

# GlobalARRK Report:

## Models for monitoring the impact of the 1980 Abduction Convention



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The Hague Conference on Private International Family Law meets periodically for a 'Special Commission' to monitor the use of the Hague Abduction Convention 1980 and the Hague Child Protection Convention 1996. Whilst much preparation goes into these events to monitor state parties use of the Conventions, the work is directed at state level experience of their functioning. There is little reflection on the experience of end users of the Conventions, and no ongoing process to monitor the use of the Conventions by state parties in between the Special Commissions. This lack of monitoring capability has resulted in gaps in understanding of the impact of the Convention upon affected families.

Within domestic law and international law there are various mechanisms for monitoring the use and compliance with legal frameworks by considering the experience of individual users of the system. These mechanisms often seek to provide overall oversight and reporting even if they do not seek to resolve, or intervene in, particular cases. Some of the terms used are specific to a particular national legal system, making global comparisons difficult, e.g. the Domestic Abuse Commissioner in England and Wales. However, for the purposes of international child abduction, several models could be considered:

### Ombudsman Model

Many national legal systems have a children's ombudsman, charged with protecting and promoting children's rights and interests in the national context.

An ombudsman model can take the form of a dispute resolution model through administrative law, designed to resolve a particular complaint, e.g. between a consumer and producer. This form is not appropriate for the 1980 Convention, where the return application is itself a legal resolution process, and mediation or non-judicial resolution is completed in this context.

However, an ombudsman can provide a forum for complaints regarding abuse of rights and providing research into general complaints (rather than individual).

An ombudsman model in the UK is a form of dispute resolution through administrative law, designed to resolve a particular complaint between e.g. a consumer and producer. It can provide a forum for complaints regarding abuse of rights. This form of ombudsman would represent general user perspectives and suggestions.

There can be significant difficulties in ensuring the independence from the context of the complaints they evaluate if e.g. they are appointed by government. There is also little obligation to respond and comply with their recommendations or reports.

- Who would appoint a 'Hague Commissioner' or 'Ombudsman', and what oversight would they have in relation to national signatory states decision-making?

There are two further international potential models for monitoring that could be considered. These have the benefits that the model exists already in international law.

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### Council of Europe Model

#### 1. Council of Europe Istanbul Convention on Violence Against Women

The Istanbul Convention is specifically designed to monitor CoE state parties' law/polities/implementation in relation to violence against women and girls in a national context. There is an obligation on state parties to report on compliance with the obligations under the Convention to a monitoring panel that writes a regular report making recommendations for reform of policy and practice. NGOs can make specific complaints regarding the compliance of a state party.

### UN Committee on the Rights of the Child Model

#### 2. UN Committee on the Rights of the Child

This Committee also has a monitoring role in relation to state parties' ability to comply with the UN Convention on the Rights of the Child. State parties report to the Committee, which writes a report on their compliance, highlighting problematic areas, which is publicly available. There is now the possibility of making an individual or group complaint to the Committee.

### Conclusion

Under these international models, the performance of state parties to the Hague Convention 1980 could be monitored more consistently in relation to experience in practice of the operation of the Convention. This could include e.g. domestic abuse and return; availability and enforcement of protective orders (nationally and in cross-border proceedings); availability of legal aid; reliability of enforcement of return orders; availability and processes for relocation.