



Aalborg University
Department of Politics and Society
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The Runaway Moms:
A Two Cases Study on Deconstruction of Gender and The
Application of The 1980 Hague Convention on the Civil Aspects
of International Child Abduction



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Nathália Santos Pezzi

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Abstract

This thesis analyses, through a case study, how can gender, and gender deconstruction perspectives influence in the application of The 1980 Hague Convention in Brazil. This application refers to the first decisions in court of the country of abduction, that has its solely verdict the assurance of the prompt return of the child to the country of habitual residence, or the non-return in exception cases. Those exceptions include the non-return in the possibility that the child could suffer psychological or physical harm. The cases of Ghisi and Goldman were used for the analysis of the phenomena and the implications that gender has in it. Both cases involve mothers that have “runaway” with their children back to their home countries. However, the two women had different reasons and outcomes to their cases.

Keywords: Children’s Rights, International Child Abduction; Gender; Gender Deconstruction; 1980 Hague Convention; Brazil; Brazilian International Law.

1. Introduction

In an increasingly interconnected world, with rise in migration, tourism and exchange of culture. There is a growth in the phenomenon of intercultural marriages, or in other, marriages involving people from different countries. This trend has led to a fascinating mix of cultures, languages, and traditions, enriching societies worldwide. However, it holds implications for society in terms of family dynamics, since with the growth of marriages, there's in consequence, the growth in divorces. Divorces involving people from different countries can presents unique challenges, including those related to the welfare and custody of children.

In cases of divorces or separations of couples that have children, there can be conflict with who should be the holder of the child(ren) custody. This is not different in cases of families in which the parents come from different countries. Custody decisions can be diverse as the rules are different according to the country in which they were decided. Some can hold full custody or shared custody. The case of a shared custody, for example, could trammel the wish of one parent to come back to their home country. Since they would need the authorization of the other holders of custody rights to move. There are many other possibilities in which one of the parents could wish to move away, more likely to their home country, and would like to bring their children along.

This wish, notwithstanding, can develop into an International Child Abduction. Meaning that the parent (or even just a relative or a caregiver) could, with the willingness to move away and have their children with them, bring a child to a country different from where they habitually reside, without the authorization of all the ones who have the custody rights. Addressing this as an international concern, due to the rise in numbers. In 1980, The Hague Convention on the Civil Aspects of International Child Abduction¹ has been signed and ratified by multiple countries. This establishes a legal framework for the prompt return of children who have been wrongfully removed from their country of habitual residence or that are retained in a different country. The 1980 Convention grant a process for cooperation between the Signatory Nations, ensuring that children are returned so that custody and visitation disputes can be resolved in the jurisdiction of their habitual residence. Its objective

¹ Hague Conference on Private International Law. **Hague Convention on the Civil Aspects of International Child Abduction.** 25 October 1980. Hague XXVIII. Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>. Last accessed 14th January 2023.

is to secure the well-being and best interest of the child and prevent parental abduction across national borders.

So far, this Convention is the biggest hope for parents or caregivers whose children have been taken away to different countries. However, in the other side, what the parents who abducted? Or have been accused of abduction? This was the case for two mothers in the two different cases analysed in this research. The cases of Goldman and Ghisi were similar in some ways. They were two mothers that for different reasons decided to move back to their home country, bringing their underage children. Yet those two women had very different outcomes as a consequence of this action. Both mothers had faced their first court decision in Brazilian justice system, since they had runaway to Brazil.

As the country of abduction, Brazilian government had to guarantee the prompt and safe return of the child. However, this first decision made by Brazilian justice is only to reassess that the case is valid and to be definite that the case is not an exception. The exception put by the Article 13² says that in case where there's risk of harm (both psychological and physical), the child should not be returned. In both the cases of Goldman and Ghisi the just mentioned article was evoked by their lawyers, but one case was considered an exception and the other not. Meaning that, in the first decision, one of the children was given back to the country of habitual residence and the other had the custody granted to the abductor.

When coming across with the first decisions of the two cases, a hidden component is present in both cases: gender. In the case of Goldman, it is represented in the justification for the non-return of the child: "the child will be mostly harmed without the mother". In the case of Ghisi, it is represented by the accusations of domestic violence of Ghisi being dismissed in the first decision as a possibility of harm to the child. As those two gender related topics, respectively gender norms and gender-based violence, have influenced first court decisions in International Parental Child Abduction cases.

The cases have sparked the research question:

² The 1980 Hague Convention on the Civil Aspects of International Child Abduction, Article 13.

In the Brazilian context. How can gender and gender deconstruction perspectives influence in the application of the first decisions of International Child Abduction (under The 1980 Hague Convention)?

The theoretical choice for a post structuralism approach of gender was preferred because it sees gender as a discourse constructed by society³. If it is a notion constructed by society, it means it is a volatile belief, it can be deconstructed, it can be changed, transformed, and give space to new mindsets. When deconstructing the traditional ideas of gender, or gender norms, it is possible to reveal structural inequalities that could otherwise be overlook. If this deconstruction is applied in first decisions of International Child Abduction, would the outcomes differ in a broad way? Having in mind that The 1980 Hague Convention is an international policy and thus not have a discourse, interpretations that deconstruct gender are open to be implemented in their applications.

With the intention of responding to the research question the Thesis was outlined with the following structure. At first there's description of the cases so that it is possible to follow the next chapter with the cases in mind. The next two chapters explains the methods of a case study, how the data was collected, and reviews how the themes that the research is involved in are approached by previous studies. In order to better understand the context there is a background analysis on Brazil and gender, as well as a description on the Hague Convention. This is followed by a gender perspective analysis on how gender is approached in cases involving The 1980 Hague Convention. After giving enough context the discussion on two cases is approached and it opens the space for the conclusions that aim to answer the research question.

2. The cases

2.1 Goldman Case

In June 2004, the mother of 4-year-old Sean Goldman brought him from the USA, where he lived with this family, for a “one month” holiday with the Brazilian side of the family, and never came back. This is the start of the most famous case of the application of The Hague Convention in Brazil. Bianchi, the mother of the Goldman's child, who is Brazilian, has by

³ JATOBA. **Teoria das Relações Internacionais**. São Paulo: Editora Saraiva, 2013, p.105.

herself decided to move back to Brazil, file for a divorce, and in the Brazilian legal system has applied for full and exclusive custody, which she has received.

This decision has violated the father's right's conceived by The 1980s Hague Convention. In the timing considered valid by the Convention, Goldman has entered with a case of International Child Abduction under the light of the Convention, which opened a request to Brazil for the prompt return of the child to the country of habitual residence (in this case The United States of America). Goldman decided to do the same as Bianchi and have also entered with a custody request in the North American court, which has given him the full custody.

In the requested court case in the Brazilian justice under The 1980 Hague Convention, it has been decided that the child shouldn't be returned to the USA, and that he should stay in the custody of the mother. This decision was sustained by the Article 13⁴ of the Convention, with the argument that the child would suffer psychological damage from being apart from her. Another argument was that the kid has stayed "too long" in the country and was already adapted, even though the father had entered with the case in the required time. According to Del'Olmo, the Brazilian justice understood the illegality of the way the child was brought to/kept in Brazil, however, decided that this was an exception type of case⁵. This case has continued further with the accidental death of Bianchi, and the reinstated fight for the custody by the father, who in 2009 finally recover the custody.

Sean Goldman case is particularly interesting for many reasons. Besides the big involvement of the media; of the government (even of famous politicians from both countries, like Hillary Clinton, that was the USA State Secretary) and the diplomatic crisis it has created. In this case, Bruna Bianchi Carneiro Ribeiro, Sean's mother, has never accused David George Goldman, the father, of domestic violence of any sort. The mother was not running away from an abusive relationship or a gender based violence. There's no confirmed reason for the reason, yet it is a fact that Bianchi wanted to be out of the relationship and to get full custody of her child, as she filled for divorce and full custody.

⁴ The 1980 Hague Convention on the Civil Aspects of International Child Abduction, Article 13.

⁵ DEL'OLMO. **Subtração Internacional de Crianças à Luz do caso Sean Goldman**. Anuario Mexicano de Derecho Internacional, vol XV (2015): 739-772. p. 760.

2.2 Ghisi Case

In contrast with Sean Goldmann case, my second case study is Valeria Ghisi, the mother who ran away from domestic violence from France to Brazil with her daughter. In 2016, when Ghisi had ended the relationship with the father of her daughter, she decided to come back to Brazil with the 5-year-old child. Ghisi had gathered all the needed documentation, including the father's authorisation. Even so, when she arrived in Brazil she discovered her ex-husband had opened a case of International Child Abduction under The 1980 Hague Convention against her. As the first decision in the Brazilian court system, the child had the predicted prompt return to the country of habitual residence, and thus given back to the father, as the Convention orders. In this first decision the Article 13, used in the case of Goldman, was dismissed, meaning that the possibility of keeping the case as an exception due to risk for the child was not applied.

The parents stayed in an international justice court fight for almost 3 years. Ghisi had troubles to prove that she hasn't brought the child illegally. In 2018 the Brazilian government made an international request that the child would come back to Ghisi, but the French court refused the decision and the international cooperation and asked for the mother to enter with another case in French justice.

This case is specifically important, since Ghisi had many times before reported the abuse of the father while still in France and pregnant. However, when the father plead for the child return, using the 1980 Hague Convention, he had the Convention working for him.

3. Methodology

The aim is to comprehend how gender influenced first court decisions cases of International Parental Child Abductions in Brazil using a case comparison study. The two cases of Goldman and Ghisi have similarities, however they differ in outcomes. I have chosen those two different cases, to conduct a study using what is called by Bennett and Elman, a "most-similar case comparison"⁶. Meaning that the two cases chosen are as similar as possible in all but one independent variable, and that differ in their outcomes⁷. The reason for this choice is that having less variants in the cases, and still having very different outcomes, can show more

⁶ BENNETT; ELMAN. **Case Study Methods in the International Relations Subfield**. In: Comparative Political Studies Volume 40 Number 2. Sage Publications, February 2007, pp.174-176.

⁷ BENNETT; ELMAN, *Ibid.*, pp.174-175.

specifically the divergence in the gender aspect in the phenomena of International Child Parental Abduction cases .

The choice of working with case studies comes from the idea that when studying a phenomenon in an individual setting it is possible to delve into a more thorough analysis of its singularities. As noted by Ruffa, case studies can be defined as an instance of a broader phenomenon under study⁸. A case studies is a qualitative analysis, not an illustration of the phenomena. Ruffa in other words say that “a case study is not an illustrative example.”⁹. Which means that the aim of using case studies when analyzing International Child Parental Abduction through a gender perspective is not to show examples of cases where gender has influenced court decisions. Yet, the purpose is to understand how gender manifest itself in two different cases.

3.1 Focus on Gender

Beforehand mentioned, the objective of the thesis involves understanding how gender is a factor of influence in International Parental Child Abduction cases that have their verdict conducted in Brazilian context. Even so the Thesis was baptized as “Runaway moms”, the intention is to pursuit a gender analysis, involving how both mothers’ and fathers’ genders influence the outcomes for them.

The choice of working in this research with a focus on gender as opposed to only women is important since, as said by Kantola and Lombardo, it is with an effort for an understanding of the wider societal structures that reproduce the continuing patterns of domination and inequality¹⁰. I strongly believe that gender is in the root cause of both the gender issues identified in the cases. In the Ghisi case, more specific, the gender issue of gender-based violence, manifested as domestic violence. And in the Goldman case the gender issue of the gender norms in parenthood building the sense that women are seen as more suitable to custody.

⁸RUFFA. **Case Study Methods**. In: The SAGE Handbook of Research Methods in Political Science and International Relations. SAGE, 2020. p.5.

⁹ RUFFA, *Ibid.*, p.6.

¹⁰ KANTOLA; LOMBARDO. **Feminist political analysis**. In *Feminist Theory*, Vol.18(3) (2017), pp.323-341.

The choice for a theoretical approach of a post-structuralist view of gender, with an approach of Deconstruction of Gender, was elected since it theorizes gender as a discourse and a practice that is continuously contested and constructed in political debates¹¹. This grant opening for the possibility of problematization of the different outcomes of the chosen cases by a gender perspective.

3.2 Selection of sources

As above mentioned, the access to the court cases was denied. The denial included the cases of Ghisi and Goldman. Due to that, the research had to rely on secondary sources in order to gather information on the cases. This was considered a risky move, since the media involving those two cases was sensationalist and bias, as well as the risk of relying on the researches about the cases, since they had already their conclusions in regarding other aspects (they weren't focusing on gender).

As a consequence, it was needed to be source critical. When gathering information on the cases it was preferred to focus on facts about the cases, rather than extra information that couldn't be proved, could be considered rumormongers or even had a clear bias. One example of extra information is that many international newspapers have blamed the mother by the trauma by reproducing interviews made with the 11-year-olded Goldman about how being in the international dispute was terrifying and traumatic for him¹².

The information regarding the cases were taken preferably by research conducted about them. Those texts will be better summarized in the Literature Review of this Thesis (Chapter four). Since, besides being a source for data on the cases, those studies fit into the review of literature that has already been carried out on the cases of Ghisi and Goldman. For this reason here in the methodology it will be done a very brief review of the sources:

One of the sources used was the research of Pires that has analysed the law process of four cases of international parental child abduction, more specifically her third chapter where there's a quick description on each case by the law proved facts. Between the cases Pires has

¹¹ KANTOLA; LOMBARDO, Ibid., pp.323-341.

¹² One example is the news by Daily Mail: Sean Goldman recounts terror of five year international custody battle after mother abducted him to Brazil. Daily Mail, 2012. Available in: <https://www.dailymail.co.uk/news/article-2134968/Sean-Goldman-recounts-terror-international-custody-battle-mother-abducted-Brazil.html>.

worked on, there are both Sean Goldman and Valeria Ghisi ones¹³. Two sources used specifically for Sean Goldman case was the article the Del'Olmo analysis of the international law to cases of international child abduction, where he also makes a synopsis of the case history¹⁴. And the article conducted by Waide, that aims to criticize Brazilian performance in cases of International Child Abduction judged under the light of the 1980 Hague Convention¹⁵.

When gathering data from the previous mentioned texts, their analysis were ignored in with the objective of minimizes the influence and bias of their texts into the analysis of this thesis. Only the facts of the first instance (first court decision) and the information of dates and confirmed facts were used as data. In order to assure the facts, they were double checked on the references of each article as well as in available media. The facts were repeated as well in most media available. It is important to reassure that media articles about the cases were mainly ignored in their content and were used only to check on dates in which the facts had happened. Small media vehicles were ignored, and the fact checks happened only in well known and traditional media companies and news. The reason for that is that those would have more resources to do a better and more focused research.

3.3 Type of Data

In the beginning, the idea of the thesis was to analyse Brazilian court cases related to International Parental Child Abduction. However, this inclination in the research had to be switched, due to the non-disclosure of the requested cases from the Brazilian government. Despite Brazil having the access to information law¹⁶, which states that any requested information should be provided to its citizens, and the fact that the researcher conducting this thesis is Brazilian, the government has denied access to these files. This decision is due to the research involving minors, and the law mandates the protection of their identities.

However, I have found a possibility in continuing with the research, owing to two cases of International Parental Child Abduction. The respective cases of Goldman and Ghisi

¹³ PIRES. **Análise de Casos do Sequestro Interparental no Brasil**. Trabalho de Conclusão de Curso. Direito, Unievangélica, 2020.

¹⁴ DEL'OLMO. Op. Cit., pp.739-772.

¹⁵ WAIDE. To Comply or Not to Comply? Brazil's Relationship with the Hague Convention on the Civil Aspects of International Child Abduction. *Georgia Journal of International and Comparative Law*, 39(2), (2011): pp.271-298.

¹⁶ BRASIL. "Lei No. 12.527, de 18 de novembro de 2011." Planalto, Casa Civil - Subchefia para Assuntos Jurídicos. Accessed May 29, 2023. <https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/112527.htm>.

have been widely public debated (since the identities of the children were announced by the Brazilian and international media). Those two cases had the most media coverage in the country since the adoption of The 1980 Hague Convention by Brazil. The information needed about the two cases are possible to find in the Brazilian media as well as in academic research papers in law, in international relations and even in psychology studies.

Moreover, these two cases were not chosen single-handed because they are the most famous and the ones with the most available data. There were also other cases that have received media and academic attention. They were chosen due to their similarity in conditions: the comparison between these two cases do not require an intersectionality analysis since the mothers were both white, cisgender, straight and middle class women. They are also similar in the way that in both cases the women were Brazilian nationals that were living abroad with international partners. They were both living in “rich countries”, respectively France and USA. Both of them brought kids under the age of 5 years to live in their home country, without what is considered a “valid” consent of the father. At the same time, the mothers “ran away” for different reasons. Ghisi was a survivor of domestic violence and was trying to be far away from her abuser. The mother of Goldman, Bianchi, wanted the full custody of her child and a divorce. In that way, as mentioned before, this case study qualifies as “most-similar case comparison”, as explained by Bennett and Elman¹⁷.

Ruffa explains the importance of the selection of the case in a case¹⁸. In her article, Ruffa discusses the difficulty in the fact that the researcher ‘is asked to perform a heroic role: to stand for (represent) a population of cases that is often much larger than the case itself’ in a case study¹⁹. For that matter, it is also interesting that the case of Ghisi seem to be representative of most cases in which women abduct children. As viewed in the article *Global Trends in the Operation of the 1980 Hague Abduction Convention*²⁰ mothers are the mostly likely abductors between all the possible caregivers²¹. Freeman and Taylor²² argue that the usual common reason behind this is the desire to escape from domestic violence and

¹⁷ BENNETT; ELMAN.Op. Cit., pp.174-176.

¹⁸ RUFFA, Op. Cit., p.9.

¹⁹ RUFFA, Op. Cit., p.9.

²⁰ LOWE; STEPHENS. *Global Trends in the Operation of the 1980 Hague Abduction Convention*. Family Law st Quarterly 52, no. 2 (2018): pp.349-384.

²¹ LOWE; STEPHENS. *Ibid.*, p.352.

²² FREEMAN; TAYLOR. **Domestic Violence and Child Participation**. Journal of Social Welfare and Family Law 42, no. 2 (2020): pp.154-175.

to stay near their children²³. Moreover, the study of Long, Zogg and Forehand²⁴ showed that the most seen cases were motivated by the desire of protecting the child and the longing of being with the child²⁵. In the case of wanting to protect the child, their reasons were mainly from emotional abuse (60%) and physical abuse (30%)²⁶. Cases such as the Sean Goldman, where Bianchi, the mother, was not suffering from domestic violence, represent a minority of the cases. And for this research, this can provide an alternative view of the phenomena. On top of that, the diverse first outcomes of the two cases when deeply analysed show two different aspects in which gender can influence the court decisions or the court explanation to the decision in those cases. In one way having the lack of a gender sensitivity and in the other way letting gender norms be the given reason for the outcome.

Due to the data available, it was decided to work only with the first decisions of the cases and the first outcomes of the cases. Meaning for the Goldman case the decision of letting the child stay in Brazil, and for the Ghisi case the decision of giving the “prompt return” of the child, as the 1980 Hague Convention has ruled. So this research does not involve the court decisions that were made after. In the Goldman case for example the father manages to bring the child back to the USA after the death of his ex-wife; or for example in the Ghisi case it was later recognised that she had the papers that allowed her to bring the child to her country. Those later decisions will not be analysed, since as forementioned, there’s not an abundance of information. Moreover, those decisions involve later arguments and decisions that are not relevant for the gender analysis.

3.4 This research’s weakness

As previously mentioned, I understand the that the potential of the research is limited when only being able to compare two cases. Having said that, it is important other cases that had the same amount of media coverage had many other variants in the abductor character. Also, some of them the children were taken **from** Brazil and not **to** Brazil.

²³ FREEMAN; TAYLOR. Ibid., p.155.

²⁴ FOREHAND; LONG; ZOGG. **Preventing Parental Child Abduction**. Clinical Pediatrics 30, no. 9 (September 1991): pp.505-510.

²⁵ FOREHAND; LONG; ZOGG., Ibid., p. 551.

²⁶ FOREHAND; LONG; ZOGG., Ibid., p. 551.

Moreover, it could have been interesting to have cases that involve more intersectionalities. Race, sexual orientation, other gender identities (such as trans and gender-neutral), social class, cases where the abductor is not a parent but another caregiver, or even just cases in which the abductor is the father. This could have given insights beyond the gender, giving a broader perspective of how other aspects can impact these type of cases.

Another problem encountered in the process was the collection of data. As mentioned before, Brazil protects data of children, they are anonymous. This brings two problems. The first is that there was a limited amount of statistical data available that could've given a better view in the dealing with international parental child abduction in Brazilian context. The second was that it was needed to rely on second hand information on the cases, since they are not available to the public. The information of the cases had to be taken from research articles and projects, and I have relied on media news and articles for fact checks.

This second problem, in other words, relying on second hand information brings the problem of: it is possible that the views on the cases are influenced already by the bias of other researchers. For that reason, it was needed to be source critical in every aspect when looking for the information on the cases. This limits the research on getting a deeper look into the stories, what could've been done with court cases (that are not accessible due to the age of the victims).

4. Literature Review

4.1 The literature that focus on patterns of International Child Abduction

Since The Hague Convention on the Civil Aspects of International Child Abduction has been signed in the 1980, International Parental Child Abductions and The Convention on its own have been a theme for studies specially in International Law and International Relations fields. Most of those studies are trying to understand the phenomena and its patterns.

This is the case for the study of Long, Zogg and Forehand, in their article *Preventing Parental Child Abduction: Analysis of a National Project*, published in 1991²⁷. In this study they use data that indicate that child abduction by a parent is more frequent than stranger²⁸. They have analysed data from a national hotline program that targeted prevention of parental child abduction. The data were collected on 86 consecutive telephone calls from parents

²⁷ FOREHAND; LONG; ZOGG. Op. Cit. pp.505-510.

²⁸ FOREHAND; LONG; ZOGG. Ibid, p.506.

contemplating abduction of their children. And at the time, this study helped to understand levels of inter parental conflict/violence, reasons for contemplating abduction, and abduction plans²⁹.

Long, Zogg and Forehand findings include the strong relation to child abduction and parents divorce³⁰. In the cases they studied 70% were divorced, had filed for divorce or were divorcing. In those cases, abduction usually happens when the parent does not get to be in the custody. It is also relevant that 20% of cases they studied have as one of the reasons the dissatisfaction with Court Ordered Visitation or in 30% that the other parent refuses to comply with visitation order³¹.

Even so their objective wasn't to make a gender analysis, their findings end up revealing data for it. In this study, most of the abductors were men, which they bring up as a result of men usually not being conceived with the custody³². However, making a percentage counting, the authors say that women are more likely to abduct than men when they are not granted with share of the custody, but end up being less in number than men in abductions because they usually get the custody³³. Long, Zogg and Forehand also share that in cases of abduction women are more likely to search for external help if their child gets abducted³⁴.

Some other findings of Long, Zogg and Forehand are quite interesting. In their studies the children abducted were usually between 3 and 10 years old, not younger or older³⁵. This fits with the two cases analysed in this thesis. It is also interesting that, according to their study, most parents that did abduct children had second thoughts about it after and even though they had a plan it was mostly not well thought previously. Most of them didn't want to continue on the run, yet were afraid of the consequences of their actions. The parents' reasons for abduction are mostly the idea that they have to protect the child and/or the desire to be with the child. (almost half of cases are those).³⁶In the case of wanting to protect the child their reasons were mainly: emotional abuse (60%), but also physical abuse (30%), sexual abuse (10%), and other parent's abuse of alcohol (21%) and/or drugs (26%)³⁷.

²⁹ FOREHAND; LONG; ZOGG. Ibid, p.506.

³⁰ FOREHAND; LONG; ZOGG. Ibid, p.552.

³¹ FOREHAND; LONG; ZOGG. Ibid, p.550.

³² FOREHAND; LONG; ZOGG. Ibid, p.550.

³³ FOREHAND; LONG; ZOGG. Ibid, p.550.

³⁴ FOREHAND; LONG; ZOGG. Ibid, p.550.

³⁵ FOREHAND; LONG; ZOGG. Ibid, p.550.

³⁶ FOREHAND; LONG; ZOGG. Ibid, p.551.

³⁷ FOREHAND; LONG; ZOGG. Ibid, p.551.

A more recent research with the same objective of understanding the patterns of International Child Abduction was conducted by Stephens and Lowe and published in 2018: *Global Trends in the Operation of the 1980 Hague Abduction Convention: The 2015 Statistics*³⁸. In this article they discuss the major findings of the 2015 survey, concentrating on overall numbers, pattern, outcome, and timing, both in respect to return and access applications³⁹. In order to put these findings into context, Stephens and Lowe draw upon the findings of the previous studies conducted by them, which let them provide an analysis of statistical trends over a sixteen-year period⁴⁰.

Stephens and Lowe discuss that the 1980 Hague Convention provides both applications for the return of a child (if they were wrongfully removed or retained) or applications to secure effective exercise of rights of access. Those types of application are only valid in Contracting States⁴¹. In their research they show that most applications for the return of the child to his or her state of habitual residence (86%)⁴².

Differently from the studies of Long, Zogg and Forehand, in the research of Stephens and Lowe the majority of abductors were mothers. This was consistent for them in the research of 2015, 2008 and 2003. It is important to notice that in this research not only fathers and mothers were studied, but also involved grandparents, institutions, or other relatives, such as step-parents or siblings⁴³. It is equally significant to acknowledge that the clear majority of abductors (be they mother, fathers, grandparents or another family member) were primary caregivers. Stephens and Lowe also point that even abduction by primary caring mothers has significant detrimental effects for the child⁴⁴.

Stephens and Lowe include in their research the performance of the Contracting States, this performance is judged by the outcome of each case. The researchers says that the preferred outcome shouldn't be the "return rate", since the Convention itself permits refusals⁴⁵. For this reason, a low return rate or a high refusal rate shouldn't be seen as a low performance indicator.⁴⁶ Nonetheless, the "return rates" hold an intriguing aspect: some states

³⁸ LOWE; STEPHENS. Op.Cit., pp.349-384.

³⁹ LOWE; STEPHENS. Ibid., p.350.

⁴⁰ LOWE; STEPHENS. Ibid., p.350.

⁴¹ LOWE; STEPHENS. Ibid., pp.349-350.

⁴² LOWE; STEPHENS. Ibid., p.351.

⁴³ LOWE; STEPHENS. Ibid., p.352.

⁴⁴ LOWE; STEPHENS. Ibid., p.354.

⁴⁵ LOWE; STEPHENS. Ibid., p.366.

⁴⁶ LOWE; STEPHENS. Ibid., p.366.

have a notable “lower-than-average overall return rate”. Brazil in 2015 had over half of its applications either rejected or withdrawn⁴⁷.

One of the performance rate given by Stephens and Lowe is the timing of the return applications: since the first article of the Convention demands the secure “prompt return” of the child who has been wrongfully removed to or retained in another Contracting State⁴⁸. The authors compare the timing of response of the Contracting States, and giving as an example Denmark has solved applications quite quickly: 82 days, 14 applications. By contrast, applications received by Brazil took much longer to conclude: 297 days, 23 applications⁴⁹.

4.2 The production of analysis of The 1980 Hague Convention

The Hague Convention on the Civil Aspects of International Child Abduction itself has also been a study subject since it has been signed. Many researches analyse it specially regarding its legal processes. Most of those researches analyse it in the light of the law practice of the country in which it has been written. The article by Cidrão, Muniz and Moreira analyses it through a Brazilian law perspective⁵⁰. One of the first chapters in the article is about “how should the Convention be applied”, and they start with the recognition that the sovereignty of the “Habitual Residence” of the child shall be respected⁵¹.

Explaining the Technicalities of the application of the 1980 Hague Convention, Cidrão, Muniz and Moreira point that the first step is for the left behind parent or caregiver to report the abduction, either to their country legal system or directly in the abduction country legal system⁵². The authors call attention to the age of the child being of importance, the child should have up to 16 years old for the Convention to be valid⁵³. Even if the child was legally taken to another country, if the child is being retained there, The Hague Convention can be applied⁵⁴. In some cases there are exceptions preventing the return of the child, and the authors call attention to the Article 13 or the case of the child being opposed to being

⁴⁷ LOWE; STEPHENS. *Ibid.*, p.370.

⁴⁸ LOWE; STEPHENS. *Ibid.*, p.373.

⁴⁹ LOWE; STEPHENS. *Ibid.*, p.375.

⁵⁰ CIDRÃO; MUNIZ; SOBREIRA. **Sequestro internacional de crianças**. Ponto e Vírgula, no. 23 (2018): 44-59. Editora PUC SP.

⁵¹ CIDRÃO; MUNIZ; SOBREIRA. *Ibid.*, pp.47-48.

⁵² CIDRÃO; MUNIZ; SOBREIRA. *Ibid.*, p.50.

⁵³ CIDRÃO; MUNIZ; SOBREIRA. *Ibid.*, p.48.

⁵⁴ CIDRÃO; MUNIZ; SOBREIRA. *Ibid.*, p.48.

returned⁵⁵. However, the authors argue that a child opinion might be completely biased by victim of parental alienation⁵⁶.

Moreover, in this article the authors compare the 1980 Hague Convention to the Inter-American Convention on the International Return of Children (1994), that is also applied in Brazil.⁵⁷ The article shows that the Inter-American Convention on the International Return of Children differs due to its criminal law side, this convention prevents and punishes crimes that aim to wrongfully remove or retain a child from the protection of their legal guardians for the purpose of exploitation⁵⁸. It's also interesting that this Convention is extended to children up to 18 year old⁵⁹.

Another common type of study is articles that analyse the 1980 Hague Convention and how the International Child Abduction cases work on Non-Signatory Nations. Those wonder if the Convention can still be applied. In her article *The Hague Convention on the Civil Aspects of International Child Abduction as Applied to Non-Signatory Nations*⁶⁰, Cardin notes that the phenomena of International Parental Child Abduction is not confined to certain region of the globe, it can happen anywhere that there are marital disputes⁶¹.

When analysing the Convention⁶², Cardin recollects that the Convention only empowers the local court of the Country of abduction to determine the merits of an abduction, not custody claims⁶³. The custody issues are left for the courts of the child's habitual residence to resolve once the child returns⁶⁴. The author also recollects the definition of a wrongful retention or removal of the child implies the violation of the other parent or caregiver legal rights to custody as established by the laws of the habitual residence State of the child⁶⁵. The common outcome in the Convention is to return the child to his or her

⁵⁵ CIDRÃO; MUNIZ; SOBREIRA. Ibid., p.52-57.

⁵⁶ CIDRÃO; MUNIZ; SOBREIRA. Ibid., p.55.

⁵⁷ CIDRÃO; MUNIZ; SOBREIRA. Ibid., p.48.

⁵⁸ CIDRÃO; MUNIZ; SOBREIRA. Ibid., p.48.

⁵⁹ CIDRÃO; MUNIZ; SOBREIRA. Ibid., p.48.

⁶⁰ CARDIN. **The Hague Convention on the Civil Aspects of International Child Abduction as Applied to Non-signatory Nations**. International Child Abduction, Houston Journal of International Law 20, no. 1 (1997): pp.141-172.

⁶¹ CARDIN, Ibid., p.142.

⁶² CARDIN, Ibid., p.144-157.

⁶³ CARDIN, Ibid., p.145.

⁶⁴ CARDIN, Ibid., p.145.

⁶⁵ CARDIN, Ibid., p.145.

‘habitual residence’. However, Cardin reminds that there’s no definition in the Convention of “what is Habitual Residence”⁶⁶.

Continuing the analysis with the questions of what are the expeditions in which an abductive parent can keep the child, Cardin brings up the possibility of pledging the Articles 13 and 20⁶⁷. Those articles permit the case where the abductor can justify their actions⁶⁸. Regardless, Cardin exposes that because of this possibility, many courts and commentators are afraid that this opens up space for abuse of those articles, because those provisions are open to interpretations⁶⁹. In addition, Cardin explains that the mechanics of the Convention⁷⁰, in theory are supposed to ensure that the child will be returned fast, but in practice many times a country's legal system may fail a left-behind parent⁷¹. The author emphasize taking notice of the possibility that in some cases there can be the difficulty of one of the parents to access the other country’s law system, or the terrible possibility of xenophobic and racist judges that will be biased to their nationals⁷².

The Hague Convention on the Civil Aspects of International Child Abduction only applies if a child was habitually residing in a "Contracting State" immediately before any breach of custody or access rights⁷³. Having regard to this, Cardin analysis Non-Signatories countries and affirms that this is the 1980 Hague Convention’s weakness⁷⁴. Since, when the Conventions don’t apply is the law of the country to which the child was abducted governs⁷⁵, what is more likely biased to the locals or the culture⁷⁶. Cardin alerts that non-signatory nations often ignore requests for an abducted child's return⁷⁷. On the author conclusion, there’s a calling for a pressure that other countries should be signatories, and that otherwise there’s no hope to left behind parents⁷⁸.

⁶⁶ CARDIN, *Ibid.*, p.145.

⁶⁷ CARDIN, *Ibid.*, p.147.

⁶⁸ CARDIN, *Ibid.*, p.147.

⁶⁹ CARDIN, *Ibid.*, p.148.

⁷⁰ CARDIN, *Ibid.*, pp.154-156.

⁷¹ CARDIN, *Ibid.*, p.155.

⁷² CARDIN, *Ibid.*, p.156.

⁷³ CARDIN, *Ibid.*, p.146.

⁷⁴ CARDIN, *Ibid.*, pp.157-170.

⁷⁵ CARDIN, *Ibid.*, p.157.

⁷⁶ CARDIN, *Ibid.*, pp.157-162.

⁷⁷ CARDIN, *Ibid.*, p.158.

⁷⁸ CARDIN, *Ibid.*, pp.171-172.

4.3 The literature that focus on the gender perspective in cases of International Child Abduction

Most studies that have a focus in the gender perspective regarding the 1980 Hague Convention are mainly focussing on domestic violence suffered by mothers that have abducted and how courts proceed with requests of return of the child in those cases. The article written by Freeman and Taylor published in 2020, *Domestic Violence and Child Participation: contemporary challenges for the 1980 Hague child abduction convention*⁷⁹, can represent this type of research.

Freeman and Taylor discusses that the Convention was not drafted to include the mindset of gender issues⁸⁰. They cite other studies (including the one of Lowe and Stephens, already mentioned in this research) to argue that the profile of abductors have changed from non-custodial father abductors to primary and joint primary carer mother abductors, that are mostly some of whom abduct because they are escaping from domestic violence or abuse⁸¹.

Freeman and Taylor affirm that the Article 13 of the Convention can be potentially used in case of Domestic violence. “Under this provision, a court in a requested State is not bound to order the return of the child if there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.”⁸². However, if the case of domestic violence is not proven, the parent who is suffering domestic abuse will have to choose between coming back and putting themselves in danger to be near the child, or let the child alone and far away, and it is reported by women that many times their domestic violence was disbelieved⁸³. Freeman and Taylor say that one potential explanation for the reluctance to accept claims of domestic violence come from the fear of “undermining the strength of the Convention”, since allegations of domestic violence are employed as a means to prevent the return of an abducted child to their country of habitual residence⁸⁴. As a conclusion for their article, Freeman and Taylor acknowledge that it is unlikely the 1980 Convention will be amended to address domestic violence (or child participation) issues, having in mind the great number of Contracting States. Yet they

⁷⁹ FREEMAN; TAYLOR. Op. Cit. pp.154-175.

⁸⁰ FREEMAN; TAYLOR., Ibid, pp.155-162.

⁸¹ FREEMAN; TAYLOR., Ibid., pp.155-162.

⁸² FREEMAN; TAYLOR., Ibid., p.157.

⁸³ FREEMAN; TAYLOR., Ibid., p.157.

⁸⁴ FREEMAN; TAYLOR., Ibid., p.158.

incentivize a gender supportive interpretation of Article 13(1)(b) and the Convention in appropriate cases.”⁸⁵.

Another example of this type of research is the book *Battered Women, Their Children, and International Law: The Unintended Consequences of The Hague Child Abduction Convention*⁸⁶, published in 2012. As its title implies, it refers to mothers who have been physically or emotionally abused in the context of domestic violence, and due to that have abducted their own children to another country, most commonly to the mother’s home country. One thing the authors refer already in the first chapter is about domestic violence going beyond physical violence. In their terms they refer to *emotional terrorizing*; physical harm; *threats to life*; *intentional isolation*; *economic control*; *rape*; and in the case of victims who are also migrants: *passport control* and *immigration threats*. They define in the research domestic violence as an ongoing pattern of intimidating behaviour in which the threat or use of serious physical and/or sexual violence is employed to accomplish the overall goal of controlling the partner.”⁸⁷. In this book the authors express that domestic violence should be seen as a Human Rights concern⁸⁸, rather than as the impulsive behaviour of private individuals⁸⁹. According to them, it's possible to compare tactics of torture to many characteristics of domestic violence. And if torture is considered a Human Rights violation, domestic violence should be as well⁹⁰.

4.4 The literature that focus on Children’s Rights regarding International Child Abduction

Some other studies are more focused on Children’s Rights. Such as the article *A child-friendly area of freedom, security and justice: work in progress in international child abduction cases*⁹¹ by Baruffi. Baruffi addresses that The Hague Convention on the Civil Aspects of International Child Abduction is the main source governing the field of child

⁸⁵ FREEMAN; TAYLOR., Ibid., p.168.

⁸⁶ COMMAS, et al. **Battered Women, Their Children, and International Law**. Northeastern University Press, 2012.

⁸⁷ COMMAS, et al. Ibid., p.8.

⁸⁸ COMMAS, et al. Ibid., pp.20-22

⁸⁹ COMMAS, et al. Ibid., p.22

⁹⁰ COMMAS, et al. Ibid., p.30

⁹¹ BARUFFI. A child-friendly area of freedom, security and justice. *Journal of Private International Law* 14, no. 3 (2018): pp.385-420.

abduction at the global level⁹². In her opinion, this Convention is arguably the most successful ever international treaty, even though its territorial scope is concerned⁹³. In spite of that Baruffi explores the field in other international treaties on the protection of children's rights, such as the Regulation (EC) 2201/2003 (Brussels IIa), that focus on the EU legal order and provides for rules concerning jurisdiction, the recognition and enforcement of decisions, and co-operation between the Central Authorities. It has been applicable in all the Member States (except Denmark) since 1 March 2005⁹⁴.

Some other work that focus on the children concentrate in the effects that International Parental Child Abduction had on children. The work of the book *Battered Women, Their Children, and International Law*, besides the book having a focus on the gender perspective (that has been seen in the previous subchapter), has a whole chapter on *Child Exposure to Abduction and Domestic Violence*⁹⁵. The authors explain that the effects can naturally vary based on the variants of each case, such as the age of the child, length of abductions, etc.⁹⁶. And due to that, not all children are irreparably damaged by the abduction⁹⁷. A handful of the children studied in this research (54%) had experienced a decline in functioning (on behaviour at home and at school, overall health, and grades) between pre- and post-abduction⁹⁸.

“Some children are profoundly affected by the abduction experience, while others show few negative effects depending on specific characteristics of their abductions. The view that taking parents have committed a wrongful act has resulted in little research attention to the consequences of abduction on taking parents.” (COMMAS, et al., 2012, p.3).

The chapter also discusses on the overlap of domestic violence and child abduction, since they have shown that this is one of the most common cases when regarding International Parental Child Abductions. The authors present that near-half of families in which a partner is physically violent to the spouse (typically the father to the mother), the children in the household are also physically or sexually abused, or that many children

⁹² BARUFFI. Ibid, pp.385-386.

⁹³ BARUFFI. Ibid, p.390.

⁹⁴ BARUFFI. Ibid, pp.385-386

⁹⁵ COMMAS, et al. **Child Exposure to Abduction and Domestic Violence**. In: *Battered Women, Their Children, and International Law*. Northeastern University Press, 2012.

⁹⁶ COMMAS, et al., Ibid. p.1.

⁹⁷ COMMAS, et al., Ibid., p.2.

⁹⁸ COMMAS, et al., Ibid., pp.2-3.

physically intervene to protect an abused parent, further endangering the child⁹⁹. Furthermore, children can be significantly harmed by exposure to violence even when they are not themselves direct targets of physical or sexual violence¹⁰⁰. This harm is psychological for the witnessing of abuse (both physical and psychological of the mother)¹⁰¹, and can affect children even when the parents think they are not witnessing it¹⁰².

Talking about the recognition of the effects of child exposure to domestic violence, the authors bring up the example of the North American courts that now (in most states) include the “presence of domestic violence” as criteria that judges may use to determine custody and visitation arrangements when disputed¹⁰³. For that they critique the 1980 Hague Convention decisions that don’t include the domestic violence as a “grave risk of harm” for children¹⁰⁴.

There are also research in cases with older children regarding the possibility of them objecting their own return to the state of habitual residence. Freeman and Taylor, in the same text previously brought in the 4.3 subchapter of this thesis, analyse outcomes for objecting children under the 1980 convention¹⁰⁵. According to the authors each case will have very different outcomes, depending on the view that the court has on their maturity (which is subjective)¹⁰⁶. Since the Convention is based on the aim to safeguard children internationally from the negative consequences of their parental abduction, it has been raised concerns about whether it is in the child's best interest to force their return against their will¹⁰⁷. However, the children views are not usually taken into consideration, due to the possibility of parental alienation¹⁰⁸.

4.5 The literature that analyze the cases of Goldman and Ghisi

Finally, there are studies that analyse the same cases analysed in this MA Thesis. Most of those researches are from Brazil, and in the case of Goldman there are some from the United

⁹⁹ COMMAS, et al. Ibid., pp.3-4.

¹⁰⁰ COMMAS, et al. Ibid., p.6.

¹⁰¹ COMMAS, et al. Ibid., pp.6-7.

¹⁰² COMMAS, et al. Ibid., pp.13-14.

¹⁰³ COMMAS, et al. Ibid., p.8.

¹⁰⁴ COMMAS, et al. Ibid., p.15.

¹⁰⁵ FREEMAN; TAYLOR., Op. Cit., pp.162-167.

¹⁰⁶ FREEMAN; TAYLOR., Ibid., pp.162-167.

¹⁰⁷ FREEMAN; TAYLOR., Ibid., pp.162-167.

¹⁰⁸ FREEMAN; TAYLOR., Ibid., pp.162-167.

States. The articles cited in this part of the literature review were also the where the data was collect to this Ma thesis, for this reason now in this part there is a careful summary of them.

One of those articles is the *To Comply or Not to Comply? Brazil's Relationship with the Hague Convention on the Civil Aspects of International Child Abduction*¹⁰⁹, written by Waide and published in 2011. The purpose of this article is to critic Brazilian performance in cases of International Parental Child Abduction: “Brazil is one nation that demonstrates a pattern of noncompliance with The Hague Convention.”¹¹⁰.

As mentioned in the other articles, Waide reinforce that the Hague Convention intends to preserve the child custody arrangement that existed before the wrongful removal¹¹¹. In consequence, the abducting country must return the child immediately and not decide the merits of the custody case¹¹². The “prompt” return has of course exceptions:

“Not every wrongfully removed child must be returned to their country of habitual residence. In fact, the Hague Convention provides four defenses that preclude the return of a child:38 (1) the action to return a child was commenced more than a year after the child was wrongfully removed; (2) the left-behind parent failed to exercise custody rights at the time of the removal or consented to the removal; (3) returning the child would create a grave risk to the child's safety; and (4) returning the child would violate fundamental principles of human rights.” (WAIDE, 2011, pp.276-277/ Hague Convention, supranote 11, arts. 12-13, 20.).

However, Waide criticizes the use of the Article 12, it is to be used in case the child will suffer serious abuse if returned, not intended to determine where the child would be the happiest¹¹³. The same is valid for the Article 20 that defends that a child shouldn't be returned in case it would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms¹¹⁴.

In order to explain the critics on Brazilian performance¹¹⁵, Waide says that Brazilian courts have a tendency to treat Convention cases as custody decisions. One common reason pointed by her is that: Brazilian courts deciding Hague Convention cases often find that

¹⁰⁹ WAIDE. Op. Cit., pp.271-298.

¹¹⁰ WAIDE. Ibid, p.273.

¹¹¹ WAIDE. Ibid, p.273.

¹¹² WAIDE. Ibid, p.275.

¹¹³ WAIDE. Ibid, P.278.

¹¹⁴ WAIDE. Ibid, pp.278-279.

¹¹⁵ WAIDE. Ibid, pp.279-280.

abducted children have become "adapted to Brazilian culture" and should remain in the country¹¹⁶. What according to the article is a type of decision that goes to the merits of a custody dispute¹¹⁷. In the same way, Waide critics that Brazilian court show bias to Brazilian mothers and that in this mindset the woman is seen as the best caregiver to the child¹¹⁸.

The article give potential reasons for the noncompliance by Brazilian government¹¹⁹. The first one is that Brazilian law enforcement's treat cases of Hague Convention cases as custody decisions¹²⁰. The second is the structure of the Brazilian court system, that takes long to take decisions and give cases of International Child Abduction a low priority because wrongful retention is not a criminal offence that is regularly punished under the Brazilian Penal Code¹²¹. And the third and final reason given by Waide is "Brazil's manipulation of the defences to returning a child under The Hague Convention", since after failing to immediately proceed with a case, the Brazilian courts use the delay as a reason for keeping the child in Brazil¹²².

After explaining the machine of the Convention and denounce the Brazilian performance, Waide uses the case of Goldman as an example of non-compliance¹²³. The author details the processes of the case:

"As a result, "[i]n 2004, Goldman filed a petition under the Hague [C]onvention to have his son returned."91 Bianchi quickly raised the defense under Article 13 that Sean would suffer grave harm if he were returned to the United States" (WAIDE, 2011, p.282)

In this case, even though Brazilian Federal Court determined that the child had been wrongly taken and that a U.S. court should decide custody, yet that the child had spent too long in Brazil and would be the best for him to stay: "Brazilian officials treated this case as a simple custody dispute where "the mother always gets the child" because "the mother is the most important bond."¹²⁴. According to the article, the Brazilian court couldn't have decided on the children stay in Brazil, the court should've only determined the country of habitual

¹¹⁶ WAIDE. Ibid, p.279.

¹¹⁷ WAIDE. Ibid, p.279.

¹¹⁸ WAIDE. Ibid, p.279.

¹¹⁹ WAIDE. Ibid, pp.289-294.

¹²⁰ WAIDE. Ibid, p.289.

¹²¹ WAIDE. Ibid, pp.289-290.

¹²² WAIDE. Ibid, p.293.

¹²³ WAIDE. Ibid, pp.281-289.

¹²⁴ WAIDE. Ibid, pp.282-283.

residence and returned him to that country, since the petition for return was filed in the accepted time, under the parameters of The Hague Convention¹²⁵.

Waide brings up the propositions given by U.S. House Resolutions (that happened much later than the first decisions analysed in this Ma Thesis)¹²⁶. In 2009 when the Brazilian Supreme Court issued a ruling that would finally return the child to the United States, another decision issued a stay for the child, what would mean a longer wait for Goldman Father¹²⁷. In conclusion to the article, Waide supports the sanctions to Brazil in case of non-compliance¹²⁸, since in this case Brazil suffered unofficial sanctions and it has been successful:

“In response to the stay, U.S. Senator Frank Lautenberg placed a hold on a trade bill that would have "provide[d] export tariff relief to 130 countries, of which Brazil would be the fifth largest recipient. Lautenberg's hold was designed to exert additional pressure on Brazilian authorities to abide by the court order and return Sean to his father.” (WAIDE, 2011, p.296)

Another article that focus in the Goldman case is *International Child Abduction in the light of Sean Goldman case*¹²⁹, by Del’Olmo, published in 2015. Del’Olmo explains how The Hague Convention on the Civil Aspects of International Child Abduction has been a turning point to the subject, through a international law perspective. The article reminds Brazil was already a signatory country to the Inter-American Convention on the International Return of Children, but that the 1980 Hague Convention has expanded the children’s rights more broadly¹³⁰.

In the same way as Waide, Del’Olmo explains the machinery of The 1980 Hague Convention¹³¹, and follow with the Brazilian applicability of it¹³². The article explains that the Secretariat of Human Rights of the Presidency of the Republic was assigned in 2001 as the Brazilian designated authority¹³³. It is worth to mention that this Secretariat works with other Human Rights related subjects. In the article there’s the acknowledge that the critics suffered by Brazil over the 1980 Hague Convention Cases were about the delay observed in

¹²⁵ WAIDE. Ibid, p.283.

¹²⁶ WAIDE. Ibid, p.296.

¹²⁷ WAIDE. Ibid, p.296.

¹²⁸ WAIDE. Ibid, pp.299-301.

¹²⁹ DEL’OLMO. Op. Cit., pp.739-772.

¹³⁰ DEL’OLMO, Ibid., p.744.

¹³¹ DEL’OLMO, Ibid., pp.745-753.

¹³² DEL’OLMO, Ibid., pp.753-758.

¹³³ DEL’OLMO, Ibid., p.754.

most cases, due to jurisdictional conflicts between the Common Justice and the Federal Justice; as well as judges and legal practitioners' lack of knowledge regarding the content of the Convention; and moreover, the absence of a specific judicial procedure to ensure the expediency envisaged in the Convention¹³⁴.

In order to understand the application of the 1980 Hague Convention in Brazil, Del'Olmo analyses the Goldman case¹³⁵, explaining that Bianchi (the mother) had decided to stay in Brazil and once there, decided to file for a full custody in Brazilian court, what she was successful in¹³⁶. When Goldman got the notice of this he acted fast filing a lawsuit in the Brazilian court against his ex-wife, in order to regain custody of his child and in light of The Hague Convention, the American father which was dismissed in the first and second instance¹³⁷. However the fast act of the father, and the confirmation that the child retention in Brazil was illegal when he arrived in 2004¹³⁸. The judgment of the case in 2005 October decided that the child had already adapted to the new residence and that being apart from the mother would cause him psychological harm¹³⁹. The article continues the analyses with explaining the following decisions of the court cases, in the next instances.

Del'Olmo articulate that this case has become a leading case due to media coverage in both involved countries¹⁴⁰. Media that has caught an unprecedented coverage of International Parental Child Abduction and has influenced many in popular acclamation, specially the USA media that had impacted in the international diplomacy of the two countries. According to the authors conclusions this case is emblematic specially due to the great involvement of the diplomatic organs of the two countries¹⁴¹, since USA understood as unfair the closure of the first instance.

Another study that works with the legal aspect of the cases was published in 2020. The academic work of Pires, who has analyzed four cases of International Parental Child Abduction in which Brazil is involved¹⁴². Between the analyzed cases there are both the Goldman and the Ghisi case. Pires points out to the lack of a specific legislation in the

¹³⁴ DEL'OLMO, Ibid., p.754.

¹³⁵ DEL'OLMO, Ibid., pp.758-768.

¹³⁶ DEL'OLMO, Ibid., P.760.

¹³⁷ DEL'OLMO, Ibid., P.760.

¹³⁸ DEL'OLMO, Ibid., P.760.

¹³⁹ DEL'OLMO, Ibid., p.760.

¹⁴⁰ DEL'OLMO, Ibid., p.760-761.

¹⁴¹ DEL'OLMO, Ibid., p.768.

¹⁴² PIRES. Op.Cit.

Brazilian juridical field and the problems it causes to the application of the 1980 Hague Convention in Brazil¹⁴³. Those problems include the difficulties in the time taken to make decisions¹⁴⁴, what happens even though the Article 11 of the Convention requests urgency to the treatment of International Child Abductions, to minimize the harm caused to the child¹⁴⁵. According to Pires, the time taken to solve those cases is the most criticized part of the Brazilian application of the Convention, due to that the Brazilian government has created the Permanent Group of Studies in Hague Convention in 2006¹⁴⁶.

When analyzing the case of Goldman¹⁴⁷, the author reminds the facts of the case and describe its relevance for being held in the first decade of application of the Convention in Brazil¹⁴⁸. According to Pires, Brazilian government wasn't ready for cases of International Child Abduction: the case was being held both in the Federal and Local courts, that were giving different decisions to the case, making it hard to understand the competence¹⁴⁹. The conclusion given by the author is that this case has stained Brazilian reputation internationally for the violations of the Convention¹⁵⁰. Moreover, Pires points out that the legal impacts of this case have also affected USA justice system that has created the Goldman Law (David Goldman International Child Abduction Prevention and Return Act), that defines a possibility of retaliation against countries that go against what is defined by the 1980 Convention¹⁵¹.

The work in the legal aspects of International Child Abduction of Pires is also the only academic piece that analyzed the case of Ghisi. Yet the Ghisi case was really mediatic it didn't receive as much academic attention as the case of Goldman. Pires baptized the chapter of the analysis of this case as "from domestic violence victim to abductor of her own child"¹⁵². The chapter brings up Brazilian data that at least 80% of child abduction cases happen as consequence of domestic violence¹⁵³. Pires describe that Ghisi was suffering from an abusive relationship from her French partner, and that after many accusations to French

¹⁴³ PIRES, *Ibid.*, pp.15-29.

¹⁴⁴ PIRES, *Ibid.*, p.27.

¹⁴⁵ PIRES, *Ibid.*, p.28.

¹⁴⁶ PIRES, *Ibid.*, p.28-29.

¹⁴⁷ PIRES, *Ibid.*, pp.30-34.

¹⁴⁸ PIRES, *Ibid.*, p.30.

¹⁴⁹ PIRES, *Ibid.*, P.30.

¹⁵⁰ PIRES, *Ibid.*, p.43.

¹⁵¹ PIRES, *Ibid.*, p.43.

¹⁵² PIRES, *Ibid.*, pp.38-40.

¹⁵³ PIRES, *Ibid.*, P.38.

justice, her ex-husband had been held accountable for his actions¹⁵⁴. Ghisi had ended her relationship and got all the needed paper to move back to Brazil with her child, yet when arriving in the country those weren't recognized ¹⁵⁵. So as to respect the Convention, Brazilian justice provided the "prompt return" of the child to France. Later the papers brought by Ghisi were recognized as legit, but France hasn't cooperated to accepting the child's return to Brazil¹⁵⁶.

4.6 This Ma Thesis contribution

Acknowledging academic work that has already been done in the areas that this Ma Thesis embraces. It's visible that The Hague Convention on the Civil Aspects of International Child Abduction has been broadly analyzed: it's legal aspects; it's application in most of the Signatory Countries and in Non-Signatory Countries; it's patterns and trends; through a gender perspective. The cases of Goldman and Ghisi have been also theme of research, linked to their legal aspects and regarding the Brazilian application of the 1980 Hague Convention.

Yet, this Ma Thesis wants to contribute to studies in The 1980 Hague Convention by bringing a gender perspective on the cases of Goldman and Ghisi, what hasn't been done yet. Shedding a light into the gender perspective of those cases it is possible to have a better insight of how the application of the Convention in Brazil can be affected by gender. Moreover, bringing more diversity to the studies on those cases rather than the legal aspects of them.

5. Theoretical framework

A post-structuralism feminist theory was applied in this research with two different purposes. Firstly, the understanding of gender norms that take place in a specific country context and how they influence in the society of this country in general, which includes the judiciary system and court decisions. In the context of this Ma Thesis, those court decisions take place in Brazil, however they decide on cases that involve another country. This means that gender norms of a country can affect international processes, that should be gender-neutral in principle. Secondly, when acknowledging the gender norms as a society construction, it is

¹⁵⁴ PIRES, *Ibid.*, p.29.

¹⁵⁵ PIRES, *Ibid.*, p.29.

¹⁵⁶ PIRES, *Ibid.*, p.29.

arguable that they can be deconstructed in the same way as they were constructed. If they are negatively influencing those decisions, as we will further discuss in the Thesis, it is important to understand how noting this can improve gender equality in court cases that decide international instances.

5.1 Post-structuralism

The theoretical base for this research comes from Post-structuralism Theory, and for that matter it is important to understand how it is postulated. According to Jatobá, in his book that summarizes International Relations Theories¹⁵⁷, in the 1980s emerged the International Relations field the importance of an epistemological critic, a challenge to the traditional and mainstream¹⁵⁸. This epistemological critic in the post-structuralism context focus on the relation between power and knowledge, in the deconstruction of conceptual hierarchy, and in the questioning of certain notions, such as of rationality, truth, reason, and others¹⁵⁹.

In his book, Jatobá points out to the contributions the Post-structuralism Theory brought to the field of International Relations¹⁶⁰. The first noted contribution is the understanding that it is not possible to construct theories that explain International Relations in an objective and impartial manner¹⁶¹. Having in mind that all “truth” is embedded by power relations that produce and reinforce them¹⁶². The definition of power most used by post-structuralists is the one by Foucault, more conceptualized as “relations of power”¹⁶³. Foucault understood power as something that is spread in the society, and that works between webs of relations and practices, not something delimited to a specific authority¹⁶⁴.

Another contribution of post structuralism given by Jatobá is the critic of the subjectivity: the idea that it exists without a gathered of politic, social, and cultural practices¹⁶⁵. Moreover, Jatobá highlight the post-structuralist critic on discourses¹⁶⁶. For this theory discourses and the way they are constructed play a role in the society, in the sense that they facilitate the

¹⁵⁷ JATOBA. **Teoria das Relações Internacionais**. São Paulo: Editora Saraiva, 2013.

¹⁵⁸ JATOBA. *Ibid.*, p.100.

¹⁵⁹ JATOBA. *Ibid.*, pp.100-101.

¹⁶⁰ JATOBA. *Ibid.*, pp.103-106.

¹⁶¹ JATOBA. *Ibid.*, p.104.

¹⁶² JATOBA. *Ibid.*, p.104.

¹⁶³ JATOBA. *Ibid.*, p.105.

¹⁶⁴ JATOBA. *Ibid.*, p.105.

¹⁶⁵ JATOBA. *Ibid.*, p.105.

¹⁶⁶ JATOBA. *Ibid.*, p.106.

ordering of the context¹⁶⁷. The discourses are influenced by the power relations and, at the same time, are promoting the reproduction of them¹⁶⁸.

5.2 Feminist Theory

Prior to discussing Gender Norms and Deconstruction of Gender, it is important to understand where the concepts used in the Thesis came from. Feminist studies is interdisciplinary, for this reason it can be approached by the International Relations field. In the article *Feminist International Relations: Old Debates and New Directions*, Wibben explains that a feminist approach to International Relations rose as an opposition to IR mainstream¹⁶⁹. Firstly, with the idea of "Where are the women in IR?":

“Women and their experiences are rendered invisible by the traditional focus on the public, on politics understood as competition for power, and on male experience as representative for human experience. Therefore, asking "Where are the women in IR?" by itself is a powerful challenge to IR—it refuses to ignore this bias, offering a corrective by populating international relations with women.” (WIBBEN, 2004, p.105)

Moreover, Wibben display a second “way” that feminism has worked in the field: gender¹⁷⁰. According to her article, some feminists were not satisfied with focusing only on women’s roles¹⁷¹. They rather wanted to understand how practices in the world and in the IR field shaped by gender¹⁷². The notable historian Joan Scott affirm that the term “gender” has had in the 80s appeared among North American feminist who wanted to insist that distinctions based on sex were fundamentally a social quality, not a necessary biological determinism¹⁷³. The definition of Gender, by the *Dictionary of Gender Studies*, starts with “The notion of what it means to be male or female.”. Followed by the critics to the binary, that can be outlined as a social construct. And it continues with the possibility of it having a third and neutral gender¹⁷⁴.

¹⁶⁷ JATOBA. *Ibid.*, p.106.

¹⁶⁸ JATOBA. *Ibid.*, p.106.

¹⁶⁹WIBBEN. **Feminist International Relations**. *The Brown Journal of World Affairs* 10, no. 2 (Winter/Spring 2004): pp.97-114.

¹⁷⁰ WIBBEN. *Ibid.*, p.105.

¹⁷¹ WIBBEN. *Ibid.*, p.105.

¹⁷² WIBBEN. *Ibid.*, p.105.

¹⁷³ SCOTT. **Gender**. *The American Historical Review* 91, no. 5 (Dec., 1986). p.1054.

¹⁷⁴ GRIFFIN. **Gender**. In: *A Dictionary of Gender Studies*. Oxford University Press, 2017.

When focusing on gender perspectives¹⁷⁵, Jatobá empathizes the multiplicity of possibility of approaching gender in International Relations¹⁷⁶. One of them is the post-structuralism perspective of feminism, that understand that the gender norms, ideas, and practices associated with “masculine” and “feminine” are social constructions¹⁷⁷. Being a social construction, they are subjected to transformation, for this reason they vary in culture and time¹⁷⁸. Yet, the gender norms seem to reproduce structural power, where there’s a hegemony of the masculine, and that’s what the feminists argue¹⁷⁹. Masculinity is then associated with concepts of power, autonomy, action, independence, rationality etc.; while femininity is associated with their “weak” opposites: weakness, dependence, emotion, passivity etc.¹⁸⁰. Youngs in her article *Feminist International Relations*¹⁸¹ defends that it is necessary to not take as given or necessarily natural the categorizations of the genders female and male¹⁸². Those “given meanings” or social constructs to what being from each gender means or how they are supposed to act are called Gender Norms. Bringing again The Dictionary of Gender Studies, it defines Gender Norms as a “sociocultural prescriptions of how people should act and behave in accordance with their gender”, that is unconscious and diagnosed by society as “natural”¹⁸³.

5.3 Deconstruction of Gender Approach

When something has been constructed, it can be deconstructed. That is valid for gender norms in a post-structuralism view. In the article *The Ethical Implications of the Deconstruction of Gender*¹⁸⁴, Marilyn Gottschall broach that the way that gender is theorised has gone through a dramatic shift in the last few decades¹⁸⁵. Gender has changed from a fixed and certain binary concept of men and women, to a social construct that can be reevaluated¹⁸⁶.

¹⁷⁵ JATOBA. Op. Cit., pp.111-118.

¹⁷⁶ JATOBA, Ibid., p.111.

¹⁷⁷ JATOBA, Ibid., p.117.

¹⁷⁸ JATOBA, Ibid., p.117.

¹⁷⁹ JATOBA, Ibid., p.117.

¹⁸⁰ JATOBA, Ibid., p.117.

¹⁸¹ YOUNGS. **Feminist International Relations**. International Affairs, vol. 80, no. 1, 2004, pp. 75-87.

¹⁸² YOUNGS, Ibid., p.77.

¹⁸³ GRIFFIN. **Gender Norms**. In: A Dictionary of Gender Studies. Oxford University Press, 2017.

¹⁸⁴ GOTTSCHALL. **The Ethical Implications of the Deconstruction of Gender**. Journal of the American Academy of Religion 70, no. 2 (2002): 279-299.

¹⁸⁵ GOTTSCHALL, Ibid., p.180.

¹⁸⁶ GOTTSCHALL, Ibid., p.180.

Botton, Cúnico, Barcinski and Strey assert in their article that gender norms are social constructs in the society that are learned from childhood and are passed from one generation to the other¹⁸⁷. The psychologists say that as soon as the child is discovered as a girl or a boy in the pregnant womb, their parents start assigning to them gender-specific colours, toys, clothes¹⁸⁸. Followed by showing them unconsciously what are the accepted behaviours for their gender when they are still children.¹⁸⁹ Nevertheless, the authors point that not only the family teaches those stereotypes: they are present in all the spaces of society this child is present, such as the school; and in addition media plays a great role in their construction¹⁹⁰.

Those Gender Norms, or gender stereotypes, are what the Deconstruction of Gender wants to problematize. In the words of Joan Scott: “We need a refusal of the fixed and permanent quality of the binary opposition, a genuine historicization and deconstruction of the terms of sexual difference.”¹⁹¹. Deconstruction of Gender comes from the junction of feminist studies with deconstruction approach. Diane Elam, in her book *Feminism and Deconstruction*¹⁹², explains that they are similar in the way that both of them challenge the traditional way of thinking¹⁹³. When specifically talking about Feminism, Elam describes that feminism is a political movement that “upsets” the way we think about politics because it criticizes historical representation¹⁹⁴. The assumption derived from that is that Feminism has challenged the way we understand gender and it’s relations.

When talking about Deconstruction, Elam describes that it “upsets the way we think about philosophy because its analysis of the tradition is inseparable from an attention to the performative effects of the discourse of analysis itself”¹⁹⁵. Deconstruction as an approach itself makes us rethink about what is thought to be given and to be true in already well established and concrete ideas. With the given arguments, it is possible to argue that Feminism and Deconstruction are related in the idea that they challenge the traditional way of thinking. Having these similarities in mind, when mixing Feminism with Deconstruction, a

¹⁸⁷ BOTTON; CUNICO; BARCINSKY; STREY. **Os Papéis Parentais nas Famílias**. Pensando Famílias 19, no. 2 (dez. 2015): pp. 43-56.

¹⁸⁸ BOTTON; CUNICO; BARCINSKY; STREY; Ibid., pp.45-47.

¹⁸⁹ BOTTON; CUNICO; BARCINSKY; STREY; Ibid., pp.45-47.

¹⁹⁰ BOTTON; CUNICO; BARCINSKY; STREY; Ibid., p.47.

¹⁹¹ SCOTT, Op. Cit., p.1065.

¹⁹² ELAM. **Feminism and Deconstruction**. Routledge. New York, 1994.

¹⁹³ ELAM, Ibid., pp.1-2.

¹⁹⁴ ELAM, Ibid., p.1.

¹⁹⁵ ELAM, Ibid., pp.1-2.

problematization of the concept of gender and the binary arises. Gender norms are then seen as something constructed by society, and not as a given fact.

According to Ackerly and True, for the Deconstruction approach the gender binary is socially constructed, which means that it denies the existence of an autonomous male/female subject, gender is seen as an effect of historically-specific discourse, performance, and disciplinary practices¹⁹⁶. Dietlind Hüchtker, in the article *Deconstruction of gender and women's agency*¹⁹⁷, also affirms that gender then is understood as something relational, analysed as a construction and a product of discourse that constitutes and maintains power relationships¹⁹⁸. Hüchtker explains that this means that gender is something that is always being constructed in discourses and in ways of thinking, acting and perceiving¹⁹⁹.

6. Background

For the purpose of analyzing the cases of Goldman and Ghisi, it's significant to shed a light into the background of the cultural setting that the cases were involved in. The previously discussed theories are the guideline for understanding the context.

The concept of what gender means is crucial to the understanding of gender based violence and (as one of its possible forms) of domestic violence. Those social constructions of the gender norms, the expectation and behaviours linked to them, goes beyond the biological features of a male and a female. Despite the biological strength that could make a man overpower a woman in a violent situation, those norms see as "natural" a violent behaviour of a man²⁰⁰. Those social constructions affect power relations that perpetuate gender based violence²⁰¹. Understanding gender allows us to recognize inequalities, stereotypes and social norms that perpetuate violence against women, as well as to seek effective solutions to prevent and combat this form of violence.

Recognising that the society has adopted gender norms that provide stereotypes on how each gender is supposed to act, interact and live. It's a step into understanding how gender can affect the idea of motherhood and fatherhood. In consequence, those stereotypes

¹⁹⁶ ACKERLY; TRUE. **Back to the Future**. Women's Studies International Forum 33 (2010), p.467.

¹⁹⁷ HUCHTKER. "Deconstruction of Gender and Women's Agency. Journal of Women's History 17, no. 1 (2005): pp.145-152.

¹⁹⁸ HUCHTKER, Ibid., p.330.

¹⁹⁹ HUCHTKER, Ibid., p.330.

²⁰⁰ SAFFIOTI, Op. Cit., p.83.

²⁰¹ SAFFIOTI, Op. Cit., p.83.

of what is a mother and what is a father can influence decisions on which one of them is more important to the upbringing of a child and hence be a decisive point to a custody decision. Whereas, deconstructing those gender norms and their stereotypes is a needed action in order to make more gender-neutral decisions in court. This is because, if gender is deconstructed, there's an acknowledgement that both genders (or a person with the absence of one) can play whichever role in society.

6.1 Brazilian Moms: a Background on how Gender Norms are linked to Children's Custody

There is a conception of an ideal of parenthood, this may vary conforming the cultural background. In Brazil, it is very central in the idea of the women as caregivers and men as bread winners. Costa draws the attention to an idea of women having a “natural superiority” in taking care of children²⁰². Boyd conceptualised this ideology of motherhood as a set of “common-sense expectations”, that she summarizes as the idea that mothers must be full-time carers for their children²⁰³. As explored by Marie D. Dawn, in her article *Integrated Motherhood: Beyond Hegemonic Ideologies of Motherhood*²⁰⁴:

“These ideologies assume that childrearing is a mother's duty, that mothering occurs within a self-sufficient nuclear family, and that paid employment conflicts with motherhood. Even when mothers do not conform to these ideologies, scholars find that they continue to influence mothers, as exhibited by mothers' efforts to reframe, redefine, or actively reject the ideal.” (DAWN, 2016, P.180)

Even though Dawn talks about U.S.A. society, it fits into the Brazilian stereotype. Fonseca in her chapter of the famous Brazilian history book, which I will translate the title to “The Women's History in Brazil”²⁰⁵, explains that Brazilians have imported to their culture the ideals of gender of the western bourgeois values²⁰⁶. This implies that the “perfect woman” was a stay at home mother, that looks after her children, submissive to her husband and is

²⁰² COSTA; et al. **Gender stereotypes underlie child custody decisions**. European Journal of Social Psychology, n.49. John Wiley & Sons, Ltd, 2019. p.548.

²⁰³ BOYD. **Is there an Ideology of Motherhood in (Post) Modern Child Custody Law?** SOCIAL & LEGAL STUDIES. SAGE Publications, Vol. 5 (4). London,1996. p. 495.

²⁰⁴ DAWN. **Integrated Motherhood**. Journal of Marriage and Family 78 (February 2016): pp.180-196.

²⁰⁵ PRIORE (Org.). **História das Mulheres no Brasil**. São Paulo: Editora Contexto, 2004.

²⁰⁶ FONSECA. **Ser Mulher, Mãe e Pobre**. In: PRIORE (Org.). **História das Mulheres no Brasil**. São Paulo: Editora Contexto, 2004. Pp.428-463.

christian religious²⁰⁷. Along with this mindset, Fonseca reinforces that in Brazilian culture, even in low income families, the women were seen as the only ones suited for a children caregiver role, even if the ideal was not always fulfilled²⁰⁸.

In their article *The Parental Roles in Families*, Botton, Cúnico, Barcinski and Strey illustrate that the gender norms in Brazil produce stereotypes of motherhood and fatherhood²⁰⁹. Those can be represented as an imaginary “ideal” that mothers are caregivers and fathers are breadwinners, where the mothers are in charge of the children and the fathers serve as a “protector” figure²¹⁰. To demonstrate how those stereotypes are present in the culture, the psychologist show studies that in Brazilian children’s books the figure of the father is almost inexistent, and the mother is the caring present figure²¹¹. These books reinforce that in Brazilian stereotypes mothers are more important in the upbringing than the fathers²¹².

Moreover, as studied by Boyd, this ideology of motherhood when reinforced in custody law influences custody cases, can concern to parenting rights to both genders²¹³. In other words, these ideologies of motherhood and fatherhood, provoked by gender stereotypes, can, and most likely do, influence court decisions on children’s custody lawsuit²¹⁴. This argumentation can be sustained by the statistics in the table below:

²⁰⁷ FONSECA, *Ibid.*, p.442.

²⁰⁸ FONSECA, *Ibid.*, p.442.

²⁰⁹ BOTTON; CUNICO; BARCINSKY; STREY, *Op. Cit.*, pp. 43-56.

²¹⁰ BOTTON; CUNICO; BARCINSKY; STREY, *Ibid.*, pp.47-49.

²¹¹ BOTTON; CUNICO; BARCINSKY; STREY, *Ibid.*, pp.47-49.

²¹² BOTTON; CUNICO; BARCINSKY; STREY, *Ibid.*, pp.47-49.

²¹³ BOYD, *Op.Cit.*, pp. 495-521.

²¹⁴ BOYD, *Ibid.*, pp. 495-521.

Place of divorce law suit: Brazil			
Divorces decided in first court to couples with underaged children	2019	2020	2021
Total	161 907	140 218	167 536
Responsible to children's custody			
Men	6 601	5 767	6 022
Women	101 048	80 315	90 825
Both ex partners	43 367	43 934	57 856
Other	2 029	1 181	1 355
No declaration to whom got the custody	8 862	9 021	11 478
Number of underaged children			
1	104 000	91 210	109 055
2	46 524	39 961	47 743
3	9 465	7 568	9 054
4	1 528	1 197	1 384
5	276	179	235
6	71	64	43
7 or more	43	39	22

The table above was produced by IBGE the Brazilian Institute of Geography and Statistics, and it describes how underage children custody cases (that were solved with just one decision) were determined²¹⁵. In the three years of research, women were the most likely immediate holder of full child custody.

Women and men ideal roles in parenthood influences a lot in court decisions. Those roles as Miller puts better into words “(...) traditional notions about fathers as breadwinners and mothers as caregivers remain deeply ingrained.”²¹⁶. Having this in mind seeing women as caregivers give them better chances of getting a custody, being it more socially accepted and expected. Costa also adds that in the Brazilian case, one common reason why women often granted with full or a major part of the custody is because they were already the ones taking the role of caregiver prior to the divorce²¹⁷. In her research about Custody Law, Costa has come to the evidence that there is a preference for maternal-primary custody, linked to stereotypes about gender²¹⁸.

Cases of parental child abduction shouldn't go through the exact same type of court case as child custody court cases after divorces, but in Brazil they follow similar paths as we

²¹⁵ **Place of divorce lawsuit: Brazil.** Translated by me. Lugar da Ação do Processo: Brasil. IBGE, 2022. Registro Civil - Divórcios concedidos em 1ª instância a casais com filhos menores de idade, segundo o responsável pela guarda dos filhos e o número de filhos menores de idade. Available at <<https://sidra.ibge.gov.br/pesquisa/registro-civil/quadros/brasil/divorcios>>. Last access 15th March 2023

²¹⁶ MILLER. **The Motherhood Penalty vs. the Fatherhood Bonus.** New York times, 2014.

²¹⁷ COSTA; et al., Op. Cit., p.459.

²¹⁸ COSTA; et al., Ibid., p.556.

will see in the fourth chapter of this research: *The Hague Convention on the Civil Aspects of International Child Abduction*. The data in the chart shows that women are the preferred gender as a caregiver in Brazil. The custody law in Brazil show how gender stereotypes on motherhood can influence those court decisions related to children and the notion of “what is best” for their well-being as we will explore.

6.2 Background in Gender Based Violence in Brazil

As previously highlighted, it is important to understand the cultural background of the place where the cases were held, in order to better analyze their outcomes. When acknowledging the gender norms in Brazil, it's observed that men are seen as “strong” and as the “leader”, while women are seen as “weak” and “obedient”²¹⁹. And, those norms see as “natural” a violent behaviour of a man.

Domestic Violence can be perpetrated by any gender, men and women can potentially be violent. However, due to biological differences, cisgender women usually have a physical disadvantage. Saffioti in her article about domestic violence in Brazil²²⁰ argue that domestic violence, when pretreated by men against women, cannot be a reciprocated violence when compared by violence from women against men²²¹. According to the article, women can be violent, however in terms of physical strength, safeguarding individual differences, the female defeat is predictable²²². Abreu, Souza and Silva in their article *Domestic Violence among Intimate Partners*²²³, expose data that indicate that in Brazil the most common violence against women are committed by intimate partners or ex-partners²²⁴. The article also exposes the biggest share of this violence is physical violence²²⁵.

When using a gender perspective lenses, it's impossible not to see women (or mothers) being the ones most affected by the domestic violence case. Nevertheless, when talking about this gender based violence, men not only have advantages in the physical or

²¹⁹ JATOBA, Op. Cit., p.117.

²²⁰ SAFFIOTI. **Já se mete a colher em briga de marido e mulher**. São Paulo em Perspectiva, 13(4) 1999. pp.82-89.

²²¹ SAFFIOTI, Ibid., p.83.

²²² SAFFIOTI, Ibid., p.83.

²²³ ABREU; SOUZA; SILVA. **Domestic Violence among Intimate Partners**. Id on Line Rev. Mult. Psic. V.11, N. 38. 2017, pp.388-407

²²⁴ ABREU; SOUZA; SILVA, Ibid., p.402.

²²⁵ ABREU; SOUZA; SILVA, Ibid., p.390.

biological matter. This violence is founded in the cultural level. Saffioti, when talking about Brazilian context, says that is “culturally normal” or thought as “possibly natural” the idea that men can mistreat women²²⁶. In other words, Saffioti explains that gender based violence (even when inside a domestic violence situation) is not random, but it comes from society norms that benefit men²²⁷. In addition, Abreu, Souza and Silva affirm that values linked to the socialisation of men are quite often incentives for violence²²⁸.

In the 2020s research by UNODC, it was reported that every 11 minutes a woman or a girl had been killed by someone in their family in that year²²⁹. In other words: “Globally 81,000 women and girls were killed in 2020, around 47,000 of them (58 per cent) died at the hands of an intimate partner or a family member (...)”²³⁰. Unfortunately, Brazil is known for its high rates of domestic violence, in a study by Gender Equality Observatory for Latin America and the Caribbean, Brazil had the biggest number of femicides (in total 1900) as well as the high rate 1.7 women per 100000 women, becoming the 8th country in the region for femicide per 100000 women²³¹. Even though Honduras has the biggest rate as 4.6, they killed in total 234 women. It is important to observe that those numbers are the proved cases judged as femicide, being possible that this number is much higher²³². This measure is important, knowing that femicide is the most violent and extreme data for domestic violence.

Acknowledging the importance of recognising that domestic violence goes beyond physical violence. In the text *Emotional Terror, Physical Harm, and Women’s Experiences of Domestic Violence*²³³, the authors bring up other forms of domestic violence: emotional terrorizing, threats to life, intentional isolation, economic control and rape²³⁴. Being specific about the women in their study (domestic violence survivors that were facing the 1980 Hague Convention, due to abducting their children), they also reported specific domestic violences more linked to migrating women: passport control and immigration threats²³⁵.

²²⁶ SAFFIOTI, Op. Cit., p.84.

²²⁷ SAFFIOTI, Ibid., p.86.

²²⁸ ABREU; SOUZA; SILVA., Op. Cit., p.400.

²²⁹ UNODC. **UNODC Research**. UNODC Website. November 2021

²³⁰ UNODC, Ibid.

²³¹ ECLAC- United Nations. Femicide or feminicide. United Nations Observatory of Gender Equality for Latin America and the Caribbean. [ECLAC - United Nations](#) Website, 2016.

²³² ECLAC- United Nations, Ibid.

²³³ COMMAS, et al. **Emotional Terror, Physical Harm, and Women’s Experiences of Domestic Violence**. In: Battered Women, Their Children, and International Law. Northeastern University Press, 2012.

²³⁴ COMMAS, et. Al., Ibid.

²³⁵ COMMAS, et. Al., Ibid.

On top of that, it is important to recognise the difficulties on stopping this violence. Saffioti argues that when domestic violence occurs in an affective and/or romantic relationship, it is needed external intervention for the rupture²³⁶. Or in other words, women rarely can break up with violent men if they don't have external help²³⁷. Bringing this logic to the present research: when the woman is living abroad, the violent partner is possibly their only family and friend. This means that unless they go back to a place where they have this support group of friends and family, they probably won't be able to scape from the violence. The text the *Misinterpretation of Domestic Violence Recasting Survival as Child Abduction*²³⁸ explains that women who are violence victims (in the USA) turn most frequently to informal support networks (family and friends) for help in coping with relationship troubles²³⁹, I would also claim this logic to Brazilian women. Even so informal support networks are usually the preferred option, in Brazil there's means of government help.

Domestic violence, and more specifically gender based violence, has become a prominent field of commitment of Brazilian law, due to the high incidence of the matter in the country. In the 7th of August 2006 the law known as "Lei Maria da Penha" has been promulgated. This law, also known as Law number 11.340/2006, it's a Brazilian legislation to combating domestic and family violence against women²⁴⁰. This law has received its name in homage to Maria da Penha Maia Fernandes, a woman that has become a symbol of the fight against domestic violence in the country²⁴¹.

This law recognises the various types of gender based violence (physical, emotional financial, etc.) and stablish mechanisms to prevent it, to give assistance to the women and even for the punishment of the aggressor²⁴². Between the most important measures this law includes there is the removal of the aggressor from the home, the prohibition of approaching, the suspension of firearm possession. In addition, the law asks for the providence of public

²³⁶ SAFFIOTI, Ibid., p.85.

²³⁷ SAFFIOTI, Ibid., p.85.

²³⁸ COMMAS; et al. **The Misinterpretation of Domestic Violence Recasting Survival as Child Abduction.** In: Battered Women, Their Children, and International Law. Northeastern University Press, 2012.

²³⁹ COMMAS, et. Al., Ibid.

²⁴⁰ BRASIL. **Lei nº 11.340**, de 7 de agosto de 2006. Cria mecanismos para coibir a violência doméstica e familiar contra a mulher. Diário Oficial [da] República Federativa do Brasil, Brasília, DF, 8 ago. 2006. Seção 1.

²⁴¹ MENDES. A proteção da mulher contra a violência doméstica. Revista Brasileira de Direito, Vitória, v. 12, n. 1, p. 95-114, jan./jun. 2016.

²⁴² BRASIL. **Lei nº 11.340**, de 7 de agosto de 2006.

policies aimed at preventing violence, training of professionals who deal with cases of domestic violence, and the creation of support and care networks for victims²⁴³.

6.2.1 Gender Based Violence effects on Children

In cases of International Parental Child Abductions, if the abductor was suffering from domestic violence and can prove. It will be the abduction country judge that will decide if the situation is a risk for the child and thus a reason for him not to be returned to their habitual residence country or not. In the first chapter of the book: *Battered Women, Their Children, and International Law: The Unintended Consequences of the Hague Child Abduction Convention*²⁴⁴, the authors argue that:

“How a society defines domestic violence has implications for the legal protections available to victims, the availability of supportive services, and the likely responses that survivors will encounter from friends, family members, and others in their social networks.” (COMMAS, et al., 2012, p.1)

As we will further discuss in the next chapter of this thesis (chapter five), The Hague Convention on the Civil Aspects of International Child Abduction was constituted as a means to safeguard the **child’s** best interest and safety. In addition, this international treaty does not take into account the possibility of domestic violence or any gender issue. This conveys that the idea of what is the child’s best interest and safety is open to the jurist in charge. Taking the previous discussion into consideration, it’s understandable how this gender based violence can be overseen. If we violence against women is seen as natural, it is not seen as a treat to their children.

In spite of this view, Brandon and Lewis have discussed the harm caused to children by witnessing domestic violence²⁴⁵. These authors have beheld in their research that most children that witnessed violence between parents displayed more than one emotional or behavioural problem²⁴⁶. Some even have shown traces of Post Traumatic Stress Disorder

²⁴³ BRASIL. **Lei nº 11.340**, de 7 de agosto de 2006.

²⁴⁴ COMMAS, et al. **Emotional Terror, Physical Harm, and Women’s Experiences of Domestic Violence**. In: *Battered Women, Their Children, and International Law*. Northeastern University Press, 2012.

²⁴⁵ BRANDON; LEWIS. **Significant harm and children’s experiences of domestic violence**. *Child and Family Social Work*, 1996, 1, pp.33-42.

²⁴⁶ BRANDON; LEWIS., *Ibid.*, p.40

(PTSD) and some have developed depression²⁴⁷. Brandon and Lewis affirm that the backdrop of violence has been ignored by adults, when explaining the children's behaviour²⁴⁸. They prefer to culpability the children for they behaviour instead of taking into account the horrible experiences these children are dealing with²⁴⁹. The researchers include that:

“The evidence points to the possibility that the cumulative harm from witnessing violence will affect the children's emotional and mental health and future relationships. Children can be helped to recover from the impact of parental conflict if proper support is provided. Until professionals recognize that when a child sees violence at home there is a likelihood of significant harm, it will not be possible to act to prevent long-term damage.” (BRANDON; LEWIS, 1996, p.41)

In addition, it is not only witnessing the domestic violence, the improper behaviour of parents and the stress that the parents are under. Brandon and Lewis examine that in families where there's a culture of violence, there's a typical coping method of “distancing” between family members²⁵⁰. Specially in the case of violent fathers, they tend to be more distance and less involved with the child's upbringing, as well less affectionate and more prone to resort to physical punishment to control their children's behaviour²⁵¹. Brandon and Lewis also add that mothers in domestic violence situations have more stress when caring for children, showing inconsistent behaviour and being more punitive towards the children²⁵².

In the text *Child Exposure to Abduction and Domestic Violence*²⁵³, the authors counterpoise that the negatives effects of child exposure to abduction can be negative, however the exposure to domestic violence is potentially worse²⁵⁴. According to them, one of the reasons for this is because usually the abductor is a mother, who is also the primary caregiver²⁵⁵. This text also alerts to data that usually when there's domestic violence against women in a household, there's a huge possibility that the children are also physically or sexually abused, often by the father²⁵⁶. The authors have also pointed that there's evidence of

²⁴⁷ BRANDON; LEWIS., Ibid., p.35.

²⁴⁸ BRANDON; LEWIS., Ibid., p.41.

²⁴⁹ BRANDON; LEWIS., Ibid., p.41.

²⁵⁰ BRANDON; LEWIS., Ibid., p.35.

²⁵¹ BRANDON; LEWIS., Ibid., p.35.

²⁵² BRANDON; LEWIS., Ibid., p.35.

²⁵³ COMMAS, et al. Op. Cit.

²⁵⁴ COMMAS, et al., Ibid.

²⁵⁵ COMMAS, et al., Ibid.

²⁵⁶ COMMAS, et al., Ibid.

clear psychological harm to the children even in cases where they are not abused or in that the mother is only suffering from emotional abuse²⁵⁷.

7. The Hague Convention on the Civil Aspects of International Child Abduction: an overview

The cases of International Parental Child Abduction, in which the Thesis is based on, happened in Signatory Nations to The Hague Convention on the Civil Aspects of International Child Abduction. In both cases, the country of abduction and the countries of habitual residence (terms that will be better explored in this chapter), were Signatory Nations: Brazil, United States of America, and France. Consequently, this Convention was the base for the cases to have a court trial, and the text in which the outcomes of the first decisions were grounded.

This chapter seek to provide an overview of The 1980 Hague Convention's rationale and how it functions in practical terms. This is to facilitate the analysis of the cases of Ghisi and Goldman. This chapter, with the same reason, review briefly Brazilian performance (when being a country of abduction) in applying the Hague Convention in it's territory.

The Hague Convention on the Civil Aspects of International Child Abduction, or by its shorter name: The 1980 Hague Convention is an International Treaty regarding children's rights and safety. This convention addresses the issue of International Child Abduction, and as said in its official text, the purpose of the convention is to provide a mechanism for the prompt return of children who have been wrongfully removed or retained in a country other than their habitual residence. The convention establishes a process for determining which country has jurisdiction over a custody dispute and provides for the cooperation of courts in different countries to resolve the dispute and facilitate the return of the child. "The primary intention of the Hague Convention is to preserve whatever child custody arrangement existed before the wrongful removal."²⁵⁸.

The reason for the Convention was the growing concern about the increasing number of cases in which one parent would take a child across international borders without the other parent's consent or against a court order. This situation often resulted in the child being separated from one of their parents and their extended family, and sometimes even their

²⁵⁷ COMMAS, et al., Ibid.

²⁵⁸ WAIDE, Op. Cit., p.272.

home country. In the words of Waide, the international parental child abduction is a “global epidemic that is escalating”²⁵⁹. In her article, Waide also points that the reason to this “epidemic” is the rise of transnational marriages (and in consequence, the rise of transnational divorces), that even though can be positive, also put the children of these unions are at risk when the marriages end²⁶⁰.

In the case of a child being abducted or removed from their country of residence without the proper consent of one of the holders of custody. The country of that has received the child has to make sure the child comes back to the country of habitual residence. This means that the government of the country of abduction will have to make open a process of finding where the child is located, try to facilitate an amicable turn back of the child by the abductor, or a not amicable one. And finally, this government will be responsible for returning the child to the country of residence, where the custody process can be continued. Waide points that “Instead of deciding the merits of the custody case, the abducting country must determine only the child's country of habitual residence and return the child immediately to that count.”²⁶¹. This is the overall ideal practice when relying on The 1980 Hague Convention.

Altogether, The Hague Convention on the Civil Aspects of International Child Abduction is an important international legal instrument that aims to protect children from the harmful effects of international child abduction and promote the peaceful resolution of custody disputes between parents and caregivers in different countries that have signed it. At the moment, the Convention has 103 countries as part of the treaty. As we can see in The Hague Convention's official website in 2023, 101 countries have ratified the convention²⁶². All those countries expect a cooperation between each other so that custody rights given by one country's authority is valid and respected in the others. Cooperation that is expected to be “prompt”, in the words used in the Convention, and so that the child's best interest and safety can be guaranteed. Each country that has ratified the convention is responsible for ensuring that its domestic laws and procedures are in compliance with the convention's provisions. If a country fails to follow the rules set forth in the convention, the consequences may vary depending on the circumstances. However, the most serious consequence is usually sanctions,

²⁵⁹ WAIDE, *Ibid.*, p.272.

²⁶⁰ WAIDE, *Ibid.*, p.272.

²⁶¹ WAIDE, *Ibid.*, p.275.

²⁶² Child Abduction Section. Hague Conference on Private International Law. The World Organisation for Cross-border Co-operation in Civil and Commercial Matters. HCCH, 2023.

may they be diplomatic or economic. Brazil, in the case of Goldmann that is studied in this thesis, has suffered non official sanctions in 2009, and according to Waide this has been very effective with assuring the compliance²⁶³. Although, it is more common that if a country fails to comply with the convention's provisions, other countries may be less willing to cooperate with that country in cases of international child abduction. In addition, a country that fails to fulfil its obligations under the convention may be subject to criticism, but excluding exceptions, it does not go further than that.

Even though The Hague Convention on the Civil Aspects of International Child Abduction has been signed in 1980, Brazil has signed and ratified it only in 1999, and it entered into force in Brazil in February 2000. In addition, Brazil was already a signatory country to the Inter-American Convention on the International Return of Children since 1989. However, as mentioned by Araújo, even though Brazil has signed two conventions in regarding the theme no authority or specific department has designated to be in charge of the whole process of children's return²⁶⁴.

The U.S. Department of State makes every year their Annual Report on International Child Abduction, that regards only to cases of international child abductions that involve the United States²⁶⁵. This document is important since they are the only country that makes accessible annual reports and separates the action of every country. It is worth mentioning that the law that instituted the need for the Annual report was baptized due to one of the cases analyzed in this Thesis: *The Sean and David Goldman International Child Abduction Prevention and Return*²⁶⁶. In the 2023 report, Brazil appears in the “noncompliance” list. According to the report, Brazil was previously cited for demonstrating a pattern of noncompliance in all the 2006–2022 Annual Reports²⁶⁷. Recollecting that the 1980 Hague Convention require a “prompt” return of the child. This happens specially for the delay of over 12 months that Brazilian government takes to resolve the cases.

In her article, *To Comply or Not to Comply? Brazil's Relationship with the Hague Convention on the Civil Aspects of International Child Abduction*, Waide points potential

²⁶³ WAIDE, Op. Cit., pp.281-289.

²⁶⁴ ARAÚJO. **Direito Internacional Privado**, 5a ed., Rio de Janeiro: Renovar, 2011

²⁶⁵ U.S. Department of State, "Reported Cases of International Parental Child Abduction". Travel State Gov. Website.

²⁶⁶ THE SEAN AND DAVID GOLDMAN INTERNATIONAL CHILD ABDUCTION PREVENTION AND RETURN ACT OF 2014 22 U.S.C. §9111, ET SEQ.

²⁶⁷ U.S. Department of State, " 2023 Annual Report on International Child Abduction". Travel State Gov. Website, 2023.

reasons for Brazil's pattern of noncompliance²⁶⁸. As mentioned before in the Literature Review (chapter 4), Waide give 3 potential reasons, of which is more substantiated to raise the matter on: the treatment of the cases in the country and the structure of the Brazilian court system²⁶⁹. This article also affirms that Brazil treats cases of International Child Abduction in the same way they treat custody decisions. Those given reasons have implications to the Brazilian action regarding those cases. The first reason of the treatment of the cases being seen with less urgency or less priority is due to, and Waide also points that out, the wrongful retention is not a criminal offence that is regularly punished under the Brazilian Penal Code, being the punishment an imprisonment from two months to two years²⁷⁰.

Since, as mentioned before, Brazil does not reserve an authority or specific department designated to be in charge of the whole process. Those decisions, then, would be treated as custody decisions²⁷¹. Those decisions can be very influenced by the culture of the country, and in the case of Brazil, as argued in this research, tend to favour the mother as the most clear option of a caregiver. This has to do with the gendered ideals of motherhood that the country exhibits. Waide when looking into Sean Goldman case brings up the Brazilian justice answer to keeping him in the country: he had “already adapted to the country” and that as in a simple custody dispute “the mother always gets the child” because “the mother is the most important bond”²⁷².

Nevertheless, it is crucial to acknowledge that to follow the agreement on the 1980 Hague Convention, the country of abduction is not supposed to decide on the matter as if it was a custody case. The country of abduction, as noted earlier, ought to facilitate the safe return of the child. And only in exceptions should keep the child in the country if proved that it's not safe for the child (physically and emotionally) to come back to their custody holder as put in the Article 13²⁷³.

²⁶⁸ WAIDE, Op. Cit., pp.271-298.

²⁶⁹ WAIDE, Ibid., p.279.

²⁷⁰ WAIDE, Ibid., p.279.

²⁷¹ WAIDE, Ibid., p.279.

²⁷² WAIDE, Ibid., pp.282-283.

²⁷³ The 1980 Hague Convention on the Civil Aspects of International Child Abduction, Article 13.

8. The 1980 Hague Convention by a gender perspective

In the light of this Thesis objective in bringing a gender perspective into the Ghisi and the Goldman cases. It is important to understand how gender was raised in cases under The Hague Convention on the Civil Aspects of International Child Abduction. Highlighting that the Convention itself, as it is an international policy, a treaty, does not have a discourse. As this implies, no gender perspective is included in The 1980 Hague Convention on the Civil Aspects of International Child Abduction.

8.1 The gender of the abductor

Reiterating that gender is not a concept mentioned in the Convention, the abductor's gender is also not stated or distinguished. The abductor is identified as possibly a parent or a caregiver who does not have or does not have a full custody of the child, and so does not have the legal rights to bring a child to live in another country. In other words, despite any judgment of gender that the jurist in charge may have, the Convention mentions only a person who has legal right to custody in opposition to a person who does not.

In the Chapter 6.1, the background on how gender norms are linked to children's custody in Brazilian context has been reviewed. It was argued based on data produced by IBGE, that the woman usually gets the custody of children in the first instance (first court decision)²⁷⁴. As sustained by Costa, there are mainly two reasons for this fact: firstly, seeing maternal-primary custody as preferential is linked to gender-norms that idealize motherhood, seen them as natural caregivers²⁷⁵; secondly, in the Brazilian case, women are often granted with full or a major part of the custody, as they had role of caregiver prior to the divorce²⁷⁶. This background is relevant since, as mentioned by Waide, Brazilian court "tends to decide on cases that involve The 1980 Hague Convention in the same way as child custody"²⁷⁷.

Reinforcing that The Convention is clear in mentioning that the abduction country shall not decide in terms of custody, what usually happens in Brazil is that the court decides that is best for the child's well-being to stay with the mother, pledging the Article 13:

"Article 13

²⁷⁴ IBGE, 2022. Op. Cit.

²⁷⁵ COSTA; et al., Op. Cit., p.459.

²⁷⁶ COSTA; et al., Ibid., p.556.

²⁷⁷ WAIDE. Op. Cit., p.279.

Notwithstanding the provisions of the preceding Article, 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

–

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) 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 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. In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.”

As it was the scenario in the Goldman case, the point that the child should not be returned in case that it could expose the child to child to physical or psychological harm, is used as a reason for the child to stay with the mother, as it is interpreted that the mother is more important for the child’s upbringing. That’s what Waide means with the affirmation that The 1980 Hague Convention cases are treated as custody cases²⁷⁸. In other words, it is because in both cases the jurist in charge can interpret that it’s best for the child to stay with the mother. However, it’s important to reinforce that this is an interpretation of the Convention, and not a discourse predicted in it, since it is a policy and thus not have a discourse. The 1980s Convention by itself is gender-neutral, however interpretations of it can carry gender norms discourses, and this signify that gender norms (in this case the Brazilian gender norms) can influence the decisions in cases of International Parental Child Abductions.

²⁷⁸ WAIDE. *Ibid.*, p.279.

8.2 The 1980 Hague Convention and Domestic Violence

The 1980s Hague Convention, as well as other agreements in relation to children rights such as the Inter-American Convention on the International Return of Children²⁷⁹ (that is also applied in Brazil), are, as explained by Costa and Lopes, constructed with the principle of the minor's well-being²⁸⁰. This principle of well-being is not defined by the Convention text. In this way, it is opened to interpretation. Yet, the Convention does mention the need to respect Human Rights and that the child should not suffer any further physical or psychological harm.

Having mentioned that, the Convention does not have the parent's or other caregiver's well-being as a precedence. It is not seen as a priority, neither the well-being of the left-behind caregiver or parent; nor the well-being of the abductor. Nonetheless, it is the responsibility of the jurist in charge to understand in each particular case if the child's caregiver well-being can affect their own well-being. Often Article 13 is evoked in case of domestic violence, with the same argument used in the previous chapter type of case (Chapter 8.1) and point that the child should not be returned in case that it could expose the child to child to physical or psychological harm. Contrastingly, there's no evidence supporting the interpretation that one of the genders can provide a better caregiver role (as the argument used in the previous subchapter to support a possibility of higher "psychological harm" if the child is separated from the mother). There are studies conducted in the effects of domestic violence in children, supporting that they can be harmful psychologically and physically²⁸¹.

Freeman and Taylor in their article *Domestic violence and child participation* reflect specifically about the topic of how domestic violence has influenced 1980 Hague Convention cases in the last few years²⁸². According to them, when the convention was set, most of the abductions were made by men, however now women are the ones abducting more²⁸³. In accord with their research, these occurrences have, most times, relation to domestic

²⁷⁹ Organization of American States (OAS). **Inter-American Convention on the International Return of Children**, 15 July 1989, OAS, Treaty Series, No. 70.

²⁸⁰ COSTA; LOPES. **Analysis of the Conventions on International Restitution of Children Wrongfully Retained or Removed Under the Light of the International Regime Theory**. Sequência, n72. Florianópolis: Jan-Apr 2016.

²⁸¹ See Chapter **6.2.1 Gender Based Violence effects on Children**.

²⁸² FREEMAN; TAYLOR. Op. Cit., pp.154-175.

²⁸³ FREEMAN; TAYLOR. Ibid., pp.155.

violence²⁸⁴. Freeman and Taylor understand that this mindset was not involved in the draft of the convention.

“It is at least questionable whether non-return of the child to the State of habitual residence encourages abduction or whether women who are victims of domestic violence will still try anything to protect themselves and their children, even if they fear they might ultimately be returned.” (FREEMAN; TAYLOR., 2020,p.157).

The convention does not mention in any article something about the possibility of domestic violence between the parents, in consequence it does not specify a conduct on how to act in case one of the parents is acting violent against each other. Anyhow, in cases such as so, it is possible to evoke the Article 13. Yet, according to the book *Battered Women, Their Children, and International Law: The Unintended Consequences of the Hague Child Abduction Convention*, “In only a few Hague Convention cases have judges accepted that children’s exposure to their mothers’ suffering from domestic violence represents a grave risk of harm to the children and denied the fathers’ petitions for their children’s return²⁸⁵. Regardless of it being a possible risk of harm to the children, it depends on the interpretation of the jurist selected to the case if domestic violence suffer by one of the partners is a threat to the child, and thus a reason for keeping the child in the country of abduction.

9. Discussion on the cases of Goldman and Ghisi: a case comparison

The two cases described have an abundance of similarities. This is besides the outcomes of the cases and the domestic violence situation. It is important to acknowledge those similarities so that we can isolate the gender related aspects for our analysis. As before discussed, this discussion holds a “most-similar case comparison”²⁸⁶, meaning in this that they were chosen to isolate the specific characteristic that is aimed to be analyzed. In this case the characteristic is how gender played a role in the first decisions of each case.

Those two cases resemble in the way that both of the women had “ran away” from their migration country, to their native country. They did that along their children whose fathers were from the migration country. Both of the women were white, straight, young, belonged to a Brazilian middle class and have migrated (one to North America and the other

²⁸⁴ FREEMAN; TAYLOR. Ibid., pp.155.

²⁸⁵ COMMAS, et al. Op. Cit. pp.5-7.

²⁸⁶ BENNETT; ELMAN. Op. Cit. pp.174-176.

to Europe). Both children when abducted were under the age of 10, respectively 4 and 5 years old.

In the two cases, the women were accused of International Child Abduction. In both cases the women had gone through international court cases involving The 1980 Hague Convention. Court cases based in Brazilian territory (with Brazilian judges). The judges were the ones to interpret what is postulated by the Convention and applied it such as so. Because of the judges culture, it is possible to say that in both cases we could see Brazilian culture having a say in what should be decided or not in the migration country (in those cases: USA and France). In the sense that both those first decisions were influenced by the Brazilian background in gender, what the country culture has constructed as gender norms and how domestic violence is seen. However, those similarities in the women had completely different outcomes. As presented previously: in the Goldman case, Bianchi has got to be with her child; but the mother in the Ghisi case had to give up her child. Of course, they had different judges for each case, and their different interpretations of the law interfere on the outcomes.

With the shared similarities taken into consideration and isolating the gender component of the cases. The confrontation comes with the statement that in both cases gender plays a big part. Either by being a “given reason” to why the child should stay with the mother (Goldman case). Or by the absence of attention to it: by neglecting the domestic violence accusations of the mother, and the possible harm that it could cause the child (Ghisi case).

The Goldman case when analyzed through a gender perspective show the influence of gender norms in the first decision by the Brazilian court. As one of the main reasons given to define the decision that the child should not be returned was that the child would suffer psychological damage from being apart from her, argument sustained by the Article 13²⁸⁷ of the Convention. This “psychological” damaged suffered by being apart from the mother comes from the assumption that she would play the role of primary caregiver, as the motherhood ideals in Brazil imply that²⁸⁸. On the other hand, the father plays the role of provider, in the meaning that besides the financial resources, the father does not play a major role in the child’s upbringing²⁸⁹. Waide in her article critics that Brazilian court show “bias

²⁸⁷ The 1980 Hague Convention on the Civil Aspects of International Child Abduction, Article 13.

²⁸⁸ BOTTON; CUNICO; BARCINSKY; STREY, *Op. Cit.*, pp.47-49.

²⁸⁹ BOTTON; CUNICO; BARCINSKY; STREY, *Ibid.*, pp.47-49.

to mothers” because of the mindset that “the woman is seen as the best caregiver to the child”²⁹⁰. As discussed in the theoretical framework of this research, those gender ideals are socially constructed since childhood and are passed from generation to generation²⁹¹.

As aforementioned, the Ghisi case holds a substantial circumstance that differs it significantly from the Goldman case. Valeria Ghisi was suffering from domestic violence. This situation has proved to be the most common cause between International Parental Child Abduction cases.²⁹² Regardless being the most common cause, it is still overseen in many cases, such as the one we are currently analysing²⁹³. According to the 1980 Hague Convention, if disregarding the gender aspect, in theory, everything has happened in the way it was supposed to be. When Ghisi has arrived in Brazil with her child, Brazilian justice has provided France the prompt return of the child, respecting the Convention and the decisions of French justice system. In theory, the Convention has been applied successfully by the Brazilian government in this case, but it is arguable that women's rights were not taken into consideration. Bearing in mind the discussion on the effects of gender based violence in children²⁹⁴ is also valid to reinforce that this violence, that is in most cases gender based, should be considered as an aggravating factor in the child’s safety, both psychological and physical. What by the Article 13 predicts, this could then be seen as an “exception”.

When a gender perspective is applied into the cases, we analyze how gender plays a role into each one of them. Even though The 1980 Hague Convention does not include in the text any gender norms or stereotypes, since it is a Convention and thus not have a discourse. Its open to interpretations that include it in their decisions, or that ignore gender based violence.

In the case of Goldman, when deconstructing the motherhood and fatherhood ideas and thus dismantling the argument that the solely mother absence will have the worst psychological effect (since she would be seen as the most important in the child upbringing). And knowing that the other argument given of the time that the child had spent in the country was not valid since the father had applied in time. It’s possible to argue that The Hague

²⁹⁰ WAIDE. *Ibid*, p.279.

²⁹¹ BOTTON; CUNICO; BARCINSKY; STREY. *Op. Cit.*, pp. 43-56.

²⁹² COMMAS, et. Al., *Op. Cit.*, pp.3-4.

²⁹³ COMMAS, et. Al., *Ibid.*, pp.3-4.

²⁹⁴ See Chapter 6.2.1

Convention on the Civil Aspects of International Child Abduction was not applied correctly based on the articles:

The Article 1.b argues that rights of custody and of access under the law of one Contracting State have to be effectively respected in the other Contracting States.

The Article 16 points that the neither the judicial nor administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody (if they haven't been decided yet), until the process of returning of the child is done.

The Article 19, word to word says "A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue."

The Article 31 defines that in matters of custody of children, if they have more than one system of law applicable (in different territorial units), should be applicable the one that refers to the children's habitual residence.

In this case, we saw Brazilian gender norms being one of the arguments to making a decision that, in the validity of the 1980 Hague Convention, should've been made in the country of habitual residence (in this case the USA). Since, when taking away the two main arguments, the decision becomes more similar to a custody decision. In this case, the 1980 Hague Convention was not applied in the correct manner. This had the excuse of it being an exception (using Article 13), since it was for the "best for the child" that he would stay with his mother. And the other argument used to keep the Goldman child in Brazil was that he had already spent too much time in Brazil, and so had adapted to the culture. However, he had only spent "too much time" in the country because the "prompt return" in which the Convention is based didn't happen.

In the Ghisi case, the background in gender-based violence in Brazil needs to be addressed in order to analyze the case. Those social constructions of the gender norms predict expectations and behaviours that goes beyond the biological features of a male and a female²⁹⁵. As mentioned by Saffioti, in Brazil, those norms see as "natural" a violent

²⁹⁵ SAFFIOTI, Op. Cit., p.83.

behaviour of a man²⁹⁶, having this in mind gender norms affect power relations that perpetuate gender-based violence²⁹⁷. Analyzing a case such as Ghisi, where the accusations of domestic violence were not seen as a threat to the child. And thus the Article 13 was not applied in the first decision. Show, Through a gender perspective, that gender norms of violence are naturalized. And so, when deconstructing the idea that this is a “normal” behavior, the situation can be then seriously interpreted as a threat to the safety of the child.

Applying a deconstruction of gender norms of in both cases bring to the surface that the jurists’ interpretation of gender has influenced in their first decisions. Their interpretation, even so different. In one case explicit in the reasoning for the stay of the child. In the other case expressed in the absence. Represent Brazilian specific gender norms, that have implications in the outcomes. For Goldman meant being the abduction successful, with the unfair decision for the father. For Ghisi meant the efforts made to runaway from abuse and protect her child insignificant, and their separation.

10. Conclusion

The 1980 Hague Convention understands that with these growing phenomena of child abduction, it is necessary that countries cooperate with each other in order to keep the court custody decisions of a country valid. This implies, as its first article mentions, that in case a parent or a caregiver runs away to another country with a child, without having the rights to do so, the other country is obligated to ensure the prompt return of the child to their habitual residence, with the person who owns the custody. This has been a successful relief for parents who had their children taken away. With the knowledge that family related (parents and other caregivers) abductions are more common than stranger abduction²⁹⁸. This international treaty is really important to assure that (in Contracting States) the custody decisions and children’s rights are respected.

Conversely, as analyzed in this Ma Thesis there are other aspects that should be taken into consideration when dealing with the process of child return or with the decision of taking the case as an exception, due to risk for child psychological and physical safety (Article 13).

²⁹⁶ SAFFIOTI, *Ibid.*, p.83.

²⁹⁷ SAFFIOTI, *Ibid.*, p.83.

²⁹⁸ FOREHAND; LONG; ZOGG. *Op. Cit.*, p.506.

Having the discussion on the cases based in gender deconstruction, it is concluded that, underlying gender norms of motherhood and fatherhood shouldn't be a considerate reason for a child to stay with their mother. Other factors should have a bigger importance, such as who is the caregiver or who has better conditions to support that child. The gender stereotypes should be deconstructed. Every person can be a great caregiver, no matter the gender.

In this same discussion, deconstructing gender provide means to denaturalize violent behavior of men. This provides the conception that domestic violence is not a natural behavior and has implications on the child safety (being able to cause harm physically and psychologically). Moreover, taking into consideration the continuity of the commonnesses of gender-based violence cases (that when family related translates mostly to domestic violence). There should be a given support to mothers who have run away with their children to another country, in order to escape from domestic violence. This type of violence is not only a women's rights violation, it is also harmful to the children, both psychologically and physically, and can affect children's development.

After witnessing the first outcomes and the analysis of gender in each case. It is imperative to give due consideration to a gender analysis when addressing to International Parental Child Abduction cases. There should be a more careful consideration into the case before taking an action. Notwithstanding, that does not imply that the government should not grant the prompt return of the child. Meaning that to take a careful consideration shouldn't mean interfering in time taken for the process. As mentioned before in the Chapter 7, Brazil is already failing concerning the timing the whole process should take.

One of the reasons for this time taken to first court decisions, given by Waide, is the fact that Brazil treat the process of International Parental Child Abduction cases in the same way and justice area that the child custody cases²⁹⁹. However, as seen required in The 1980 Hague Convention, those decisions shall not be considered custody cases (or treated as one).

For that means, Brazilian government needs to assign an authority or specific department designated to be in charge of the whole process of children's return in cases of International Parental Child Abduction. This could create a faster response to those cases,

²⁹⁹ WAIDE, Op. Cit., p.279.

apart from an organised and pre-planned set of steps that should be taken. An advanced preparation could provide a smooth return, with more safety and a reduce amount of further trauma.

When determining an authority or specific department, there ought to exist a predetermined collection of rules and protocols to be adhered to when addressing International Child Abduction cases. Those rules and protocols would follow the Convention predeterminations. And, common exception cases, such as domestic violence, could be already be predicted in this regulation, in order to address specially gender-based violence. It would also be of importance that this authority/department is instructed to set aside cultural views of gender norms, in order to make gender-neutral decisions. Otherwise, this set of rules and protocols should already include this gender perspective in their text, so that there's no room for other biased interpretations.

Moreover, this research incentivises the continuation of new researches that involve more intersectionalities. Understanding the effects of someone's race, sexual orientation, other gender identities (such as trans and gender-neutral), social class, cases where the abductor is not a parent but another caregiver, or even just cases in which the abductor is the father. How those other intersectionalities and cultural aspects are influencing the processes of International Parental Child Abduction? Those should also be taking into account when dealing with cases. All Human Rights should be respected as well as the integrity of Contracting States decisions.

Bibliography and References

ABREU, Gabriela S. de, Marjane B. SOUZA, and Márcio dos S. SILVA. "Domestic Violence among Intimate Partners: Cultural and Social Issues About Men Who Commit Violence." *Id on Line Rev. Mult. Psic.* 11, no. 38 (2017): 388-407.

ACKERLY, Brooke and Jacqui True. "Back to the Future: Feminist Theory, Activism, and Doing Feminist Research in an Age of Globalization." *Women's Studies International Forum* 33 (2010): 464-472.

AREND, Silvia Maria Fávero, Luciana Rosar Fornazari Klanovicz, and Humberto da Silva Miranda. "Infâncias, relações de gênero e famílias sob o enfoque da história do tempo presente." In *Fio que se faz trama: a História do Tempo Presente e a responsabilidade na*

pesquisa histórica, edited by Bruno César NASCIMENTO, 61-82. Editora Mil Fontes, Brazil, 2022.

ARAÚJO, Nádia de. *Direito Internacional Privado: teoria e prática brasileira*, 5a ed., Rio de Janeiro: Renovar, 2011.

BARUFFI, Maria Caterina. "A child-friendly area of freedom, security and justice: work in progress in international child abduction cases." *Journal of Private International Law* 14, no. 3 (2018): 385-420.

BENNETT, Andrew and Colin Elman. "Case Study Methods in the International Relations Subfield." *Comparative Political Studies* 40, no. 2 (2007): 170-195.

BEAUMONT, Paul, et al. "Child Abduction: Recent Jurisprudence of the European Court of Human Rights." *The International and Comparative Law Quarterly* 64, no. 1 (2015): 39-63. Cambridge University Press.

BOTTON, Andressa, Sabrina Daiana Cúnico, Mariana Barcinski, and Marlene Neves Strey. "Os Papéis Parentais nas Famílias: Analisando Aspectos Transgeracionais e de Gênero." *Pensando Famílias* 19, no. 2 (dez. 2015): 43-56.

BOYD, Susan B. "Is there an Ideology of Motherhood in (Post) Modern Child Custody Law?" *Social & Legal Studies* 5, no. 4 (1996): 495-521. SAGE Publications.

BRANDON, Marian and Ann Lewis. "Significant harm and children's experiences of domestic violence." *Child and Family Social Work* 1 (1996): 33-42.

BRASIL. Lei nº 11.340, de 7 de agosto de 2006. Cria mecanismos para coibir a violência doméstica e familiar contra a mulher. *Diário Oficial [da] República Federativa do Brasil*, Brasília, DF, 8 ago. 2006. Seção 1, p. 1.

BRASIL. "Lei nº 12.527, de 18 de novembro de 2011." Planalto, Casa Civil - Subchefia para Assuntos Jurídicos. Accessed May 29, 2023. <https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/112527.htm>.

BURCHILL, Scott, Andrew Linklater, Richard Devetak, Jack Donnelly, Matthew Paterson, Christian Reus-Smit, and Jacqui True. *Theories of International Relations*. 3rd ed. New York: PALGRAVE MACMILLAN, 2005.

CARDIN, Lara. "The Hague Convention on the Civil Aspects of International Child Abduction as Applied to Non-signatory Nations: getting to square one." *International Child Abduction*, *Houston Journal of International Law* 20, no. 1 (1997): 141-172.

Child Abduction Section. Hague Conference on Private International Law. The World Organisation for Cross-border Co-operation in Civil and Commercial Matters. HCCH, 2023. Accessed January 14, 2023. <<https://www.hcch.net/en/instruments/conventions/specialised-sections/child-abduction>>.

CIDRÃO, Taís Vasconcelos, Antônio Walber Muniz, and Sérgio Adriano Ribeiro Sobreira. "Sequestro internacional de crianças: uma análise da Convenção de Haia de 1980." *Ponto e Vírgula*, no. 23 (2018): 44-59. Editora PUC SP.

COMMAS, Lindhorst, et al. *Battered Women, Their Children, and International Law: The Unintended Consequences of the Hague Child Abduction Convention*. Northeastern University Press, 2012.

CONNEL, Raewyn. "Masculinities in global perspectives." *Theory and Society* 45 (2016): 303-318.

COSTA, José Augusto Fontoura, and Rachel de Oliveira Lopes. "Analysis of the Conventions on International Restitution of Children Wrongfully Retained or Removed Under the Light of the International Regime Theory." *Revista Seqüência*, no. 72 (2016): 125-144.

COSTA, Luiza Lopes Franco, et al. "Gender stereotypes underlie child custody decisions." *European Journal of Social Psychology*, no. 49 (2019): 548-559. John Wiley & Sons, Ltd.

DEL'OLMO, Florisbal de Souza. "Subtração Internacional de Crianças à Luz do caso Sean Goldman". *Anuario Mexicano de Derecho Internacional*, vol XV (2015): 739-772.

DOW, Marie Dawn. "Integrated Motherhood: Beyond Hegemonic Ideologies of Motherhood." *Journal of Marriage and Family* 78, no. 1 (February 2016): 180-196. <[doi:10.1111/jomf.12255](https://doi.org/10.1111/jomf.12255)>.

ELAM, Diane. *Feminism and Deconstruction*. Routledge. New York, 1994.

FONSECA, Cláudia. "Ser Mulher, Mãe e Pobre." In *História das Mulheres no Brasil*, edited by Mary Del Priore, 428-463. São Paulo: Editora Contexto, 2004.

FOREHAND, Rex, Nicholas Long, and Carolyn Zogg. "Preventing Parental Child Abduction." *Clinical Pediatrics* 30, no. 9 (September 1991): 505-510. <doi:10.1177/000992289103000903>.

FREEMAN, Marilyn, and Nicola Taylor. "Domestic Violence and Child Participation: Contemporary Challenges for the 1980 Hague Child Abduction Convention." *Journal of Social Welfare and Family Law* 42, no. 2 (2020): 154-175. <doi:10.1080/09649069.2020.1739786>.

GONÇALVES, Karyna Batista Sposato et al. *Lei Maria da Penha: aspectos gerais e sua efetividade na proteção à mulher*. Revista Eletrônica de Direito Processual, Rio de Janeiro, v. 14, n. 1, p. 84-104, jan./abr. 2013.

GONZALEZ-OCANTOS, Ezequiel. "Designing Qualitative Research Projects: Notes on Theory Building, Case Selection and Field Research." In *The SAGE Handbook of Research Methods in Political Science and International Relations*, edited by Luigi Curini, Robert J. Franzese Jr., and Wendy Martinek, 1st ed., 477-496. SAGE, 2020.

GOTTSCHALL, Marilyn. "The Ethical Implications of the Deconstruction of Gender." *Journal of the American Academy of Religion* 70, no. 2 (2002): 279-299.

GRIFFIN, Gabriele. *A Dictionary of Gender Studies*. Oxford University Press, 2017. doi: 10.1093/acref/9780191834837.001.0001. Available at: ><https://www-oxfordreference-com.zorac.aub.aau.dk/display/10.1093/acref/9780191834837.001.0001/acref-9780191834837>>. Last access 11 May 2023.

Grupo Permanente de Estudos sobre a Convenção da Haia de 1980. "Comentários em Convenção sobre os aspectos civis do Sequestro Internacional de Crianças." MPPR. Accessed January 12, 2023. <https://crianca.mppr.mp.br/pagina-1362.html>.

Hague Conference on Private International Law. *Hague Convention on the Civil Aspects of International Child Abduction*. 25 October 1980. Hague XXVIII. Available at: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>. Last accessed 14th January 2023.

HCCH. "Status Table." Accessed January 13, 2023. Available at: <<https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>>. Last access 13 January 2023.

HUCHTKER, Dietlind. "Deconstruction of Gender and Women's Agency: A Proposal for Incorporating Concepts of Feminist Theory into Historical Research, Exemplified through Changes in Berlin's Poor Relief Policy, 1770–1850." *Journal of Women's History* 17, no. 1 (2005): 145-152.

JATOBA, Daniel. *As Principais Perspectivas Teóricas Contemporâneas: Pós-estruturalismo, Pós-modernismo, Gênero e Pós-colonialismo*. In: *Teoria das Relações Internacionais*. São Paulo: Editora Saraiva, 2013. PP.99-125

KANTOLA, Johanna and Emanuela Lombardo. "Feminist Political Analysis: Exploring Strengths, Hegemonies and Limitations." *Feminist Theory* 18, no. 3 (2017): 323-341.

LOWE, Nigel V., and Victoria Stephens. "Global Trends in the Operation of the 1980 Hague Abduction Convention." *Family Law Quarterly* 52, no. 2 (2018): 349-384.

MENDES, Taís Gasparian. A proteção da mulher contra a violência doméstica: avanços e desafios da Lei Maria da Penha. *Revista Brasileira de Direito*, Vitória, v. 12, n. 1, p. 95-114, jan./jun. 2016.

MILLER, Claire Cain. The Motherhood Penalty vs. the Fatherhood Bonus: A Child Helps Your Career, if You're a Man. *New York Times*, 2014. <<https://www.nytimes.com/2014/09/07/upshot/a-child-helps-your-career-if-youre-a-man.html>>. Accessed in 21st of May 2022.

National Center for Missing & Exploited Children. "Child Victim Identification Program: Key Findings and Trends Report." Washington, D.C.: National Center for Missing & Exploited Children, 2021. Accessed May 23, 2023. <<https://www.missingkids.org/content/dam/missingkids/pdfs/publications/pdf2a.pdf>>.

Organization of American States (OAS), *Inter-American Convention on the International Return of Children*, 15 July 1989, OAS, Treaty Series, No. 70. Accessed 30 May 2023. Available at: <<https://www.refworld.org/docid/3de4b8754>>.

PIRES, Adryelle Horrane Soares. "Análise de Casos do Sequestro Interparental no Brasil." Trabalho de Conclusão de Curso. Direito, Unievangélica, 2020.

Place of divorce lawsuit: Brazil chart. "Lugar da Ação do Processo: Brasil." Translated by Nathalia S. Pezzi. IBGE, 2022. "Registro Civil - Divórcios concedidos em 1ª instância a casais com filhos menores de idade, segundo o responsável pela guarda dos filhos e o número de filhos menores de idade." Available at <<https://sidra.ibge.gov.br/pesquisa/registro-civil/quadros/brasil/divorcios>>. Last accessed March 15, 2023.

RUFFA, Chiara. "Case Study Methods: Case Selection and Case Analysis." In The SAGE Handbook of Research Methods in Political Science and International Relations, edited by Luigi Curini and Robert Franzese. SAGE, 2020.

SAFFIOTI, Heleieth I. B. "Já se mete a colher em briga de marido e mulher." São Paulo em Perspectiva 13, no. 4 (1999): 82-89.

SCOTT, Joan W. "Gender: A Useful Category of Historical Analysis." The American Historical Review 91, no. 5 (Dec., 1986): 1053-1075.

TETREAUULT, Mary Ann. "Frontier Politics: Sex, Gender, and the Deconstruction of the Public Sphere." Journal of Marriage and Family 80 (October 2018): 1125–1143.

ECLAC- United Nations. United Nations Observatory of Gender Equality for Latin America and the Caribbean. Femicide or feminicide. [ECLAC - United Nations](https://oig.cepal.org/en/indicators/femicide-or-feminicide) Website, 2016. Accessed May 15, 2023. Available at: <<https://oig.cepal.org/en/indicators/femicide-or-feminicide>>.

UNODC. "UNODC Research: 2020 Saw Every 11 Minutes a Woman or Girl Being Killed by Someone in Their Family." UNODC Website. November 2021. Accessed May 15, 2023. Available at <https://www.unodc.org/unodc/frontpage/2021/November/unodc-research_-2020-saw-every-11-minutes-a-woman-or-girl-being-killed-by-someone-in-their-family.html>.

U.S. Department of State, "Reported Cases of International Parental Child Abduction," Travel State Gov. Website. Accessed May 6, 2023, <<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/providers/legal-reports-and-data/reported-cases.html>>.

U.S. Department of State, "2023 Annual Report on International Child Abduction". Travel State Gov. Website. Accessed May 6, 2023, <<https://travel.state.gov/content/dam/NEWIPCAAssets/2023%20ICAPRA%20Annual%20Report-fv.pdf>>.

WAIDE, A. M. (2011). To Comply or Not to Comply? Brazil's Relationship with the Hague Convention on the Civil Aspects of International Child Abduction. *Georgia Journal of International and Comparative Law*, 39(2), 271-298.

WIBBEN, Annick T.R. "Feminist International Relations: Old Debates and New Directions." *The Brown Journal of World Affairs* 10, no. 2 (Winter/Spring 2004): 97-114. Accessed May 11, 2023.< <https://www.jstor.org/stable/24590524>>.

YOUNGS, Gillian. "Feminist International Relations: A Contradiction in Terms? Or: Why Women and Gender Are Essential to Understanding the World 'We' Live in." *International Affairs*, vol. 80, no. 1, 2004, pp. 75-87. Oxford University Press on behalf of the Royal Institute of International Affairs. Accessed May 11, 2023. <doi:10.1111/j.1468-2346.2004.00367.x>.