



INTERACTION OF THE 1980 HAGUE CONVENTION AND DOMESTIC VIOLENCE IN INTERNATIONAL CHILD ABDUCTION CASES

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ABSTRACT

This article examines the complex challenges faced by mothers who abduct their children internationally to escape domestic violence, focusing on the implications under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. These mothers encounter costly and intricate cross-border legal proceedings, and a court-ordered return may force them back into the abusive environment they fled. The study explores strategies to enhance protections for these vulnerable mothers during return proceedings, proposing judicial and legislative measures to address their plight. It also investigates the intersection of international child abduction law and refugee law, particularly when domestic violence allegations are involved. Special attention is given to Article 20 of the Convention, highlighting the increasing use of asylum claims as a defense against return orders and the associated human rights implications. The article identifies a critical area for further research: the relationship between domestic violence and asylum claims, emphasizing the need for a nuanced approach to balance the Convention's objectives with the safety and rights of abducting mothers and their children.

Keywords: 1980 Hague Convention; domestic violence; international refugee law; 1951 Refugee Convention; best interests of the child; Article 20

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1. INTRODUCTION

This article investigates the challenges surrounding domestic violence within the framework of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. It focuses on the circumstances of mothers who cross international borders with their children to escape domestic violence perpetrated by the left-behind father, only to face complex return proceedings under the Convention. The study explores how these mothers navigate the legal intricacies of such cases and the implications of their actions in the context of international family law. Additionally, it examines the intersection between international child abduction law and international refugee law when allegations of domestic violence arise, drawing on key studies for insight (e.g., Hegar & Greif, 1994; Norris, 2010; Hayman, 2018; Al-Shargabi, 2022). The article delves into the principle of the "best interests of the child" as a critical consideration in abduction cases involving domestic violence, analyzing its application in judicial decisions. Furthermore, it proposes a range of judicial and legislative interventions to better protect abducting mothers during return proceedings under the 1980 Hague Convention, aiming to address their vulnerabilities and ensure their safety. By highlighting these issues, the article seeks to contribute to a deeper understanding of how legal frameworks can better balance child welfare with the protection of mothers fleeing abusive environments.

2. THE ISSUE OF DOMESTIC VIOLENCE WITHIN THE FRAMEWORK OF THE 1980 HAGUE CONVENTION

The 1980 Hague Convention on the Civil Aspects of International Child Abduction establishes a global mechanism to ensure the prompt return of children wrongfully removed or retained across international borders. However, the application of this framework becomes particularly complex when domestic violence is a factor in these cases. Statistical data from the Hague Conference on Private International Law (2017) reveals that in 2015, 73% of abducting parents were mothers, a 4% increase from 1999, while the proportion of abducting fathers decreased from 30% to 24% over the same period (Permanent Bureau of the Hague Conference on Private International Law, 2017). These figures highlight a significant trend: mothers are increasingly the primary abducting parents, often citing domestic violence by the left-behind father as their motivation for fleeing with their children (Weiner, 2000; Brown Williams, 2011; Hale, 2017; Trimmings & Momoh, 2021; Masterton et al., 2022). While comprehensive global statistics are lacking, estimates suggest that domestic violence may be a factor in up to 70% of parental child abduction cases, underscoring the scale of this issue (Trimmings & Momoh, 2021).

Mothers who abduct their children to escape abusive environments face significant challenges during return proceedings under the 1980 Convention. These proceedings are often costly and legally intricate, requiring the mother to navigate complex cross-border legal systems. If a return order is issued, the mother may be compelled to return

to the abusive situation she sought to escape, placing her and her child at further risk (Masterton et al., (2022)). To avoid this outcome, the abducting mother must demonstrate to the court that returning the child would expose them to a "grave risk of harm" or place them in an "intolerable situation," as stipulated under Article 13(1)(b) of the Convention. This burden of proof is particularly daunting, as it requires substantiating claims of domestic violence in a manner that satisfies the court's stringent criteria, often without sufficient evidence or resources (Brown Williams, 2011).

The vulnerability of these mothers is compounded by several factors. If they choose not to accompany their child back to the state of habitual residence, they risk separation from their child, who may be returned to the custody of the left-behind parent. Alternatively, returning with the child may expose the mother to renewed abuse, financial dependency on the abuser, or, in extreme cases, homelessness (Masterton et al., 2022). These outcomes highlight a critical gap in the Convention's framework, which primarily focuses on the child's return without explicitly addressing the safety of the abducting parent.

In some instances, mothers fleeing domestic violence may seek refugee status under the 1951 Convention Relating to the Status of Refugees and its 1967 Optional Protocol (Zimmermann, 2011). At the European Union level, additional legal instruments, such as the Brussels IIa Regulation, may also apply (Kruger & Samyn, 2016). Furthermore, soft law instruments, such as the principles and guidelines on the human rights protection of migrants in vulnerable situations, emphasize the need to protect individuals who may not qualify as refugees but are nonetheless at risk (Office of the High Commissioner for Human Rights, 2018). When return proceedings under the 1980 Hague Convention coincide with asylum applications, complex legal interactions arise. For example, a left-behind father may initiate return proceedings during or after asylum proceedings, raising questions about whether a return order could violate the principle of non-refoulement, which prohibits returning individuals to a country where they face persecution or serious harm (Office of the High Commissioner for Human Rights, 2018). This interplay between international family law and refugee law underscores the need for a more integrated approach to ensure the protection of both the child and the abducting mother in cases involving domestic violence.

3. THE SIGNIFICANCE OF THE BEST INTERESTS OF THE CHILD IN HAGUE CONVENTION PROCEEDINGS

The 1980 Hague Convention on the Civil Aspects of International Child Abduction aims to ensure the prompt return of children wrongfully removed or retained across international borders, but a central challenge lies in prioritizing the best interests of the child, particularly in cases involving allegations of domestic violence. This principle, widely recognized in international family law, becomes complex when applied to abduction cases where the mother flees with her child to escape an abusive environment. The Convention's framework seeks to protect children from the harmful

effects of wrongful removal, yet the presence of domestic violence introduces unique considerations that may justify exceptions to the default return mechanism (Pérez-Vera, 1982). This section explores how the best interests of the child are interpreted and applied within the context of the 1980 Hague Convention, with a focus on cases involving domestic violence, and examines the interplay with other legal frameworks such as the United Nations Convention on the Rights of the Child (UNCRC).

In the European Union, the Brussels IIa Regulation has historically emphasized the best interests of the child in intra-EU abduction cases, highlighting the need for decisions to prioritize child welfare (Kruger & Samyn, 2016). However, scholars like Kruger and Samyn (2016) argue that referencing the UNCRC explicitly would strengthen the Regulation's clarity and credibility. The Brussels IIa Recast Regulation, now in effect, reinforces this by stating in its preamble that parental responsibility matters should be shaped with the child's best interests as the guiding principle. This development reflects a growing recognition of the need to align regional and international legal frameworks. Over a decade after the 1980 Hague Convention's adoption, Dyer (1993) compared its ratification to that of the UNCRC, noting that the Hague Convention had only 30 contracting states, a fraction of the UNCRC's ratifications (Dyer, 1993). Dyer argued that the Hague Convention imposes stricter, more specific obligations than the broader, more universally accepted principles of the UNCRC, requiring courts to exercise discipline and adopt new perspectives to meet these demands (Dyer, 1993). Today, these treaties are increasingly viewed as complementary, with neither taking precedence over the other in isolation.

The Hague Convention's preamble emphasizes the "interests of children," framing wrongful removal or retention as generally contrary to their well-being (Pérez-Vera, 1982). The Explanatory Report to the Convention clarifies that preventing such removals is a core objective, embodying the best interests of the child by protecting them from the adverse effects of abduction (Pérez-Vera, 1982, para. 24; Chamberland, 2012). However, in cases involving domestic violence, strict adherence to this principle may be inappropriate or even harmful. Convention provides an exception to return when there is a "grave risk" that the child would be exposed to physical or psychological harm or placed in an "intolerable situation." In such cases, courts often argue that returning a child to an environment of domestic violence contradicts their best interests (Chamberland, 2012). The Hague Conference's Guide to Good Practice on Article 13(1)(b) seeks to standardize the application of this exception, though its impact remains under evaluation (Permanent Bureau of the Hague Conference on Private International Law, 2020). Critics argue that the exception does not sufficiently protect victims of domestic violence and their children, as courts may prioritize prompt return over a thorough risk assessment (Vesneski et al., 2011; Weiner, 2003).

Research by Vesneski, Lindhorst, and Edleson (2011) suggests that court decisions under often fail to adequately protect battered women and their children, placing them on a challenging path to prove grave risk (Vesneski et al., 2011). Weiner (2003) goes

further, asserting that the Hague Convention creates significant barriers for women escaping domestic violence, offering little hope for those fleeing with their children (Weiner, 2003). Weiner argues that returning a child to a context of serious domestic violence is rarely in their best interest, a view echoed by Norris (2010), who advocates for courts to prioritize the best interests of the child over the Convention's emphasis on prompt return (Norris, 2010). Pretelli (2021) highlights the "double bind" faced by women in these cases, caught between protecting themselves and their children and navigating a legal system that may compel their return to an abusive environment (Pretelli, 2021). Pretelli emphasizes the need for universal principles, such as the best interests of the child, to guide decision-making in abduction cases (Pretelli, 2021).

Conversely, Browne (2011) cautions against over-relying on the best interests principle, arguing that it risks introducing gender stereotypes common in custody disputes (Browne, 2011). Browne suggests that a detailed best interests inquiry could complicate the Convention's summary proceedings, which are designed to avoid in-depth examinations of custody merits (Beaumont & Walker, 2013; Silberman, 2011; Pérez Manrique, 2012). The Hague Convention's focus is on determining whether a wrongful removal has occurred and whether return is appropriate, not on resolving underlying custody disputes. Thus, the best interests principle in this context is narrowly construed to assess whether return aligns with the child's immediate welfare, particularly in light of potential harm from domestic violence.

The application of the best interests principle must also consider the specific circumstances of the child in return proceedings. For instance, exposure to domestic violence, whether directed at the child or the mother, can constitute a grave risk under. Courts increasingly recognize that domestic violence against a parent can indirectly harm the child, creating an intolerable situation (Permanent Bureau of the Hague Conference on Private International Law, 2020). This perspective aligns with evolving judicial interpretations, such as those in the UK, where courts have acknowledged that a mother's mental health, affected by domestic violence, can impact her ability to care for the child, thus triggering the grave risk exception (Hale, 2017). However, challenges remain in ensuring consistent application across jurisdictions, as some courts adhere to a strict interpretation of "grave risk," requiring direct evidence of harm to the child rather than the parent (Trimming & Momoh, 2021).

The interplay between the Hague Convention and the UNCRC further complicates the application of the best interests principle. The UNCRC's broader focus on child welfare, including protection from abuse and neglect, complements the Hague Convention's narrower objective of preventing wrongful removals. In cases of domestic violence, the UNCRC's principles may support arguments for non-return, particularly when return would expose the child to harm or an unsafe environment. The European Court of Human Rights has also emphasized the need for an "effective examination" of domestic violence allegations in Hague Convention cases, as seen in *X v Latvia*, advocating for a thorough yet expeditious review to balance speed with child safety.

(Beaumont et al., 2015; Momoh, 2019). This approach underscores the importance of integrating human rights considerations into return proceedings, ensuring that the best interests of the child are not overshadowed by the Convention's procedural objectives.

In conclusion, the best interests of the child remain a cornerstone of Hague Convention proceedings, but their application in domestic violence cases requires careful consideration. The Convention's focus on prompt return must be balanced against the need to protect children from harm, particularly when domestic violence is a factor. Judicial interpretations, supported by frameworks like the UNCRC and regional regulations, play a critical role in ensuring that decisions prioritize the child's welfare while addressing the vulnerabilities of abducting mothers. Ongoing efforts to refine the application and integrate human rights principles reflect a growing awareness of the need for a more nuanced approach to these complex cases.

4. ENSURING THE SAFETY OF ABDUCTING MOTHERS IN HAGUE CONVENTION RETURN PROCEEDINGS

The 1980 Hague Convention on the Civil Aspects of International Child Abduction prioritizes the prompt return of children wrongfully removed or retained across international borders, yet it often overlooks the safety of the abducting parent, particularly mothers fleeing domestic violence. When determining whether an exception to return applies, the Convention focuses primarily on the child's situation, with no explicit consideration for the safety of the abducting mother (Trimmings & Momoh, 2021). This gap is particularly concerning in cases where mothers, often the primary caregivers, flee abusive environments only to face the prospect of returning to the same dangerous circumstances if a return order is issued. Although it is not mandatory for the mother to accompany the child back to the state of habitual residence, many do so to avoid separation, compromising their own safety (Masterton et al., 2022). This section analyzes judicial and legislative approaches to safeguard these mothers, drawing on case law, proposing interpretive adjustments, and exploring alternative dispute resolution (ADR) mechanisms. It highlights the need for a more integrated approach that aligns private international law with public international law principles, particularly human rights frameworks (Mills, 2009).

4.1. Case-Law Analysis and Suggestions for Judicial Interpretations

The application of the 1980 Hague Convention in cases involving domestic violence requires careful judicial interpretation to balance the Convention's objectives with the protection of vulnerable mothers. This subsection examines key exceptions under the and proposes interpretive strategies to enhance safeguards for abducting mothers.

4.1.1. The 'Grave Risk of Harm' Exception (Article 13(1)(b))

Hague Convention allows courts to refuse a child's return if there is a "grave risk" that it would expose the child to physical or psychological harm or place them in an "intolerable situation" (Permanent Bureau of the Hague Conference on Private

International Law, 2020). This exception is frequently invoked by mothers who have fled domestic violence, as it provides a potential defense against return orders sought by the left-behind father. In 2015, was the most commonly cited ground for refusing return, accounting for 25% of judicial refusals (Permanent Bureau of the Hague Conference on Private International Law, 2017). However, the undefined terms “grave risk” and “intolerable situation” leave significant interpretive discretion to domestic courts, often resulting in inconsistent application (Brown Williams, 2011, p. 62; Pérez-Vera, 1982).

Correlation Between Domestic Violence and Grave Risk to the Child

Historically, courts adopted a narrow interpretation, requiring direct evidence of harm to the child. Only in the past decade have some jurisdictions, notably the UK Supreme Court, recognized that domestic violence against the mother can indirectly create a grave risk of harm to the child (Hale, 2017, Quillen, 2014, Brown Williams, 2011). This shift acknowledges that a child’s exposure to violence against their mother whether through witnessing abuse or experiencing its ripple effects can constitute an intolerable situation (Permanent Bureau of the Hague Conference on Private International Law, 2020). However, not all jurisdictions accept this correlation, with some requiring evidence that the child is directly harmed, thus limiting the defense’s effectiveness (Zashin, 2021, Trimmings & Momoh, 2021).

The term “intolerable situation” has been interpreted to mean circumstances that a specific child, in their particular context, should not be expected to endure (Trimmings & Momoh, 2021). For example, courts have recognized that a mother’s compromised mental health due to domestic violence can impair her ability to care for the child, creating an intolerable situation (Permanent Bureau of the Hague Conference on Private International Law, 2020). The UK Supreme Court has further clarified that the source of the risk—whether objective or based on the mother’s subjective perception is irrelevant if the court determines that return would destabilize her parenting to the point of harming the child (Hale, 2017). This approach allows mothers to invoke based on intense anxieties about returning, even if those anxieties lack an objective basis, provided they are critically examined and cannot be mitigated by protective measures.

Assessment of Domestic Violence Allegations

Courts typically employ a “protective measures approach” when assessing claims, which involves a two-step process: first, determining whether the allegations, if true, would constitute a grave risk to the child; and second, evaluating whether protective measures in the requesting state can mitigate that risk (Trimmings & Momoh, 2021). If adequate measures exist, courts often defer to the requesting state’s legal system to resolve substantive issues, assuming it is better equipped to handle custody disputes (Trimmings & Momoh, 2021). However, this approach has significant flaws. It assumes the availability of effective protective measures without first establishing the veracity of domestic violence allegations, potentially trivializing the mother’s claims

(Trimmings & Momoh, 2021). This can lead to premature reliance on hypothetical protections, leaving mothers and children vulnerable upon return.

An alternative, more robust approach the “assessment of allegations approach” prioritizes evaluating the merits of domestic violence claims within the summary nature of return proceedings (Trimmings & Momoh, 2021). This method involves a thorough but expeditious examination of the allegations to determine whether a grave risk exists before considering protective measures. The European Court of Human Rights, in *X v Latvia*, endorsed this approach, emphasizing the need for an “effective examination” that is thorough, limited, and swift (Beaumont et al., 2015; Momoh, 2019). This approach ensures that courts do not sidestep the critical task of assessing the risk posed by domestic violence, even if it extends the duration of proceedings. Speed, while important, should not override the need to protect the child and mother from harm.

Protective Measures

The effectiveness of protective measures is crucial for ensuring the safety of returning mothers and children. In the UK, courts consider a broad range of measures, including access to legal services, state assistance, housing, health services, and women’s shelters (Trimmings & Momoh, 2021, Munby, 2018). However, this expansive view may dilute focus on measures directly addressing domestic violence, such as court-issued protection orders (Trimmings & Momoh, 2021). Common law jurisdictions often rely on “undertakings” promises made by the left-behind parent to address the mother’s concerns but these are frequently ineffective due to limited enforceability, especially in civil law jurisdictions (Trimmings & Momoh, 2021, Zashin, 2021). Breaches of undertakings are common, and their lack of recognition across borders undermines their utility (Brown Williams, 2011).

In intra-EU cases, the Brussels IIa Recast Regulation and the Protection Measures Regulation facilitate the cross-border recognition and enforcement of protective measures (Trimmings & Momoh, 2021). The 1996 Hague Convention also supports this in contracting states, but where the state of habitual residence is not a party, judges must exercise caution (Trimmings & Momoh, 2021). Even when legal mechanisms exist, protection orders are often breached, and follow-up by authorities may be inadequate. Courts should avoid conditioning return orders on protective measures in cases of severe violence, as the risk of future harm may be too great.

Evidence-Related Challenges

Mothers invoking face significant evidentiary hurdles. The burden of proof lies with the abducting parent, yet there is no universal standard for what constitutes sufficient evidence of grave risk (Brown Williams, 2011). Domestic violence is often difficult to substantiate due to its private nature, and evidence may be unavailable or uncorroborated. The Convention’s emphasis on prompt return further complicates matters, as courts may prioritize speed over a thorough evidence review (Brown Williams, 2011). The POAM Project’s Best Practice Guide offers valuable guidance, providing an “evidence roadmap” for handling documentary and oral evidence in return

proceedings involving domestic violence (POAM Project Team, 2020). This resource helps courts navigate evidentiary challenges while ensuring a fair assessment of the mother's claims.

4.1.2. The 'Child Objections' Exception (Article 13(2))

Allows courts to refuse return if the child objects and has reached an age and maturity level where their views should be considered. In domestic violence cases, this exception is often used alongside, as children may express objections based on their experiences of abuse (Trimmings et al., 2020, p. 85; Honorati, 2020). Courts should actively listen to children, giving weight to their accounts of domestic violence and its impact on them and their mother. In the UK, children as young as seven and a half are routinely heard in return proceedings, a practice stemming from the 2006 House of Lords decision in *Re D (Abduction: Rights of Custody)* (Freeman & Hutchinson, 2007). This approach serves as a model for other jurisdictions, encouraging judges to prioritize the child's voice in assessing the risks of return.

4.1.3. Human Rights Considerations (Article 20)

Permits courts to refuse return if it would violate the fundamental principles of the requested state relating to human rights and freedoms (Pérez-Vera, 1982, Trimmings & Beaumont, 2014). Unlike a public policy clause, Article 20 focuses on the interplay between the Convention's objectives and international human rights obligations, particularly when domestic violence is alleged (Weiner, 2004). Despite its potential, rarely invoked successfully, often serving as a secondary argument (Trimmings & Beaumont, 2014).

Grounds refusals in the requested state's national laws, which are often shaped by international human rights treaties, such as the UNCRC, the 1951 Refugee Convention, and the European Convention on Human Rights (ECHR) (Zimmermann, 2011). In domestic violence cases, mothers may argue that return would expose them or their child to persecution, invoking protections under the 1951 Refugee Convention, particularly the principle of non-refoulement (UN High Commissioner for Refugees, 1990). For example, women as a social group may claim asylum if their state of habitual residence fails to protect them from domestic violence, a form of persecution (Momoh, 2023). Cases like *Walsh v Walsh* and *State Central Authority v Mander* demonstrate that courts may refuse return when protective measures are ineffective due to the left-behind parent's history of non-compliance (Trimmings & Momoh, 2021).

The landmark UK case *G v G* illustrates the interplay between Article 20 and asylum claims. The mother, fleeing domestic violence and facing mental health challenges, applied for asylum in England, including her child as a dependent. The UK Supreme Court held that a child named as a dependent in an asylum application is protected by non-refoulement, preventing the implementation of a return order (Home Office, 2021). This decision established that return proceedings must respect asylum protections, with the Secretary of State responsible for determining asylum claims. However, jurisdictions like the US and Canada have been less consistent, with some

courts treating asylum grants as a “rebuttable presumption” rather than a bar to return (*AMRI v KER*; *Sanchez v RGL*). Recent Canadian jurisprudence, such as *M.A.A v D.E.M.E*, aligns more closely with the UK, prohibiting return orders for children with pending asylum applications (Trimmings & Momoh, 2021).

4.2. Legislative Interventions

To address the shortcomings of the Hague Convention in protecting abducting mothers, legislative reforms at both global and domestic levels are essential.

4.2.1. Global Level

Amending the 1980 Hague Convention

Amending the Convention to include specific protections for mothers fleeing domestic violence is a potential but challenging solution. Proposals include creating a dedicated exception for domestic violence or establishing a separate procedural pathway for such cases, incorporating provisions for evidentiary standards, legal aid, ADR, judicial communication, and psychological support (Thorpe, 2006). However, amending an international convention with over 100 contracting states is a complex process requiring unanimous consent, making it highly impractical (Thorpe, 2006).

Adopting a Protocol to the 1980 Hague Convention

A more feasible option is adopting a Protocol to the Convention, allowing like-minded states to strengthen protections without requiring universal agreement (Thorpe, 2006). While this approach limits the Protocol’s scope, it could standardize protections for abducting mothers in participating states, addressing issues like evidence, legal aid, and protective measures (Permanent Bureau of the Hague Conference on Private International Law, 2011).

4.2.2. Domestic Level

At the national level, countries can amend domestic legislation to prioritize the safety of abducting mothers. Australia’s 2022 Regulations serve as a model, explicitly recognizing domestic violence as a factor without requiring proof of past or future violence (The Hon Mark Dreyfus KC MP, 2022). Such laws could also include provisions for legal aid, ADR, and judicial communication to support mothers during return proceedings (Trimmings et al., 2023).

4.3. Alternative Avenue: ADR/Mediation

Mediation offers a potential alternative to litigation in Hague Convention cases, but its use in domestic violence cases is controversial. Critics argue that mediation may delay access to protective court orders, risk re-traumatization, and exacerbate power imbalances between the victim and abuser (González Martín, 2014, Permanent Bureau of the Hague Conference on Private International Law, 2012). Additional challenges include cross-border complexities, such as cultural differences and language barriers (González Martín, 2014).

Despite these concerns, mediation can offer benefits, particularly when tailored to the victim’s needs. It allows mothers to negotiate arrangements that address custody, visitation, and living conditions, potentially mitigating the harsh consequences of

return, such as renewed abuse or homelessness (Masterton et al., 2022. Quillen, 2014). Mediation can also lead to agreements that reduce the likelihood of criminal prosecution for abduction (Alanen, 2008). Techniques like online or shuttle mediation, where parties do not meet face-to-face, can enhance safety and empower the victim to voice her concerns (Vigers, 2011, Whatling, 2012). Experienced mediators trained in domestic violence can address power imbalances, ensuring a fair process (Kucinski, 2010).

For mediation to be effective, it must be voluntary, informed by independent legal advice, and conducted by mediators trained to identify and address domestic violence. A case-by-case assessment is critical to determine suitability, maximizing the potential for positive outcomes for mothers and children (González Martín, 2014).

5. CONCLUSIONS

The 1980 Hague Convention on the Civil Aspects of International Child Abduction aims to secure the swift return of children wrongfully removed across borders, but its application in domestic violence cases reveals significant challenges. When mothers flee abusive environments with their children, they face complex, costly legal proceedings that may force them back into danger. The Convention's focus on the child's prompt return often overlooks the safety of the abducting mother, creating a critical gap in protection. This article highlights the need for judicial and legislative reforms to address these vulnerabilities, emphasizing the importance of safeguarding both the child and the mother.

Key exceptions, such as, allow courts to refuse return if it poses a grave risk of harm to the child, but inconsistent interpretations and evidentiary hurdles limit their effectiveness. Though underutilized, offers potential by linking return decisions to human rights principles, particularly when asylum claims are involved. The intersection of the Convention with refugee law, as seen in cases like *G v G*, underscores the need for a balanced approach that respects non-refoulement obligations.

Proposed solutions include adopting a Protocol to the Convention to standardize protections for mothers fleeing domestic violence and implementing domestic laws, like Australia's 2022 Regulations, to prioritize their safety. Alternative dispute resolution, when carefully tailored, can also mitigate the risks of return proceedings. Ultimately, a more integrated legal framework that aligns the Convention's objectives with human rights obligations is essential to protect vulnerable mothers and their children, ensuring that the best interests of the child are upheld without compromising maternal safety.

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