593-706; M Kaye, ‘The Hague Convention and the Flight from Domestic Violence: How Women and Children are being Returned by Coach and Four’ (1999) *International Journal of Law, Policy and the Family* 13(2), 190-212; Carol Bruch, ‘The Unmet Needs of Domestic Violence Victims and their Children in Hague Child Abduction Convention Cases’ (2004) *Family Law Quarterly* 38(3), 529-542; Brenda Hale, ‘Taking Flight – Domestic Violence and Child Abduction’ (2017) *Current Legal Problems* 70(1), 3-16; Marilyn Freeman and Nicola Taylor, ‘Domestic Violence and Child Participation: Contemporary Challenges for the 1980 Hague Child Abduction Convention’ (2020) *Journal of Social Welfare and Family Law* 42(2), 154-175; Jeffrey Edleson, Sudha Shetty and Mary Fata, ‘Fleeing for Safety; Helping Battered Mothers and Their Children using Article 13(1)(b)’ in Marilyn Freeman and Nicola Taylor (eds), *Research Handbook on International Child Abduction: The 1980 Hague Convention* (Edward Elgar Research Handbooks in Family Law Series, 2023, 96-114).

a representative Steering Committee. The forum may also inform possible further work of the HCCH on this matter.<sup>18</sup>

As formal change to the Convention seems to be very unlikely, the responsiveness of Article 13(1)(b) in cases where violence and/or abuse are argued as the reasons for the child's abduction is undoubtedly critical. The Eighth Special Commission also approved Conclusion and Resolution No. 102 regarding the value of evidence-based research<sup>19</sup> and we therefore hope that the data provided by our empirical research project will provide a useful contribution to the current international debate concerning how best to manage international child abduction cases when the abduction occurred against a background of violence and/or abuse to the taking parent and/or the abducted child(ren).

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18 See Conclusions and Recommendations of the Eighth Meeting of the Special Commission on the Operation of the 1980 and 1996 Hague Conventions (The Hague, 10-17 October 2023): <https://assets.hcch.net/docs/5b48f412-6979-4dc1-b4c1-782fe0d5cfa7.pdf>

19 Conclusion and Recommendation No. 102: 'The SC recalled C&R No. 81 of the 2017 SC recognising the value of evidence-based research to strengthen the effective operation of the 1980 Child Abduction Convention. The detrimental impact of abduction on children and family members is well-known. Yet important gaps remain regarding how any voluntary agreements and / or Convention proceedings worked out and whether there were any subsequent legal proceedings and provision of aftercare support. Further research to address these, and other, gaps, would be welcome, especially research of a collaborative or cross-jurisdictional nature. The SC acknowledged that this is not part of the work programme of the PB, and that it places no burden on individual States'.

# Methodology

Family justice professionals around the world were invited to complete a 20 minute online survey about their experiences of international child abduction and domestic violence/abuse – see Appendix One. The questionnaire was drafted by the Principal Investigator and Co-Investigator in consultation with colleagues from the School of Social Sciences at the University of Westminster. It was then loaded into the online Qualtrics platform by the research assistant and rigorously tested by the research team members. This repeated testing and refinement ensured that the questions were understandable, flowed well, and that the website processes worked correctly.

## Participant Recruitment

Participants were recruited to take part in the study by an extensive range of strategies including the following:

- Emails sent to an initial world-wide mailing list constructed by the Principal and Co-Investigators comprising specialist organisations and individuals including: lawyers, mediators, judges, Central Authorities, academics/researchers, family law and other professional associations and networks, psychologists, counsellors, and NGOs. Each received information about the project and an invitation to participate, and were asked to distribute the information and invitation to their members (and to ‘snowball’ to others) to encourage participation via the survey link.
- Distribution by the HCCH of the information and invitation to participate to the members of the International Hague Network of Judges (IHNJ).
- Translation of the survey from English into Japanese by Maekoya Chie (Central Authority, Ministry of Foreign Affairs, Japan) to assist Japanese family justice professionals to participate in the study. Their completed questionnaires were translated back into English and then uploaded by the research assistant into the Qualtrics database.

Ultimately, the invitation was distributed globally to approximately 600 potential participants. The anonymous online survey was administered through the study website and was open for just under six weeks from 22 March to 2 May 2023. Participants were self-selected and opted to complete the survey after receiving information about the study through the range of recruitment strategies outlined above.

The survey questions enquired into the participants’ experiences and observations about the effects and impacts of abduction on taking parents, children and left-behind parents. Their views were also sought on the differences, if any, between abductions for protective reasons compared to those involving no violence or abuse; their perceptions about the Article 13(1)(b) exception to return; the effectiveness of the Convention in cases where domestic/family violence or abuse towards the taking parent and/or child(ren) had been alleged; what was working well; the changes or improvements that would be helpful regarding the Convention’s operation in these cases; and demographics (gender, age and level of educational qualification). Participants were able to skip any question they did not wish to answer.

## Sample

The online survey was started by 195 respondents, but 79 did not complete it, and their partial data has not been included in the dataset. The sample is therefore comprised of **116 respondents**.

The intention was not to gain a representative sample, but rather to ensure a diverse range of participants from the professions involved in international child abduction cases, and countries with experience of international child abduction. It also provides an interesting snapshot of the distinctly different schools

of thought (roughly evenly divided in this sample as discussed further below) regarding domestic violence and the Convention, and illuminating data in relation to professional views regarding Article 13(1)(b) as it impacts on the various parties involved, including the taking parents, abducted children and left-behind parents.

### **Data Analysis**

The information obtained from the 116 online survey responses is a mix of quantitative and qualitative data. The findings are reported below and include a thematic analysis of the open text data. Please note that some quotes have been edited for ease of reading.

### **Limitations of the Study**

As with any survey approach, there are some limitations associated with the online survey methods used for this research. These should be taken into account when interpreting the findings. The group of survey respondents was self-selecting and is not a representative sample. It is impossible to recruit such a sample within the international family justice community. Instead, our intention was to ensure a diverse range of professionals with varying roles, and from differing jurisdictions, in the study. With the exception of the Japanese translation, respondents had to complete the survey in English which may not have been the first language for some.



# Findings

## Survey Participants

### Gender, Age and Highest Educational Level

Table 1 sets out the demographic profile (gender, age and educational level) of the family justice professionals who completed the online survey. A few people preferred not to indicate their gender or age, while six people skipped all three questions.

Most ( $n=84$ , 72.4%) of the respondents were female, and 20 (17.2%) were male. Nearly three-quarters ( $n=86$ , 74.2%) were aged 40 years and over. Younger respondents comprised six (5.2%) who were aged 20-29 years, and 14 (12.0%) who were aged 30-39 years. The educational level of the respondents was high – nearly all ( $n=109$ , 94.0%) had a tertiary qualification (undergraduate or postgraduate), and just one had a trade or vocational qualification. This high level of educational achievement was unsurprising in view of their professional status in the family justice sector.

**TABLE 1: Survey respondent profile**

	Number of respondents	%
<b>Gender</b>		
Female	84	72.4%
Male	20	17.2%
Prefer not to answer	6	5.2%
Other	0	-
Missing	6	5.2%
<b>Age</b>		
20-29 years	6	5.2%
30-39 years	14	12.0%
40-49 years	30	25.9%
50-59 years	26	22.4%
60-69 years	20	17.2%
70-79 years	10	8.7%
Prefer not to answer	4	3.4%
Missing	6	5.2%
<b>Educational level – Highest level of qualification</b>		
No qualification	0	-
Secondary school qualification	0	-
Trade or vocational qualification	1	0.8%
Tertiary qualification	109	94.0%
Missing	6	5.2%

## Professional Roles

Of the 116 respondents, 21 selected more than one profession. Most ( $n=65$ , 56.0%) were lawyers, and a further 15 (12.9%) said they were a lawyer representing children (see Table 2). Thus, this increased the percentage of lawyers in the sample to 69%. Some lawyers also noted that they were an academic/researcher or mediator. Given that the Convention is the primary legal mechanism for dealing with international child abduction cases, including those involving domestic violence/abuse, it is unsurprising that lawyers were such a high proportion of the sample.

However, family justice professionals from all the other significant categories of people working in the field of international child abduction also completed the survey: judges ( $n=11$ ), Central Authorities ( $n=11$ ), psychologists ( $n=10$ ), mediators ( $n=9$ ), academics/researchers ( $n=8$ ), non-government and other organisations ( $n=7$ ), counsellors ( $n=5$ ) and others ( $n=5$ ).

**TABLE 2: Professional role(s)**

Professional Role	Number of respondents	%
Lawyer	65	56.0%
Lawyer representing children	15	13.0%
Judge	11	9.5%
Central Authority	11	9.5%
Psychologist	10	8.6%
Mediator	9	7.8%
Academic / Researcher	8	6.9%
NGO/Organisation	7	6.0%
Counsellor	5	4.3%
Other	5	4.3%

*Note: Multiple selection possible*

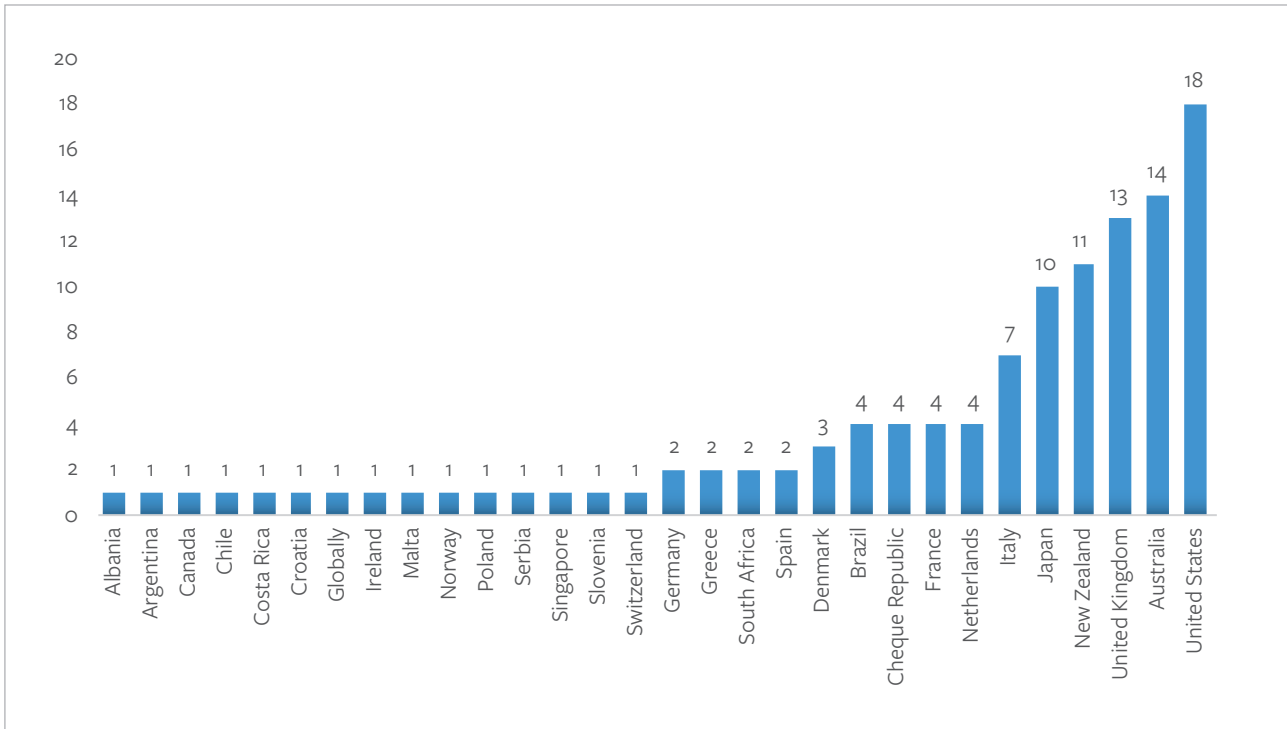
## Jurisdictions

Respondents from 30 jurisdictions completed the survey (see Figure 1): United States of America ( $n=18$ ); Australia ( $n=14$ ), the United Kingdom ( $n=13$ )<sup>20</sup>; New Zealand ( $n=11$ ); Japan ( $n=10$ ); Italy ( $n=7$ ), the Netherlands ( $n=4$ ); France ( $n=4$ ); Czech Republic ( $n=4$ ), Brazil ( $n=4$ ); Denmark ( $n=3$ ); Spain ( $n=2$ ); South Africa ( $n=2$ ), Greece ( $n=2$ ) and Germany ( $n=2$ ). One person from each of the following jurisdictions also participated: Albania, Argentina, Canada, Chile, Costa Rica, Croatia, Globally, Ireland, Malta, Norway, Poland, Serbia, Singapore, Slovenia and Switzerland.

Of the 113 (97.4%) respondents who provided information on the jurisdiction(s) in which they worked, three indicated more than one country: (Respondent #19 – 2 countries; Respondent #57 – 4 countries; Respondent #95 – ‘Brazil and all of the EU’). Three respondents did not indicate which jurisdiction they worked in.

<sup>20</sup> Several respondents indicated ‘England’, ‘England and Wales’, ‘Scotland, and ‘United Kingdom’. For simplicity, these were all grouped as ‘United Kingdom’.

**FIGURE 1: Jurisdictions in which the survey participants worked**



### Length of Time Working in the International Child Abduction Field

The survey respondents were mostly very experienced as 70 (61.4%) had been working in the international child abduction field for one to three decades (i.e., 11 to 31+ years; see Table 3). Only five (4.3%) had been working in this field for less than one year, and a further 23 (19.8%) had 1-5 years' experience; and 18 (15.5%) had 6-10 years' experience.

Those with greater experience included 12 (10.4%) with 11-15 years' experience; 22 (19.0%) with 16-20 years' experience; 13 (11.2%) with 21-25 years' experience; 10 (8.6%) with 26-30 years' experience; and 13 (11.2%) with 31 years' or more experience.

**TABLE 3: Length of time working in the international child abduction field**

Number of years working	Number of respondents	%
0 – 11 months	5	4.3%
1 – 5 years	23	19.8%
6 – 10 years	18	15.5%
11 – 15 years	12	10.4%
16 – 20 years	22	19.0%
21 – 25 years	13	11.2%
26 – 30 years	10	8.6%
31 years or more	13	11.2%
<b>Total</b>	<b>116</b>	<b>100%</b>

## Number of International Child Abduction Cases Worked On

The family justice professionals were very experienced in the field of international child abduction. Nearly a third ( $n=36$ , 31%) had worked on more than 51 international child abduction cases each during their career (see Table 4). A further 22 (19.1%) had each worked on between 21 and 50 cases, and another 22 had worked on between 11 and 20 cases. The 34 respondents with the least experience had nevertheless each still worked on between 6-10 cases ( $n=19$ , 16.4%) and 1-5 cases ( $n=15$ , 12.9%). Only two (1.7%) of the respondents said they did not work directly with family members and therefore had no experience with international child abduction cases.

**TABLE 4: Number of international child abduction cases worked on during career**

Number of cases	Number of respondents	%
None – do not work directly with family members	2	1.7%
1 – 5	15	12.9%
6 – 10	19	16.4%
11 – 15	12	10.3%
16 – 20	10	8.6%
21 – 25	3	2.6%
26 – 30	9	7.8%
31 – 40	6	5.2%
41 – 50	4	3.5%
51 or more	36	31.0%
<b>Total</b>	<b>116</b>	<b>100%</b>

## Knowledge of and Experience with International Child Abduction Cases Involving Domestic Violence

Of the 115 respondents who answered this question, most ( $n=105$ , 91.3%) had knowledge and/or experience with international child abduction cases where domestic violence and/or abuse to the taking parent, abducted children, or both, had been alleged. Only three (2.6%) respondents reported that they had no knowledge or experience, and a further seven (6.1%) were not sure.

**TABLE 5: Knowledge and/or experience of international child abduction cases involving domestic violence**

Responses	Number of respondents	%
Yes	105	91.3%
No	3	2.6%
Not Sure	7	6.1%
<b>Total</b>	<b>115</b>	<b>100%</b>

Ninety-eight (84.5%) of the 116 survey respondents provided further detail about how they had gained their knowledge of, and experience with, international child abduction cases involving domestic violence and/or abuse. Several outlined the **number of cases they had worked on**, ranging from one, two, three and five to 100:

Three of my Hague Convention cases involved coercive abuse. (03, Lawyer, US)

As a frontline charity worker supporting families – usually 100 per year. (31, NGO / Organisation, Globally)

I have worked with two Hague Convention cases, both of which included allegations of domestic violence, but in neither case was there any clear evidence supporting the allegations. In one case, the abductor was the children's maternal grandmother. I am unsure how relevant my experiences will be to your survey, and you may wish to consider disregarding my responses. I have no experience with cases where the taking parent and/or children were found to have confirmed or verifiable claims of domestic violence. (74, Psychologist, NZ)

I have reported on two situations where the applicant mother alleged abuse of her and the children. (79, Psychologist, NZ)

I have had three cases where that was a defense. (88, Lawyer, US)

In two of the five cases, abuse was alleged by the abducted parent. In one case, there was alleged mistreatment toward the two children. In one case, there was alleged mistreatment toward mother. In both cases, it was not proven. (98, Lawyer, Netherlands)

In three cases of the five I have worked on domestic violence against mother and/or child was an issue. (109, Lawyer, Germany)

Others anonymously referred to **specific cases** they had been involved in:

A wife moved out of the country with her children on the grounds that her husband had violated her. (45, Lawyer, Japan)

I provided advice for a parent who was suffering from domestic violence and desired to return to his/her own country with the child on what action to take. (76, Role unknown, Japan)

I have been involved in a petition where there were allegations of domestic abuse committed by one parent against the other. The case focused on the risk to the mother and the consequent risk to the children as a result of that. (85, Lawyer, Scotland)

The abducting parent left with the children for their safety. In this case, the Foreign Central Authority and court asked us to provide a psychosocial report. (92, Central Authority)<sup>21</sup>

Some family justice professionals discussed **their role as a lawyer or barrister** as the means by which they obtained their knowledge and experience:

Have successfully defended several Hague cases on the basis of grave risk of harm based upon domestic violence. (07, Lawyer, Lawyer representing children, Mediator, Canada)

Acting as counsel for taking or left behind parent. (09, Lawyer, Scotland)

I have represented children in cases where both the left-behind parent and the taking parent have made allegations of family violence. I have also represented children in parenting

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<sup>21</sup> Eleven staff from Central Authorities (for example, in Brazil, Costa Rica, Czech Republic, Malta, Slovenia and Switzerland) completed the survey. To preserve anonymity, their country has not been reported after each quote.

proceedings after the return order has been made in another country, where family violence was an issue. (15, Lawyer, Lawyer representing children, Australia)

I have run cases where domestic violence forms part of the matrix of the grave risk defence and I have also made applications on behalf of requesting parents where allegations of domestic violence are asserted as part of the taking parent's defence. (16, Lawyer, Australia)

Representing the left-behind parent or on behalf of the Central Authority. (20, Lawyer, Lawyer representing children, NZ)

I draft return and access Hague applications and affidavits for 'left-behind' parents in Australia. My involvement generally ends when the application is filed with the Australian Central Authority, but in some circumstances we help the left-behind parent to reply to the taking parent's response documents. I have experience in matters where those allegations are clear from the outset (i.e., a family violence protection order has been taken out), where I am instructed by the left-behind parent that the taking parent is likely to allege violence, where the likelihood of those allegations becomes clear from the material before me (i.e., text messages) and when I am preparing reply material. I also provide one-off legal advice and referrals to taking parents who have arrived in Australia who have experienced family violence. (36, Lawyer, Australia)

As a barrister I have handled many cases where parents – usually the mother – abducted the children into England. (50, Judge, Lawyer, England)

I have dealt with cases where I have represented the taking parent alleging the need to flee due to domestic violence and also represented the left-behind parent who has been accused of domestic violence. (65, Lawyer, US)

Represented abductors alleging domestic abuse, respondents to such allegations and the abducted children. (75, Judge, Lawyer, Lawyer representing children, England)

I have represented clients in cases in which there was an allegation of domestic violence. (87, Lawyer, US)

I have been counsel for the Central Authority in such cases and also for children where domestic violence is alleged. (91, Lawyer, Lawyer representing children, NZ)

I have been representing parents both left-behind or taking, accusing or victim of domestic violence. (104, Lawyer, France)

Others stated that it was their role as a **judge, mediator, psychologist, social worker, social service provider, academic, researcher or Central Authority staff member** that enabled them to acquire their knowledge and experience:

As a social worker I've supported left-behind parents where the person taking the child has alleged domestic and family violence. As a mediator I've also been involved in meditations where one parent has alleged domestic and family violence. (13, Mediator, Australia)

My experience is twofold: firstly, experience I gained working as a lawyer at a Central Authority; and, secondly, experience I gained as an academic specialised in the area of international parental child abduction. (25, Academic / Researcher, UK)



From the stories from parents, so that is a one-sided story. (29, NGO / Organisation, Netherlands)

Research and/or practical involvement with families where taking parent has alleged violence/abuse towards them and/or the abducted child. (48, Academic / Researcher, UK)

Researched US cases. (78, Academic / Researcher, US)

Family assessments generally and research. (80, Psychologist, Australia)

I work for a non-profit domestic violence agency and so the only Hague cases we take are cases where domestic violence is alleged. (107, Lawyer, US)

I work in a social work service that can provide support to both the taking and the left behind service (although the same worker would not work with both). Although I am relatively new to this role, every single case I have worked in has involved allegations of domestic violence to the taking parent by the left behind parent, and many of those include allegations of direct abuse towards the child. (108, Counsellor, Australia)

I have had several cases where this was indicated as a lawyer and also as a judge, where this was clearly mentioned in the papers presented to the court. (82, Judge, Lawyer, Netherlands)

Domestic violence multidisciplinary team report, social work centre reports, inclusion in secret locations for the victims of crime (by the police). (83, Central Authority)

We are an organisation that specialises in helping Brazilian women who are victims of domestic violence and are undergoing custody disputes in the European Union. Our main field of work involves the 1980 Hague Convention, specifically where the Article 13(1)(b) exception applies. (95, NGO / Organisation, Brazil and all of the EU)

I have been acting as an expert/evaluator in cases involving child abduction in Brazilian States for almost 10 years. (97, Psychologist, Brazil)

Many survey respondents indicated the **frequency with which domestic violence / abuse was raised in the international child abduction cases they dealt with**. This ranged from several cases, one-third of their cases, 30%, around half, 50%, every second case, many cases, most cases, often, very often, eight out of 10 cases, nearly all cases, and a very high percentage of cases:

It is my experience that in most cases the taking parent has set forth the defense of ‘grave risk of harm’ based on allegations of abuse, whether there is an actual, demonstrated concern for abuse or not. (05, Lawyer, US)

I am a domestic abuse specialist and nearly all of my cases involve both. (10, Lawyer, Lawyer representing children, England)

We often encounter this during the treatment of Hague abduction cases. We see two categories: the first, whereby the taking parent has already made a complaint of domestic violence to the local authorities and takes the minor abroad because they see no other choice; the second, whereby the removal takes place first, and domestic violence by the left-behind parent is alleged afterwards, once the taking parent is confronted with the return application. (11, Central Authority)

The allegation of domestic violence is made in every second case. (17, Judge, Germany)

Many, if not most, cases I work on include at least one parent alleging domestic violence. (23, Lawyer, Lawyer representing children, Mediator, Academic / Researcher, US)

Involved in many cases in which the taking parent has alleged that the left-behind parent is violent and abusive, including a wide range of allegations. (26, Lawyer, Lawyer representing children, NZ)

Has been alleged in several of my cases. (33, Judge, Norway)

I am primarily involved with adult children of abduction who seek support as adults, and allegations of abuse are often involved. (32, Role unknown, US)

There are very few cases that do not have family or domestic violence involved. Generally speaking, those with an element of coercive control are the most challenging as it can in many ways continue to impact on the victim. (35, Lawyer, Mediator, Counsellor, Australia)

I dealt with several cases where the mothers were forced to abduct the child/children because they had suffered domestic violence. (37, Lawyer, Italy)

In most cases I have dealt with, family violence is either the main or one of the main reasons which the abducting parent mentions to explain the abduction. In some cases, this happens to be the case, in others not so much. I have dealt with several cases where there was violence in the marriage / cohabitation and the abducting parent has been obliged to come back to Greece. In such cases and mainly because of the abduction it has been very difficult (i.e., time consuming and costly) to get the parent to return to their country of origin where they feel safer. (40, Lawyer, Mediator, Greece)

I dealt with many cases where violence was alleged as a reason for the abduction. The most difficult thing is to be sure that domestic violence occurred. However, in some cases the parties sought the help of police and other state bodies, and the violence was well documented. It is really difficult to separate the violence to the mother from the violence to the children in these cases. It is especially difficult to work with this kind of case, as there is a movement in [country] to disregard the 1980 Hague Convention and to attack anyone who defends its application, as women are seen as victims in all cases. When you work with this Convention for many years, you become more aware of the manipulations that can occur from both parties, with a lot of things being created by lawyers to avoid the return of the children. I have seen just a few cases where the danger was real for the children. (41, Central Authority)

In about half of my cases, the taking parent alleges the abduction is to protect themselves and/or the children from abuse. (44, Lawyer, US)

In Albania, it is a defence strategy to claim domestic violence in favour of the taking parent. In most of the cases the allegations have not been proved, but have been useful to delay the process of return of the child. (51, Lawyer, Albania)

Most of the cases have had alleged some form of domestic violence either to the child/children or to the taking parent. (52, Judge, US)

I would say that at least on 50% of the cases the violence or sexual abuse was the argument for the abduction. (53, Lawyer, Chile)

Eight out of 10 cases in Brazil, according to the data so far collected, have allegations of domestic violence against the taking parent and/or the children. (56, Lawyer, Academic / Researcher, Brazil)

In all but one of my international cases of abduction, domestic violence and/or child abuse has been alleged by the abducting parent. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

It is not rare to see an abducting parent evoke domestic violence to justify the abduction a posteriori. It happened in some of my cases in more or less 30% of the cases. (59, Lawyer, France)

In cases I am familiar with, the abduction often takes place due to domestic violence, however, it is not the only reason why a parent decides to abduct the child. Very often one of the parents does not see any other alternative. (63, Lawyer, Poland)

This comes up often in abduction cases. (67, Lawyer, Lawyer representing children, UK)

Many cases in which domestic violence and/or abuse has been advanced by the taking parent. My only substantive experience has been as a judge so I have not directly engaged with the individuals concerned. (68, Judge, England & Wales)

It is a very high percentage of my cases that allegations of domestic violence has been made within the proceedings. (69, Lawyer, England)

Many abduction cases involve domestic violence or violence. (70, Central Authority)

Although this was a rare issue in the past with the emphasis on the 'grave risk' that has developed, it has become a more common allegation and I would see it in some form in most of my more recent cases. It can be constructed as either/both physical or psychological abuse. (71, Psychologist, NZ)

In many cases the abducting mother alleged to be a victim of domestic violence and tried to find refuge in the new country (often her origin country). (72, Lawyer, Italy)

Several of these cases involved allegations of intimate partner violence, sexual abuse, and abduction of children. (73, Psychologist, NZ)

In a lot of cases of abduction there is alleged domestic violence towards the taking parent, and further in the case even alleged violence toward the child, but a lot of them are just a terrible strategy for their children not to be returned to their country of habitual residence. Only few cases were proven to be domestic violence toward the taking parent. (89, Psychologist, Central Authority)

Mostly there is no proof of domestic violence. The taking parent alleges that there has been domestic violence (mostly of a psychological nature), but has no evidence and has never made any official report to the Police or child welfare authority. So, it is very difficult to judge whether there really was domestic violence or it is only purpose statement of the taking parent. (90, Central Authority)

Sometimes violence has been alleged and it was true and other times it was not. (99, Lawyer, España)

In child abduction cases, one or both parents often allege that the other parent is abusive to them or the child. (100, Central Authority)

Very often domestic violence has alleged before international child abduction to have evidence regarding Article 13(b). (101, Lawyer, Italy)

## Effects of Abduction

Survey respondents were asked several open-ended questions about the effects of abduction on family members when domestic/family violence or abuse to the taking parent, abducted child(ren), or both had been alleged. These included the effects on the taking parent, on the abducted child(ren) and on the left-behind parent and their comments have been thematically analysed below.

### Effects on the Taking Parent

Ninety-eight (84.5%) of the 116 survey respondents commented on the effects of abduction on the taking parent in the context of domestic violence and/or abuse. The most commonly reported **positive effects** were the **relief** the taking parent felt about them and their children **feeling safe** again:

Relief of cessation of conflict/abuse, ability to recover from effects of abuse and rebuild self-esteem. (20, Lawyer, Lawyer representing children, NZ)

A sense of rescuing themselves and the children from the violence. Safety is paramount and first and foremost. Often times parents do not think of consequences and take the children to a location where they are likely to be safe and have adequate support mechanisms in place. (35, Lawyer, Mediator, Counsellor, Australia)

One effect typically advanced is that, because the taking parent will be living in a different country and usually at a greater physical distance from the other parent, they are less at risk of abuse and feel safer. Part of this will be because the taking parent will usually select a country with which they have substantive connections which they consider provide them with more support. (68, Judge, England & Wales)

The taking parent feels safe once they are out of the habitual residence country and supported by family. (91, Lawyer, Lawyer representing children, NZ)

If they are escaping from an actual abusive situation, they probably feel a sense of relief. (100, Central Authority)

**Other positive effects** included the taking parent feeling justified about their decision, less at risk, relaxed, at rest, rescued, having won, or gaining a new sense of freedom and the opportunity to rebuild their self-esteem:

Domestic violence is considered to justify the abduction. (17, Judge, Germany)

They try to make self-justice in leaving the violent partner. (51, Lawyer, Albania)

For the parent, it can be a feeling of freedom, having their supportive net of family around, being in a long distance from their abuser. (89, Psychologist, Central Authority)

The taking parent would feel relaxed and at rest since there is no further abuse. (92, Central Authority)

Many respondents emphasised the **negative effects** on the taking parent, with **fear** being the most commonly reported detrimental impact, together with a range of other feelings including stress, worry, anxiety, anger, concern, upset, sadness, loneliness, social isolation, solitude, financial impacts, physical/mental health and emotional effects, confusion, low self-esteem, and doubts about their ability to parent:

Wide range of responses. In some people it creates fear of return and anxiety, they can feel no-one is listening to them. They can gravitate towards lobby type groups who share their views. (26, Lawyer, Lawyer representing children, NZ)

Strong loneliness and fear for one's own safety and that of the children. (86, Lawyer, Italy)

Fear of return. (79, Psychologist, NZ)

Confusion and need for protection. (104, Lawyer, France)

Usually, the parent is very upset and flees – even if that is not the wisest choice. (113, Lawyer, US)

Other **stronger negative effects** for the taking parent were reported to be desperation, depression, self-doubt, exhaustion, hopelessness, feeling traumatised, devastated, fragile, vulnerable, in survival mode, in flight mode, the last resort, destabilised, guilty, shameful, blameworthy, disbelieved, shock, panic, abject terror, or PTSD:

Absolutely devastating and traumatic. (10, Lawyer, Lawyer representing children, England)

Anxiety about the litigation, worry about finding a lawyer and affording one. Concern about having to go back and continue litigation in the other country. Sometimes an unrealistic optimism about how much better life will be in the new country. (21, Lawyer, NZ)

The taking parent often appears traumatised by their actions in taking the children and fearful of what will happen if ordered back. (44, Lawyer, US)

Making a decision that the taking parent perceives or believes to be in their or the children's best interests can result in shock, fear, or panic, when confronted with the knowledge that the taking parent or caregiver has broken the law and may be faced with legal repercussions. The prospect of being denied the freedom to choose where to live can be perceived as oppressive, and lead to anxiety, stress, and depressive symptoms. (74, Psychologist, NZ)

Complete desperation, a feeling that there was no other option. Usually, victims of domestic violence who are also the taking parent see abduction as the last resort measure because they couldn't get protection from the local services. ... They flee to prevent the child from being the next victim, to protect them from witnessing violence, and sometimes to save their own lives. (95, NGO / Organisation, Brazil and all of the EU)

Many respondents commented that the effects on the taking parent were **two-fold** – primarily, that the effects were **positive at the time of the child's wrongful removal or retention** (e.g., relief, safety, etc), but **negative thereafter** (e.g., fear of the child being ordered to return to the state of habitual residence, etc):

Sense of relief, but apprehension that he or she may have to return to the habitual residence. (07, Lawyer, Lawyer representing children, Mediator, Canada)

Abduction means safety, but fear that return will be ordered under the Convention. (14, Academic / Researcher, US)

The taking parent feels relief because they have removed themselves and the child from a dangerous situation. They also feel afraid, lest they should be obliged by the court to go back to the country from which they abducted the child. These feelings of fear and insecurity may affect the degree in which they can meet the requirements of their parenting role. (40, Lawyer, Mediator, Greece)

He/she is relieved to escape domestic violence, but another fear arises that he/she will have the child taken back. (45, Lawyer, Japan)

They seem to feel some respite from the abuse and sense of security in raising the child. Yet they are often accompanied by the undercurrent of fear that the child might be returned to the environment where the child again will be either a witness to and/or a recipient of abuse. (47, Counsellor, Japan)

The taking parent often feels relief at having 'escaped', combined with fear about what will happen next, and whether they will need to return with their child to the state of habitual residence and the possibility of further abuse. (48, Academic / Researcher, UK)

It makes them feel righteous, but also fragile. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

Such parents have moved beyond national boundaries because their ache, anxiety, fear, and loneliness of suffering from spousal violence in married life in a foreign country caused them to feel that it was very difficult to continue living abroad. While they probably feel relieved after actually fleeing violence, they must feel guilty towards the child or feel anxious that the left-behind parent may take the child back. For this or other reasons, such parents seem very cautious during the other parent's visitation or other contacts with the child. (76, Unknown role, Japan)

Refuge, safety, comfort of supportive family, depression, adjustment. (80, Psychologist, Australia)

Abduction can be seen as the only option to obtain safety and stability. The taking parent is often removing to an area where they can access direct support from family and friends, and whereby they can have access to income support and health care without being dependant on the alleged perpetrator. Often, the effect of the abduction is twofold as they are relieved to have immediate safety and access to support, but they are also fearful of the legal ramifications of what they have done, and that they will be forced to return. (108, Counsellor, Australia)

Great distress and helplessness but, at the beginning, the ability to do something. (109, Lawyer, Germany)

Some respondents noted the **complexity of effects** and the **difficulty in isolating the effects** from the taking parent's experience of violence/abuse and the effects of abduction more generally:

Abduction can have a significant and enduring effect on family members when there are claims of domestic violence and/or abuse. Significant side effects, such as emotional trauma that might emerge as guilt, shame, fear, worry, solitude, and hopelessness, may be experienced by the taking parent. The taking parent could also experience legal repercussions, including as



criminal charges and the loss of custody or visitation rights. Furthermore, because of the shame attached to kidnapping, individuals could become socially isolated as friends and relatives turn away. (62, Psychologist, NGO / Organisation, Greece)

It is difficult to isolate the 'effects of abduction' when domestic violence and/or abuse is alleged from the existing effects of domestic abuse and/or from the effects of the abduction more generally. (68, Judge, England & Wales)

The **anticipated return proceedings** could generate effects for the taking parent, particularly in relation to the prospect of a return order being made by the court:

There are effects prior to the abduction and effects after the abduction. With respect to the former, taking parents rely very much on piecemeal advice given by bodies such as the Police/ domestic violence organisations and, sometimes, even lawyers which encourage them to take the step of returning to their country of origin. This, of course, then blows up in their face when they seek to rely on that evidence because gathering evidence of what advice they had and who gave it to them is almost impossible given the limited resources available to the taking parent in the country of refuge and in most cases is deemed irrelevant to whether or not a grave risk can be established. In extreme cases, fear of domestic violence can so paralyse the taking parent that they simply cannot face returning with the child and so the child is sent back alone to a parent that at best he or she has not seen for at least 12 months. I can only imagine what impact that might have on the child. (16, Lawyer, Australia)

When I speak to taking parents who have experienced violence they are often very scared and stressed about the possibility of a return order being made. Many of them find it very difficult to believe that the law is not on their side and that it will likely be difficult to prove there is a grave risk of harm to their child in the country they have fled. (36, Lawyer, Australia)

It is very hard for the taking parent to prove the allegations and, of course, it is really hard for them to trust that they will be protected in the other state. Some people are really traumatized by the experience. (41, Central Authority)

Potential systems abuse by left behind parent. Significant financial costs in defending litigation. Risk of physical and psychological harm if ordered to return including lifelong injuries or death, potential alienation from children. (43, Lawyer, Australia)

Fear, lots of fear, impotence, risk of losing the child and returning to that place and not being safe. (70, Central Authority)

They are very scared to have to go back, but they are also feeling better when leaving the abusive partner. (82, Judge, Lawyer, Netherlands)

For the taking parent, having a petition raised for return of the children can feel like a continuation of the abuse. While they have taken themselves and the children out of the situation, they may not feel safe. The delay of the court process can leave them in limbo and cause immense amounts of stress where they don't know what is going to happen. There can be a fear that, if the perpetrator of abuse is successful with return, then they may feel vindicated and that could create a worse situation on return. (85, Lawyer, Scotland)

A sense of revolt and hopelessness against the Brazilian State that does not protect the children, but rushes to bring them back to the abuser. (97, Psychologist, Brazil)

The effects on the taking parent were said to sometimes **affect their approach** to the return proceedings e.g., the taking parent may be less willing to negotiate or compromise:

It is hard to describe the effects on a taking parent that are different in cases where family violence has been alleged. In a very general sense, perhaps parents in this category find it harder (or are more unwilling) to negotiate or consider what could happen in the country of return to keep them safe or make the return easier if a return is ordered. (15, Lawyer, Lawyer representing children, Australia)

The taking parent may be less willing to compromise or to accept any decision ordering the return of the child. (22, Lawyer, Italy)

Distrust of the legal system that they are fleeing from. (65, Lawyer, US)

Once [abduction] has been alleged, it hangs like a shadow over the case ... and the taking parent will be blamed for this. (110, Lawyer, Denmark)

The effects on the taking parent could depend on **the validity of their claim** as to whether violence/abuse had genuinely occurred or was being used strategically, and perhaps exaggerated, to advance their interests:

Depends on if abuse was manufactured. Domestic abuse is NOT a valid defense. (04, Lawyer, US)

The taking parent may either have a legitimate concern of abuse or may be using the defense as a shock tactic to justify the abduction. (05, Lawyer, US)

The [taking parent] may be eligible for more government support. I suspect that it is very easy for allegations to be enhanced and exaggerated. Allegations in excess of what occurred is going to make returning more difficult. (06, Judge, Australia)

If the complaint is false, the effect is satisfaction for having achieved its objective. If the complaint is true, it is peace and justice. (30, Lawyer, Argentina)

Depends on whether the allegations are true or not, but feels justified I suppose. (33, Judge, Norway)

Depends on the case. I have had cases where highly traumatised parents have had to fight to stay in England. Equally, I have had cases where parents have used allegations of domestic abuse to try and remain in England as it is easier than applying for leave to remove in the other jurisdiction. (50, Judge, Lawyer, England)

The effect is dependent on the validity of the claim. (58, Lawyer, NZ)

Depending on whether domestic violence/abuse actually took place, the taking parent is scared and very often traumatised. However, in cases of child abduction, in the majority of cases the taking parent alleges that them and the child were victim to domestic violence, but very often during the proceedings it comes to light that there was no abuse. (63, Lawyer, Poland)

There are usually two different situations of taking parents. The first is a parent who has indeed suffered significant family violence and feels a need to be safe, close to family and cannot imagine that they will be safe remaining where they are. In some cases, they fear that the legal protections in the country they are in are adequate to protect them (and in some cases they

may not be). The second is where there is a use of allegations of family harm to bolster an application for relocation. Those are very difficult cases in the current climate as there may be only (and it's not easy to say this) low level issues often associated with a relationship going downhill or other stressors or maybe no evidence of anything (although it is very difficult to say that with psychological abuse allegations) so that this is used to try to force the Courts hand ultimately and set aside the presumption of return. (71, Psychologist, NZ)

The parent in my experience is 100% convinced the allegations are true and feels disbelieved. They believed that they were driven to abduct their children and are acting out of child safety concerns. (73, Psychologist, NZ)

In Hague Convention cases, taking parents may be advised by lawyers to claim that the child would be at "grave risk" if returned to their previous place of residence. This can exacerbate their perception of threat, leading to domestic violence allegations being fabricated or significantly exaggerated. This may ultimately damage the applicant's credibility when going on to seek a parenting order following the culmination of the Hague Convention case. (74, Psychologist, NZ)

The taking parent is very angry and evasive about the left-behind parent. They are focused on arguing that the abuse is real and have difficulty considering that the return of the child might be in the child's best interest. (81, Counsellor, Japan)

Assuming that domestic violence actually occurred, it may be the only way how to save. However, the problem is that it is not necessary to run and take the child(ren) to another country. (90, Central Authority)

There are obvious stressors given the risk of civil and criminal sanctions, but there are also [taking] parents who receive secondary gain from the attention and harm to the other parent. (106, Lawyer, US)

Two respondents considered that the raising of 'grave risk' issues by taking parents **could backfire** on them or result in them losing their case:

In my experience, making such allegations can backfire on the taking parent. (87, Lawyer, US)

They often times lose their case. (88, Lawyer, US)

The final theme raised by respondents was the effect on the taking parent in **the aftermath of return orders** being made, including the emotional toll, revictimisation, loss of custody/contact, deciding whether to return or not with the child, and their inability to trust any protective measures that had been ordered by the court:

A return order in such circumstances often takes a toll on the mental health of the taking parent, leading to anxiety and/or depression associated with the return and possible loss of custody or even contact with the child following the return. (25, Academic / Researcher, UK)

The taking parent alleging domestic violence is often victimised all over again by following the children back to the country where there is rarely equality of arms. ... Mothers (by and large) flee from family violence with the children, only to be returned to the ex-partner's country without support, a network or ability to live in or work in that country. Then they get penalised in the other court (if they can afford to appear) for not having stability. Grave risk of harm is too a high a hurdle. I am also not satisfied that the use of conditions for return (e.g., payment

of a lump sum of money prior to return) are considered, or creatively considered. (27, Judge, Australia)

By taking their child and moving together to a place of safety, usually their home country, the family feels safer unless the court rules that their child must be returned to the other country, usually to live with the perpetrator. In which case, the effect on the taking parent will often be damaging as she will struggle to deal with the aftermath of a Hague Convention case due to post separation abuse, family / criminal court, and a range of difficulties that often present upon return. (31, NGO / Organisation, Globally)

This may lead to her children's return being ordered – at which point the taking parent also has to make a decision about whether to return or not herself. The taking parent's trust in any protective measures ordered by the court may not be high. (38, Academic / Researcher, NZ)

### Effects on the Abducted child(ren)

Ninety-eight (84.5%) of the 116 survey respondents commented on the effects of abduction on the abducted child in the context of domestic violence and/or abuse. The most commonly reported **positive effect** was **relief** that the abducted child (and the taking parent) were **safe**:

It can remove the child from immediate risk of harm. (34, NGO / Organisation, Australia)

Depends on the age and understanding of the child at the time of being taken, but where the child is aware of the violence/abuse, relief at them/the taking parent being safe, and not having to continue to witness the violence against the taking parent. (48, Academic / Researcher, UK)

Children are relieved the violence can't continue. (115, Mediator, Czech Republic)

Increased safety. (107, Lawyer, US)

Often, however, respondents framed this **sense of relief and/or safety in the context of other negative effects** on the abducted child such as fear (especially of being ordered to return to the State of habitual residence), sadness, grief, loss, guilt, dislocation, resentment, uncertainty and confusion. Therefore, for some abducted children, the effects were said to be **both positive and negative**:

If the allegations are true there may be some relief. If the abuse is emotional it may continue by electronic means. If the abuse alleged is out of proportion to what occurred, the child is likely to be expected to corroborate the narrative of the taking parent. (06, Judge, Australia)

Ranges from relief from violence to significant guilt/dislocation/resentment. (12, Lawyer, Lawyer representing children, Australia)

Abduction means safety, but fear that return will be ordered under the Convention. (14, Academic / Researcher, US)

Grief, loss of relationship with parent and relief from cessation of conflict between parents. (20, Lawyer, Lawyer representing children, NZ)

Safety is ensured, but also a sense of loss for missing the left-behind parent. Confusion as to why they have been abducted and taken away from another parent. (34, NGO / Organisation, Australia)

If they have been subjected to domestic violence themselves or have seen domestic violence against one parent, they may be relieved to be rid of them, but otherwise may be confused. (45, Lawyer, Japan)

Potential escape from violence, freedom. Potential trauma in severing of relationship with left-behind parent. Risk of physical and psychological harm if ordered to return, potential alienation from primary carer if carer does not also return. (43, Lawyer, Australia)

Some children are happy to have left an oppressive environment, while some are confused and distressed in a new environment, and often they can be both. (47, Counsellor, Japan)

Whether or not there has been family violence, being removed suddenly from your home and familiar environment is very stressful for children. Where children and the taking parent have been subject to severe violence there is relief at 'getting away' and the child/ren will often align naturally to the victim parent. Over time, however, the reality of the situation may impact negatively on the child and removal may make any reconciliation impossible, creating long-term developmental issues. (71, Psychologist, NZ)

In some cases, such children may feel relieved after fleeing a dispute between their parents, or violence or abuse against themselves. In other cases, it can be inferred that they have a mistrust of their parents or feel anxiety because their parents made them move without explanation, feel anxiety because they have been disconnected from their familiar life, develop a sense of loss after being separated from one of their parents, or otherwise feel various emotions. While it depends on the characteristics of the child concerned or the environment of the parent and the child at the place to which the child moved, such abduction also affects whether the child can adapt to a new life. (76, Unknown role, Japan)

Fear, relief from abusive situation, uncertainty in new environment, sadness. (78, Academic / Researcher, US)

They are scared about what is going on, but seem better not to be in the abusive surroundings any more. Although they also want to know how the abusive parent is doing. (82, Judge, Lawyer, Netherlands)

The child is often confused by the abduction as the domestic violence has been part of their reality, but the taking parent is often less stressed and more present once they are in the new country. (91, Lawyer, Lawyer representing children, NZ)

The child might be disoriented and confused at first however s/he will notice that the taking parent is acting differently and less tense. (92, Central Authority)

Many respondents, however, primarily raised the **negative effects of abduction on abducted children** in the context of domestic violence and/or abuse. These effects included fear, stress, distress, pain, confusion, harm, trauma, vulnerability, fragility, estrangement, devastation, displacement, destabilisation, depression, anxiety, sadness, regret, loyalty binds, volatility, chaos, inability to trust, adjustment issues, physical injury, impacts on attachment, mental health and social relationships, insomnia, bedwetting, PTSD, developmental delays, psychopathology, alignment with the taking parent, growing up too fast, and identity issues.

Psychological child abuse (04, Lawyer, US)

Volatility, lack of ability to trust, and overall depression. (07, Lawyer, Lawyer representing children, Mediator, Canada)

Absolutely devastating and traumatic. (10, Lawyer, Lawyer representing children, England)

Impact on attachment, mental health, relationship with both parents and social relationships. (13, Mediator, Australia)

In the majority of cases where I have represented children when the taking parent has alleged family violence, the children have been very young and I did not meet them, nor were they assessed by an expert. In one case involving an older child, the family dynamics were very complicated, but he showed signs of trauma, he felt worthless, had developed a facial tic, had trouble sleeping and was described by the left-behind parent (with whom he was reunited) as his 'shadow'. (15, Lawyer, Lawyer representing children, Australia)

Fear, stress because of the very tense traumatic situation of being abducted plus, if violence really happened or stress is caused by the abductor, double traumatic experience. (17, Judge, Germany)

Mostly very little when violence is low level or disputed. When it is high level, or on the child, it can cause significant distress. (18, Lawyer, Lawyer representing children, Mediator, NZ)

Confusion where there is no contact with the other parent, anxiety about the situation of the taking parent, anxiety about the left-behind parent, and, depending on age, sadness about loss of friends in other country. (21, Lawyer, NZ)

The abducted child tends to suffer from anxiety and other mental health problems, sometimes associated with physical problems, such as bedwetting etc. (25, Academic / Researcher, UK)

A great conflict of loyalties. The child is stuck between the parents, and because of that they are often under enormous psychological pressure. (29, NGO / Organisation, Netherlands)

Confusion, loyalty conflicts, pain and regret at having to testify against a parent and having to grow up too fast. (32, Unknown role, US)

Traumatic – the unknown, the uncertainty, and being taken into an environment that they are not familiar with. Being separated from a parent is always going to be challenging and confusing to the child. The need to re-establish bonds and social networks can be difficult. (35, Lawyer, Mediator, Counsellor, Australia)

The abducted child is placed in the middle of a terrible situation and traumatized by having been taken and impacted by the fear of the taking parent. (44, Lawyer, US)

Absolutely harmful. (53, Lawyer, Chile)

Has bad effects on the child. (54, Lawyer, Japan)

He or she cannot understand that it is not his or her fault. (56, Lawyer, Academic / Researcher, Brazil)

Uncertainty, fear, fragility, alignment with abducting parent. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

Whether the allegation is valid or not, the child's reality is impacted, and their lives disrupted by the abduction. (58, Lawyer, NZ)



Violence has always a negative consequence on the children, but these children are also torn apart as they still love the left-behind parent in most cases. (59, Lawyer, France)

Feeling of fear and rejection by the accused parent, the risk that the child will take sides with the parent they consider to be the weakest in the relationship. (60, NGO / Organisation, France)

Abduction can have negative and enduring impacts on the kidnapped children, especially when there are claims of family violence and/or abuse. Some of these implications could be trouble trusting other people, emotional anguish, bodily damage, interrupted education, relationship hardship, and legal repercussions. Because to the traumatic event, abducted children may feel fear, worry, bewilderment, and a sense of loss. Also, they can sustain bodily wounds and miss class, which would affect their academic achievement. The kidnapping can also sour their relationship with the kidnapping parent and cause them to lose faith in other people, including their own family and the police. (62, Psychologist, NGO / Organisation, Greece)

The effect on a child can be quite profound and is not as front and centre of any application as it should be. Some countries do not see domestic violence on a parent as anything to do with the child. Not so here. (64, Lawyer, UK)

Confusion, loyalty binds, disrupted attachment with the left-behind parent, isolation (particularly in cases where the children may have been coached to make false or exaggerated claims, and the taking parent or caregiver is concerned that the child may 'slip up' on their story if allowed to interact with others). (74, Psychologist, NZ)

Destabilised by removal from their habitual residence and emotionally harmed by separation from left-behind parent. (75, Judge, Lawyer, Lawyer representing children, England)

Loss, estrangement, alienation. (79, Psychologist, NZ)

Confusion, fear, identity issues, grief. (80, Psychologist, Australia)

In my experience, the child is caught in the middle and harmed. (87, Lawyer, US)

Anxiety/panic disorders and other mental illnesses such as depression; perpetually strained parent-child relationships; need for extended psychological and psychiatric assistance; late development of personality. (95, NGO / Organisation, Brazil and all of the EU)

The children feel extremely insecure and fear something bad might happen to them and the parent with whom they live; to the point that sometimes they develop Post-Traumatic Stress Disorder (PTSD), General Anxiety Disorder, or other trauma related symptoms. (97, Psychologist, Brazil)

PTSD, developmental delays and psychopathology now and later from direct and indirect abuse and threat to caretaker. (103, Unknown role, US)

Loss of self-confidence, fear, loss of landmarks. (104, Lawyer, France)

The children can develop a fear of being with the taking parent. (110, Lawyer, Denmark)

The sudden loss of the abducted child's relationship with the left-behind parent, even where violence or abuse has occurred, was reported as having a detrimental effect on the **child's relationship and contact**

**with the left-behind parent**, particularly when the taking parent was influencing the child or alienation had become an issue:

The child does not want contact with the other parent, and most probably suffers a lot inside. (19, Lawyer, Lawyer representing children, Mediator, Croatia, Austria)

These are high stakes cases with children at risk of suffering ACEs [Adverse Childhood Events] and risk that they may, in the end, lose any contact with the other parent for much of their minority. (106, Lawyer, US)

Lack of relationship with the other parent. (28, Lawyer, España)

Most of the time the child doesn't even realise what is going on. It is just because of the explanation of the taking parent that the child starts to change the way how they relate with the left-behind parent. The main consequence is the relationship with the left-behind parent is going to be progressively interrupted. (39, Lawyer, Lawyer representing children, Italy)

I have seen many children that had to grow up quickly and to assume the role of the father/mother of their parents. The most common effect is the alienation from the other parent. Children feel they have to be loyal to one of the parents and become aggressive towards the other parent. (41, Central Authority)

Abduction in such cases always makes a negative impact on the child; it very often leaves them traumatised. The taking parent usually alienates the child from the other parent which breaks the bond between the child and the left-behind parent. (63, Lawyer, Poland)

Confusion and a sense of being abandoned by the left-behind parent since they rarely know why they are leaving. (65, Lawyer, US)

In most cases, extreme reluctance to engage at all with left-behind parent – as this is the only defence I believe huge pressure on the child to object. (66, Lawyer, Ireland)

The child is disrupted in their relationships and some areas of their psychological development. The child has learnt not to mention the other parent and/or has taken on the parent's perspective. (73, Psychologist, NZ)

Children dislike, fear and avoid the left-behind parent, also influenced by the taking parent. (81, Counsellor, Japan)

I understand that where a child is abducted to another country they can end up in some chaos where they are stripped of everything familiar (home, routine, school, toys etc.). They are separated from the left-behind parent and do not always know why. It can leave the child in a limbo state until the decision is made by the court where there is sometimes no possibility to arrange or enforce contact with the left-behind parent which impacts on the child directly and their relationship with the left-behind parent. I would question whether the impact on a child is less when the taking parent is removing the child from an abusive household or where the impact of abuse may be more harmful for the child if they were to remain there. I think it is an area where more research should be undertaken. (85, Lawyer, Scotland)

The children sometimes cannot see the other parent for a long time. (88, Lawyer, US)

Even though there is freedom for them as well, it is the loss of their other parent. It is almost impossible to provide the child and the parent from which they were separated with professional help they would need, and their relationship deteriorates quite quickly. (89, Psychologist, Central Authority)

Other respondents said the effects on the child **depend on other factors**, particularly **the age of the child**, but also the nature and severity of the violence to which they have been exposed, the primary carer's emotional state, and whether or not the allegations are true. It can also be **difficult to generalise** when the effects are so dependent on the circumstances:

Impossible to generalise – usually dependent on the emotional state of the primary carer and degree to which child has been exposed to violence/abuse/conflict. (08, Judge, Australia)

Depends. It can free them from violence, but it can also have the potential to sever the relationship with either parent – the taking parent who, on a return order being made, is unable to follow or engage in foreign proceedings, or the left-behind parent if they do not engage with Hague. (27, Judge, Australia)

Depends on whether the allegations are true or not. What I have seen appears to be confusion more than anything. (33, Judge, Norway)

It depends upon the circumstances. (37, Lawyer, Italy)

They depend on the age of the child. Children invariably feel better after the stress-inducing factors (such as parents fighting or violent outbursts from one parent) have been eliminated or reduced. The change of the environment may feel good or threatening, depending on the age and the previous life experiences of the child. Family violence can be very destructive for a child and in most cases it will leave indelible marks on the child's soul. (40, Lawyer, Mediator, Greece)

Some children exhibit confusion of what is happening, are sad, others are happy to be removed from a situation, many are clingy of the taking parent (depend on the age of the child). Older children may be unhappy to be removed from an environment they know, or at having to learn a new language or leave friends or family. Some manifest missing the left-behind parent. Some appear more confident and secure. (52, Judge, US)

I don't think you can generalise – it's very complicated. They may be protected from domestic abuse, but they are often otherwise uprooted from their lives, leave their school, friends, etc, and lose contact with the other parent. (67, Lawyer, Lawyer representing children, UK)

It is difficult to isolate the 'effects of abduction' when domestic violence and/or abuse is alleged from the existing effects of domestic abuse and/or from the effects of the abduction more generally. If the child had regular contact with the other parent, they are likely to experience a sudden diminution in the nature and quality of that relationship which can extend to an abrupt severance. This applies more widely to their social and family connections in their home country. The changes are invariably unplanned and sudden which can have varying detrimental consequences for children depending on their age and the quality of their life prior to the abduction. Not infrequently, they may also become more involved in their parents' dispute than they were previously and subject to the influence of the taking parent. (68, Judge, England & Wales)

Assuming that domestic violence actually occurred, it demands a lot on the situation – whether the child was also a victim of the violence, or the child was witness of the violence or the child didn't know about anything. It depends also on the age of the child. The effects could be various. (90, Central Authority)

As a lawyer, it is difficult for me to determine the state of mind of a child. Much depends on the circumstances of the case. Was the child aware of, or even a victim of, the violence? Were the allegations true? (100, Central Authority)

I believe the impacts on the abducted child is dependent on their age, whether they were abducted by their primary care giver/ attachment figure, and whether they were abducted by the perpetrator or the victim/survivor of family violence. Generally, if the children are young (approx. 5 and below) and taken by the primary attachment figure, they tend to seem okay. They may even have positive outcomes due to no longer experiencing family violence, being in a safe environment, and the positive flow on effects of their parent being in a safe environment. If the children are older than 5 then the impact seems to vary – the confusion, separation, and exposure to continued conflict between parents can be detrimental and traumatic. Alternatively, the safety it can afford can be highly beneficial to their development and wellbeing. Older children can be particularly impacted both positively and negatively as they have greater understanding and insight into what is happening. If the children are abducted by the non-primary care giver and the perpetrator of family violence – the effects and impacts are catastrophic. (108, Counsellor, Australia)

It varies depending on whether the child witnessed the violence or was subjected to it personally. (113, Lawyer, US)

Several respondents considered that the **return proceedings** could have a negative effect on the child. They mentioned the child's fear of being uprooted and returned, difficulties associated with the prolonged nature of proceedings when the Article 13(1)(b) exception is raised, the adequacy of protective measures, loyalty conflicts, and the exposure of children to multiple interviews:

In a case of actual abuse, the child is likely affected by facing a return to an untenable situation. In a case where the [Article 13(1)(b)] defense is raised, the child is affected by being possibly alienated from the left-behind parent in an effort to bolster the allegations. (05, Lawyer, US)

The abducted child can experience additional prejudice, because given the prolonged time required to decide the case when violence is alleged, he may start to call home his new country and, therefore, if returned to his original place of residence, be uprooted a second time. (22, Lawyer, Italy)

Can place them even more in the centre of these disputes as they end up being interviewed by multiple professionals (such as their representatives and psychologists). Such allegations can lead to delays in determination, so they can feel frustrated about how long the case is taking and anxious about the likely result. They often end up losing contact with the left-behind parent for lengthy periods, regardless of their own views (for example, even if they are seeking safe contact) and that relationship becomes undermined. Often they witness their present parent expressing fear/anxiety and distress. (26, Lawyer, Lawyer representing children, NZ)

I would say the children feel stressed, torn between wanting to please both their parents and just want the whole court process to be over as quickly as possible. I note that most of the cases I have worked in have allegations of physical harm being perpetrated against the child by both parents and sadly the child often considers violence to be normal. (36, Lawyer, Australia)

Key issues here include protecting the child from the domestic violence and abuse by the left-behind parent; the adequacy of protective measures should the child's return be ordered; the child's relationship with parents, siblings and wider family members, and the post-return support and after-care on offer (which is usually minimal). (38, Academic / Researcher, NZ)

Two respondents indicated that they considered the effects on the abducted child to be **minimal or similar to those experienced in other types of abductions**:

I consider that it is the same as in any other reason for abduction. (30, Lawyer, Argentina)

Negligible. (50, Judge, Lawyer, England)

Just one respondent raised the issue of the effects on the abducted child being due to the **abuse and trauma they had experienced**, rather than the abduction:

Children who have been removed from an abusive environment and have been taken out of the country, often to their primary carer's home country will often be very vulnerable and traumatised. Children who have been the victim of abuse (which is ALL children living in an abusive household) will often suffer ongoing trauma which they may need support with. The cause of this trauma is not usually the 'abduction' or move, rather it is the actual abuse that they have been a victim of that prompted the move. (31, NGO / Organisation, Globally)

### **Effects on the Left-Behind Parent**

Ninety-six (82.8%) of the 116 survey respondents commented on the effects of abduction on the left-behind parent in the context of domestic violence and/or abuse. Negative effects pervaded the responses on this issue – no positive effects were mentioned. The **negative effects** included anger, rage, loss, despair, dread, desperation, hopelessness, helplessness, frustration, confusion, grief, sadness, hurt, shame, denial, disbelief, disappointment, aggression, disempowerment, mistrust, loss of control, indignation, surprise, shock, betrayal, alienation, resentful, indignant, feeling frozen, stuck, victimised or demonised, experiencing mental health impacts, depression, financial pressure, scared, broken, revengeful, and uncertain when they will next see their child(ren):

The left-behind parent, if there are no financial resources, usually becomes deeply depressed, although sometimes reacts with a lot of anger. (01, Lawyer representing children, US)

Anger, rage, adjustment issues, 'splitting' – 'I am good; abducting parent is bad'. Unable to 'see' a 'middle ground'. (03, Lawyer, US)

A parent's second worst nightmare. (04, Lawyer, US)

Sense of despair and hopelessness. (07, Lawyer, Lawyer representing children, Mediator, Canada)

Absolutely enrages them. (12, Lawyer, Lawyer representing children, Australia)

Mental health, emotional impact, and legal ramifications. (13, Mediator, Australia)

Parents have expressed feelings of hopelessness, frustration about lack of contact and/or information about their child and about the length of time it takes to resolve things. (15, Lawyer, Lawyer representing children, Australia)

Helplessness, frustration, fear to lose the child (if violence did not happen). (17, Judge, Germany)

From hurt and shame to anger and aggressive responses. (18, Lawyer, Lawyer representing children, Mediator, NZ)

Concern, lack of trust. (23, Lawyer, Lawyer representing children, Mediator, Academic / Researcher, US)

Denial that abuses took place. (24, Psychologist, South Africa)

No doubt devastating for the left-behind parent, but the focus ought to be on the child. (27, Judge, Australia)

They feel helplessness and despair. (29, NGO / Organisation, Netherlands)

Lost connections, guilt, feeling demonized, lingering anger and difficulty moving on. (32, Role unknown, US)

Sense of loss and grief, confusion, anger, frustration, sense of helplessness. (34, NGO / Organisation, Australia)

Ambiguous loss and shock. Grief and loss on many fronts. Not knowing what legal mechanisms are available to them (if any). (35, Lawyer, Mediator, Counsellor, Australia)

The left-behind parent is definitely surprised by the abduction, however the allegations of domestic violence increase the tension of the left-behind parent even more. Depending on the situation, this tension may present itself as anger or disappointment. (40, Lawyer, Mediator, Greece)

They are angry that their child has been taken away. (42, Lawyer, England & Wales)

In most cases, they feel alienated and resentful. (45, Lawyer, Japan)

Shock normally. (50, Judge, Lawyer, England)

Rage, fear, helplessness. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

Often devastating – and issues arise in counteracting the allegations made. (58, Lawyer, NZ)

Physical and psychological suffering: feelings of injustice, loss of trust in the spouse, fear that the child will be manipulated, depression, suicidal ideas, sleep disorders, fear of new accusations. (60, NGO / Organisation, France)

Provoke indignation. (61, Lawyer, Japan)

Abduction can have substantial and enduring impacts on the parent who is left behind, particularly when marital violence and/or abuse are present. These repercussions could include social isolation, financial pressure, relationship strain, trouble navigating the legal system, emotional trauma, and relationship strain. Anxiety, despair, and feelings of loss and grief are just a few of the emotional traumas that the parent who is left behind may experience. The left-behind parent may experience severe financial hardship as a result of the kidnapping since



they may need to employ a lawyer and pay other legal costs in order to reclaim custody of their child. The parent who was left behind and the kidnapped child could not get along very well, especially if the kid is moved to another state or country. The legal processes of the country where the child was removed may also be challenging for the parent who was left behind, making the procedure challenging and unpleasant. The left-behind parent's physical health may suffer as a result of the stress of dealing with the abduction and its aftermath, which can cause issues including insomnia, high blood pressure, and other stress-related ailments. The left-behind parent may experience social isolation as a result of the abduction because they may not have access to the same support systems they did before to the abduction. (62, Psychologist, NGO / Organisation, Greece)

Anger, confusion, and distrust especially where the domestic violence allegations have proven to be unsubstantiated. (65, Lawyer, US)

In some senses, the same as for any abduction, but this may also be the first time that their abusive behaviour really comes to be examined, so it can also be a bit of a reckoning. (67, Lawyer, Lawyer representing children, UK)

Losing control. (70, Central Authority)

The left-behind parent is, in my experience, desperate, broken and in despair. Their functioning has also been severely impacted on. (73, Psychologist, NZ)

Grief, disempowerment, financial pressure, anxiety, stress, depression. (74, Psychologist, NZ)

Anger, revenge, sadness. (78, Academic / Researcher, US)

Loss, disbelief, sadness, fear for the children. (79, Psychologist, NZ)

Grief, stress, depression. (80, Psychologist, Australia)

Angry, scared, not knowing when and how to see the child(ren). (82, Judge, Lawyer, Netherlands)

The left-behind parent can feel frozen, stuck and like they have had their rights taken away. There can be feelings of hopelessness, desperation, and dread at the thought of being so far from their child and never being able to see them again. (85, Lawyer, Scotland)

A strong feeling of anger and resentment towards the taking partner. (86, Lawyer, Italy)

The left-behind parent might feel out of power and angry and with mixed emotions since they have just lost his family. (92, Central Authority)

Uncertainty, anger. If the left-behind parent is also a victim of domestic violence, abduction will be another act of aggression to attempt to alienate that parent completely. In many instances, the child will be influenced to forge an exception, such as the refusal of a mature child. (95, NGO / Organisation, Brazil and all of the EU)

Feelings of helplessness and sadness. Feeling unnecessarily 1-0 behind, needing a lot of conversation to tell his own story. (98, Lawyer, Netherlands)

Misunderstanding, anger, sadness. (104, Lawyer, France)

Anger, helplessness, even more aggression, great distress. (109, Lawyer, Germany)

For the left-behind parent there can be a sense of shock, betrayal, helplessness, grief, and loss. The loss of a child can seem disproportionate to any conflict that has occurred, and in cases where there has been confirmed family violence, they often perceive it to be occurring in both directions. (108, Counsellor, Australia)

Usually, they are very angry and deny the domestic violence. (113, Lawyer, US)

Anger, because he can't control the members of the family. (115, Mediator, Czech Republic)

Several respondents commented on the emotional harm that left-behind parents could experience due to the **separation from their child(ren)**:

They suffer very much because of the lost contact with the child. (19, Lawyer, Lawyer representing children, Mediator, Croatia, Austria)

Grief, loss of relationship with child/ren, anger, denial. (20, Lawyer, Lawyer representing children, NZ)

Lack of relationship with the child and initiation of legal proceeding. (28, Lawyer, España)

Potential alienation from child, grief at severing of relationship. (43, Lawyer, Australia)

Often times, the left-behind parent says there was no abuse and is traumatized by the loss of their children. (44, Lawyer, US)

The left-behind parent often loses the connection to their child due to alienation. It also very often pushes the parent to try to get the child back via force. (63, Lawyer, Poland)

Emotionally harmed by separation from their child(ren). (75, Judge, Lawyer, Lawyer representing children, England)

Can't see their child whether the allegations are true or not. (88, Lawyer, US)

Loss of their child and, even though they need professional help, it is very hard for them to be in touch with their children. (89, Psychologist, Central Authority)

There is a suspicion against the left-behind parent and normally there is a hesitation to work towards establishing contact between the parent and children during the case. When there is a suspicion the left-behind parent can become frustrated and make the conflict worse and if the left-behind parent hasn't seen the children for a long time it can be very hard to reconnect. (110, Lawyer, Denmark)

Some respondents said that the effects on the left-behind parent can **depend on the circumstances**, including the veracity of the allegations. It can be **difficult to generalise**:

Difficult to generalise. (08, Judge, Australia)

The difference varies depending on each situation. (30, Lawyer, Argentina)

Depends on whether the allegations are true or not, but what I have seen appears to be hurt, fear and devastation. (33, Judge, Norway)

This is highly situation-dependent, and I only work with parents at a particular point in time (when the court proceedings are just about to commence or are ongoing) so cannot comment on long-term effects. The vast majority of the time, the allegations of violence are (in my view) credible and the left-behind parent will often feel anger toward the taking parent, that their rights as a parent aren't being respected and make excuses such as the other parent being manipulative, a liar or 'crazy'. In some cases, the left-behind parent will admit to the behaviour, but won't acknowledge that it is violent, or are unable to accept that the court might rule in favour of the taking parent. In the rare cases where (in my assessment) the allegations appear not to be credible, the left-behind parent tends to express hurt and disappointment rather than anger. (36, Lawyer, Australia)

Depends. Anger, sadness. Denial. Frustration. (52, Judge, US)

It is difficult to isolate the 'effects of abduction' when domestic violence and/or abuse is alleged from the existing effects of domestic abuse and/or from the effects of the abduction more generally. The effect on the left-behind parent is the same in reverse to the effect on the child. It will, again, vary depending on the nature of the relationship, physical distance, and other factors, but the loss or diminution in the relationship with the child can be profound. (68, Judge, England & Wales)

This probably depends on whether the claims are true or not. In general, the emotional state of the left-behind parent ranges from disbelief to frustration, to a sense of helplessness, to despair, to rage. (100, Central Authority)

Many variables here. If an abuser, then loss of control may enhance risk to the other parent and child. If not an abuser than the loss can be traumatic and debilitating emotionally over many years. (106, Lawyer, US)

The left-behind parent will be the person making the **application for the child's return**. Several respondents commented on including their use of this legal avenue as a possible way of **regaining control over, or retaliating against, their ex-partner and children**:

They may counter with an allegation of parental alienation rather than accept responsibility. (10, Lawyer, Lawyer representing children, England)

Abduction is a threat to the abuser's power and control. The left-behind parent seeks to retaliate and/or reassert power and control by using the Hague Convention. (14, Academic / Researcher, US)

If they are the perpetrator of abuse, and their victim has escaped, they will try to regain control by whatever means necessary, usually through the courts. They will use (misuse) the Hague Convention in order to regain control over their victim and to punish them. (31, NGO / Organisation, Globally)

Ascertaining whether the alleged domestic did indeed occur, and what the history of this might be, are important in understanding how the left-behind parent might be feeling or react to the child's disappearance to another country. There may be some insight into why the left-behind parent's former partner has fled, or this act may in itself exacerbate the alleged domestic dynamics within the family relationships. The left-behind parent, once aware of the 1980 Hague

Convention and the possibility of reaching a mediated agreement for voluntary return, or of invoking return proceedings, likely feels quite assured that an international approach to which 103 countries are currently Contracting Parties is available. If the child has been taken to a non-Convention state however, the left-behind parent faces significantly greater issues in locating their child and seeking their return. So, the child's destination may well influence the effect of the abduction on the left-behind parent. (38, Academic / Researcher, NZ)

It is very complicated to see parents being falsely accused of domestic violence and being separated from their children. When domestic violence is really the cause of the abduction, I think that the left-behind parent is more concerned about controlling or regaining control of the ex-partner than to protect the children. (41, Central Authority)

For them, demanding the return of the child often becomes the means to control their partner or/and the child. (47, Counsellor, Japan)

Others commented on the effect of the **return proceedings on left-behind parents**, including feeling **frustrated by, or under attack** during, the proceedings:

The left-behind parent is affected by the case morphing from a return action to a 'best interest analysis', which is inappropriate during a return proceeding. The left-behind parent is also faced with answering allegations of abuse in an unfamiliar legal forum. (05, Lawyer, US)

Anxiety about time frames, frustration that not being heard or believed, concern about lack of contact with the children. (21, Lawyer, NZ)

The left-behind parent may experience a very uphill and prolonged path while trying to overcome the violence allegations. (22, Lawyer, Italy)

Can make them feel frustrated because they can't defend themselves against allegations effectively. Makes them feel under attack when they feel that they have been wronged by the abduction. They can end up having their children turned against them, leading to further anger. Leads to feelings of injustice. (26, Lawyer, Lawyer representing children, NZ)

Devastating, because at the end they are the ones that have to prove they DID NOT do it, against burden of proof, and in a foreign jurisdiction most of the times. (53, Lawyer, Chile)

Frustration and sense of been treated as a perpetrator within the proceedings. (69, Lawyer, England)

The left-behind parent may become more reactive and defensive making addressing issues in the family system more difficult. They may also feel abused by having both to fight to get their child/ren back and defend themselves against the allegations. (71, Psychologist, NZ)

Even where they have been the perpetrator of abuse it can feel like proper due process has been disregarded and they do not have a chance to have their say given the summary nature of the proceedings and the fact there is no oral evidence. It can be difficult to then litigate across borders. (85, Lawyer, Scotland)

It can be difficult to defend alleged domestic allegations and frequently the allegations arise in a context of parents with low socio-economic capital and with substance abuse issues/use by both party so the evidence is blurred and complex. (91, Lawyer, Lawyer representing children, NZ)

Defend, but in a very difficult situation. (101, Lawyer, Italy)

Family justice professionals said that some left-behind parents sometimes **denied being violent or abusive** toward their ex-partner and/or children and **lacked insight** into their behaviour:

He/she usually doesn't see anything wrong in his behaviour and reacts badly to the illegal abduction or retention. (39, Lawyer, Lawyer representing children, Italy)

Doesn't necessarily accept that domestic violence/abuse occurred. (48, Academic / Researcher, UK)

In general, in his stride to control the woman's and the child's lives, he usually feels regret, before his impotence for not having had the ability to show affection. His poor communication skills and lack of understanding of the difficulties of a foreign mother to raise a child in a different country are intertwined. (56, Lawyer, Academic / Researcher, Brazil)

The author of domestic violence rarely understands the consequences of his acts. (59, Lawyer, France)

As the perpetrator, I assume they show lack of insight, and it manifests itself in anger and a desperation to return to their sense of control/power. (64, Lawyer, UK)

Usually total denial. Many pursue acts of hostility – come over etc. (66, Lawyer, Ireland)

In some cases, parents who commit domestic violence or abuse are not fully aware of their own behaviour. They strongly feel victimized on the grounds of the abduction of the child itself and adopt a highly truculent attitude toward the taking parent. Of course, some of them may understand why their spouse or child are feeling, introspect on their own behaviour, and adopt a positive mindset to re-establish a new relationship of trust. Certainly, a careful judgment should be made on a case-by-case basis. However, it is very difficult to judge whether an act of violence or abuse has been committed. (76, Japan)

Even if there was abuse, it is hard to focus on it. Instead, they are angry about being avoided by the taking parent and their children. (81, Counsellor, Japan)

Not much, since abuser usually does not understand/accept wrong doings. (83, Central Authority)

Assuming that domestic violence actually occurred, the aggressor lost his or her victim and feels it as injustice, mostly – according to our experiences – the aggressors deny their deeds or sometimes are not aware that they did something wrong. (90, Central Authority)

The left-behind parent most of the time does not acknowledge the harm they caused to the child or the other parent. (97, Psychologist, Brazil)

One respondent questioned the **terminology** of 'left-behind parent' and instead preferred the use of 'requesting parent':

I prefer to use the term 'requesting parent' because I think it gives that parent more of a sense of agency and responsibility for the process. The requesting parent is hamstrung by the usual problems of vagueness of allegations and difficulty in establishing a negative proposition

particularly as in Australia they are not party to the litigation and cannot directly instruct the lawyer appearing in the case. (16, Lawyer, Australia)

## Difference Between Abductions for Protective Reasons Compared with Those Where Violence and/or Abuse is Not Involved

Respondents were asked whether, in general, they considered there to be much, if any, difference between abductions for protective reasons where domestic violence and/or abuse to the taking parent, abducted child(ren), or both, is involved, compared to those where such violence and/or abuse is not involved. Only 8 (6.9%) of the 116 respondents indicated that there were no differences (see Table 6). A further 8 (6.9%) did not know or weren't sure. However, nearly half ( $n=56$ , 48.3%) of the family justice professionals indicated that the difference between these types of cases varies depending on each situation. The remaining 27 (23.3%) of the respondents considered there to be a large number of differences.

**TABLE 6: Difference between abductions for protective reasons compared with those where violence and/or abuse is not involved**

Responses	Number of respondents	%
No difference(s)	8	6.9%
Some difference(s)	17	14.6%
The difference varies depending on each situation	56	48.3%
A large number of difference(s)	27	23.3%
Don't know / not sure	8	6.9%
<b>Total</b>	<b>116</b>	<b>100%</b>

Sixty-eight (58.6%) of the 116 survey respondents commented on what the differences are, and the reasons for them, as well as the effects on family members, when international child abductions occur for protective reasons.

Several respondents considered that abductions for protective reasons and those for other reasons are **very different** in terms of such matters as the allegations, the motivations for the wrongful removal, the effects, the added pressure, anxiety and fear, and the speed of resolution:

The cases are entirely different. Not only is the effect on the child 100% different, but the moral reprehensibility of the 'abductor's' actions is also 100% different. (14, Academic / Researcher, US)

The differences are the added pressure on both the requesting parent and especially on the taking parent and the continuing absurdity of deciding these cases without considering the best interests of the particular child. I think this is the case in all abduction cases but particularly in those where domestic violence is alleged. The Convention was developed in a period when parental rights were the dominant paradigm in decided family law cases. Domestic law has moved on from this, but the Convention has only ossified. (16, Lawyer, Australia)

Protective abduction always includes violence allegations in my experience. (18, Lawyer, Lawyer representing children, Mediator, NZ)

If no violence is alleged the case may be solved quite easily by ascertaining only the Country of habitual residence of the child; if violence is alleged matters become much more complex and



uncertain; also because confirming such allegation will be rendered more difficult provided that it is very likely that the facts took place in the country of habitual residence of the child, while proceedings are likely to be held in the country where he has been abducted. (22, Lawyer, Italy)

Significantly increased levels of anxiety on the part of both the taking parent and the child throughout the return proceedings. These mental health problems tend to deteriorate further if a return order is made. Unlike in cases not involving domestic abuse, in abductions committed for protective reasons, a return is not just a simple inconvenience; instead, it may be a life-or-death situation. (25, Academic / Researcher, UK)

Where a primary carer parent has left a country with her child because of domestic abuse the parent did so to protect the child from harm. Often parents do not consider that they are doing anything 'wrong' in this situation since, domestically, parents are advised to leave violent relationships and this is considered within the best interests of the child. For many parents living in a foreign country, they do not have access to alternative options such as refuges or domestic abuse support within the country where their child is habitually resident. Applying for Leave to Remove can be impossible for many parents as they can't afford it. So, they don't have access to a legal route back to their home country, where they feel safe, with their child. (31, NGO / Organisation, Globally)

Cases where the taking parent has removed the child from the country due to domestic violence should be treated completely different to those without because a child's safety is the motivating factor for the removal. Sometimes a parent can see no way of protecting their child other than to remove them from the situation. Why then should a parent who has removed the child to ensure their protection be ordered back into a country where the perpetrator can access them and perpetrate further violence? We all know Apprehended Violence Orders (AVOs) aren't always effective. (34, NGO / Organisation, Australia)

There are many differences, but their degree may vary. If the alleged family violence takes place in the life of the family at the moment of the abduction, there will be much more relief for both mother and child. Also, the mother may feel more empowered by the fact that she left her abusing partner and is much freer to determine her future as an individual as well as the future of her child. From a legal perspective, family violence may be a more effective defence in order to substantiate any claims for non-return of the child, based on Article 13(b). (40, Lawyer, Mediator, Greece)

In a case where an abduction occurs as protective measures, it tends to serve the interests of the child. It is because constantly having to witness or/and receive abuse is detrimental for the wellbeing of the child. However, for the left-behind parent's part, the situation gives them more reason to place blame on the taking parent by claiming child abduction. On the other hand, in a case where a taking parent takes away the child without the consent of the other party, but not as protective measures, the interests of the child are not treated with utmost concern, and it places the child in the centre of the conflict and puts undue pressure on the child's emotional state. (47, Counsellor, Japan)

If there is no alleged abuse, and the taking is for other reasons, there may still be anger and frustration, but fear is not a great factor. More concern over custody and monetary issues. (52, Judge, US)

When there is abuse or domestic violence, the taking parent is running away because they fear for their life and their children's life too because they are not been protected or feeling

protected in that State. In other cases, in which it is not violence but parental problems, they are seeking for a better life. (70, Central Authority)

There is a massive difference where the taking parent is also a victim of domestic violence and a non-EU national. This person will have, in almost all cases, an unsurmountable difficulty in gathering evidence, being heard, being able to undergo custody dispute in equal terms. They will also, most of the times, be women. They will suffer from multiple fronts of violence because of their gender, ethnicity, and passport. They will not be able to file police complaints if the police officers refuse to register or miswrite what they narrate because of language barriers. They might be financially dependent on their partners and not be able to hire a lawyer or rent a place to live. Without a fixed residence and a job, they lose custody and, sometimes, their visa. They are instantly labelled by courts as ‘potential abductors’. They are fatigued and scared. The only way to get some support is asking it from where they feel a sense of identity. At least someone will actually hear them and have empathy for their situation. They can be distant from their loved ones and need at least the emotional support. It is very uneven when you weigh everything, in particular where criminal offences are into play. If the abducting parent has no way to record the domestic violence, how will they argue the risk that the child was subjected to? If their lives were at risk and no one paid due attention, what would be their role as parents if not distance the child from the aggressor? If they can’t properly argue their case in court, for lack of resources or evidence, must they deliberately remain prisoners of that country, without permission to leave, while the children remain vulnerable to violence? (95, NGO / Organisation, Brazil and all of the EU)

Some respondents noted that the differences relate to the nature of the **intrafamilial dynamics**, the behaviour of the allegedly violent parent, such as coercive control or revenge, and the notice, timing and consequences of the abduction:

Interesting question. Seems to me every Hague Convention case I have handled involved at least some level of coercive control. (03, Lawyer, US)

There are many cases where the behaviour of the left-behind parent cannot properly be described as abusive – or may be at the lower end of the spectrum of family violence behaviours – but the abducting parent has experienced isolation, distress and an inability to escape from the relationship unless allowed to return to their country of origin. Those abductions cannot strictly be described as occurring for ‘protective reasons’, but the impact on the abducting parent of return to the country of habitual residence may be just as dire. (08, Judge, Australia)

Impact on the timing of the abductions and legal ramifications. (13, Mediator, Australia)

There are differences where the abuse is alleged to be experienced by the taking parent and in those cases where the children were subjected to family violence. In the latter case, the children are clearer about wanting to remain – but if they are not aware of the allegations against their parent or haven’t observed any abuse towards that parent then they just miss the left-behind life and that other parent. It also matters whether or not they have been living in the same household or if this is a separated family and with a shared care or contact arrangement. What kind of shared care affects the children. Also, financial circumstances and accommodation insecurity alters how the families respond to the abduction. (21, Lawyer, NZ)

In the Netherlands, if a parent is abused by the left-behind parent this does not mean that the child is in danger by her or himself and the child may therefore have to return to the country of habitual residence. It really must involve an unbearable condition of the child. (29, NGO / Organisation, Netherlands)

Where violence occurred, the whole family is more traumatized and there are more conflicts of loyalty involved. In many cases, the taking parent does not want to separate the children from the left-behind parent, and is willing to agree with flexible access rights. Children suffer less when they do not have to choose between the parents and do not feel they have to protect one of the parents. (41, Central Authority)

Even where the abduction occurs for protective reasons, some of the negative effects of abduction are still present e.g., the loss of contact with left-behind family and friends. However, the relief at being safe (either themselves, and/or the taking parent) is a specific and significant difference in these cases. Children abducted for protective reasons may be more likely to be told in advance about the planned removal which may contribute to their feelings of guilt towards the left-behind parent and family, but also to the lessening of the shock of being taken which comes from not having been prepared in advance. (48, Academic / Researcher, UK)

It is often difficult for the taking parent's family to know how to support an adult child subject to domestic violence in another country and they are often a big influence in the decision to abduct. (91, Lawyer, Lawyer representing children, NZ)

Some abductions are just pure revenge / there is lot of trauma going together with abduction. (115, Mediator, Czech Republic)

Abduction may happen for the taking parent and the child to live with dignity. (111, Counsellor, Japan)

The **need for safety and protection** was highlighted by several respondents in the context of abductions for protective reasons:

Domestic violence victims require protection against recurrence of domestic violence. (06, Judge, Australia)

In general, protection can be asked for in the state of habitual residence so that abduction is not justified; in extreme cases return is not possible, especially because of fear of child and/or abduction parent transferred to the child. (17, Judge, Germany)

Safety of the children and the abused parent at risk. (24, Psychologist, South Africa)

I am not a mental health professional, but I think forcing a return after abductions for protective reasons have a much deeper emotional and psychological effect on the taking parent than in other matters. Anecdotally speaking, taking parents who have experienced violence tend to react with abduction because they are afraid for their safety and the safety of their child if they return. (36, Lawyer, Australia)

Mothers feel completely unsafe and unprotected when they are in countries which are not their home and the father is abusing them. They can parent better and are protected once they flee. (42, Lawyer, England & Wales)

In most member states, there is a legislation that gave the abducting parent protection, but this is seldom known, or known and ignored. (59, Lawyer, France)

The court is more likely to insist on proper protective measures if there is domestic violence (usually). Non-domestic violence cases are more clear cut to a return. (64, Lawyer, UK)

Domestic violence is real. However, I have seen it being utilized as a tool after-the-fact to try to justify a taking parents actions which only makes it harder for actual victims of domestic violence to get the protection they need. (65, Lawyer, US)

In cases of abduction on the grounds of protection, in order to serve the best interests of the child, it is essential to separate the child from an environment where acts of violence or abuse are committed. Needless to say, a support system by which parents and children suffering from violence or abuse can be protected without having to abduct a child beyond national boundaries is needed. However, I think we need to give careful consideration to issues such as whether the child concerned can be sufficiently protected both physically and mentally in the country where he/she has lived, or whether it is better to allow the parent who desires to move to receive protection and his/her child to move to an environment where the parent can raise the child appropriately, and we should not be obsessed with the idea of returning the child to the state of habitual residence without any exception. (76, Role unknown, Japan)

Some also mentioned that, compared to other types of abduction, protective abductions involve **heightened emotional states including fear, distress and trauma**:

The abducting parent has a greater sense of fear should the child (ren) be ordered returned. (07, Lawyer, Lawyer representing children, Mediator, Canada)

The whole circumstance is greatly distressing to everyone involved, including the children. (12, Lawyer, Lawyer representing children, Australia)

The taker is usually traumatised. The children are resistant to return. Extreme concern / even refusal to go back on part of taker on the basis that not safe. (66, Lawyer, Ireland)

All the family are upset, conflict entrenched and the issues emotional. (80, Psychologist, Australia)

Abduction was said to occur because it was **the best or only option** for the taking parent in cases involving domestic violence or abuse:

The safety and wellbeing of children is first and foremost. If there is family violence or domestic violence being perpetrated toward a parent/child it is not unrealistic or unexpected that the victim leaves that violent situation. Sometimes leaving to another country to distance themselves as far away as possible to a place where they have support mechanisms is the only solution. (35, Lawyer, Mediator, Counsellor, Australia)

In some cases, it seems that the only choice for domestic violence victims may be to run away with their children when they are faced with matter of life-or-death due to domestic violence. (45, Lawyer, Japan)

A parent who has taken a child may invent a story about the left-behind parent – they have died; they moved away and don't know where they are. Family members appear to believe that their allegations were 100% true and that there was no alternative to their actions. They perceive themselves as the only parent who is acting in best interests of child. (73, Psychologist, NZ)

It is very complex situation and for many taking parents who have experienced family violence, abduction seems like the only option for them to be able to have the security and autonomy to raise their children in a safe environment free from violence. However, for the left behind parent it is a severe consequence for their actions and appears highly unfair as they wouldn't

necessarily lose access to their children if the issues were dealt with in the local court systems. But mostly it impacts the children as they are exposed to continued destabilisation and conflict. If the family is ordered to return and there is a history of family violence, it is vital that agreements are made and supports put in place to ensure the taking parent and children are protected and able to re-establish themselves independently of the perpetrating parent. Furthermore, if the perpetrating parent does not actively seek support around their use of violence and parenting, then the option of relocation for the taking parent should be more accessible. (108, Counsellor, Australia)

It was said to be **more difficult to achieve resolution** when an abduction occurred for protective reasons:

The most evident difference lie on the possibility or not to find an agreement or an amicable solution. (39, Lawyer, Lawyer representing children, Italy)

Parents are highly conflicted and rarely agree to restitution through voluntary discussions. Few visitation exchanges are conducted, including through online methods. (82, Judge, Lawyer, Netherlands)

I think that a failure to seek relief for the domestic violence in the place of habitual residence creates a much more complicated situation and makes resolution of these issue more difficult. (87, Lawyer, US)

From my point of view as a psychologist it is very difficult to try to persuade the abused parent to return to the country where the abuse happened. Usually they are there without their support, their family. (89, Psychologist, Central Authority)

Other respondents mentioned issues relating to **the law, evidence or legal implications** of the abduction or the return order:

In a country like Albania, the taking parent returns only for forum shopping. (51, Lawyer, Albania)

The main difference is how law is applied in these different cases. If domestic violence is present, judges tend to soften their tune and tend to apply the 'grave risk' exception. The problem is that sometimes lack of evidence brought by the taking parent cast a doubt if there was really domestic violence or they are making it up to close the case in your favour. The knowledge (or lack of it) of how to search protection in the habitual residence is the key point. (56, Lawyer, Academic / Researcher, Brazil)

I think the Hague works best where things are quite clear cut (i.e., without other allegations) because the intent of the Hague is then able to be the focus. Where there are allegations they require a much more nuanced approach which does not fit will with the assumption of a speedy return as far more information needs to be before the court including in many cases specialist reports. It can be difficult for the Central Authority to gather appropriate information about allegations which have been generated by experiences in another country and to put before a court accurate and helpful information. It can be hard to know how a 'taking parent' can substantiate their experiences in a way which will satisfy a court. (71, Psychologist, NZ)

The Judge who must decide on the return of the children has to evaluate in a very different way cases in which domestic violence is alleged. (72, Lawyer, Italy)

Any differences seem to me to be associated with the likely consequences of an order made for return. (79, Psychologist, NZ)

In the majority of cases there is some allegation of mistreatment (physical or mental), which is not necessarily truth. There has to be concrete evidence of it, so the procedure is not abused for the purpose of quarrelling between parents. (83, Central Authority)

It is brought up as a defense and usually in my jurisdiction it wins, whether it is real or not, or proven in court. (88, Lawyer, US)

Some respondents said the differences **depend** on various factors, such as the nature of the allegations and their veracity, the approach of the judge:

It can depend on the Judge. Very often the Article 13(b) discretion is not exercised and protective measures are taken as effective protection for safe return, with no follow up when it all goes wrong. (10, Lawyer, Lawyer representing children, England)

The case tends to depend much more on allegations / counter-allegations made by the parents, with differences of perspective being heightened by the litigation process. This leads to greater polarisation and acrimony between the families. (20, Lawyer, Lawyer representing children, NZ)

Differences will vary depending on the abuse alleged, the relationships between all parties, the evidence available, the country to which the children have been taken, the approach taken by the court etc. I'm not really clear on what the question is asking. (43, Lawyer, Australia)

There are likely different considerations that need to be taken into account to ensure that a Convention designed to return abducted children speedily to their state of HR is not compromising the child's rights e.g., to safety and protection. (38, Academic / Researcher, NZ)

The effects of an abduction will depend on a variety of factors which will vary in their strength and nature across all abductions. Abductions where domestic abuse is involved raise additional specific factors including, in particular, issues of safeguarding which typically do not arise in other cases. However, they can because, for example, the child's prospective physical and social environment on a return can raise similar issues. (68, Judge, England & Wales)

It largely depends on whether the allegations are true and, if so, the extent of the abuse suffered and the remedy available in the country of habitual residence, or whether allegations are false/exaggerated in an attempt to justify abduction. (75, Judge, Lawyer, Lawyer representing children, England)

Depends not only on the individual situation, but the larger context. Is their family receiving them in the country to where they have fled? What are their resources in the new country? etc. (78, Academic / Researcher, US)

It really depends on the situation, whether it seems to be a purpose statement or there are some signs that there could be some problems in the family and the taking parent and the abducted child could be endangered. (90, Central Authority)

It would depend on the cultural attitudes towards abuse, rights of women and children in the country where someone flees and the protections that exist there. I would have concerns over whether the abuse is the type of a pattern of abusive control and power, or a situational



and isolate response to the separation of the parties – neither is okay, but there are different considerations about the need to flee. (93, Lawyer, US)

Finally, a few respondents commented that there is **little difference between abductions for protective reasons and other types of abductions**: Their implications and effects are similar:

The dramatic nature of abduction can have a lifelong negative effect on all involved regardless of the justifications made, especially if, over time, those justifications are watered down over time. (32, Role unknown, US)

I feel about half of the protective abductions are true domestic violence situations and half are untrue allegations. Of those true situations, only about half have really tried to get help before taking the children and fleeing – those are the cases where a return really presents a grave risk of harm. I think that the abduction itself can be as harmful to everyone as the underlying abuse. (44, Lawyer, US)

The risks and consequences of the abduction for children across domains and lifespan are probably similar. (106, Lawyer, US)

Child abduction seems often to be a sign for helplessness. Therefore, the differences are not so great whether there is physical violence involved or not. (109, Lawyer, Germany)

## Article 13(1)(B)

### Grave Risk / Intolerable Situation Exception

Article 13 of the Convention sets out six exceptions or ‘defences’ to return, one of which involves grave risk / intolerable situation:

There is grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

We were interested in family justice professionals’ views on how well this Article 13(1)(b) exception operates in the context of international child abduction which occurs against a background of violence or abuse towards the taking parent and/or abducted child(ren).

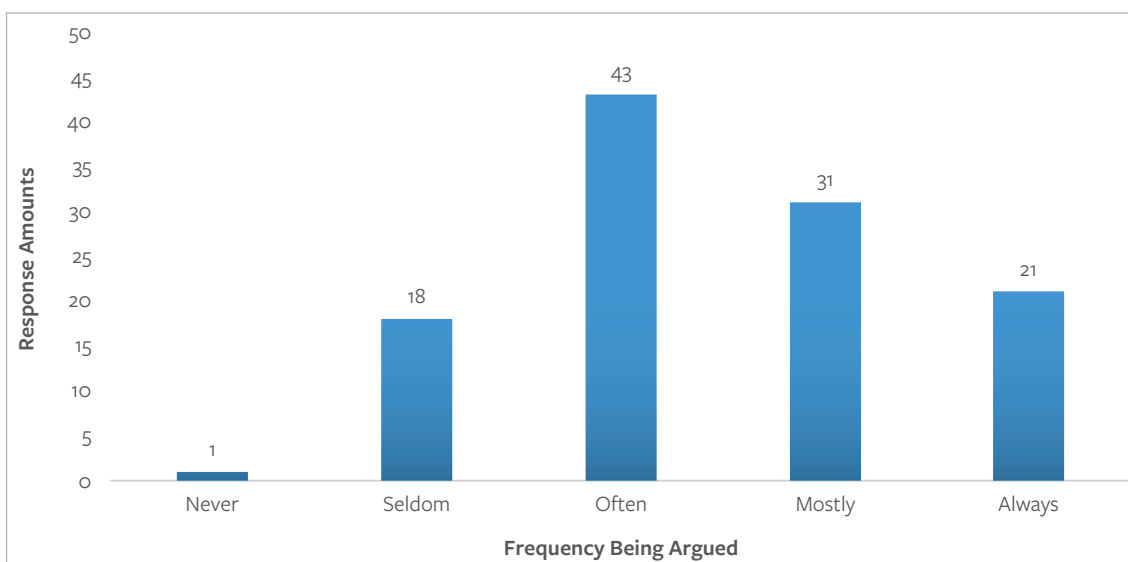
#### Frequency With Which This Exception is Argued

Of the 114 respondents who answered this question, by far the majority ( $n=95$ , 83.3%) reported that the Article 13(1)(b) exception is often, mostly or always argued when international child abduction occurs against a background of violence or abuse towards the taking parent and/or abducted child(ren) (see Table 7 and Figure 2). Less than 1% of respondents indicated that it was never argued, while 18 ( $n=15.8%$ ) reported that it was seldom argued. Clearly, most respondents therefore considered that Article 13(1)(b) plays a very significant role in these cases.

**TABLE 7: Frequency with which the Article 13(1)(b) exception is argued in international child abduction cases involving violence and/or abuse**

Responses	Number of respondents	%
Never	1	0.9%
Seldom	18	15.8%
Often	43	37.7%
Mostly	31	27.2%
Always	21	18.4%
<b>Total</b>	<b>114</b>	<b>100%</b>

**FIGURE 2: Frequency with which the Article 13(1)(b) exception is argued in international child abduction cases involving violence and/or abuse**



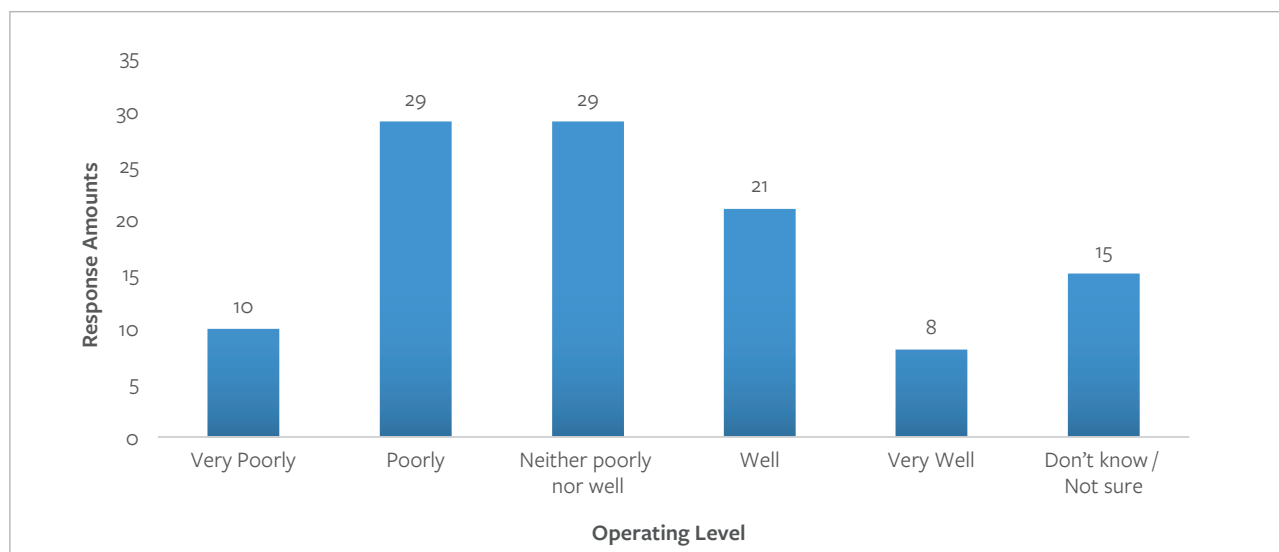
## How Well the Article 13(1)(b) Exception is Operating

Of the 112 respondents who indicated how well the Article 13(1)(b) exception is operating in circumstances involving domestic violence and abuse, one quarter ( $n=29$ , 25.9%) considered the exception to be working well (18.8%) or very well (7.1%) (see Table 8 and Figure 3). Another quarter ( $n=29$ , 25.9%) said the exception was operating neither poorly nor well. Fifteen (13.4%) of the respondents either didn't know or were not sure. However, more than a third ( $n=39$ , 34.8%) considered that Article 13(1)(b) is operating poorly (25.9%) or very poorly (8.9%). While the response to this question is somewhat mixed, it is clear that more family justice professionals considered the exception to be working poorly than well in this context.

**TABLE 8: How well the Article 13(1)(b) exception is operating**

Responses	Number of respondents	%
Very Poorly	10	8.9%
Poorly	29	25.9%
Neither poorly nor well	29	25.9%
Well	21	18.8%
Very Well	8	7.1%
Don't know / Not sure	15	13.4%
<b>Total</b>	<b>112</b>	<b>100%</b>

**FIGURE 3: How well the Article 13(1)(b) exception is operating**



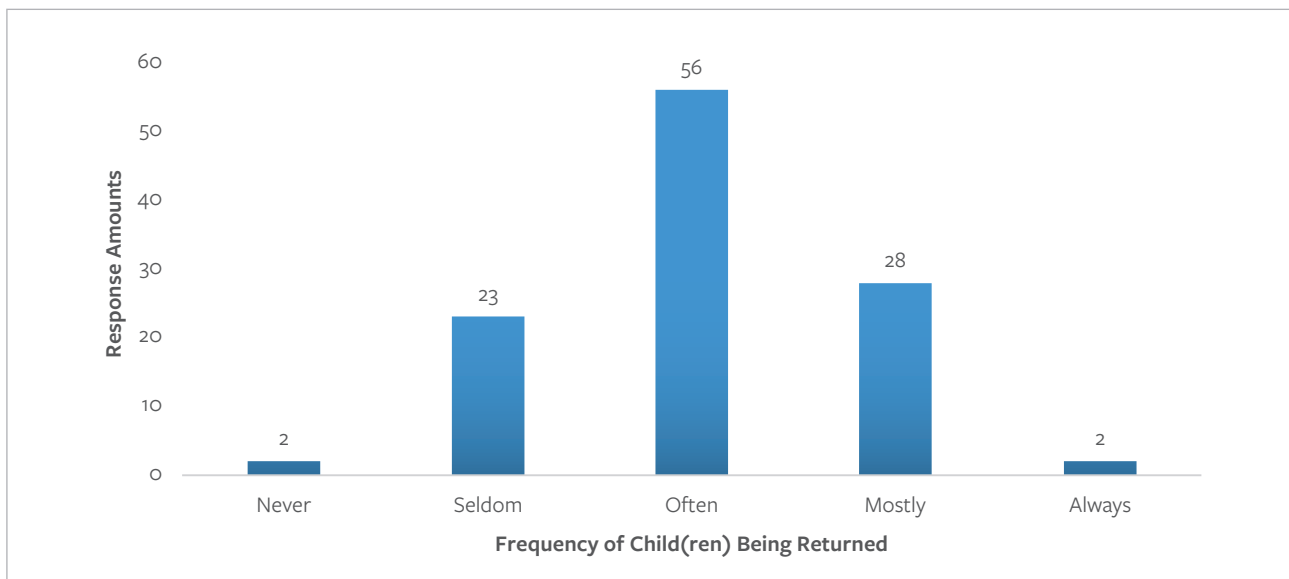
## How Often Abducted Children are Returned Despite the Article 13(1)(b) Exception Being Argued

Three-quarters ( $n=84$ , 75.2%) of the 111 respondents to this question reported that abducted children are often ( $n=56$ , 50.5%) or mostly ( $n=28$ , 25.2%) returned when the Article 13(1)(b) exception is argued in circumstances of domestic violence and/or abuse (see Table 9 and Figure 4). A fifth ( $n=23$ , 20.7%) indicated that abducted children were seldom returned in these circumstances, while two respondents (1.8%) said they were never returned.

**TABLE 9: How often abducted children are returned despite the Article 13(1)(b) exception being argued**

Responses	Number of respondents	%
Never	2	1.8%
Seldom	23	20.7%
Often	56	50.5%
Mostly	28	25.2%
Always	2	1.8%
<b>Total</b>	<b>111</b>	<b>100%</b>

**FIGURE 4: How often abducted children are returned despite the Article 13(1)(b) exception being argued**



### Comments on the Article 13(1)(b) Exception

Eighty-two (70.7%) of the 116 survey respondents commented on the grave risk/intolerable situation exception in Article 13(1)(b) of the Convention. **Different attitudes** towards use of this exception in domestic violence cases were, once again, revealed.

Some family justice professionals consider the exception to be **overused or abused**:

I think it is abused. (04, Lawyer, US)

Just because it is alleged, it does not mean it occurred. (06, Judge, Australia)

Family violence must be dealt with in every jurisdiction – it is universal. We do not deal with it any better here than elsewhere. Using borders to deal with it is counterproductive except in extreme cases. (18, Lawyer, Lawyer representing children, Mediator, NZ)

Upon my experience, there is usually no such risk, it is just that the parent that took the child tries to present the situation in that way so that the child would not be returned. (19, Lawyer, Lawyer representing children, Mediator, Croatia, Austria)

The problem with this exception is that, on the one hand, it is the only possible effective defence, while, on the other hand, it requires the allegation of very ‘bad’ behaviours, so it may

encourage the abducting parent to provide the court with a grossly exaggerated account of the perceived problem in order surpass the high threshold of gravity set by this rule. (22, Lawyer, Italy)

English court unwilling to go behind allegations themselves so inevitably many false allegations also made. (50, Judge, Lawyer, England)

The grave risk exception and domestic violence are winning arguments in today's world. (88, Lawyer, US)

It is alleged a lot, but usually without any proof, reasonable explanation and the storyline does not correspond with domestic violence. (89, Psychologist, Central Authority)

In my view the exception is being overused. The guarantees can and should be used to limit the grave risk/intolerable situation. (94, Central Authority)

Nowadays, we rarely see an application for return where Article 13 is not argued. (100, Central Authority)

The situation must be proved first, many situations are just not true. (115, Mediator, Czech Republic)

Other respondents said that **the exception is very hard/too hard to establish:**

There is a high bar to prove this exception. (07, Lawyer, Lawyer representing children, Mediator, Canada)

Difficult to set up and hard to establish. (09, Lawyer, Scotland)

It is so difficult to prove, especially where the evidence must lie in the left-behind country. (12, Lawyer, Lawyer representing children, Australia)

There have been recent legislative changes in Australia, but nothing in practice has changed because there remains the difficulty of getting evidence and the problem of reaching the required standard of grave risk. Courts in Australia are only too willing to kick the problem down the line to the habitual residence country even in the face of evidence that the court there will not intervene for practical reasons e.g., the mother does not go back / the child is removed from the mother upon return / the mother does not have the resources to bring the matter before the court. (16, Lawyer, Australia)

There can be problems where allegations/counter-allegations are determined in a summary process which has such far-reaching effects. In my experience, the left-behind parent does not have the resources (financial or otherwise) to litigate the issue in the other country with the result that the child effectively loses its relationship with that parent. (20, Lawyer, Lawyer representing children, NZ)

Credibility is the biggest practical hurdle here. Who does the court believe? (21, Lawyer, NZ)

Test seems to be too high. (42, Lawyer, England & Wales)

Courts should be more careful about the dangers of domestic violence and use this clause more aggressively. The court's decision may drive domestic violence victims to despair and put them in further danger. (45, Lawyer, Japan)

Frequently argued, but rarely upheld, save if good psychological evidence of trauma. (50, Judge, Lawyer, England)

There seems to be an assumption that allegations of risk should be heard in the country of children's origin before an attempt to abduct. (79, Psychologist, NZ)

Unless the abuse is significant and well documented, I think that courts have trouble getting past a parent failing to file for relief in the habitual residence rather than resorting to abduction. (87, Lawyer, US)

The **difficulty in using the exception in domestic violence cases** was identified by some respondents, especially regarding the relationship between violence to the parent and harm to the child:

When such matters are before court, the court often considers whether the domestic violence has been against the child or against the taking parent; the return is more often refused under Article 13(b) of the Convention in the first situation. (11, Central Authority)

Some courts are more expert, others are not. (37, Lawyer, Italy)

Legal representation is rarely available to taking parents and this places them at a huge disadvantage. Central Authorities do not act as 'model litigants' and instead typically prosecute their own case. (43, Lawyer, Australia)

It is hard to prove the nexus between abuse of the taking parent presenting a grave risk of harm to the child. When an abducted child is experiencing emotional problems the question often is whether the trauma results from witnessing abuse or from the actual taking itself. (44, Lawyer, US)

The biggest problem is that it does not directly take into account the risk to the taking parent, and only relates to the abducted child. Whether the risk to the taking parent will 'count' will depend on the interpretation of the exception by the tribunal in question. There are differing approaches to this question depending on the court and jurisdiction concerned which makes it unpredictable for domestic violence victims in Hague Convention abduction proceedings. (48, Academic / Researcher, UK)

It is time that the grave risk exception starts encompassing violence between parents. It's a child's right not to witness violence and not to be put in a situation where they are more likely to suffer violence. Even if the child is not the main target of the aggression, the child is still a collateral victim or parental violence. It may also mean that the child will grow up in an unstable environment and learn from that behaviour, bringing countless psychological and psychiatric problems and traumas into adulthood. (95, NGO / Organisation, Brazil and all of the EU)

It is now meaningless. (66, Lawyer, Ireland)

In cases where it is more clear it is used when the child was a victim or secondary victim of the abuse. (89, Psychologist, Central Authority)



I think many times this exception is clearly subjective. (99, Lawyer, Española)

Others considered the exception to be **completely inappropriate for use in domestic violence cases**:

It is outdated and categorically fails to protect women and children. It is a very high bar for victims/survivors of family violence to meet and it has to be directed at the child rather than the mother. It does not take into account the obvious negative effects on children of exposure to violence in their parents' relationship. It also pairs very poorly with the way in which the (colonial English) justice system assesses credibility of witnesses and allegations. In the eyes of the court, the most credible evidence is that of a person who experiences or sees something first-hand, who tells a consistent story from the very beginning and who is able, if possible, to back it up with documentary evidence. Victim/survivors of family violence are traumatised, which can often lead to difficulties in remembering and recounting what happened to them consistently. It is common and very easy for courts to dismiss them as unreliable witnesses and make return orders, or to consider the risk to be adequately mitigated with a protection order. This is usually not the case. Often taking parents choose to flee to a country where they have family or some other support system, and part of the reason they leave not just the relationship, but the country, is because they are better able to support themselves and the child in this new place. A protection order does not adequately protect in these circumstances because the taking parent is forced to return to a country where they are to some degree reliant on the left-behind parent for financial support, childcare etc. (36, Lawyer, Australia)

The Convention's policy of return and faith in the effective of protective measures on return is likely compromising children's' welfare and best interests in these situations. While the grave risk / intolerable situation exception is available, some courts/countries nevertheless take a 'high threshold' approach to this exception and consider that the courts in the state of HR will be able to sort the child's care arrangements out satisfactorily and safely on their return. (38, Academic / Researcher, NZ)

It is ineffective in protecting victims of violence. Courts require evidence which is very hard to collect, to demonstrate an extreme level of violence and often disregard less 'serious' forms of violence. (43, Lawyer, Australia)

It doesn't work at all. The judges stick too much to the principle of returning the children. ... (46, Lawyer, Japan)

Insufficient attention paid to reality of protection in the overseas jurisdiction whether by undertakings [which are generally unenforceable] or not. (50, Judge, Lawyer, England)

I think the understanding of grave risk / intolerable situation is outdated and not in line with current, evidence-based, understandings of the impacts of family violence and conflict on children, even when it is not directly perpetrated against them. This is because we understand now, that on a physical / psychological / emotional level, a child being exposed to family violence experiences it in the same way as one who is the direct recipient of family violence. I believe this exception as it currently stands is only effective in the most extreme circumstances, thus is not effective enough. (108, Counsellor, Australia)

**Protective measures** which may be included in an order for return were also addressed:

If domestic violence occurred, protective measures may be put in place which makes a return safe (tolerable). (06, Judge, Australia)

The risk refers to in Article 13(b) is risk, therefore the protective measures play a significant role in these proceedings. The key is to satisfy the court that the return will be safe under those measures. (69, Lawyer, England)

Even if it is proven, courts order the return of the child with accommodations to protect the parent and child. (113, Lawyer, US)

There was a distinct difference in the approach to the use of protective measures identified by the respondents. One group thought that **protective measures helpfully ameliorate the identified risk** and that it would create a dangerous situation if a child was returned to the State of habitual residence without such measures in place:

If domestic violence occurred, protective measures may be put in place which makes a return safe (tolerable). (06, Judge, Australia)

I consider it to be operating well if the court is still able to return children, but with protections in place, which is what is happening. (23, Lawyer, Lawyer representing children, Mediator, Academic / Researcher, US)

Children will be returned if the left-behind parent offers safeguard measures, such as independent housing and financial help that will last until the court of habitual residence has passed an order. It is very dangerous to refuse return (save when legislation does not offer protection in the HR country) as this would open the doors to confer to the country of refuge jurisdiction on the merits. (59, Lawyer, France)

Most countries of habitual residence have accessible legal protections for domestic abuse and/or most respondents will give undertakings as to their behaviour so that return can be affected. This is a proportionate solution to the problem of abductions in these circumstances. (75, Judge, Lawyer, Lawyer representing children, England)

Other respondents considered it to be appropriate to use protective measures in domestic violence cases, but emphasised **the individual nature of such cases** in terms of the suitability of protective measures, as well as the **likelihood of enforcement** in specific States of habitual residence:

I think you have to be very careful about generalisations here. The court in England returns children where there is a realistic thought that there will be adequate protective measures in place in the other country. ... These are individualised, case by case decisions. I don't think the fact that domestic abuse is alleged (not proven, remember – the Hague court doesn't usually test the evidence) can be a trump card, but that doesn't mean that the court isn't taking it seriously and indeed responding appropriately. (67, Lawyer, Lawyer representing children, UK)

The nature of these cases varies significantly. It is difficult to generalise. Some have an established history of domestic abuse. Some rely on slight evidence. In some there might be a raft of available protective measures; in others there might be few. (68, Judge, England & Wales)

It all depends on the country of habitual residence, if there is a possibility to offer accurate protection to mother and children. (104, Lawyer, France)

It depends a lot on the country where the child(ren) should return to and the help the abducting parent can get when they need to return. (82, Judge, Lawyer, Netherlands)

I was involved in a recent case where the court had a strong focus on the effectiveness of protective measures that were available on return of the children to ensure that the risk is properly mitigated and any protective measures would, in reality, be effective. The court found that there was a plethora of protective measures available and in place in the home state but were concerned about their effectiveness of those measures to protect the taking parent and children and so refused return on that basis. (85, Lawyer, Scotland)

Yet another group of respondents said that **protective measures are completely insufficient** in responding to the risks posed in domestic violence cases:

In my view, too much reliance is put on the protective measure ameliorating the risk. We all know the effectiveness in some countries is not like ours, but can never say so, for political reasons. (64, Lawyer, UK)

Even where there are real doubts about the ability of the abducting parent to receive proper protection for herself and her children upon return, the requirements of comity generally demand that the courts of each contracting state express confidence in the protective mechanisms available in the state of habitual residence. In practice, this is a real concern. (08, Judge, Australia)

It needs to be real protection that will be effective, but invariably kids are returned where there will be little or no real protection from abuse to kids or taking parent. I've had undertakings not to remove from Mum on return, only to find the kids back with the abuser as soon as the plane lands and Mum cut out altogether. (10, Lawyer, Lawyer representing children, England)

Article 13(1)(b) is not suitable to satisfactorily address concerns that arise in child abductions committed for protective reasons. This is in particular because it does not take into account the need for ensuring the safety of the taking parent upon the return; it is concerned solely with the child. Often protective measures are made as part of a return order; however, these are rarely effective. (25, Academic / Researcher, UK)

Even if the judge accepts that the child is at 'grave risk' if returned they will get around this by the use of 'protective measures' of which there is no evidence base to suggest that they are effective in keeping children safe where there are 'grave risks' identified. The exception to return should be used by judges as it is written, rather than simply 'got around' with the addition of protective measures which simply don't work. (31, NGO / Organisation, Globally)

A protection order does not adequately protect in these circumstances because the taking parent is forced to return to a country where they are to some degree reliant on the left-behind parent for financial support, childcare etc. (36, Lawyer, Australia)

The Convention's policy of return and faith in the effective of protective measures on return is likely compromising children's' welfare and best interests in these situations. (38, Academic / Researcher, NZ)

Courts do not believe the massive evidence of the impact on children and like in custody are focused on preserving the relationship with the father as if that is required for healthy development – which it isn't. (103, Role unknown, US)

Insufficient attention paid to reality of protection in the overseas jurisdiction whether by undertakings [which are generally unenforceable] or not. (50, Judge, Lawyer, England)

These exceptions were created at a time where we had a very un-nuanced and rather simplistic understanding of Family Violence, and at a time where job mobility was not as it is now. There is also little regard to the situation to which a parent will return – a foreigner, without permanency (e.g., visa other than a 90-day tourist visa), job, or support. (27, Judge, Australia)

The **desirability of further guidance** in this area was raised by several respondents:

The Guide to Good Practice on Article 13(b) has not made things better for this population. (14, Academic / Researcher, US)

Requires careful assessment, maybe best practice guidelines. (24, Psychologist, South Africa)

‘Grave risk’ is a term that needs to be more carefully and specifically defined. As it is, the definition is fuzzy and fungible. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

There is still too much ambiguity in what constitutes grave risk in the US. (65, Lawyer, US)

It is probably a situation where there is a need for more guidance about how to think about the competing issues of child welfare and protection and the long-term interests and wellbeing of the child. (71, Psychologist, NZ)

The grave risk criteria are open to different interpretations and can be misused. Parents appear able to recruit professionals to advocate for them and agree that there is a grave risk where there appears to be little evidence. (73, Psychologist, NZ)

The **need for research**, and the issue of **children’s rights**, were both raised by some respondents:

We simply do not know much about the post-return period, whether these anticipated proceedings occur, how well any protective measures are implemented etc. There is a desperate need for research on the use of the grave risk exception and, more broadly, the outcomes for abducted children (and other family members) on return. (38, Academic / Researcher, NZ)

I would question whether the impact on a child is less when the taking parent is removing the child from an abusive household or where the impact of abuse may be more harmful for the child if they were to remain there. I think it is an area where more research should be undertaken. (85, Lawyer, Scotland)

The right of the child is not sufficiently respected. The wellbeing of the child is not the main issue. (109, Lawyer, Germany)

Very difficult to find the right balance between the general aim and the need to protect the individual child. (17, Judge, Germany)

## Adequacy of the Operation of the 1980 Convention / Changes Required

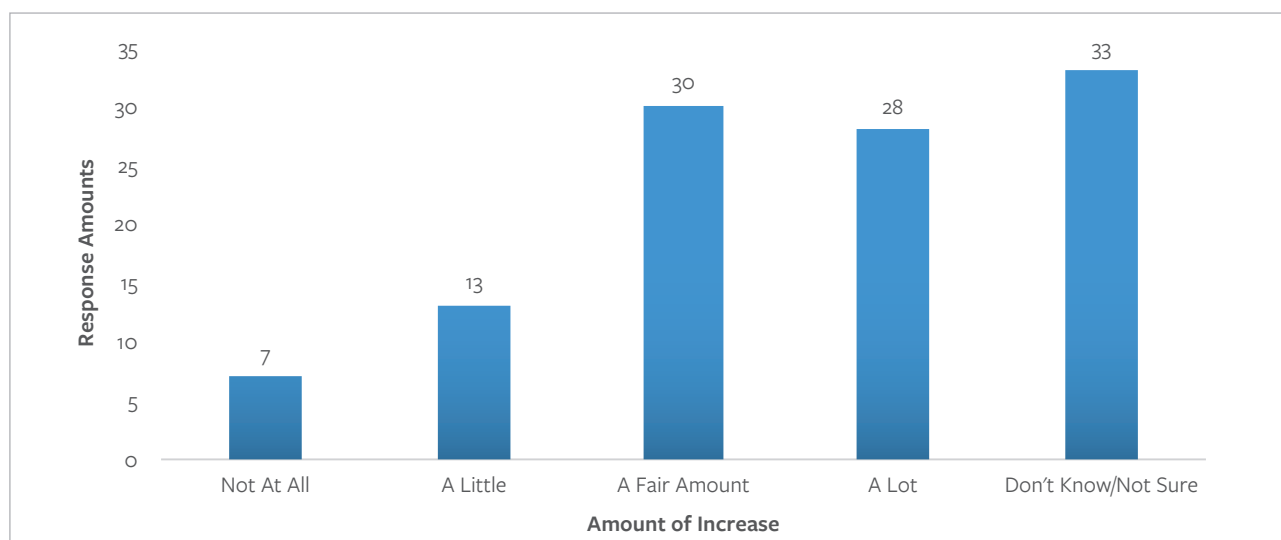
### Whether the Number of Cases is Increasing

Of the 111 respondents who answered this question, 29.7% ( $n=33$ ) did not know or weren't sure whether the number of cases is increasing where domestic violence and/or abuse to the taking parent and/or the abducted child(ren) has been alleged (see Table 10 and Figure 5). A further 6.3% ( $n=7$ ) indicated that the numbers were not increasing, while 11.7% ( $n=13$ ) said they were increasing 'a little'. However, over half ( $n=58$ , 52.3%) reported that the number of cases was increasing by 'a fair amount' ( $n=30$ , 27.1%) or 'a lot' ( $n=28$ , 25.2%).

**TABLE 10: Whether the number of cases is increasing**

Responses	Number of respondents	%
Not At All	7	6.3%
A Little	13	11.7%
A Fair Amount	30	27.1%
A Lot	28	25.2%
Don't Know/Not Sure	33	29.7%
Total	111	100%

**FIGURE 5: Whether the number of cases is increasing**



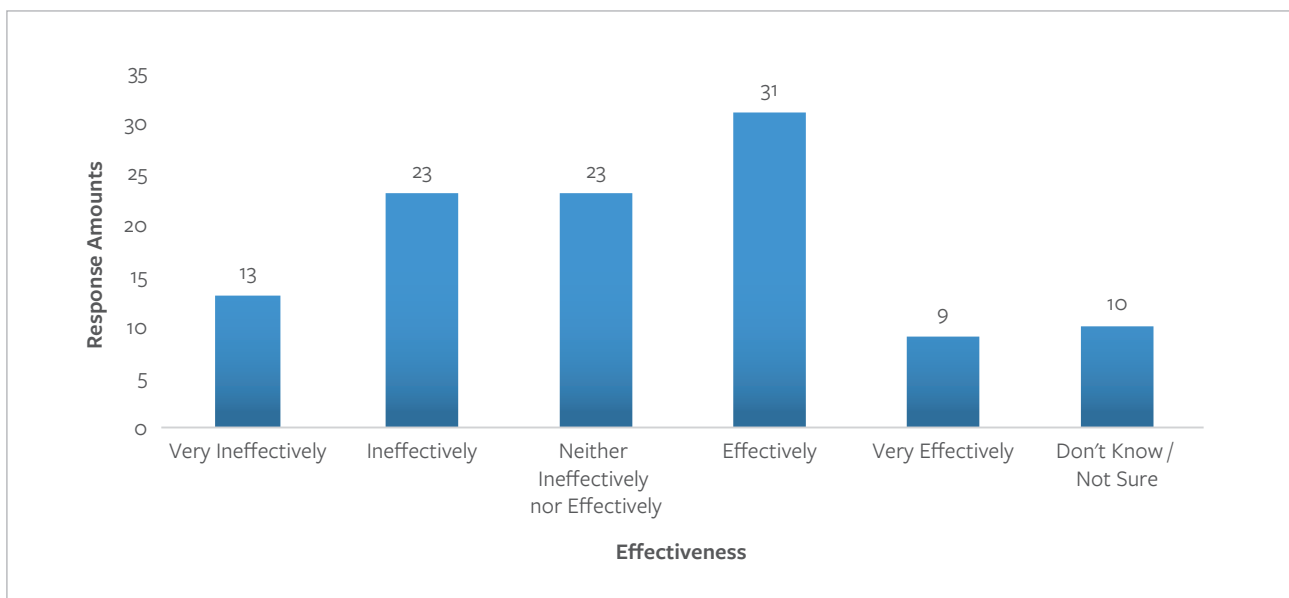
### How Effectively the 1980 Hague Convention Deals with Abductions Where Domestic Violence has been Alleged

Of the 109 respondents who answered this question, one fifth ( $n=23$ , 21.1%) indicated that the Convention was dealing 'neither ineffectively nor effectively' with abductions in the context of domestic violence and/or abuse (see Table 11 and Figure 6). However, other respondents were almost evenly split between negative (33.0%) and positive responses (36.7%). The Convention was said to deal 'ineffectively' ( $n=23$ , 21.1%) or 'very ineffectively' ( $n=13$ , 11.9%) with these type of abductions versus 'effectively' ( $n=31$ , 28.4%) or 'very effectively' ( $n=9$ , 8.3%).

**TABLE 11: How effectively the 1980 Hague Convention deals with these type of abductions**

Responses	Number of respondents	%
Very Ineffectively	13	11.9%
Ineffectively	23	21.1%
Neither Ineffectively nor Effectively	23	21.1%
Effectively	31	28.4%
Very Effectively	9	8.3%
Don't Know/Not Sure	10	9.2%
<b>Total</b>	<b>109</b>	<b>100%</b>

**FIGURE 6: How effectively the 1980 Hague Convention deals with these type of abductions**



### What is Working Well with the Convention

Eighty-three (71.6%) of the 116 survey respondents commented on what they thought was working well with the Convention or the legal approach in their jurisdictions governing these cases. Many focused on the grave risk of harm exception within Article 13(1)(b), together with the ameliorative / protective measures which could be put in place to safeguard the return of the child:

I think the exception can work effectively in cases where the defence is properly articulated, and the evidence is prepared with care and diligence to support the defence. (15, Lawyer, Lawyer representing children, Australia)

Caselaw reinforces the discretion of judges to explore common sense ameliorative measures to uphold the tenets of the Convention to safely return children while still ensuring they are protected. (23, Lawyer, Lawyer representing children, Mediator, Academic / Researcher, US)

There is an increasing focus on children, where there is an allegation of domestic abuse. (09, Lawyer, Scotland)

The Netherlands interprets the treaty and its refusal-grounds very strictly, as it is intended. (29, NGO / Organisation, Netherlands)

That the issue is now being talked about and better understood as knowledge about domestic violence expands and questions are raised about whether or not these cases require an approach different to that of a speedy return to the state of HR. (38, Academic / Researcher, NZ)

The Article 13(b) provisions which allow a claim of family violence to be brought and examined before the court. (40, Lawyer, Mediator, Greece)

In cases of extreme abuse where it is demonstrated that the country of origin cannot protect the children from harm associated with domestic violence, my jurisdiction will not return children. But, if the taking parent has not availed themselves to options in the other jurisdiction before fleeing, the children will be returned. (44, Lawyer, US)

The fact that they consider risk only if the other jurisdiction doesn't offer warranties for a due process or has no legal instruments to protect them in case they return. (53, Lawyer, Chile)

The definition of 'grave risk' and the clarification of protective measure available in the home jurisdiction often determines the outcome. (58, Lawyer, NZ)

French court in most cases will check if the country of habitual residence offers protection. Within the EU, the court may take temporary measures that will be in force until the country of habitual residence has ruled otherwise. (59, Lawyer, France)

The 1980 Hague Convention can be useful in circumstances where claims of domestic violence and/or abuse against the taking parent and/or child(ren) have been made in order to make sure that the safety and well-being of the child are prioritized. This entails determining the child's risk of danger and taking the necessary precautions to ensure their safety, which may include directing the child's return to their nation of habitual residency or establishing safeguards for the child in the new place. These exceptions can help guarantee that the child's safety and wellbeing are preserved and can be especially pertinent in situations where domestic violence and/or abuse have been reported. (62, Psychologist, NGO / Organisation, Greece)

If the domestic violence is proven, the exception usually suffices for the court to not order its return to its place of habitual residence. However, the domestic violence/ abuse has to be proven during the proceedings. (63, Lawyer, Poland)

Article 13(b) provides an effective means of addressing these cases. These cases can be challenging to determine because of the nature of the allegations and the argument that a return would create a grave risk. However, the legal approach is well-established and appropriately balances the relevant factors. (68, Judge, England & Wales)

There is the chance to consider the exceptions. (70, Central Authority)

I think that having parents seek relief in the habitual residence for domestic violence would help minimize abduction risk. (87, Lawyer, US)

It is very complicated to consider whether the child is endangered when the domestic violence occurred between parents. Also, it is mostly complicated to prove that there really was domestic violence because mostly there are no other evidence that the statement of the taking parent. (90, Central Authority)



Attesting that the child was also a victim of violence and will remain at risk with their return. (95, NGO / Organisation, Brazil and all of the EU)

Grave risk is rather broad and could be interpreted in favour of protecting children in domestic violence situations. (96, Academic / Researcher, Netherlands)

Where the court takes the time to properly assess the situation in case of return and, if necessary, to request that accompanying measures be put in place in the requesting State, the Convention is a sufficient instrument. (100, Central Authority)

Several respondents remarked appreciably about the **Guide to Good Practice on Article 13(1)(b)** in this context:

The Article 13(b) exception is considered by the courts and can be taken into account (see also Hague Conference practice guide on this Article 13(b). (11, Central Authority)

The Guide to Good Practice has been a helpful explanatory aid. The Court of Appeal has restated the law recently and that has been helpful in terms of clarifying law. (21, Lawyer, NZ)

Guide to Good Practice is increasingly being referenced in cases. (26, Lawyer, Lawyer representing children, NZ)

The Guide to Good Practice is applied well in the grave risk cases. (91, Lawyer, Lawyer representing children, NZ)

However, the **disparity in views** between family justice professionals regarding domestic violence and its treatment under the Convention was clearly expressed within the responses provided, and the inconsistency of approach was also highlighted within these responses:

The defense of ‘grave risk of harm’ works well when the ‘grave risk’ is readily apparent, but it should not be used as a vehicle to expand what is allowable under the Convention and the implementing statutory scheme. (05, Lawyer, US)

It works really well to protect the victims of violence. However, it works poorly if you consider that a lot of taking parents make false allegations in order to avoid the return, which have a lot of consequences for the children, who usually lose contact with the left-behind parent, sometimes forever. In one case we had, the children would only contact their father to hear ‘the other side of the story’ when they became adults. This has had a tremendous impact on their lives. (41, Central Authority)

In some cases when the taking mother is ordered to return with the children, and there is a history of FV (both substantiated or unsubstantiated), undertakings not to commit FV are included in the return order, as are mechanisms for support for the parent in regard to income and housing. This allows the parent to begin to establish themselves separate from the perpetrating parent and increases safety for the children. (108, Counsellor, Other, Australia)

Family violence is considered in detail when alleged. If it is high level or the home country is not dealing with it, then it can qualify for grave risk. If anything, we are too soft on it. (18, Lawyer, Lawyer representing children, Mediator, NZ)

It does nothing but harm to the victims of domestic violence/abuse. ... While the Convention works well when the abuser takes the children as a means of abuse, it is nothing but a harm to

the victims who fled from violence. So many Japanese mothers who married to Westerners are suffering because they cannot escape from abuse. (46, Lawyer, Japan)

Safety of the child if returned is not sufficiently addressed. (78, Academic / Researcher, US)

There is a greater awareness amongst the judges about the impact of domestic violence. (07, Lawyer, Lawyer representing children, Mediator, Canada)

Some judges understand grave risk, but also psychological most do not. There is a lack of understanding of the dynamics of domestic violence and an insane use of theories of alienation that are on play – basically there is systemic misogyny. (103, Role unknown, US)

These [Federal] judges are not specialized in Family Law or violence against women, therefore they are not well informed about the all the factors and circumstances involved in such cases. (97, Psychologist, Brazil)

There is inconsistency in respect of practice worldwide in respect of the protective measures. There should be a protocol of best practice. (69, Lawyer, England)

Many respondents also commented on the **benefits of speed and the summary nature of Convention proceedings**, but some noted that these can sometimes be undermined by local practice:

Generally, California state courts and the federal district courts for Northern California and Eastern California, for the most part expedite Hague Convention cases. (03, Lawyer, US)

The Convention works well when it is applied as intended, which is a summary proceeding. (05, Lawyer, US)

Speed (08, Judge, Australia)

If the case is dealt with quickly the legal process is working well. (13, Mediator, Australia)

Although the beauty and speed of that remedy is muddied by often pointless exercises of an increasing bureaucratized family law jurisdiction. (16, Lawyer, Australia)

Prompt hearing time (though this is relative (20, Lawyer, Lawyer representing children, NZ)

Court gives these cases priority (26, Lawyer, Lawyer representing children, NZ)

Swift procedures (33, Judge, Norway)

A speedy return to the state of HR. (38, Academic / Researcher, NZ)

Dealing with cases fast. (50, Judge, Lawyer, England)

Judges apprised of the Hague Convention control their dockets and move fairly rapidly in expediting hearings and returns. (52, Judge, US)

Court decides whether the child shall be returned or not expeditiously, compared to other domestic cases. (61, Lawyer, Japan)

From an English point of view, the procedural urgency given to these cases is very good. (64, Lawyer, UK)

The advanced time frame in which cases need to be heard. (65, Lawyer, US)

The need for speedy process. (83, Central Authority)

Short duration of the domestic judicial abduction procedures before the Juvenile Court. (86, Lawyer, Italy)

It is quick. (109, Lawyer, Germany)

A recently renewed focus on the summary application of the Convention is welcome. (75, Judge, Lawyer, Lawyer representing children, England)

The commitment of the courts to deal with such cases in accordance with the Convention, and with priority is heartening. (12, Lawyer, Lawyer representing children, Australia)

The **effectiveness of Central Authorities** was another theme to emerge positively from the responses. The **experience of judges** hearing Convention proceedings was a notable issue, although some respondents reported the lack of familiarity of some judges in their jurisdictions with important features of family law and domestic violence:

Effectiveness of Central Authorities. (08, Judge, Australia)

The various Central Authorities appear to work well together (12, Lawyer, Lawyer representing children, Australia)

Central Authority is very efficient and provides guidance and training for lawyers it instructs. (26, Lawyer, Lawyer representing children, NZ)

Communication between Central Authorities. (99, Lawyer, España)

There is a greater awareness amongst the judges about the impact of domestic violence. (07, Lawyer, Lawyer representing children, Mediator, Canada)

Experienced judges, good intra-judicial communication. (08, Judge, Australia)

Caselaw reinforces the discretion of judges to explore common sense ameliorative measures to uphold the tenets of the Convention to safely return children while still ensuring they are protected. (23, Lawyer, Lawyer representing children, Mediator, Academic / Researcher, US)

Many of the Family Court Judges are now familiar with the Convention concepts. (26, Lawyer, Lawyer representing children, NZ)

Judges apprised of the Hague Convention control their dockets and move fairly rapidly in expediting hearings and returns. (52, Judge, US)

I think the Hague Convention is very poorly applied by Federal Judges with are responsible for taking decisions about these cases – these judges are not specialized in Family Law or violence against women, therefore they are not well informed about the all the factors and circumstances involved in such cases. (97, Psychologist, Brazil)

Some judges understand grave risk, but also psychological most do not. There is a lack of understanding of the dynamics of domestic violence and an insane use of theories of alienation that are on play — basically there is systemic misogyny. (103, Role unknown, US)

The issues of **consistency and uniformity in the interpretation and application of the Convention** featured in several responses, both positively and negatively:

There is some uniformity that would not otherwise be available. (01, Lawyer representing children, US)

There is inconsistency in respect of practice worldwide. There should be a protocol of best practice. (69, Lawyer, England)

It is good to use the same legal rules for all the cases. (82, Judge, Lawyer, Netherlands)

The Convention gives sufficient legal background. However, its application varies a lot in the signatory states and there are more possible approaches (for example, how extensively ‘grave risk and insufferable situation’ are interpreted). (94, Central Authority)

This depends on the interpretation and application of the Convention and especially Article 13. (100, Central Authority)

Many responses addressed the identified **inconsistency in the Convention’s application** by reference to the original aim of the Convention and questioned whether it was still being fulfilled, together with the ancillary issue of appeals and delays:

The Convention still works quite well in the cases for which it was designed. That is abductions by non-custodial parents (16, Lawyer, Australia)

In my observations, countries do not handle the Hague Convention as a legal instrument to send the child to the previous position (in the country of origin), but instead start to deal with the case as if it was about custody, and that is false. When the Hague Convention gets twisted into a custody battle, then it loses all its meaning. (19, Lawyer, Lawyer representing children, Mediator, Croatia, Austria)

The basic legal framework set by the Convention is quite clear. (22, Lawyer, Italy)

I have, in recent times, seen appeals to a return order be successful – this in my opinion shows that courts can reconsider and view cases appropriately. (35, Lawyer, Mediator, Counsellor, Australia)

Public sentiment and pressure as well as the views of individuals judicial officers can lead to outcomes which are clearly not consistent with the intent of the Convention, and this leads to appeals and long delays. (71, Psychologist, NZ)

It helps establish the court’s authority to act and may narrow all the usual child custody strategies to delay a trial as in the ordinary case. (106, Lawyer, US)

Although there were positive comments regarding a perceived increased focus on children in Convention proceedings, concern was expressed about the **pressure this placed on children**. The **value of specialist mediation** in the settlement of abduction cases was also commented on by several respondents:

Representation of children's interests by an independent children's lawyer (ICL). If child is returned safely, it is likely that the taking parent can be returned safely. (06, Judge, Australia)

There is an increasing focus on children, both in terms of objections to return and where there is an allegation of domestic abuse. (09, Lawyer, Scotland)

Voice of the child works well here, but child is under huge pressure to object and entirely reject the left-behind parent. (66, Lawyer, Ireland)

Specialised Hague mediations. (06, Judge, Australia)

The effort to give more value to the mediation process in view of an amicable agreement considering the vulnerable party involved. (39, Lawyer, Lawyer representing children, Italy)

The commitment to mediation should also be praised. (64, Lawyer, UK)

The use and implementation of the Alternative Dispute Resolution (including the cross-border mediation) in order to overcome the conflict (86, Lawyer, Italy)

The **relationship of the Convention with other instruments** was raised by some respondents, in particular Brussels 11-bis and the 1996 Convention:

Article 13 Bis is working well. (72, Lawyer, Italy)

The problem is with 1996 and with the cost and the amount of time it takes to effectuate return if return is indicated. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

The need for speedy process; and the connection to 1996 Hague Convention. (83, Central Authority)

The issue in NZ is the lack of accession to the 1996 Convention and the ability to assist a safer return. (91, Lawyer, Lawyer representing children, NZ)

Some respondents felt that the Convention was not working well, although others thought that it was in specific circumstances, especially as a **deterrent**. The **enforcement of orders** made under the Convention was also said to be a problem about the way that the Convention works:

It has a strong deterrent effect, by dissuading parents from abducting child to other Countries (22, Lawyer, Italy)

It is deterrent to other child abductions. (109, Lawyer, Germany)

The Convention does not work well when it is treated as a family law proceeding and the parties seek relief beyond what is allowed under the Convention and the implementing statutory schemes. (05, Lawyer, US)

Nothing. (14, Academic / Researcher, US)

When the court requests an assessment. (24, Psychologist, South Africa)

The Convention works well in respect of abductions committed not for protective reasons. (25, Academic / Researcher, UK)

Very little – it is out-of-date in terms of understanding family violence and coercive control. (27, Judge, Australia)

Nothing is working well as children and families are being put at risk of harm via the Convention. (31, NGO / Organisation, Globally)

Very little. (36, Lawyer, Australia)

I don't think it is working well in these cases at all. (43, Lawyer, Australia)

It does nothing but harm to the victims of domestic violence/abuse. (46, Lawyer, Japan)

But it doesn't really work well, especially in light of the recent United States Supreme Court decisions. (88, Lawyer, US)

I think the Hague Convention is very poorly applied (97, Psychologist, Brazil)

It is broken and massively underfunded, so it works as well as the family justice system generally. (10, Lawyer, Lawyer representing children, England)

The problem is with enforcement and with the cost and the amount of time it takes to effectuate return if return is indicated. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

I currently have a case where a child will have been retained for over two years as a result of such enforcement. (71, Psychologist, NZ)

## Changes or Improvements Suggested to the Convention

Eighty (68.9%) of the 116 survey respondents provided comments on the changes or improvements to the Convention they considered would be helpful. The **different approaches of family justice professionals to domestic violence** as a basis for defending an application to return to the State of habitual residence was evident in the responses. Some respondents advocate for a separate domestic violence defence to be added to the Convention, or at least more explicit recognition that harm to the taking parent comes within the ambit of Article 13(1)(b), while others are concerned that the Convention is not 'abused' in their view by domestic violence claims in such cases. Some respondents emphasised the original intention of the Convention to return the child to the State of habitual residence so that its future could be decided in the most appropriate jurisdiction, and others argued for a complete re-think of the grave risk exception to bring it into line with current thinking:

Not allowing it to be abused. (04, Lawyer, US)

A separate exception to accommodate child abduction cases committed against the background of domestic abuse should be incorporated into the Convention. This should address concerns over the lack of protection of the taking parent. (25, Academic / Researcher, UK)

It is now time for an explicit defense. (14, Academic / Researcher, US)

Expanding the defence to specifically include harm perpetrated against the left-behind parent, not just the child, would improve things (36, Lawyer, Australia)

Perhaps the grave risk of harm to the mother (psychological or physical) should also be included. (42, Lawyer, England & Wales)

Acceptance that violence (including non-physical) directed at the mother is a grave risk to the children (43, Lawyer, Australia)

To clarify that is not enough to plead the violence or risk, but to prove it is serious and that in the other jurisdiction did not exist remedies for this situation. (53, Lawyer, Chile)

A new special law on international child abduction should be published in my jurisdiction so that domestic violence could be another point of exception, following the good examples of Switzerland and Japan. (56, Lawyer, Academic / Researcher, Brazil)

Having a clearer definition of grave risk. (65, Lawyer, US)

Change in convention to allow meaningful defence in cases where domestic violence abuse established. the existence of remedies in the country of origin irrelevant as far as I am concerned. (66, Lawyer, Ireland)

I think it would also be helpful to have a clear definition of what grave risk means, (71, Psychologist, NZ)

I think it is necessary to add to the Convention a specific Article on domestic violence. (72, Lawyer, Italy)

There needs to be an elaboration and strengthening of the grave risk criteria. (73, Psychologist, NZ)

That the Court does not use domestic violence as an excuse to not return the minor child. (88, Lawyer, US)

I don't think it is the task of 1980 Hague Convention to solve how to prove whether there really was domestic violence or it is only purpose statement (it is the task for the court). (90, Central Authority)

Clearer standards for what are grave risk and why it is not something you can ameliorate, i.e., if parents are separated that ends domestic violence! That is the level of understanding. It's a travesty. (103, Role unknown, US)

Adjusting the understanding of grave risk and intolerable harm to align with current understandings of child. But I wouldn't seek a specific provision about domestic abuse in the Convention – it's too wide ranging, and there isn't a single answer that is the 'right' response to 'domestic abuse' because that term covers such a wide range of cases. (67, Lawyer, Lawyer representing children, UK)

The improvement should be to state clearly, that the idea of Hague Convention is not to debate about custody, but to send the child back to the country, where it is easier to decide about the child's future (including) custody. (19, Lawyer, Lawyer representing children, Mediator, Croatia, Austria)

A re-think of grave harm and intolerable risk. A consideration of what the abducting parent would return to (if they followed the children back) and whether that itself is unjust and inequitable in the sense of an inequality of arms and an inability to establish a stable life if able to litigate on that overseas jurisdiction. A modern Convention would focus on the children and their best interests, and as part of that, to consider what the children would be actually



returning to, e.g., a left behind parent who is violent, abusive or neglectful. Long gone are the hot pursuit days to which Hague was initially intended. (27, Judge, Australia)

The **benefits of specialism** ran through many of the responses. This includes the need for concentrated jurisdiction in the courts and the consequent specialism of the judiciary, the greater use of Hague Network judges, specialist representation of litigants in Convention cases, and the appointment of independent children's lawyers:

Where possible, designate one or two judges in jurisdictions with multiple Hague Convention filings. (03, Lawyer, US)

Greater use of the Hague Network judges. (52, Judge, US)

I would appoint a lawyer for the child in every case. I would have specialist judges at all levels to deal with Hague cases. (21, Lawyer, NZ)

Appointing an Independent Children's Lawyer (ICL) in every case. ... Providing specialised practitioners to taking parents. (06, Judge, Australia).

Perhaps accreditation for specialist lawyers in this special field. (12, Lawyer, Lawyer representing children, Australia)

The need for **training** of all the actors involved in Convention cases was stressed by many respondents, particularly in relation to domestic violence and its effects:

Where possible, provide educational materials to those judges (03, Lawyer, US)

Better training for all involved in dealing with a Hague case, such as judges, lawyers, social workers, psychologists etc. (07, Lawyer, Lawyer representing children, Mediator, Canada)

A better understanding of the impact of familial domestic abuse on children. (09, Lawyer, Scotland)

There should be mandatory training on these issues for all decisionmakers. (14, Academic / Researcher, US)

Need more lawyers acting for the removing parents who understand Convention law. (21, Lawyer, NZ)

Educate judges about domestic violence dynamics and train them properly so they can distinguish abuse and apply the 13(b) clause. (46, Lawyer, Japan)

A more consistent approach to cases involving domestic violence would be welcome. This would require more training and a better understanding of the effects of witnessing and living with violence on children. (48, Academic / Researcher, UK)

More education to judges (52, Judge, US)

More preparation of the Judges and Prosecutors to deal with these cases (97, Psychologist, Brazil)

The most important measure would be to train judges, all authorities and services involved, as well as all other actors in the procedure (lawyers, child representatives, mediators, etc.). (100, Central Authority)

Some respondents called for **greater guidance** regarding the application of Article 13(1)(b) despite the existence of The Guide to Good Practice, and mentioned the linked uniform application of principles which was required:

Clear guidelines for what type of evidence should be allowed under the Convention and the implementing statutory scheme when a defense of 'grave risk of harm' is raised (e.g., what type of evaluations – psychological or otherwise – are appropriate and what limits should be placed on their use or interpretation). (05, Lawyer, US)

A more uniform application of principles as between contracting States. (75, Judge, Lawyer, Lawyer representing children, England)

The Guide to Good Practice has been a real setback for the application of the instrument, inasmuch as it prevents Article 13(1)(b) from being applied in cases where the abducting parent is a victim of domestic violence. (95, NGO / Organisation, Brazil and all of the EU)

Some concern was also expressed regarding the **level and type of cooperation from agencies** involved in Convention cases, and specifically the **role of Central Authorities**:

It is difficult to obtain material from a foreign jurisdiction that would help in the assessment of grave risk (or example, Police, child protection or mental health records). (15, Lawyer, Lawyer representing children, Australia)

More effective cooperation between jurisdictions (18, Lawyer, Lawyer representing children, Mediator, NZ)

Better co-ordination with other agencies about release of relevant information, such as from police/Courts and social services. This information can often be crucial to help understand the situation to which the children will return, but getting documentation can be fraught with delays. (26, Lawyer, Lawyer representing children, NZ)

One difficulty is the ability for other Central Authorities to provide information in relation to Police involvement in the requesting country. Financial matters are so important, advice from the requesting Central Authority about the benefits available to a returning parent would also make life a lot easier and clearer. (64, Lawyer, UK)

Central Authorities should do more to screen out these cases. (14, Academic / Researcher, US)

Central Authorities to take responsibility for women who return to their jurisdiction following a return order (16, Lawyer, Australia)

The issue of **speed (and appeals)** was a recurring theme in the responses. Some respondents expressed the view that the Convention timing requirements worked against the best interests of the children involved in these cases, while others were concerned about the effect on children of not acting within the designated time limits:

Appeals are slow and incentivising the appeals because delays help the removing parent (21, Lawyer, NZ)

Provided that in the perspective of the convention speed is essential, it should be cleared more firmly that when a final order is given at the end of the first degree of a full trial no stay should be granted even if the decision is subject to appeal. (22, Lawyer, Italy)

The cases take too long to be heard. It takes the Central Authorities too long to send/receive and accept applications. (35, Lawyer, Mediator, Counsellor, Australia)

The Hague Convention with its requirement that the child be returned within six weeks from the time of the application for the child's return can be risky in such cases. It can be dangerous to return a child and mother into an environment in which they feel unsafe (40, Lawyer, Mediator, Greece)

Things need to be expedited so that a child can be returned, when return is indicated, more rapidly. The longer this takes, the more likely the negative impact is going to be on the child. (57, Mediator, Psychologist, US, Australia, Singapore, South Africa)

It is always a matter of balancing the evidential requirements and a speedy resolution. (58, Lawyer, NZ)

The time delays need to be cut down so that the child's disruption is lessened and the parent who abducts cannot claim that the child is now settled in their new country. (73, Psychologist, NZ)

The time it takes to resolve these cases is a significant problem for the children and young people whose futures remain unclear while Hague Convention cases are underway. (74, Psychologist, NZ)

The issue in my experience has been the delay in return. (79, Psychologist, NZ)

I think it would be convenient if there were more speed. (99, Lawyer, España)

Longer deadlines. (105, Judge, Serbia)

An issue of great concern to many respondents related to **cost**, both of Convention proceedings and those in the State of habitual residence on return, and **whether public funding was available** to meet those costs:

Don't know how to reduce the fees and costs of Hague Convention cases. Expediting cases increases fees and costs. (03, Lawyer, US)

Providing legal aid and specialised practitioners to taking parents. (06, Judge, Australia)

Where domestic abuse is alleged, Fact finding hearings or welfare hearings should take place where the victim will get free legal representation and where her support is. There is no level playing field when she returns to a country with no legal aid, and no support and has to try and represent herself. (10, Lawyer, Lawyer representing children, England)

There should not be fees imposed on the taking parent. (14, Academic / Researcher, US)

There needs to be equal legal aid for both parents. (31, NGO / Organisation, Globally)

These reforms need to be coupled with public funding to allow left-behind parents' access to free or low-cost legal representation to defend return applications. Often the taking parent will

have access to free or low-cost legal services to run the application but the taking parent has no resources to defend it. They must rely on already overburdened women's or family violence legal services with no specialist expertise as these cases are uncommon. (36, Lawyer, Australia)

Legal costs for taking parents to be covered by govt outside of normal Legal Aid (43, Lawyer, Australia)

Some respondents focused on **the Convention proceedings**, and (i) the opportunity for children to be heard and listened to within those proceedings (ii) the need for psychological reports to be available within the proceedings and (iii) enforcement of the orders made during those proceedings:

The opinion of the child should be taken more seriously in our case law. (29, NGO / Organisation, Netherlands)

There should be more indications regarding when and how the minor's opinion is relevant ex Article 13, so to deny the return. I have seen cases where the return was denied because little children said what the mother told them to say – and they were 7 or 8. (37, Lawyer, Italy)

More investigation of the exceptions, especially the opinion of the minor, and this risk. (70, Central Authority)

Use more interest of the child in the child abduction cases and not only the basic rules. (82, Judge, Lawyer, Netherlands)

The court, in accordance with national law and procedure, must give a child an opportunity to express his/her views in accordance with his/her age and maturity. (86, Lawyer, Italy)

More opportunity for ... psychological reports to be obtained as to impact on the children. This would give better opportunity to get the decision right (i.e., a decision that reflects the children's best interests) at the hearing (20, Lawyer, Lawyer representing children, NZ)

The enforcement rules on return decision and the cooperation between criminal police of every single Member State must be implemented. Often it happens that even if the left-behind parent obtains the return decision, this decision remain ineffective because of the impossibility to physically bring back the child to his habitual residence. (39, Lawyer, Lawyer representing children, Italy)

There was much **unease regarding safeguarding** the returning child and parent after an order has been made under the Convention with distinct, and different, points of view being expressed by the respondents:

There have been some recent changes to the Regulations in Australia in relation to consideration of conditions or soft-landing orders. (15, Lawyer, Lawyer representing children, Australia)

Possibility for the court ordering return to safeguard the best interest on return in an effective way, see Article 27(5) Brussels IIb Regulation. (17, Judge, Germany)

More effective cooperation between jurisdictions to put protective measures in place for return, and for determination of whether the case is extreme enough not to order return. (18, Lawyer, Lawyer representing children, Mediator, NZ)

I think the child must go back if only the parent is victim of abuse, but there has to be more a soft landing and save returns (29, NGO / Organisation, Netherlands)

The exception to return under Article 13(b) needs to be accepted for cases where there is domestic abuse, and judges should not be allowed to get around the 'grave risk' by using 'protective measures'. Mandatory non-return in cases where grave risk is shown. No undertakings to be accepted to mitigate grave risk finding. (43, Lawyer, Australia)

More consideration should be given to ensuring the safety of those fleeing domestic violence. (45, Lawyer, Japan)

Not resolving cases using undertakings. there is no expert evidence available as to whether they are enforceable overseas – which they rarely are – and an assumption that they will be respected. (50, Judge, Lawyer, England)

The court of 'refuge' should be able to take protective order that would be enforceable in the HR country until their court rule on the merits. In France 'undertaking' are not acceptable. (59, Lawyer, France)

I think automatically enforceable protective measures and more ready recognition of undertakings internationally would be helpful – or perhaps less reliance by the English court on undertakings that are not in reality very enforceable abroad. Perhaps greater awareness of the protective measures available in the home state on a return. (68, Judge, England & Wales)

Protocol of best practice in respect of protective measures. (69, Lawyer, England)

No ameliorative measure in domestic violence cases. (103, Role unknown, US)

Making undertakings not to commit violence common in the return orders. Ensuring referrals for support or the taking parent and children are included in return orders. (108, Counsellor, Australia)

No return of the child without binding agreements on the future procedure. The future situation has to be taken into account. (109, Lawyer, Germany)

**The need for support services, and research data** was recognised by many respondents:

There needs to be safeguarding systems in place for children and vulnerable parents who are returned across borders. Families urgently need better support services to support them through the process. (31, NGO / Organisation, Globally)

There is a need to improve the cooperation between states regarding the establishment of safeguarding measures. No judge will order the return of a child if there is no guarantee that the child and parent will be protected in the other state. (41, Central Authority)

Support to the taking parent including life support, legal support after the child is returned to the country of habitual residence. (61, Lawyer, Japan)

Greater recognition of the social science [evidence] on exposure of children to adult domestic violence. (78, Academic / Researcher, US)

And there needs to be better data collection on these cases – e.g., how many are primary carer mothers fleeing abuse? We just don't have enough data. (31, NGO / Organisation, Globally)

Research is needed on domestic violence in the abduction context, the adequacy of the 1980 Hague Convention aims and response in this regard, and whether new ways of working (within the Convention's auspices) should be trialled through pilot projects and other HCCH or jurisdictional initiatives. (38, Academic / Researcher, NZ)

Some important **miscellaneous comments** were made regarding the benefits of accession to the 1996 Convention, and **general awareness-raising** which may act in a preventative way regarding abduction:

Accede to the 1996 Hague Convention. (91, Lawyer, Lawyer representing children, NZ)

Governments also need to inform their citizens about changes to habitual residence of the child when they move abroad. (31, NGO / Organisation, Globally)

Raising awareness of the issue and recommendations by the HCCH. (94, Central Authority)

# Final Comments

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Sixty-four (55.2%) of the 116 survey respondents made final comments about international child abduction in the context of domestic violence and/or abuse. The difference in approach to this issue was, once again, highlighted in these final comments.

Some respondents commented strongly that **domestic violence should not be used as a defence against return in Convention proceedings** and that it risked undermining the Convention to do so. Some also considered that domestic violence claims made by taking parents were largely untrue or exaggerated.

Domestic abuse is NOT a valid defense for abductions between Hague signatories, but many courts are dazzled by it. (04, Lawyer, US)

I think it is dangerous and wrong to create any sort of different approach to cases where violence is alleged. (26, Lawyer, Lawyer representing children, NZ)

I'm concerned that allegations of abuse will become the new normal with which parents will fight to justify abduction, and the very foundation on which the convention rests is in danger of dissolution. I am sympathetic to the difficulties involved in striking a balance, but I hope that the Convention can continue to be a strong deterrent to future abductions, and thus it needs to be firm in its founding principles. (32, Unknown role, US)

Very important to clarify what are allegations, and what seems to be real risk for the child. My experience (fortunately or unfortunately) is that taking parents allege violence to strengthen their case. (33, Judge, Norway)

I wouldn't like that other International Organizations intervene into the Convention to mix up the fact that the Hague already considers the best interest to discuss any matter concerning the child or domestic violence in the habitual residence jurisdiction. (53, Lawyer, Chile)

It is a very difficult problem, but one should point out that local legislation in most of the Member States exists, the risk being that the 'confidence' that judges on both sides should have for one another disappears if Article 13(b) is misused. (59, Lawyer, France)

There seems to be a strong motive to fabricate or perceive abuse in cases where the mother is more isolated socially/culturally and has little refers in the country where the children are born. (79, Psychologist, NZ)

The procedures do not work in certain countries that protect the abductor on the basis of nationality. (83, Central Authority)

I think that in many cases the alleged domestic violence is not real and it is used only to obtain a non-return order. (72, Lawyer, Italy)

I think that the issue of domestic violence as a defense to a parental abduction is inherently problematic. Whether the matter involves the 1980 Hague Convention or an interstate matter within the US, self-help through parental abduction seems to cause more harm than good. (87, Lawyer, US)

There are unfortunately cases where unfounded allegations of domestic violence have been made in Hague Convention cases. (74, Psychologist, NZ)



In my opinion, the argument of mistreatment will always have to be critically examined. Usually there is no evidence. It must be prevented that on the basis of incorrect information it is judged that the child does not have to return. (98, Lawyer, Netherlands)

Possible domestic violence is never an excuse or reason to kidnap minors, unless there are no legal solutions in the country where it occurs. (99, Lawyer, España)

Other respondents were emphatic that **domestic violence needs to be taken more seriously in Convention proceedings:**

There is a need to recognise the complex and varied nature of family and domestic violence in Hague cases. (13, Mediator, Australia)

There needs to be serious consideration given to the reasons behind people taking the drastic action of abduction – domestic violence, particularly that which is not black and blue bruises have very little standing it would seem. (35, Lawyer, Mediator, Counsellor, Australia)

There seems to be a very high bar to successfully defend a Hague case even where abuse against the mother is significant. (42, Lawyer, England & Wales)

There are likely many parents and children suffering from domestic violence who are unable to escape it, either because of the Hague Convention or because the exception to the Convention are not being taken advantage of. It is necessary to review either the provisions or the operation of the Convention. (45, Lawyer, Japan)

I wish relevant institutions to recognize that for a person to commit psychological / physical abuse towards his/her partner in front of the child is a form of serious child abuse. And I hope that they take it into consideration when determining whether the return of the child is truly serving the interests of the child. (47, Counsellor, Japan)

It is very easy to dismiss as ‘tactical’ allegations of domestic violence/abuse in the context of Hague Convention return proceedings. However, such an approach does not do justice to the importance of the issue generally, and the effects and impact (where such violence exists) on the taking parent and the abducted child. (48, Academic / Researcher, UK)

Very difficult issue as virtually always pleaded in every case, but court rarely deals with the detail. (50, Judge, Lawyer, England)

As with any other Hague Convention, the instrument reshaped the original problem. If the textbook abductor was initially a father who was seeking a more favourable jurisdiction for custody, now it is migrant mothers who have taken on that role. It worsely affects non-EU nationals and black women, who are often marginalised and in a more prominent state of vulnerability. Unless the justice gap is fixed to get them the appropriate support, and measures are put in place to protect them from racial and gender violence, bearing in mind the migration aspects and bias, the 1980 Hague Convention will remain as a weapon to perpetuate the violence against them. (95, NGO / Organisation, Brazil and all of the EU)

Some respondents said **the Convention, and/or the way in which it operates, needs to be changed:**

There needs to be an international re consideration of domestic abuse and fact-finding hearings take place in the country where the victim has fled to. then a proper forensic assessment of the

risk and the reality on the ground for safety can be fully examined before a decision is made to order return. (10, Lawyer, Lawyer representing children, England)

Convention needs to be changed. (66, Lawyer, Ireland)

The stakes are very high in these cases for parents and children. Hearings are very stressful and costly for families and many parents have limited financial and other resources. For those reasons, I believe it would be better to provide more opportunity in the hearing for resolving conflicts in the evidence and looking at the children's interests. This would require more hearing time but, I believe, would result in better decision-making for children. Advances in technology (e.g., audio-visual devices) provide better opportunity for this these days. (20, Lawyer, Lawyer representing children, NZ)

A best interest's assessment in 1980 Hague hearings would go some way to repairing these problems. While this was not easily achieved in the 1970s when Hague Convention was being drafted it is very achievable today. (43, Lawyer, Australia)

The Convention is applicable in Albania, but the judicial process leads the process as in divorce or other usual cases. (51, Lawyer, Albania)

There needs to be an early hearing and findings about abuse. A return to the country origin and supervised contact should be considered whilst this is being heard. Interventions need to be in place to reduce risks. (73, Psychologist, NZ)

The issue is also very difficult from the view of standard of proof. The domestic violence and abuse is very easy to allege but very hard to prove it did or did not happen. It cannot be underplayed and marginalized, but on the other hand simply stating that there was abuse should not be an easy way to get a non-return decision. Very thoughtful examination is needed which is contrary to the principle of quickness important to the return proceedings. Lot of important values are at stake and must be taken in the consideration. (94, Central Authority)

I am very upset with the legal situation. The Hague Child Abduction Convention is good for strong and wealthy parents (fathers) and catastrophic for parents (mothers) who do not have the mental and economic resources to engage a good lawyer/prevent return or a child abduction in the first place. (109, Lawyer, Germany)

Other respondents felt that the Convention was operating in the correct way:

I would repeat that these cases can be challenging to determine because of the nature of the allegations. However, I consider that Article 13(b) provides an appropriate threshold for the court to be able to have a discretion. It provides practical and effective access to justice when the court making the decision is not that best placed to make welfare decisions. (68, Judge, England & Wales)

There is an attempt in England to encourage the courts to undertake fact-finding hearings in Article 13 cases and to undermine the use of undertakings, which is being rightly resisted. The focus of the Convention should remain a swift, summary process to restore the status-quo so that remedies can be properly sought from the courts of the country of habitual residence. (75, Judge, Lawyer, Lawyer representing children, England)

I consider that Article 13 is appropriately addressed in NZ (91, Lawyer, Lawyer representing children, NZ)

I think it is most important that the principle that the case be heard in the place of habitual residence remain paramount. (12, Lawyer, Lawyer representing children, Australia)

Concerns were expressed by some respondents about the **rights of the child in Convention proceedings**:

When the Convention was developed we looked at parental rights. We have moved on from that and focus on children's rights. Like the little girl with the curl, when it is good the Convention is very good but when it is bad it is horrid. (16, Lawyer, Australia)

A focus on the particular child remains necessary in every case. (91, Lawyer, Lawyer representing children, NZ)

Perhaps the exception in the 1980 Hague Convention about the child's objection should be more often applied in these situations. Furthermore, hearing children should be taken very seriously to identify possible domestic violence. (96, Academic / Researcher, Netherlands)

In my opinion the children have the right and should always be heard by specialized professionals (such as child psychologists) before any decision is made concerning their interests in these cases. This kind of hearing is unusual in Brazilian courts unless child sexual abuse is alleged. But there should be an 'interview procedure' developed and regularly applied in these cases to allow for the voice of the children to be heard and sometimes a full evaluation including all the parties involved is also necessary due to the complexity of such cases. (97, Psychologist, Brazil)

These cases, like many custody cases, are too often unrelated to the best interests of the child. The adversarial system struggles with the risk to children from interparental violence or false allegations and has for decades. (106, Lawyer, US)

Several respondents commented on the need for, and benefits of, **training and/or guidance** for all those involved in Convention proceeding:

The more training I receive in the area of domestic violence the more aware I have become about its impact on the abducting parent and the abducted children. (07, Lawyer, Lawyer representing children, Mediator, Canada)

There is a need to recognise the complex and varied nature of family and domestic violence in Hague cases. (13, Mediator, Australia)

The courts are not well educated how the Hague Convention should be handled, and that is the reason why they twist it into custody battle. Very painful for the children and other parent. (19, Lawyer, Lawyer representing children, Mediator, Croatia, Austria)

I would like to see better education available for the parents about the Convention. Currently the process encourages overstatement of claims by one side and minimising by the other. There are genuine cases where the grave risk is satisfied. There are many more where it is a murkier evidential picture, and these cases are really challenging. (21, Lawyer, NZ)

Careful assessment and best practice guidelines. (24, Psychologist, South Africa)

The HCCH Guide to Good Practice on Article 13(1)(b) does not address domestic abuse to a satisfactory level. There is an urgent need for a law reform in this area. (25, Academic / Researcher, UK)

An additional difficulty is that the interpretation of family violence by a judge can become a complex issue, sometimes more for personal than for legal reasons. (40, Lawyer, Mediator, Greece)

A greater understanding is required of these matters for which training is needed for those charged with making return decisions. (48, Academic / Researcher, UK)

The Good Guide is a very useful tool in these cases. (91, Lawyer, Lawyer representing children, NZ)

The lack of training about domestic violence in ANY mental health training and the watered-down training for judges in the area of any domestic relations / family law – means that every case depends almost entirely on the integrity of the judge who has to learn during a case. Most have egos that do not permit this and the use of unqualified experts who are fathers' rights biased is nearly lethal for these cases. The idea that there can be an appointed neutral will result in the same awful situation as in family court where the deck is stacked against mothers. (103, Unknown role, US)

Some respondents identified **relocation** as an issue which needs greater focus in order to prevent abductions from occurring:

In my experience, fewer people are removing their children because of violence. They know the Hague is punitive and they will lose custody, have to pay the batterer's attorney's fees, etc. They are stuck and no one is exploring the harm that is happening to the parent or child from being stuck in a place that is unsafe. (14, Academic / Researcher, US)

It's important to recognise that for many when they are trapped in a foreign country what they need is to go 'home' to be supported by family and friends. Time needs to be spent on fixing the Relocation / Leave to Remove system so that it is accessible to all and functions in a timely manner. This would prevent many abductions. (31, NGO / Organisation, Globally)

I am deeply concerned lest parents or children who are suffering/have suffered from violence but are not allowed to move and compelled to stay in the country may not be under adequate protection or care, or lest, even if they seem to be under protection or care superficially, they may be suffering from stress. (76, Unknown role, Japan)

Several respondents offered suggestions for improvement in the operation of the Convention:

There is a helpful international consensus around the approach of the UK Supreme Court in the case of *In re E* [2012] 1 AC 144, but still too great a focus on the imperative of return. (09, Lawyer, Scotland)

IF there are dangers to children, wherever possible they should be resolved by protection mechanisms in the left-behind country. (12, Lawyer, Lawyer representing children, Australia)

There is a need for access to police records and family and domestic violence orders to be made available to judges. There is a need for quick processing times for families in Hague proceedings. (13, Mediator, Australia)

This is an important issue that strikes at the heart of the responsiveness of the 1980 Hague Convention and its desire (in its Preamble) 'to protect children internationally from the harmful effects of their wrongful removal or retention'. Ways of honouring and nurturing

the Convention, yet ensuring it remains fit for purpose in contemporary society (including in circumstances where abductions occur in the context of domestic violence) must be found. (38, Academic / Researcher, NZ)

I think we have to focus on protecting the victims before the abduction and to promote more cooperation between courts and central authorities to ensure the safe return of the taking parent and the child when necessary. (41, Central Authority)

Whilst honouring the intentions of the 1980 Hague Convention, this is an issue which requires urgent attention. (48, Academic / Researcher, UK)

The Hague could enlist how each country protects the victims of domestic violence, so that the investigation could be followed silently, gathering evidence, and providing a place for distancing the aggressor from the victim. That could be a good starting point. (56, Lawyer, Academic / Researcher, Brazil)

Acting for the Central Authority it is always difficult to obtain timely evidence as to the veracity of the alleged domestic violence/abuse. (58, Lawyer, NZ)

It definitely needs to remain a factor but there needs to be more understanding of the impacts of domestic violence on battered women. (65, Lawyer, US)

To improve the interaction of the relevant instruments of international/conventional and European law in order to achieve a better protection of the best interests of the child who is involved in cases in which an asylum request by one parent and a request for repatriation by the other parent are simultaneously pending on a child who is a victim of domestic violence. (86, Lawyer, Italy)

Finally, four survey respondents **welcomed research being undertaken** on international child abduction in the context of domestic violence and/or abuse:

Thank you for your involvement and making the Hague Convention more effective. (03, Lawyer, US)

I am glad that this survey is being conducted. Japan joined the Convention in 2014, but before that we practitioners were very much worried that the victims, mostly Japanese mothers who were married to abusers, would suffer more by this Convention. Our concern was not taken seriously back then, but it is good to know that, finally, the international community has started to address this issue. (46, Lawyer, Japan)

Having recently undertaken a twitter podcast type of meeting, this issue is very real to many parents and [the findings] will be eagerly awaited. (64, Lawyer, UK)

Would love to see the results. (78, Academic / Researcher, US)

## Discussion and Conclusion

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Several noteworthy findings, which are discussed below, have emerged from the responses of the internationally diverse, highly experienced and knowledgeable sample of family justice professionals who completed the online survey in 2023. The 116 respondents work in thirty different jurisdictions in roles as lawyers, lawyers representing children, judges, mediators, psychologists, counsellors, academics, researchers, and as the staff of Central Authorities, NGOs, and other organisations.

One marked and noticeable theme permeates through the research findings and must be acknowledged at the outset. This relates to the survey respondents' wide disparity of views and approaches to the use of Article 13(1)(b) of the Convention as a 'defence' against return to the State of habitual residence where the taking parent claims that they, and/or their children, have experienced domestic violence perpetrated by the left-behind parent. One group of survey respondents consider Article 13(1)(b) to be overused and, furthermore, that while domestic violence is now frequently alleged in Convention proceedings, there is often no evidence of this. They consider that the taking parent is raising the allegations to primarily find a strategic way to avoid the child(ren) being returned to the State of habitual residence. These family justice professionals emphasised that domestic violence and/or abuse is not a valid defence for abductions between Contracting States. However, another group of survey respondents was firmly of the view that the Article 13(1)(b) exception should be used more readily in abduction cases involving domestic violence and that courts need to be aware that their return decisions may drive victims to despair and place them, and their children, at further risk. Some advocated for a separate exception to deal with domestic violence, while others thought it would be dangerous and wrong to create any sort of different approach to cases where violence is alleged.

The perspectives reported by the survey respondents on the use of protective measures were similarly divisive. One group considered that protective measures helpfully ameliorate the identified risk and that it would create a dangerous situation if a child was returned to the State of habitual residence without such measures in place. However, another group said that protective measures are completely insufficient in responding to the risks posed in abduction cases that involve domestic violence and/or abuse. Some wanted the Convention, or the way it operates in this context, to be changed, while others considered that the Convention was operating in the correct and intended way.

Examples of these, and other, cavernous distinctions between the perspectives and experiences of the survey respondents pervade the data. This is, of course, not simply a matter of having different personal standpoints because this division of views between different family justice professionals impacts on what consensus or change, if any, may be achieved on this issue. There is recognition in the findings that domestic violence does feature in international child abduction cases. However, this is drowned out by both the sincere concern expressed about domestic violence claims being used as a tactical strategy to resist return to the State of habitual residence, and the genuine rejection of those assertions by those who regard domestic violence as only too real in these circumstances.

The intention of the drafters of the Convention was that Article 13(1)(b) should be interpreted in a restrictive fashion<sup>22</sup> and, as noted in the Draft Guide to Good Practice on Article 13(1)(b) in 2017, Contracting States appeared to be adhering to this approach:

[I]n 2001, experts at the Fourth Meeting of the Special Commission noted that the Article 13(1)(b) exception "had generally been narrowly construed by courts in the Contracting States" as

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22 Elisa Pérez-Vera, *Explanatory Report on the 1980 HCCH Child Abduction Convention* (HCCH, The Hague, 1981) referring to the exceptions at paragraph 34: '... they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter'.



statistics had shown a relatively small number of return applications which were refused on the basis of this exception.<sup>23</sup>

However, we now know that the situation has changed. In the Fifth Statistical Study on all applications received by Contracting States in 2021, undertaken for the Eighth Special Commission in 2023, Professor Nigel Lowe and Victoria Stephens found that there had been an ‘exponential increase in refusing return applications on the basis of Art 13(1)(b)<sup>24</sup> and, furthermore, that ‘The Article 13(1)(b) exception was more likely to be relied upon if the taking person was the mother of the child (49%, compared with 38% where the taking person was the father)’.<sup>25</sup> Lowe and Stephens also found that the number of taking persons in 2021 who were mothers of the children involved in the applications had increased to 75% (compared with 73% recorded in 2015, 69% in 2008, and 68% in 2003),<sup>26</sup> 94% of whom were joint primary carers of their children.<sup>27</sup>

These trends, and the responses to our survey, highlight the importance of the issues surrounding the use of Article 13(1)(b) in domestic violence and abuse cases. Over half ( $n=58$ , 52.3%) of our survey respondents reported that the number of these cases was increasing by ‘a fair amount’ ( $n=30$ , 27.1%) or ‘a lot’ ( $n=28$ , 25.2%). The majority ( $n=95$ , 83.3%) said that the Article 13(1)(b) exception is often, mostly or always argued when international child abduction occurs against a background of violence or abuse towards the taking parent and/or abducted child(ren).

When we asked how often children are being returned despite the Article 13(1)(b) exception being argued in domestic violence circumstances, more than three-quarters ( $n=84$ , 75.7%) of the 111 respondents to this question reported that abducted children are often ( $n=56$ , 50.5%) or mostly ( $n=28$ , 25.2%) returned. Given Lowe and Stephens finding that in 2021 there had been an exponential increase in the number of refusals based on Article 13(1)(b)<sup>28</sup> this, at first blush, may seem to contradict the perspectives of the family justice professionals who completed our survey. However, we believe it may be able to be explained by the fact that the specific reasons for the 2021 refusals based on Article 13(1)(b) are not known, and it may well be that at least some were not based on domestic violence, but rather on other aspects of grave risk and intolerable situations. Furthermore, our survey respondents were addressing this issue in 2023 which, unlike 2021, was happily not a year impacted by the global COVID-19 pandemic, and where their experiences and perspectives in this context may therefore be quite different.

When we asked the survey respondents how effectively the Convention deals with protective abductions, there was an almost even split between the negative (33.0%) and positive responses (36.7%). The Convention was said to deal ‘ineffectively’ ( $n=23$ , 21.1%) or ‘very ineffectively’ ( $n=13$ , 11.9%) with these type of abductions versus ‘effectively’ ( $n=31$ , 28.4%) or ‘very effectively’ ( $n=9$ , 8.3%). When consideration is then given to the responses to the next question about how well the Article 13(1)(b) exception is operating in circumstances involving domestic violence and/or abuse an even greater division between the family justice professionals was evident. One quarter ( $n=29$ , 25.9%) of the 112 respondents to this question considered that the exception is working well (18.8%) or very well (7.1%). However, more than one third ( $n=39$ , 34.8%) considered that Article 13(1)(b) is operating poorly (25.9%) or very poorly (8.9%). Once again, at first blush, this finding about the Article 13(1)(b) exception might appear contradictory to the findings of the earlier

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23 Preliminary Document No. 3 of June 2017 at paragraph 26: <https://assets.hcch.net/docs/oa0532b7-d580-4e53-8c25-7edab2a94284.pdf>

24 Nigel Lowe and Victoria Stephens, *Global Report – Statistical Study of Applications Made in 2021 Under the 1980 Child Abduction Convention* (Preliminary Document No 19A, HCCH Permanent Bureau, The Hague, September 2023), at paragraph 167.

25 Ibid, at paragraph 87.

26 Ibid, at paragraph 41.

27 Ibid, at paragraph 47.

28 Ibid, at paragraph 83, where Lowe and Stephens compare the ‘exponential increase’ in 2021 return applications being refused on the basis of Article 13(1)(b) against previous statistical surveys where Article 13(1)(b) was relied upon in whole or in combination with other reasons: 46% in 2021 as against 25% in 2015, 34% in 2008, and 26% in each of 2003 and 1999.



question regarding the effectiveness of the Convention. However, following analysis of the qualitative, open text, data related to these questions, it seems that the first question was viewed by the participants as probing the Convention regarding its ability as an international instrument to deal with abduction cases involving domestic violence and/or abuse. The second question was drilling more specifically into whether Article 13(1)(b) operates effectively to deal with these cases. The responses can therefore be considered as complementary to each other because it is possible to hold one view about the Convention's ability to deal with cases involving domestic violence and/or abuse, whilst holding a different view about the efficacy of the specific provision within it under which these cases are addressed, i.e., Article 13(1)(b).

Important observations and insights were also shared by the survey respondents about the effects of abduction on the parties concerned – the taking and left-behind parents and the abducted children. Several respondents stated that it was difficult to generalise, but most reported entirely negative effects for the left-behind parent, including anger, rage, despair, hopelessness, and grief, as well as mental health impacts and financial pressure. Some left-behind parents were said to use the Convention as a way of regaining control over, or retaliating against, their ex-partner and children, would deny being violent or abusive, and lacked insight into their behaviour and its impact. Nonetheless, the emotional harm which the left-behind parent might suffer due to separation from their child(ren) was clearly acknowledged by many survey respondents.

The reported effects on the taking parent were more mixed, albeit also predominantly negative. Survey respondents recognised that the effects of abduction are complex and that it is difficult to isolate these from the taking parent's experience of domestic violence and/or abuse. Fear was commonly reported, together with a range of other feelings including stress, worry, anxiety, and social isolation. Stronger effects involving panic, abject terror, or PTSD, were also raised, as were impacts on the financial situation and physical/mental health of taking parents. Although these negative effects could be tempered by the relief that taking parents were said to experience when they, and their children, felt safe once more (in the State of refuge), this was countered by growing fear and anxiety upon the realisation that the child(ren) could potentially (perhaps even most likely) be ordered to return to the State of habitual residence.

While two respondents indicated that the effects on the abducted child were minimal, or similar to those experienced in other types of abductions, another respondent raised the issue of the effects on the abducted child being due to the abuse and trauma they had already experienced prior to their abduction, rather than the abduction itself. Most respondents, however, reported mostly negative effects on the abducted child(ren), including fear, stress, confusion, trauma, and displacement, as well as impacts on attachment, mental health and social relationships. The sudden loss of the abducted child's relationship with the left-behind parent, even where violence or abuse had occurred, was said to have a detrimental effect on the child and their relationship and contact with the left-behind parent, particularly when the taking parent was influencing or alienating the child. Other respondents said the effects on the child depended on other factors, particularly the age of the child, but also the nature and severity of the violence to which they had been exposed, the primary carer's emotional state, and whether or not the allegations were true. The effects were said to be both positive and negative for some children, with the most commonly reported positive effect being relief that the abducted child (and the taking parent) was safe. Often, however, respondents framed this sense of relief and/or safety in the context of other negative effects on the abducted child such as fear (especially of being ordered to return to the State of habitual residence).

Nearly half ( $n=56$ , 48.3%) of the family justice professionals who answered the question about the differences, if any, between abductions for protective reasons where domestic violence and/or abuse is involved, compared to those where such violence and/or abuse is not involved, indicated that the difference between these types of cases varies depending on each situation. Only 6.9% of the 116 survey respondents, indicated that there were no differences. Conversely, 23.3% considered there to be large differences. Sixty-eight (58.6%) commented on what the differences are, and the reasons for them, as well as the effects on family members, when international child abductions occur for protective reasons. Several considered that abductions for protective reasons and those for other reasons are very different in terms of such matters

as the presence of allegations, the motivations for the wrongful removal, the effects, the added pressure, anxiety and fear, and the speed of resolution. Some respondents noted that the differences relate to the nature of the intrafamilial dynamics, the behaviour of the allegedly violent parent, such as coercive control or revenge, and the notice, timing and consequences of the abduction. Some also mentioned that, compared to other types of abduction, protective abductions involve heightened emotional states including fear, distress and trauma. It was also said to be more difficult to achieve resolution when an abduction occurred for protective reasons. It would therefore seem that, while it depends on the specific case, the differences, if and when they occur, can be significant.

Mixed views were also reported by the family justice professionals about the degree of consistency and uniformity in the interpretation and application of the Convention which had been achieved, and the desirability of further guidance. Several respondents remarked appreciably about the Guide to Good Practice on Article 13(1)(b), but others expressed strong views that it does not satisfactorily address domestic violence and abuse. The need for support services was recognised by many respondents, and a greater focus on relocation was urged to prevent some abductions from occurring in the first place. Support for research enquiring into international child abduction in the context of domestic violence and/or abuse, including our study, was welcomed by several respondents. Further outcomes research was also said to be needed, especially on the post-return period and need for aftercare.

The specialism, where it exists, of the judiciary and lawyers, as well as specialist mediation in abduction cases, were reported on favourably. However, training was identified as critical for all professionals involved in Convention cases, particularly in relation to domestic violence and its effects, as many respondents commented on the lack of specialism in their specific jurisdictions.

It is clear that most survey respondents consider that Article 13(1)(b) plays a very significant role in abduction cases occurring against a background of domestic violence and/or abuse to the taking parent and/or child(ren). There are, however, markedly divided views between these very experienced and specialist family justice professionals on the effectiveness of the Convention in this context and on how well Article 13(1)(b) is currently working. We were fortunate to be present at the Eighth Special Commission in The Hague in October 2023 as representatives of The International Association of Child Law Researchers which had observer status at the Special Commission. As such, we welcomed the delegates' endorsement of the Secretary-General's proposal that the HCCH Permanent Bureau organise a forum for discussion to further probe the issues raised in this critical, albeit challenging, area of the Convention's operation.<sup>29</sup> We consider that this forum, which will be held in South Africa in June 2024, will provide an important opportunity for those present to discuss and debate the very issues raised by domestic violence victims and survivors who have experienced Convention proceedings, and other key stakeholders (including left-behind parents, NGOs, family justice professionals, specialist academics/researchers, and Contracting States), which our widely divergent survey findings also reflect.

However, the key messages from this research go further. There is a perceived need for more evidence-based research to be undertaken to provide greater insight into, and knowledge about, the dynamics and outcomes of Convention cases involving domestic violence and/or abuse, both where the child was, and was

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29 Conclusion and Recommendation No. 26 of the Eighth Meeting of the Special Commission on the Operation of the 1980 and 1996 Hague Conventions (The Hague, 10-17 October 2023): 'In light of the discussions on the issue of domestic violence and the operation of Article 13(1)(b), and further to correspondence received by the Secretary General from advocates for victims of domestic violence prior to the start of the SC the SC supported the proposal of the Secretary General to hold a forum that would allow for discussions amongst organisations representing parents and children, and those applying the Convention. The importance of ensuring a balanced representation of all interested parties was emphasised. The agenda of the forum, which would focus on the issue of domestic violence in the context of Article 13(1)(b), would be prepared by a representative Steering Committee. The forum may also inform possible further work of the HCCH on this matter. Subject to available resources, the forum would ideally take place in the course of 2024. The SC invited States that are interested in contributing to the organisation and funding of such a forum to inform the PB accordingly. The SC thanked the Philippines for their willingness to assess hosting the forum in Manila, with the financial support of other interested States and observers.'

not, returned to the State of habitual residence. This call for further research, by family justice professionals working in the international child abduction field, mirrors the view of the Eighth Special Commission and Conclusion and Recommendation No. 102 which emanated from it.<sup>30</sup> In the absence of this critical data, bridging the gap between the current chasmic division of opinion between global family justice professionals on the issue of domestic violence and/or abuse in Convention proceedings may prove to be extremely difficult to achieve.

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<sup>30</sup> C&R No. 102 (n 19).

# Appendix One:

## Online Survey Questionnaire

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A project to investigate the effects and outcomes of abduction on children where the abduction occurred for protective reasons against a background of domestic violence and/or abuse towards the taking parent and/or the abducted child.

### Introduction

Thank you very much for agreeing to participate in this survey which will take you about 20 minutes to complete.

This project investigates the **impact on children of international child abduction where the abduction has occurred for protective reasons against a background of domestic violence and/or abuse towards the taking parent and/or the abducted child**. We are aiming to better understand whether the outcomes for children who have been abducted for protective reasons are the same or different from those where children have been abducted for other, non-protective, reasons, about which we already know much more.

The data will be collected through the anonymous completion of this online survey by interdisciplinary family justice professionals around the world. Please answer the questions by drawing on your experience in the international child abduction field. **Please do not refer to any particular individuals or cases in your responses as that might identify them or you.**

The progress bar at the top will indicate how far through the survey you are. The information you provide in response to each question is important, but you will be able to skip a question if you are unable to answer it. Brief responses to the open text questions are fine – please do not feel the need to write lengthy answers. Please note that if you start the survey, but then need to leave it, your responses will be saved and you can return to complete the survey later, should this be necessary, as long as you use the same link.

For further information or any questions, please contact Taylor MacDonald-Plummer (Professor Freeman's research assistant) at [plummet@westminster.ac.uk](mailto:plummet@westminster.ac.uk).

Thank you!

# PARTICIPANT INFORMATION SHEET

## Consent and Agreement

I have read the Participant Information Sheet about this project and consent to taking part.

## Introductory Questions

*The following section asks you about your current professional role in the international child abduction field.*

### 1) What is your professional role? Select all that apply.

- Judge
- Lawyer
- Lawyer representing children
- Mediator
- Psychologist
- Counsellor
- Therapist
- NGO / Organisation
- Central Authority
- Academic / Researcher
- Other (Please specify) \_\_\_\_\_

### 2) Please state the country (or countries) in which you work.

### 3) How long have you been working in the international child abduction field?

- 0–11 months
- 1–5 years
- 6–10 years
- 11–15 years
- 16–20 years
- 21–25 years
- 26–30 years
- 31 years or more

### 4) How many international child abduction cases have you dealt with during your career?

- None, as I do not work directly with family members
- 1–5
- 6–10
- 11–15
- 16–20
- 21–25
- 26–30

- 31-40
- 41-50
- 51 or more

## **Domestic / Family Violence or Abuse and International Child Abduction**

*Drawing on your experience in the international child abduction field, the following questions ask for your views on protective abductions that have taken place against a background of domestic violence and/or abuse to the taking parent and/or the abducted child.*

**5) Have you any knowledge of, and/or experience with, international child abduction where domestic / family violence or abuse to the taking parent, abducted child(ren), or both has been alleged?**

- Yes
- No
- Not sure

a) If yes, please explain your knowledge and/or experience.

**6) What do you consider to be the effects of abduction on family members when domestic / family violence or abuse to the taking parent, abducted child(ren), or both has been alleged?**

a) Effects on the taking parent:

b) Effects on the abducted child:

c) Effects on the left-behind parent:

**7) In general, how much, if any, difference(s) do you consider there to be between abductions for protective reasons where domestic violence and/or abuse to the taking parent, abducted child(ren), or both is involved compared to those where such violence and/or abuse is not involved?**

- No difference(s)
- Some difference(s)
- The difference varies depending on each situation
- A large number of difference(s)
- Don't know / Not sure

**8) Please add any comments you may have about the differences and effects on family members when abductions occur for protective reasons.**



## Grave Risk / Intolerable Situation Exception

Article 13 of the 1980 Hague Convention sets out six exceptions or 'defences' to return, one of which involves grave risk / intolerable situation:

***There is grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.***

We are interested in your views on how well this exception operates in the context of international child abduction which occurs against a background of violence or abuse towards the taking parent and/or abducted child(ren).

**9) How frequently is this exception argued in these circumstances?**

- Never
- Seldom
- Often
- Mostly
- Always

**10) Please rate how well you consider this exception is operating in these circumstances:**

- Very poorly
- Poorly
- Neither poorly nor well
- Well
- Very well
- Don't know / Not sure

**11) How often are abducted children returned despite this exception being argued in these circumstances?**

- Never
- Seldom
- Often
- Mostly
- Always

**12) Please add any comments you may have about the grave risk / intolerable situation exception.**

## Adequacy Of The Operation of the 1980 Hague Child Abduction Convention / Changes Required

*This section explores the adequacy of the 1980 Hague Convention when dealing with cases where domestic/ family violence or abuse towards the taking parent and/or child(ren) have been alleged, and your views on its effectiveness.*

**13) Do you consider that the number of cases where violence or abuse to the taking parent and/or the abducted child(ren) has been alleged is increasing?**

- Not at all
- A little
- A fair amount
- A lot
- Don't know / Not sure

**14) How effectively does the 1980 Hague Convention deal with these type of abductions? (Or, if the Convention is not applicable in your jurisdiction, how effectively are these type of abductions dealt with in your legal regime?)**

- Very ineffectively
- Ineffectively
- Neither ineffectively nor effectively
- Effectively
- Very effectively
- Don't know / Not sure

**15) If the 1980 Hague Convention is not applicable, please state in the text box the legal approach governing abductions in your jurisdiction**

16) Please explain what you consider is working well.

17) Please explain what changes or improvements you consider would be helpful.

## Final Comments

*This section gives you the opportunity to elaborate on your responses or to provide any final comments on relevant issues that may not have been addressed by the survey questions.*

- 18) Please add any final comments you might have about international child abduction in the context of domestic/family violence and abuse.**

## Demographics

*This section helps us understand who our participants are while maintaining anonymity.*

### 19) Please indicate your gender:

- Female
- Male
- Non-Binary
- Other (Please specify) \_\_\_\_\_
- Prefer not to say

### 20) What is your age in years?

- Under 20 years
- 20–29 years
- 30–39 years
- 40–49 years
- 50–59 years
- 60–69 years
- 70–79 years
- 80+ years
- Prefer not to answer

### 21) What is your highest level of educational qualification?

- No qualification
- Secondary School qualification
- Trade or Vocational qualification
- Tertiary undergraduate qualification (e.g., Bachelor's Degree)
- Tertiary postgraduate qualification (e.g., Postgraduate Certificate/Degree, Master's Degree, PhD)

## SURVEY COMPLETION

You have now completed the survey. Thank you for your time, which is greatly appreciated. You are welcome to share this project and the survey link with interested colleagues.

Debrief Sheet

