

Protection of Abducting Mothers in Return Proceedings under the 1980 Hague Convention on the Civil Aspects of International Child Abduction

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Domestic violence directed towards a parent can be seriously harmful to children who are exposed to and/or have witnessed it, or who depend upon the psychological health and strength of their primary carer for their health and well-being.ⁱ This Policy Brief is concerned with the problem of domestic violence against mothers who have wrongfully removed or retainedⁱⁱ their child(-ren) across international borders and are involved in return proceedings under the 1980 Hague Convention on the Civil Aspects of International Child Abduction ('the 1980 (Hague) Convention'),ⁱⁱⁱ in circumstances where the child abduction was motivated by domestic violence^{iv} by the left-behind father. It sets out recommendations for legal actors concerned with the interface between domestic violence and international parental child abduction. The recommendations are based on the findings of the POAM project^v and subsequent research carried out by the authors.

POLICY CONCLUSIONS

1. Since the adoption of the 1980 (Hague) Convention, the profile of the parental international child abductor has shifted to represent a majority of mothers (73%) with most cases involving allegations or findings of domestic violence. More consideration needs to be given to how states and courts can afford better protection to domestic violence victims fleeing internationally for safety.

2. A direct address of the issue involves legislative intervention at the global and domestic level. The most effective but least pragmatic legislative intervention is the potential amendment of the text of the 1980 (Hague) Convention to take account of domestic violence. Alternatively, a Protocol to the Convention could be adopted internationally and provide at least some limited protection. If international legislative action is impossible, states could adopt or amend existing domestic legislation to clarify that domestic violence including the safety of the mother must be a consideration of the court before issuing a return order of the child under the 1980 (Hague) Convention.

3. Following a domestic violence sensitive interpretation of the 1980 Hague Convention in courts can lead to added protection to mothers fleeing domestic violence. There are three points under the Convention under which domestic violence allegations should be considered by courts: (i) when the 'grave risk of harm' (Art 13(1)(b)) exception is invoked, (ii) when the child objects to the return and therefore, the 'child objections' (Art 13(2)) exception is invoked, and (iii) under the 'human rights and fundamental freedoms' (Art 20) exception.

4. Supplementary means of supporting cases of international child abduction where domestic violence is present would be twofold. Firstly, states to appoint Hague Network Judges who are aware of the pertinent issues and are actively utilising the network to address domestic violence allegations. Secondly, states to examine from a policy perspective the availability of ADR methods and not exclude mediation without case-by-case suitability assessment by an expert.

The 1980 Hague Convention and domestic violence

The majority of parental child abductions (73%) are committed by mothers.^{vi} Although there are no comprehensive statistics on how many 1980 Hague Convention cases involve allegations or findings of domestic violence, empirical research has confirmed that this phenomenon frequently plays a role in parental child abduction cases and may be present in about 70% of parental child abduction cases.^{vii}

Returning mothers in child abductions committed against the background of domestic violence are subject to particular vulnerabilities, including the risk of re-victimisation upon their return to the State of habitual residence, the lack of financial and emotional support in the State of habitual residence plus probable financial dependence on the left-behind father on the return, sometimes the lack of credibility as a respondent in return proceedings due to the failure to report the incidents of domestic violence in the State of habitual residence prior to the abduction, and the exposure to ‘intimidatory litigation’, whereby the left-behind father abusively uses the return proceedings as a means of further harassment, rather than from a genuine desire to secure the return of the child. Such ‘intimidatory litigation’ adds greatly to the anxiety suffered by the abducting mother, who, as a survivor of an abusive relationship, is likely to be overwhelmed already with the repercussions of that relationship.

Lack of protection of abducting mothers in return proceedings

The 1980 Hague Convention seeks to secure the prompt return of an abducted child to the State of his/her habitual residence^{viii} so that issues related to the custody of or access to the child be resolved in that jurisdiction.^{ix} Exceptions to the duty to secure the prompt return of the child are justified only in exceptional circumstances.^x When determining whether an exception to return applies, ‘it is the situation of the child which is the prime focus of the inquiry’;^{xi} the Convention has no explicit regard to the safety of the abducting mother upon the return. Although it is not mandatory for the abducting mother to return together with the child, the

mother (in particular if she is the primary carer), will typically accompany the child back to the State of habitual residence, even if it means that she has to compromise her own safety.

Policy focus: legislative and judicial interventions

The research has exposed the need for targeted legislative and judicial interventions to secure the protection of abducting mothers in return proceedings under the 1980 Hague Convention. The proposed interventions are outlined below. Supplementary means such as direct judicial communication and ADR methods may also be of assistance and are mentioned briefly at the end of this section.

LEGISLATIVE INTERVENTIONS

Legislative interventions can be contemplated at the global level or the domestic level.

Global level

Amending the 1980 Hague Convention

At the global level, the most extreme but, admittedly, least practicable solution would be for the Hague Conference on Private International Law as the global law-making body in the area of private international law to amend the wording of the 1980 Convention to take account of the concerns over the safety of abducting mothers in return proceedings. This could take, for example, the form of a separate exception to return on the grounds of domestic violence or a wholly separate ‘pathway’ for applications involving allegations of domestic violence, including provisions related to evidentiary matters; legal aid; the availability of alternative dispute resolutions methods; channels for direct judicial communication; and the availability of psychological and other support services to the abducting mother during the return proceedings. However, as alluded to above, this solution lacks feasibility as the process of amending an international convention is complex in itself and becomes even more challenging where a large number of contracting parties is involved as is the case of the 1980 Hague Convention.^{xii}

Amending an international convention refers to the formal modification of the convention provisions affecting all the contracting parties. Such alterations must be effected with the same

formalities that attended the original formation of the treaty. Where the convention does not lay down specific requirements to be satisfied for amendments to be adopted (as is the case with the 1980 Hague Convention), amendments require the consent of all the parties.^{xiii} The ‘stone tablet quality’^{xiv} of international conventions makes it extremely unlikely that the contracting parties to the Convention would come down in favour of a revision of the instrument.

Adopting a Protocol to the 1980 Hague Convention

An alternative option would be the adoption of a Protocol to the Convention.^{xv} This form of legislative intervention is more pragmatic than amending the Convention; however, it has other shortcomings. Most importantly, the fact that contracting parties to the Convention are not bound to participate in a Protocol initiative would mean that the safety of abducting mothers would be guaranteed at a restricted scope only. Unfortunately, this would significantly lessen the value of the Protocol. Nevertheless, one can agree with Thorpe LJ that the Protocol would ‘at least enable like-minded States to strengthen the Convention *inter se*’ and that ‘a Protocol with a limited range of operation would be better than no Protocol at all.’^{xvi}

Domestic level

At the national level, contracting parties could adopt new or amend relevant domestic legislation to clarify that allegations of domestic violence including the safety of the abducting mother should be considered before a return order is made for the child under the 1980 Hague Convention. A recent example of such legislative intervention is an Australian piece of legislation,^{xvii} which provides safeguards to mothers and children fleeing domestic violence when Australian courts consider cases brought under the 1980 Hague Convention (‘the 2022 Regulations’). The 2022 Regulations make clear *inter alia* that domestic violence is a consideration under the ‘grave risk of harm’ exception to return and a court does not need to be satisfied that such violence has occurred or will occur before it is taken into account.^{xviii} It is recommended that domestic legislation includes also supplementary provisions to strengthen the position of

abducting mothers who had fled domestic violence and are involved in return proceedings. Such provisions could pertain to matters such as legal aid, availability of ADR channels, and a legal basis for the use of and the functioning of direct judicial communication (see below ‘*Supplementary means*’).

JUDICIAL INTERVENTIONS

Another avenue for improving the safety of abducting mothers in parental child abductions instigated by domestic violence is through domestic violence -sensitive application of the 1980 Hague Convention by judges dealing with return applications under the Convention, in particular when applying the exceptions to return available under the Convention. Of these, the following three are particularly pertinent to abductions committed against the background of domestic violence: the ‘grave risk of harm’ exception (Article 13(1)(b)); the ‘child objections’ exception (Article 13(2)); and ‘the human rights and fundamental freedoms’ exception (Article 20).

The ‘grave risk of harm’ exception (Article 13(1)(b))

Article 13(1)(b) provides that ‘[...] the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that [...] 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 ‘grave risk of harm’ exception to return is often raised by abducting mothers opposing the return, based either on the allegations involving the child as the ‘direct victim’, or as an ‘indirect victim’, where the child is exposed to the effects of domestic violence directed towards the mother.^{xix} Among such effects are impaired parenting capacities of the mother, resulting from the impact of the violence on her physical and/or psychological health.^{xx} The ‘grave risk of harm’ defence may also be raised where the abducting mother is unable to return with the child due to fear of the child’s father; the subsequent separation from the primary carer mother may be argued to create a grave risk for the child.^{xxi}

Against this background, it is recommended that when dealing with return applications involving allegations of domestic violence, judges in all contracting States accept and base their decisions on the fact that the circumstances of the abducting mother and the child are likely to be intertwined to the extent that domestic violence perpetrated solely against the mother may justify the finding that the return would expose the child to a ‘grave risk of psychological harm or other intolerable situation’ pursuant to Article 13(1)(b).^{xxii}

The assessment of whether the ‘grave risk of harm’ exception to return applies can only reliably be carried out if a prior evaluation of the merits of the allegations of domestic violence has been undertaken by the judge in the return proceedings. This means that the judge should first seek to determine, to the extent possible, the merits of the disputed allegations of domestic violence.^{xxiii} Admittedly, this approach may raise concerns over the length of the proceedings in particular as the return proceedings are expected to be summary in nature; however, speed should not take priority over the proper assessment of risk and consideration of the safety of the child and the abducting mother. Indeed, the emphasis on speed may encourage judges to minimise or ignore allegations of domestic violence rather than determining them, leaving thus an unassessed risk of harm. Importantly, this approach seems to be supported by the jurisprudence of the European Court of Human Rights, specifically the case of *X v Latvia*^{xxiv} where the Grand Chamber introduced the concept of ‘effective examination’.^{xxv} As Judge Albuquerque explained in his concurring opinion, ‘effective examination’ means a ‘thorough, limited and expeditious’ examination. Accordingly, it is recommended here that a ‘thorough, limited and expeditious’ examination of disputed allegations of domestic violence be carried out by the judge in return proceedings.^{xxvi}

The appraisal of the ‘grave risk of harm’ exception is a general process,^{xxvii} meaning *inter alia* that the court must take into account all relevant matters, including ‘the availability, adequacy and effectiveness’ of protective measures.^{xxviii} In this process, protective measures are put in place with the explicit intention of addressing the grave risk of harm

posed by the domestic violence established in the case,^{xxix} and must be distinguished from practical arrangements to assist in the implementation of a return order.^{xxx} Also, the judge should acknowledge that there is an obvious intersection between protective measures for the child and measures for the mother as protective measures for the mother are by extension measures that protect the child.

In deciding what weight should be given to protective measures, the judge must take into account the extent to which they will be enforceable in the requesting State. In intra-EU child abduction cases recognition and enforcement of protective measures can be facilitated by either the Brussels IIa Recast Regulation^{xxxi} and/or the Protection Measures Regulation.^{xxxii} Outside of the EU, in cases where the State of habitual residence and the State of refuge are both contracting parties to the 1996 Hague Convention,^{xxxiii} this Convention should be utilised to facilitate cross-border recognition and enforcement of protective measures in return proceedings. However, where the State of habitual residence is not a party to the 1996 Convention, extreme caution should be exercised by the judge when protective measures are sought.

Even where a legal mechanism for cross-border circulation of protective measures exists, judges should be guarded when considering making a return order conditioned on such measures. In particular, they should be wary of the fact that protection orders are often breached, and that satisfactory follow-up measures by relevant authorities in the State of habitual residence may be lacking. In any case, employment of protective measures with a view to making a return order should never be considered in cases where it has been established that there is a future risk of severe violence.

The ‘child objections’ exception (Article 13(2))

In cases involving allegations of domestic violence, the ‘grave risk of harm’ defence is often invoked, and in some cases successfully made out, in conjunction with the ‘child’s objections’ defence under Article 13(2) of the Convention.^{xxxiv} The defence of child objections can of course be made out also independently of the ‘grave risk of harm’ defence.

Article 13(2) states:

“The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.”

Judges in all contracting states should be open to listening to children in return proceedings more frequently^{xxxv} and, when reaching a decision on the return application, should attach importance to the child’s account of the incidents of domestic violence that occurred prior to the abduction and the impact of these incidents on him/her and/or the abducting mother. For example, in the UK, children as young as seven and half are routinely given the opportunity to be heard in return proceedings. This approach can be traced back to a 2006 House of Lords decision in the case of *Re D (Abduction: Rights of Custody)*,^{xxxvi} and is recommended here as a model to follow by judges in other contracting states.

The ‘human rights and fundamental freedoms’ exception (Article 20)

Article 20 provides that a return application may be refused if the return ‘would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.’ The Explanatory Report to the Convention emphasises the ‘clearly exceptional nature of this provision’s application’^{xxxvii} and describes the high threshold required as follows:

“[...] to be able to refuse to return a child on the basis of the article, it will be necessary to show that the fundamental principles of the requested State concerning the subject matter of the Convention do not permit it; it will not be sufficient to show merely that its return would be incompatible, even manifestly incompatible, with these principles.”^{xxxviii}

Judges across the contracting parties to the Convention, adhering to the intention of the drafters, have used Article 20 very rarely. In fact, in the UK, Article 20 has not even been

implemented as the Child Abduction and Custody Act 1985,^{xxxix} which gives effect to the 1980 Hague Convention, simply omits the provision. This should be rectified.

It should be open to abducting mothers in child abduction cases committed against the background of domestic violence to rely on Article 20 when opposing an application for return under the 1980 Convention. In the same vein, judges should be open to considering such defences to return, in particular where high-severity violence was involved and/or where limited remedies and safeguards are available to victims of domestic violence in the State of habitual residence. In such situations, returning the child and, by extension, the abducting mother to the State of habitual residence could amount to the violation of ‘the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.’^{xl}

Supplementary means

Direct judicial communication

Contracting parties to the 1980 Hague Convention should ensure that they appoint International Hague Network Judges^{xli} and that these Judges are actively involved in direct judicial communications with regard to specific cases, the objective of such communications being to address domestic violence allegations both during the return proceedings and upon the return to the State of habitual residence where a return order has been made.^{xlii}

Availability of ADR methods

The use of Alternative Methods of Dispute Resolution (‘ADR’) and specifically, mediation, for the resolution of domestic family disputes is incorporated in numerous national legislations as part of efforts to resolve family disputes as amicably as possible, although, for example in England and Wales, it has been noted that mediation is not appropriate in proceedings which have a domestic violence context.

There have been calls for extending the option of voluntary mediation in cases of international child abduction with the ultimate aim of the return of the child and reaching suitable family arrangements avoiding the court process. When

domestic violence is involved or even suspected, mediation becomes a questionable option.^{xliii} However, research has shown that voluntary mediation in international child abduction cases can be beneficial to the domestic violence victim and should not be struck out as an option without assessment on a case-by-case basis.^{xliv} Therefore, courts and central authorities should contemplate recommending the option of mediation in suitable cases. A possible test to assess

suitability could involve an expert assessment by a psychiatrist^{xlv} combined with an informed opinion of a supporting institution, such as Reunite International.^{xlvi} If the case is deemed to be suitable for mediation, the mediation must be conducted in a safe manner for all parties involved and without compromising the mental wellbeing of the victim or the child. Further, the mediator must be experienced and trained to handle the power imbalances and party dynamics of an abusive relationship.

ⁱ See B. Hale, 'Taking Flight—Domestic Violence and Child Abduction' (2017) 70 *Current Legal Problems* 7.

ⁱⁱ Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction ('1980 Hague Convention'), Arts 3 and 4.

ⁱⁱⁱ Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (adopted 25 October 1980, entered into force 1 December 1983) HCCH 28 (hereafter '1980 Hague Convention' or 'this Convention').

^{iv} The term 'domestic violence' is defined as "depending on the definition used in the relevant jurisdiction, encompass a range of abusive behaviours within the family, including, for example, types of physical, emotional, psychological, sexual and financial abuse. It may be directed towards the child ("child abuse") and / or towards the partner (sometimes referred to as "spousal abuse" or "intimate partner violence") and / or other family members." Permanent Bureau, 'Guide to Good Practice under the HCCH Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Part VI – Article 13(1)(b)' (HCCH, 2020), 9. Available at <[225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf](https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf) (hcch.net)> accessed 21 June 2023.

^v See generally the Project on Protection of Abducting Mothers in Return Proceedings: Intersection between Domestic Violence and Parental Child Abduction, available at: <<https://research.abdn.ac.uk/poam/>> accessed 21 June 2023.; Katarina Trimmings and Onyója Momoh, 'Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings' (2021) 35 *International Journal of Law, Policy and the Family* 1.

^{vi} N. Lowe and V. Stephens, 'A Statistical Analysis of Applications Made in 2015, Part I – Global Report' (Hague Conference on Private International Law (HCCH, 2017)) [10].

^{vii} See e.g., S. Shetty and J. Edleson, 'Adult Domestic Violence in Cases of International Parental Child Abduction' (2005) 11 *Violence Against Women* 115; S. De Silva, 'The International Parental Child Abduction Service of the International Social Service Australian Branch' (2006) 11 *The Judges' Newsletter* 61; J. Edleson, 'Adult Domestic Violence in Cases of International Parental Child Abduction' (2005) 11 *Violence Against Women* 115; M. Freeman, 'The Outcomes for Children Returned Following an Abduction' (Reunite Research Unit, 2003). Available at <http://takeroot.org/ee/pdf_files/library/freeman_2003.pdf> accessed 21 June 2023.; and M. Freeman, 'International Child Abduction: The Effects' (Reunite Research Unit, 2006). Available at <http://takeroot.org/ee/pdf_files/library/freeman_2006.pdf> accessed 21 June 2023.

^{viii} 1980 Hague Convention, Arts 1 and 12(1).

^{ix} E. Pérez-Vera, 'Explanatory Report on the 1980 Hague Child Abduction Convention' (HCCH, 1982), [19].

^x 1980 Hague Convention, Arts 12(2), 13 and 20.

^{xi} Permanent Bureau of the Hague Conference on Private International Law ('Permanent Bureau'), 'Draft Guide to Good Practice on Article 13(1)(B) of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction' (HCCH, 2017) [52] and [132]. Available at <<https://assets.hcch.net/docs/0a0532b7-d580-4e53-8c25-7edab2a94284.pdf>> accessed 21 June 2023.; and Permanent Bureau of the Hague Conference on Private International Law, 'Domestic and Family Violence and the Article 13 "Grave Risk" Exception on the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Reflection Paper' (HCCH, 2011) [140]. Available at <<https://assets.hcch.net/docs/ce5327cd-aa2c-4341-b94e-6be57062d1c6.pdf>> accessed 21 June 2023.

^{xii} As of 19 June 2023, there are 103 Contracting Parties to the Convention. See Hague Conference on Private International Law, 'Status Table' (HCCH, 2023). Available at <<https://www.hcch.net/en/status-table>> accessed 21 June 2023.

^{xiii} 1969 Vienna Convention of the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) UN Treaty Series 1155 331, Art 40.

^{xiv} M Thorpe, 'The Hague Child Abduction Convention – 24 Years On' (2006) 11 *Judges' Newsletter on International Child Protection* 8, 10.

^{xv} The possibility of a Protocol to amend or supplement the 1980 Hague Convention was considered by the Permanent Bureau of the Hague Conference during the Sixth Special Commission to review the operation of the Convention in June 2011. See Permanent Bureau of the Hague Conference, 'Consultations on the Desirability and Feasibility of a Protocol to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction: A Preliminary Report', (Prel. Doc. No 7, HCCH 2011). Available at <<https://assets.hcch.net/upload/wop/abduct2011pd07e.pdf>> accessed 21 June 2023. The idea was, however, not pursued and a soft law instrument in the form of a Guide to Good Practice was drafted instead.; See Permanent Bureau, 'Guide to Good Practice under the HCCH Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Part VI – Article 13(1)(b)' (HCCH, 2020). Available at <[225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf](https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf) (hcch.net)> accessed 21 June 2023. Unfortunately, domestic violence is addressed only marginally in three brief paragraphs, see paras 57-59.

^{xvi} M Thorpe, 'The Hague Child Abduction Convention – 24 Years On' (2006) 11 *Judges' Newsletter on International Child Protection* 8, 10.

^{xvii} Family Law (Child Abduction Convention) Amendment (Family Violence) Regulations 2022.

^{xviii} See The Hon Mark Dreyfus KC MP 'Ensuring family safety in Australian Hague Convention cases' (Media Release, Australian Government, 2022). Available at: <<https://ministers.ag.gov.au/media-centre/ensuring-family-safety-australian-hague-convention-cases-12-12-2022>> accessed 21 June 2023.

^{xix} Permanent Bureau of the Hague Conference, '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' (HCCH, 2011), [11]. Available at <<https://assets.hcch.net/upload/wop/abduct2011pd09e.pdf>> accessed 21 June 2023.

^{xx} Permanent Bureau, 'Guide to Good Practice under the HCCH Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Part VI – Article 13(1)(b)' (HCCH, 2020), para 57. Available at <<https://assets.hcch.net/docs/225b44d3-5c6b-4a14-8f5b-57cb370c497f.pdf>> accessed 21 June 2023.

^{xxi} *Ibid.*, para. 9.

^{xxii} E.g. *In the Matter of E (Children)* [2011] UKSC 27 (hereafter 'Re E'); and *In the Matter of S (a Child)* [2012] UKSC 12 (hereafter 'Re S'). See also *ibid.*, para. 58.

^{xxiii} *Re K (1980 Hague Convention) (Lithuania)* [2015] EWCA Civ 720, and *Re C (Children) (Abduction Article 13(B))* [2018] EWCA Civ 2834. This approach was endorsed also by the High Court in *Uhd v McKay* [2019] EWHC 1239 (Fam). See K Trimmings and O Momoh, 'Intersection between Domestic Violence and International Parental Child Abduction: Protection of Abducting Mothers in Return Proceedings' *International Journal of Law, Policy and the Family* (2021) Vol 35(1), 9.

^{xxiv} *X v Latvia* (GC) Application no. 27853/09 (ECtHR, 26 November 2013). Available at <<https://hudoc.echr.coe.int/fre?i=002-9245>>

^{xxv} See P. Beaumont et al, 'Child Abduction: Recent Jurisprudence of the European Court of Human Rights' (2015) 64 *International & Comparative Law Quarterly* 44; and O. Momoh, 'The Interpretation and Application of Article 13(1) b) of the Hague Child Abduction Convention in Cases Involving Domestic Violence: Revisiting X v Latvia and the Principle of "Effective Examination"' (2019) 15 *Journal of Private International Law* 626, 650–656.

^{xxvi} For related practical matters such as evidence, burden of proof, and factors to consider, see POAM Project Team, 'Best Practice Guide: Protection of Abducting Mothers in Return Proceedings: Intersection between domestic violence and parental child abduction' (University of Aberdeen, 2020) [5.1.3]. Available at <https://research.abdn.ac.uk/wp-content/uploads/sites/15/2022/05/Best-Practice-Guide_POAM.pdf> accessed 21 June 2023.

^{xxvii} *Re S (A Child) (Abduction: Rights of Custody)* [2012] UKSC 10 [22], and *Re C (Children) (Abduction Article 13(B))* [2018] EWCA Civ 2834 [40-41].

^{xxviii} *Re C (Children) (Abduction Article 13(B))* [2018] EWCA Civ 2834, and Permanent Bureau, 'Guide to Good Practice under the HCCH Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Part VI – Article 13(1)(b)' (HCCH, 2020) [59].

^{xxix} Examples include non-molestation orders, occupation orders, restraining orders, non-harassment orders, exclusion orders, ouster orders, domestic violence interdicts, eviction orders, prohibition of access orders, or prohibitive steps orders and other protection orders against (former) spouses, partners and cohabitants, as well as orders to protect children whose well-being is at risk.

^{xxx} So called 'soft-landing' measures. E.g. "the left-behind father purchasing return flight tickets for the mother and children to enable them to journey to the State of habitual residence; the provision of a home; financial measures, such as to pay maintenance, or for a down payment for a home, or money to obtain legal advice and to instigate proceedings relevant to the custody of the children. It is of note that soft-landing measures and protective measures may overlap. For example, measures akin to the provision of a home, or money for separate accommodation, for the mother and children share a commonality with non-occupation orders, which constitute an injunctive relief and a means of prohibiting the father from living in the same home, in order that the grave risk of harm is ameliorated" POAM Project Team, 'Best Practice Guide: Protection of Abducting Mothers in Return Proceedings: Intersection between domestic violence and parental child abduction' (University of Aberdeen, 2020) [5.1.3]. Available at <https://research.abdn.ac.uk/wp-content/uploads/sites/15/2022/05/Best-Practice-Guide_POAM.pdf> accessed 21 June 2023.

^{xxxi} Regulation (EC) No 2201/2003 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility 2003 OJL 338 1 (hereafter 'Brussels IIa Recast Regulation').

^{xxxii} Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters 2013 OJL 181 4 (hereafter 'Protection Measures Regulation').

^{xxxiii} Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (adopted 19 October 1996, entered into force 1 January 2002) HCCH 34 (hereafter '1996 Hague Convention').

^{xxxiv} See POAM Project Report – United Kingdom, p. 85 and POAM Project Report – Italy, p. 3. Available at <<https://research.abdn.ac.uk/poam/resources/reports/>> accessed 21 June 2023.

^{xxxv} In the UK, this approach can be traced back to a 2006 House of Lords decision (*Re D (Abduction: Rights of Custody)* [2006] UKHL 51), and is recommended here as a model to follow by other contracting states.

^{xxxvi} [2006] UKHL 51.

^{xxxvii} Elisa Pérez-Vera, 'Explanatory Report on the 1980 Hague Child Abduction Convention' (HCCH, 1982), [118]. Available at <<http://hcch.e-vision.nl/upload/expl28.pdf>> accessed 21 June 2023.

^{xxxviii} *Ibid.*

^{xxxix} Child Abduction and Custody Act 1985, c. 60. Available at <<https://www.legislation.gov.uk/ukpga/1985/60/contents>> accessed 21 June 2023.

^{xl} This approach has been proposed by several academic commentators. See e.g., M H Weiner, 'Using Article 20' (2004-2005) 38 *Fam.L.Q.* 583; M H Weiner 'Strengthening Article 20' [2005] *IFL* 209; and K S Mast, 'The Application of the Fundamental Principles Exception of the Hague Convention on the Civil Aspects of International Child Abduction' (2003) 17 *Emory Int'l L.Rev.* 241, 262 and 265.

^{xli} As of June 2023, the International Hague Network of Judges (IHNJ) consists of 152 judges from 88 States. See Permanent Bureau, 'International Hague Network of Judges.' Available at <[665b2d56-6236-4125-9352-c22bb65bc375.pdf \(hcch.net\)](https://www.hcch.net/en/ihnj)> accessed 21 June 2023.

^{xlii} See Permanent Bureau, 'Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges' (HCCH, 2013). Available at <[62d073ca-eda0-494e-af66-2ddd368b7379.pdf \(hcch.net\)](https://www.hcch.net/en/ihnj/communications)> accessed 21 June 2023.

^{xliii} Experts who consider mediation inappropriate in cases involving domestic violence note that: (i) the mediation process can incur risk of physical or mental harm to the victim, especially in face-to-face mediation; (ii) coming in contact with the abuser might retraumatise the victim; (iii) mediation is founded on the objective of finding a mutually agreeable solution to an issue and therefore, by definition, becomes inappropriate when domestic violence is involved – reaching agreement results in no-punishment, and even, legitimisation of a crime; (iv) existence of domestic violence many times comes in hand with broken down communication and severe power imbalances between abuser and victim, therefore the process becomes unsuitable since the victim cannot voice concerns in an equal manner to the abuser. See Permanent Bureau, 'Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Mediation' (HCCH, 2012), 73. Available at <<https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>> accessed 21 June 2023.

^{xliiv} Proponents in favour of mediation argue that there are ways to safely adapt the mediation process for cases involving domestic violence by (i) expert screening of all cases of international child abduction (even when there is no mention of domestic violence), (ii) the mediation to be conducted in a manner comfortable to the victim and if necessary, without any direct contact, (iii) the mediator being trained to identify signs of and handle instances of domestic violence. Additionally, mediation must be examined as an option relative to court proceedings. Research has shown that for a domestic violence victim, court proceedings can quickly become a hostile environment (especially when the victim is cross examined on the evidence of domestic violence allegations) and the experience is re-traumatising the victim. Instead, in mediation, the expert mediator is aware that the victim requires space to voice concerns and the process is structured to empower the victim. See Permanent Bureau, 'Guide to Good Practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – Mediation' (HCCH, 2012), 73. Available at <<https://assets.hcch.net/docs/d09b5e94-64b4-4afe-8ee1-ab97c98daa33.pdf>> accessed 21 June 2023.

^{xliv} Or other expert of the medical field, with the intention of ascertaining that the domestic violence victim is physically and mentally fit to participate in the mediation.

^{xlvi} Reunite International, a non-profit organisation focused on international child abduction cases, facilitates mediation in cases of international child abduction and urges stakeholders involved to not dismiss the option of mediation even if there is domestic violence involved. Instead, suitability of mediation should be assessed on a case-by-case basis by an expert mediator, who is best suited to understand the different dynamics and power imbalances formed within relationships. See Reunite International, 'Mediation Process' (Reunite International, 2023). Available at <<https://www.reunite.org/mediation-process/>> accessed 21 June 2023.