

International law permits abusive fathers custody of children

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A new survey of court cases against battered women living abroad shows that when the women left their abusive partners and returned with their children to the United States, half of the time, U.S. courts sent the children back, usually to their fathers.

The survey, co-authored by a University of Washington researcher, also shows that almost a third of these estranged husbands filed criminal kidnapping charges against their wives.

Released in time for Human Rights Day, Dec. 10, the survey is intended to help to establish [domestic violence](#) as a factor in whether courts send children back to their fathers. And the authors of the report hope their website serves as a resource for women and lawyers faced with Hague petitions.

The children's return is in accordance with an international treaty, the Hague Convention on the Civil Aspects of International Child Abduction, which affects thousands of children each year.

The Hague Convention does not explicitly factor in domestic violence in deciding whether to send children back to the country where they lived. But since the treaty was created 30 years ago, social science research has demonstrated that a child's exposure to domestic violence is just as harmful as direct abuse. Children who witness domestic violence are at higher risk for [emotional problems](#), and later in life, they have a greater risk for violence in adult interpersonal relationships.

Now social scientists say that it's time for the law to catch up with science, especially as these cases are likely to dramatically increase as more binational families form and countries such as India and Japan consider adopting the treaty in the next few years.

"The law is not paying attention to the effects domestic violence have on women and their children," said Taryn Lindhorst, co-author of the report and a UW associate professor of social work. "This is like a tip of an iceberg: we've only seen some of the cases."

Lindhorst, an expert in the effects of domestic abuse for women, co-authored the report. The report is the first effort in the [United States](#) to interview mothers and attorneys about their experiences with the Hague Convention, in hopes of better preparing mothers and their lawyers for court proceedings in these cases.

The 404-page report, funded and published by the U.S. National Institute of Justice, includes analysis and excerpts of interviews with 22 mothers and 23 lawyers who represented mothers and fathers in Hague lawsuits and an analysis of court decisions on previous Hague cases involving domestic violence.

Most of the mothers had been living with their husbands in Europe, the Middle East or Latin America. They had moved abroad when their marriages were more stable or they had been tricked into moving.

In the report, the co-authors describe frequent, life-threatening [domestic abuse](#) endured by the women: beatings, threats with guns, ice picks and other weapons and – in a few cases – rape. Since most of the women were not citizens of the country where they were living, they were usually unable to obtain resources available to domestic violence victims in that country.

Moving back to the United States became the best option.

None of the women in the study knew about the Hague Convention before returning to the United States, Lindhorst said. Many of them learned about it when federal agents arrived at their homes to take their children into custody. Some mothers were required to be in court within a matter of hours. Scrambling for a lawyer, most could not find a lawyer experienced with the Hague Convention.

The court decisions were grim for the women. In almost half, 12 of 22, the court sent the children back to the country they had fled from with their mothers. In seven of those cases, the fathers gained custody. Seven women – a third of the sample – also faced criminal kidnapping charges in foreign courts.

Ironically, when the Hague Convention Treaty was created in 1980, it was intended to protect women and children. Lawmakers wanted to expedite the return of children taken by a parent – usually the father – who was unsatisfied by a child custody decision.

But, as it turns out, the law has been used primarily by fathers. Nearly 70 percent of Hague petitions are filed by fathers, said Jeffrey Edleson, co-author and professor of social work at the University of Minnesota.

"In many cases, filing a Hague petition is an attempt by the abusive father to use the court to extend control over mother and child," said Edleson, an expert on children's exposure to domestic violence in the home.

In the Hague Convention cases examined in the report, courts tended not to consider domestic violence toward the mother when assessing whether the children should be returned to their father. In cases where the children are returned and end up in the fathers' care, it's because the

judges see the mother as a kidnapper, Edleson said.

Once returned to the father, the children may be exposed to more violence. Typically, the mothers move back too to be closer to their children and some were abused again. Sometimes the fathers would physically abuse their [children](#).

The report is part of the HagueDV Project on international child abduction and domestic violence, led by Lindhorst and Edleson. On Human Rights Day, Dec. 10, the group will hold a free event in Minneapolis of actors reading the battered mothers' stories interspersed with commentary by law and social science experts. The event will also be available by webcast. For more information and to register, go to: www.haguedv.org/

More information: Download the report:
www.haguedv.org/reports/index.html

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