

<b>Title</b>	<b>Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, June 2024, South Africa</b>
<b>Document</b>	<b>Prel. Doc. No 9A of September 2024</b> – <i>provisional edition, pending the completion of the French and Spanish versions</i>
<b>Author</b>	PB
<b>Agenda Item</b>	TBD
<b>Mandate(s)</b>	C&D No 31 of CGAP 2024
<b>Objective</b>	To reflect the content of the presentations made during the Forum on domestic violence and the operation of Article 13(1)(b) of the 1980 Child Abduction Convention, which took place from 18 to 21 June 2024 in Sandton, South Africa
<b>Action to be Taken</b>	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input checked="" type="checkbox"/> For Action / Completion <input type="checkbox"/> For Information <input type="checkbox"/>
<b>Annexes</b>	Annex I: Report on the Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention (available in English only)
<b>Related Documents</b>	N/A

## Contents

I.	Introduction.....	3
II.	The Forum.....	4
III.	Conclusion .....	4
	Annex I: Report on the Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention.....	6
I.	Opening session .....	6
II.	The Forum sessions.....	8
A.	Opening address by The Honourable Mandisa Muriel Lindelwa Maya, Deputy Chief Justice of South Africa.....	8
B.	Session 1 – The role of key actors in the operation of Article 13(1)(b) in domestic violence cases (also with regard to GGP on Art. 13(1)(b)) .....	9
C.	Session 2 – The trauma caused by domestic violence and child abduction on victims.....	13
D.	Session 3 – Lived experiences of abduction cases involving domestic violence .....	16
E.	Session 4 – Approaches to hearing the child in return proceedings where domestic violence is raised .....	19
F.	Session 5 – Mediation and other alternative dispute resolution (ADR) methods in return proceedings where domestic violence is raised .....	20
G.	Session 6 – Return and non-return decisions in abduction cases involving domestic violence (incl. risk assessment) .....	21
H.	Session 7 – Risk assessment and protective measures (incl. benefits of the 1996 Convention) .....	23
I.	Session 8a – “Post-decision” – preserving the best interests of the child (supporting children and their families).....	27
J.	Session 8b – The voice of the seeking parents – keeping contact with the child after a decision .....	30
K.	Session 9 – Assessment of possible relocation in situations involving domestic violence .....	30
L.	Session 10 – Identifying the need for further research and collection of data on abduction cases involving domestic violence.....	33
M.	Session 11 – Moderated discussion on the lessons learned from the Forum and possible next steps .....	35
N.	Concluding Remarks / Forum closing.....	36

# Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, June 2024, South Africa

## I. Introduction

- 1 The organisation of the Forum on domestic violence and the operation of Article 13(1)(b) of the 1980 Child Abduction Convention (Forum) came as a result of discussions which took place before and during the Eighth Meeting of the Special Commission (2023 SC) on the practical operation of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention or 1980 Convention) and the *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children* (1996 Child Protection Convention or 1996 Convention).
- 2 Prior to the 2023 SC, the HCCH became aware of, and was contacted by, several NGOs which were vocal, in particular, about the operation of Article 13(1)(b) of the 1980 Convention in the context of domestic violence. It is important to note that only NGOs of an international character can be observers at HCCH meetings, as per HCCH rules and regulations. Thus, these NGOs could not take part in the 2023 SC. In any event, the role of observers in an SC meeting is more limited than the role of Contracting Parties.
- 3 During the 2023 SC, the Secretary General of the HCCH suggested the holding of a Forum where an open exchange and dialogue could take place and which would involve hearing from a wide range of perspectives, including various national and international interested groups, and including both victims of domestic violence as well as representatives of left-behind parents. The Secretary General also suggested that such a Forum would provide an opportunity to exchange information and views pertaining to jurisprudence involving the application of Article 13(1)(b), in order to discuss good practices. The Secretary General's suggestion of holding a Forum was widely supported by delegates:

“In light of the discussions on the issue of domestic violence and the operation of Article 13(1)(b), and further to correspondence received by the Secretary General from advocates for victims of domestic violence prior to the start of the SC the SC supported the proposal of the Secretary General to hold a forum that would allow for discussions amongst organisations representing parents and children, and those applying the Convention. The importance of ensuring a balanced representation of all interested parties was emphasised. The agenda of the forum, which would focus on the issue of domestic violence in the context of Article 13(1)(b), would be prepared by a representative Steering Committee. The forum may also inform possible further work of the HCCH on this matter. Subject to available resources, the forum would ideally take place in the course of 2024. The SC invited States that are interested in contributing to the organisation and funding of such a forum to inform the PB accordingly. The SC thanked the Philippines for their willingness to assess hosting the forum in Manila, with the financial support of other interested States and observers.”  
(C&R No 26).<sup>1</sup>

- 4 Subsequently, at its 2024 meeting, the Council on General Affairs and Policy (CGAP) endorsed the Forum:

---

<sup>1</sup> Sometime after the 2023 SC meeting, the Philippines informed the Permanent Bureau (PB) that the Forum could not be held on the envisaged dates in Manila due to various other legal meetings involving relevant government agencies. The Government of South Africa then generously proposed to have the Forum in Sandton.

“CGAP welcomed the holding of a Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, to take place in Sandton, South Africa, from 18 to 21 June 2024. CGAP highlighted the importance of ensuring balanced and diverse participation in the Forum from all relevant actors. CGAP noted that, while in-person participation is encouraged, at least passive online participation will be ensured. CGAP expressed its gratitude to the Government of South Africa for its generous offer to host the Forum, and thanked Australia, Brazil, the Philippines (both the Department of Justice and the Supreme Court), and the United Kingdom, for their respective financial contributions towards the Forum. CGAP encouraged other States and interested parties to consider making a voluntary contribution to cover the costs of the Forum.” ([C&D No 31](#))

## II. The Forum

- 5 From 18 to 21 June 2024, the HCCH held the Forum in Sandton, South Africa. It was co-hosted by the Government of South Africa, the University of Pretoria’s Centre for Child Law, and the HCCH.
- 6 With approximately 100 attendees joining in person and a total of over 340 following online from around the world, this Forum marked a historic moment. For the first time, the HCCH convened participants from various backgrounds and disciplines to share their perspectives on the operation of the 1980 Child Abduction Convention within the context of domestic violence. Advocates for victims of domestic violence and left-behind parents, judges, Central Authorities, government representatives, legal practitioners, psychological experts, academic researchers and non-governmental organisations, both international and national, attended and contributed to discussions during the Forum. Participants also had the opportunity to hear the voices of individuals with lived experience of domestic violence, child abduction as well as the voice of left behind / seeking parents.
- 7 The programme of the Forum, including the selection of speakers, was developed by a Steering Committee which was representative of the wide range of participating parties. The programme and other documentation pertaining to the Forum can be found [here](#).
- 8 The Forum provided an informal setting wherein participants could engage in a dialogue on matters relating to the proper and practical application of Article 13(1)(b) of the 1980 Convention in the context of domestic violence. The Forum also provided an opportunity to give visibility to and learn from past judicial decisions taken on the application of Article 13(1)(b), as well as for the range of participants to share their own experience and / or expertise regarding its application.
- 9 The Forum was divided into 10 sessions covering different subjects and perspectives relevant to child abduction cases involving domestic violence. Each session consisted of a moderated discussion by a panel of speakers with relevant expertise and / or experience followed by a Q&A session. The Forum concluded with a discussion on lessons learned and possible next steps.
- 10 A report summarising the presentations and discussions that took place during the Forum, in English only, can be found in the Annex of this document.

## III. Conclusion

- 11 Based on the foregoing, the PB invites CGAP to consider the following Conclusion & Decision:  
CGAP took note of Prel. Doc. No 9A of September 2024, *Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, June 2024, South Africa*.

## **ANNEX**



## Report on the Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention

### I. Opening session

- 1 The Opening Session of the Forum took place in the afternoon of 18 June 2024.
- 2 **Professor Elsabe Schoeman, Dean of the Faculty of Law at the University of Pretoria**, welcomed all participants on behalf of the University of Pretoria and the Centre for Child Law. She noted that the Forum brought together a truly diverse, interdisciplinary communality of practitioners involved in this area in one way or another.
- 3 She highlighted that the 1980 Convention is probably one of the most successful but most challenging HCCH Conventions, as it applies in a globalised world in which it can be highly complex and difficult to locate and return children who have been wrongfully removed or retained. She reminded participants that, generally, the wrongful removal or retention of children is not in their best interests and that the Convention provides an elaborate system of cooperation between Contracting Parties, to ensure the prompt return of the child and the restoration of the *status quo ante* their removal or retention. She acknowledged that circumstances exist where the return of the child is not in their best interests, for which the Convention provides, and that the Forum aimed to deal with the most challenging exception – that of grave risk. She added that the application of the 1980 Convention traverses the transnational and international sphere; being a private international law instrument to be applied in a domestic setting. As such, the operation of the Convention relies on robust domestic systems and laws in the area of domestic violence. She noted that courts must always keep in mind the goals of private international law, namely that of certainty, uniformity, predictability and conflict justice. In closing, she noted that the issues to be discussed in the Forum cannot be resolved within a narrow, academic discipline and highlighted the importance of bringing together relevant experts from all related fields.
- 4 **John Jeffery, Deputy Minister of Justice and Constitutional Development**, in turn, greeted and welcomed all participants. He highlighted that South Africa remains committed to the correct implementation of the 1980 Convention, and particularly of Article 13(1)(b). He noted that the Forum provides a unique platform for dialogue and exchange of practices, as well as the development of solutions to respond to the grave risk exception under the Convention and ensure the best interests of the child are at the forefront of decisions.
- 5 **Dr Christophe Bernasconi, Secretary General of the HCCH**,<sup>1</sup> welcomed participants to the Forum, noting the historic significance of the HCCH convening, for the first time, representatives from all relevant perspectives to engage in an open, informal dialogue on the operation of the

<sup>1</sup> At the request of Forum participants, the opening speech of the Secretary General has been published in full and is available on the HCCH website at [www.hcch.net](http://www.hcch.net) under “Child Abduction” then “Conferences, Seminars & Workshops”.

1980 Convention within the context of domestic violence. He noted with gratitude that the proposal to host this Forum has come to fruition with the attendance of a diverse and esteemed group of experts and stakeholders in the area. He warmly thanked all participants for their attendance and commitment to the dialogue on the important and delicate issue of the operation of Article 13(1)(b) in the context of domestic violence. He thanked the government of South Africa, the University of Pretoria and its Centre for Child Law for co-hosting the Forum, noting with appreciation the crucial role played by Karabo Ozah, Director of the Centre for Child Law, in the organisation and smooth running of the Forum. He further thanked all Members of the HCCH for endorsing the Forum and, in particular, extended his sincere appreciation to Australia, Brazil, the Philippines, and the United Kingdom for their early support of the Forum and generous financial contributions. He also thanked the Steering Committee for carefully crafting the programme for the Forum. Finally, he thanked the members of the Permanent Bureau (PB) who had helped prepare the Forum.

- 6 The Secretary General recalled the countless messages he had received from domestic violence advocates prior to the Eighth meeting of the Special Commission on the practical operation of the 1980 Child Abduction and 1996 Child Protection Conventions in 2023. Their correspondence not only highlighted the importance of the subject matter but also the profound interest and active engagement with this issue, thus underscoring the value of a platform for an open, broad dialogue – a platform transcending the formalities of a Special Commission meeting.
- 7 He reminded participants that the Forum provides an opportunity for all relevant perspectives on the operation of Article 13(1)(b) within the context of domestic violence to be heard, including those with lived experience of domestic violence, psychologists, trauma and other related experts, left behind / seeking parents, those operating the Convention (judges, lawyers and Central Authority representatives), and academics. These collective voices contribute to the meaningful growth and evolution of the Convention, in an environment that has obviously changed since it was drafted over four decades ago. He referred to a recent interview given by the Rapporteur of the Convention, the distinguished Spanish Professor Elisa Pérez-Vera, who noted that gender-based violence was not taken into account when the Convention, including the exception under Article 13(1)(b), was drafted. He added that nowadays, though, too often we hear of mothers having been “Hagued”. He explained that the expression does not sit well with him. While he is genuinely disturbed when hearing about cases in which a return has exposed a mother to renewed violence and he emphasised the importance of preventing such outcomes, he also stressed that as Secretary General he was concerned about reputational issues for the HCCH in general and for one of its most visible Conventions in particular. Recalling that a wrongful removal is also a form of violence, he emphasised the importance of the Convention as the only global instrument dealing with child abduction and that it prevents abductions and produces outcomes that are in the best interest of children.
- 8 The evolution of the Convention would entail ensuring that it operates effectively in the difficult context of domestic violence, even if this issue was not taken into account during the negotiations - something which has been proven to be possible given the cases involving domestic violence where the Convention did operate effectively. He emphasised the importance of the lessons learned both from the cases that went well and from those that did not go well, which should also lead to more consistency in the operation of Article 13(1)(b). He underscored that, if and when applied correctly, the Convention can provide recourse for victims of domestic violence.
- 9 He noted that, in his view, time remains the biggest enemy of the effective operation of the Convention, as it often exacerbates the difficulties faced by those involved in child abduction cases, in particular cases involving domestic violence. He also mentioned several important topics for

discussion among participants of the Forum, including the question of evidence in cases of alleged domestic violence, the importance of ensuring effective access to support structures for victims in their own States of habitual residence, which will help prevent abductions in the first place, the adoption and enforcement of effective protective measures, which relates to the 1996 Child Protection Convention, the role of mediation and other forms of alternative dispute resolution, as well as the topic of relocation.

- 10 In closing, the Secretary General expressed his hope that this Forum marks the beginning of a collective dialogue and that it will be a catalyst for further Fora to be hosted in the future, dedicated to addressing the various complex issues related to the implementation of the 1980 Convention.
- 11 The opening session was followed by a reception hosted by the South Africa National Convention Bureau.

## II. The Forum sessions

### A. Opening address by The Honourable Mandisa Muriel Lindelwa Maya, Deputy Chief Justice of South Africa

- 12 On Wednesday 19 June, the Forum officially commenced with its substantive discussions with opening remarks by **Deputy Chief Justice Mandisa Muriel Lindelwa Maya**. She welcomed all participants and underscored the importance of the Forum in facilitating respectful discussions on the operation of Article 13(1)(b) of the 1980 Convention in the context of domestic violence.
- 13 She recalled the general rule under the 1980 Convention that the best interests of children are best served by being promptly returned following a wrongful removal and retention, in order for matters of custody and access / contact to be resolved by the authorities in their State of habitual residence. She noted, however, that while the Convention prioritises the safe return of children, it contains built-in exceptions to the general rule, including the grave risk under Article 13(1)(b), that provides for the non-return of the child if doing so would expose them to physical or psychological harm or an otherwise intolerable situation.
- 14 She noted that, over the years, gender-based violence has been increasing at a shocking rate, leading to the unsurprising consequences of a growing interlink between domestic violence and incidences of international child abduction. She noted that the precise meaning and limits of Article 13(1)(b) are not well defined and remain open to interpretation and judicial discretion. In this regard, she emphasised that competent authorities must interpret Article 13(1)(b) in the light of the increasing phenomenon of gender-based violence.
- 15 She highlighted that the effects of being exposed to domestic violence places the child in a grave risk of harm and that, although the situation of the child is the prime focus of proceedings under the Convention, it is important to consider the situation of the accompanying parent and to take the necessary measures to protect them. She noted that courts around the world are, nevertheless, still divided on whether exposure to domestic violence is enough to establish a grave risk under Article 13(1)(b) and that some courts make orders for protective measures to accompany the return order, such as undertakings, which can be understood as official promises, concessions or agreements given by the left behind parent. Such protective measures are not consistently effective, as compliance is not always guaranteed, and victims of domestic violence remain vulnerable to re-victimisation.
- 16 The Deputy Chief Justice referred to the [Guide to Good Practice on Article 13\(1\)\(b\)](#), published by the HCCH, which offers information and guidance on the interpretation and application of the



exception and shares a number of good practices. She noted that the Guide to Good Practice recognises that harm to the parent equates to harm to the child and that for the exception under Article 13(1)(b) to come into play, the child need not be the direct victim of harm. She added that, despite the clearly articulated words of the Guide to Good Practice, there is no judicial consensus on the application of Article 13(1)(b). She invited participants to keep in mind the importance of Article 1 of the Convention during their discussions, which establishes the aim of securing the return of children wrongfully removed or retained. In closing, she expressed a hope that the Forum discussions would benefit all practitioners in this area.

## **B. Session 1 – The role of key actors in the operation of Article 13(1)(b) in domestic violence cases (also with regard to GGP on Art. 13(1)(b))**

- 17 This session was moderated by **Justice Baratang Constance Mocumie, Justice at the Supreme Court of Appeal of South Africa**. Justice Mocumie introduced the session by citing cases from the Constitutional Court of South Africa, namely the decisions in [S v. Baloyi and Others \(CCT29/99\) \[1999\] ZACC 19](#) and [The Ad Hoc Central Authority for the Republic of SA and Another v Koch N.O. and Another \[2023\] ZACC 37](#). She noted that, in the more recent *Koch* decision, the Constitutional Court held that Article 13(1)(b) of the 1980 Convention recognises that the return of a child may not be in their best interests and that the Convention allows courts to consider various factors and strike a balance that best serves the specific case and the well-being of the specific child concerned.
- 18 Justice Mocumie introduced the panel of speakers for Session 1, which consisted of:
- Justice Victoria Bennett (Australia), Justice at the Federal Circuit and Family Court of Australia, Melbourne (participating online)
  - Stefan Schlauss (Germany), Director of the International Civil Law branch in the Federal Office of Justice in Bonn
  - Judge Martina Erb-Klünemann (Germany), Judge at the Family Court, District Court of Hamm
  - Alison Shalaby (United Kingdom), CEO of Reunite International Child Abduction Centre<sup>2</sup>
  - Michelle Najara Aparecida Silva (Brazil), General-Coordinator of the Federal Administrative Central Authority-MoJ
  - Boni de Moraes Soares (Brazil), National Solicitor for International Affairs
  - Jessica Raffal (Australia), Managing Lawyer ISS Australia
- 19 **Justice Victoria Bennett** began her intervention by noting that a wrongful removal or retention is a form of family violence in and of itself, making reference to research conducted by Professor Marilyn Freeman.<sup>3</sup> She highlighted that the exception under Article 13(1)(b) is the most commonly used defence under the 1980 Convention, based on the [statistics](#) prepared in advance of the 2023 SC meeting.
- 20 Justice Bennett drew the attention of participants to Australia's [Family Law Act of 1975](#), which intentionally defines family violence in a broad manner to include an array of abusive behaviour. She highlighted that returning a child to an environment of unresolved parental conflict can result in a high degree of harm.

<sup>2</sup> Mrs Alison Shalaby was unable to present during the Forum.

<sup>3</sup> Freeman, M., *Parental Child Abduction: The Long-Term Effects* (2014).

- 21 She stressed that the answer to the significant and complex issues of domestic violence in the context of the Article 13(1)(b) exception is not to abolish the 1980 Convention, recalling her experience working with international child abduction cases prior to the entry into force of the 1980 Convention, which she referred to as “the wild west”, as there were no safe return or preventive mechanisms. She added that it would be unrealistic to amend the text of the 1980 Convention, as that would result in the Convention operating at different levels in different jurisdictions, depending on which State has ratified which version. This would result in legal uncertainty and unpredictability.
- 22 Justice Bennett emphasised that, in her view, the problem is not in fact the 1980 Convention but, rather, the inadequacy of domestic laws and systems that address family and intimate partner violence at the local level.
- 23 Presenting the ways in which Australia deals with domestic violence in the context of the 1980 Convention, Justice Bennett informed participants that an independent child lawyer is appointed for the child in every case. She informed participants that a fact sheet was recently developed by Australian IHNJ Judges in collaboration with the Australian Central Authority under the 1980 Convention, to provide information for judges in the requested State, parties, parents and mediators in cases involving a child or children allegedly wrongfully removed from, or wrongfully retained out of, Australia. She recalled that this fact sheet was also presented and shared with participants during the 2023 SC.
- 24 In closing, Justice Bennett noted that the key ways to improve the operation of the 1980 Convention, in general, and Article 13(1)(b), in particular, is through the concentration of jurisdiction, judicial education and training about the 1980 and 1996 Conventions as well as effective cooperation under the IHNJ and specialised mediations.
- 25 **Stefan Schlauss** shared the experience of Germany’s (civil law) application of the 1980 Convention as well as the application of the Brussels IIb Regulation, from an EU law perspective. During his intervention, Stefan Schlauss underlined the importance of each State having adequate domestic laws and systems to address the issue of domestic violence, which disproportionately affects women. According to the experience of the German Central Authority, the exception under Article 13(1)(b) is often raised, with allegations of domestic violence, which requires close examination by courts. He noted that the German Central Authority cannot refuse an application under Article 27 of the Convention, for reasons other than those provided in that provision but must submit the matter to the German courts to make a decision based on an evaluation of the facts. He recalled that this is also a practice detailed in the HCCH Guide to Good Practice on Article 13(1)(b).
- 26 He added that Article 13(1)(b) provides an adequate framework for addressing issues of “grave risk” on a case-by-case basis and that courts take this matter very seriously, given the statistics produced before the 2023 SC, which show that returns have declined to approximately 40% following, *inter alia*, refusals to return based on Article 13(1)(b). Stefan Schlauss shared the core principles adhered to by the German Central Authority, namely the aim to protect children from the harmful effects of abduction and the fact that return proceedings are not to be treated as custody proceedings. He highlighted that it is important to remember that the Convention provides for the return of the child to their State of habitual residence, not necessarily the city or specific home located in that State. He added that a return order made under the Convention does not automatically entail that the child is handed over to the left behind parent.
- 27 He noted that Article 27 of the Brussels IIb Regulation complements the 1980 Convention and that the European Court of Human Rights has clarified in several judgments that the safety of children in these cases must be ensured. He emphasised that general statements alleging domestic violence are not sufficient to trigger the effect of Article 13(1)(b) and that events must be described

in sufficient detail and some evidence must be produced to substantiate the allegations made. In the light of the testimony and evidence produced, the court will consider whether any protective measures are appropriate and, if so, put them in place before ordering the return of the child.

- 28 He further described how German / EU law protects victims of domestic violence, noting that the police and the judiciary often work together. Apart from the general protection measures offered under civil law, the German [Act on Protection against Violence \(Gewaltschutzgesetz, GewSchG\)](#) provides additional support. At the EU level, he referred to the landmark [Istanbul Convention](#), to which German courts may refer in their decisions. Additionally, he mentioned the EU Regulation on mutual recognition of protection measures in civil matters ([Regulation \(EU\) No. 606/2013](#)) and a [new EU Directive on preventing and combatting violence against women](#), which will be a further milestone for the EU legal framework in this area.
- 29 In closing, he noted that child abduction cases which involve allegations of domestic violence are extremely sensitive cases which require careful investigation and robust systems of domestic law to protect victims. He noted that the German Central authority holds training for judges twice a year which is a good practice that can be adopted in other States, as is the establishment of specialised courts that can build expertise on the application of the 1980 Convention and Article 13(1)(b). Finally, he indicated that child abduction is not an appropriate solution to family disputes.
- 30 Based on her 25 years of experience in handling an average of about 15 cases per year under the 1980 Convention, **Judge Martina Erb-Klünemann** noted that, in the vast majority of return proceedings, the taking parent invokes the Article 13(1)(b) exception and alleges domestic violence. She added that, upon examination, the allegations are not substantiated in the majority of cases, with evidence such as police or medical reports provided in very few cases.
- 31 Taking into account that domestic violence often takes place without witnesses, she explained that the court must assess whether the evidence available to substantiate the allegations of domestic violence is sufficient to amount to a grave risk for the purposes of Article 13(1)(b). The court must also look into whether the grave risk can be minimised through any protective measures. In this regard, Judge Erb-Klünemann emphasised that judges making decisions in 1980 Convention cases must be well trained.
- 32 She highlighted that the 1980 Convention is a useful tool that allows judges to evaluate the situation of the child involved and whether protection measures are needed / appropriate in the particular case. She acknowledged that, in some cases, judges can be prone to errors in their assessment of the case. She underlined, however, that domestic violence is one of many factual circumstances that can trigger the exception under Article 13(1)(b) and that the competent authority in the State of habitual residence is best placed to deal with matters of custody. In closing, Judge Erb-Klünemann indicated that there is no correlation between return proceedings and relocation proceedings, hoping that this can be improved. She highlighted that it is important for practitioners in this area to trust each other and learn from each other.
- 33 **Michelle Najara Aparecida Silva** noted that, although there is no need to amend the 1980 Convention, one must adjust its interpretation to account for cases that involve domestic violence and to reflect new laws that aim to protect victims.
- 34 She explained that, in order to prevent international child abduction, it is important for States to implement sufficient and effective domestic protection mechanisms. She expressed the hope that the Forum leads to the development of national protection protocols for victims of domestic violence, with particular emphasis on the protection of migrant women, who are especially vulnerable.

- 35 She emphasised that cases under the 1980 Convention that involve domestic violence cannot be treated like any other case of wrongful removal or retention but require specific care and attention. She highlighted that the issue of access / contact upon return also needs to be considered carefully, as it is not guaranteed that the left-behind parent will allow the taking parent to have access to the child following the return, which perpetuates further harm. She indicated that becoming a Contracting Party to the 1996 Child Protection Convention would help in that regard.
- 36 She acknowledged that the role of the Central Authority is limited in cases involving domestic violence, but that Central Authorities can still be proactive by making sure that the court contemplating a return / non-return order has all the relevant information at its disposal. In closing, she stressed that victims of domestic violence need to be protected and not punished / stigmatised as child abductors.
- 37 As a member of Brazil's Attorney General's Office, **Boni de Moraes Soares** explained that the Office is responsible for providing legal advice to the Brazilian Central Authority, determining the interpretation of the 1980 Convention to the Executive Branch and representing the Brazilian government before the courts in cases of international child abduction.
- 38 First, he recalled that the Guide to Good Practice on Article 13(1)(b) makes reference to the considerations of the nature, frequency and intensity of the violence when considering whether or not the threshold of "grave risk" has been met. He noted that, in his view, it would be incredibly difficult to conceive of a situation where the existence of domestic violence does not meet the threshold of grave risk. The idea that domestic violence needs to come in the form of repeated, intense physical abuse in order to meet the grave risk threshold appeared to him to be problematic.
- 39 Secondly, he expressed his disagreement with the notion that, in a case where domestic violence is established and constitutes a grave risk, this does not always entail a non-return decision but, rather, results in the consideration of protective measures to mitigate the established grave risk and facilitate safe return. He emphasised that protective measures are indeed important but, in his view, they should be considered and instituted in cases where the Article 13(1)(b) exception has been invoked but the allegations made are not sufficient to meet the grave risk threshold. In that case, protective measures would be appropriate to mitigate the alleged risks and ensure the return is safe.
- 40 Finally, he noted that the State of habitual residence must provide effective mechanisms to prevent and combat domestic violence, by instituting mechanisms for efficient investigation and prosecution. Such mechanisms are essential to allow the taking parent to produce the relevant evidence for their claim. He added that the consular authorities of the Requested State may also play an important role in that regard, as they can be more proactive when helping victims to find competent local authorities and institutions, such as shelters and specialised police stations.
- 41 **Jessica Raffal** noted that, while some may see the 1980 Convention as a weapon wielded against women / parents fleeing violence that has now outlived its usefulness, she emphasised her belief that the Convention still serves its purpose despite the shifting profile of taking and seeking parents. She noted that this, however, does not negate the reality that the operation of the Convention is faced with a "domestic violence problem". She underlined that, while at its essence, the problem lies with the domestic laws of Contracting Parties in this area and not the 1980 Convention itself, given the universality of the problem of domestic violence among Contracting Parties, the problem does ultimately belong to the Convention.
- 42 She informed participants that one in three women will experience domestic violence in their lifetime and that having a child increases the chances of violence. She emphasised that this is a

gendered problem and that, while anyone can experience domestic violence, the fact remains that women represent the overwhelming majority of victims and are more likely to experience sexual, psychological and emotional violence. She noted that well over a third of cases under the 1980 Convention will have a domestic violence component, not just in allegation but in fact. Yet, when these matters are assessed, they are treated with overwhelming scepticism and, even when proven, decision makers will not give them due weight. She informed participants that, in 2023, 50% of protection orders were breached in New South Wales, Australia. She highlighted that no jurisdiction has shown itself to be consistently capable of protecting victims of domestic violence and that this is largely due to the private sphere in which such violence is perpetrated.

43 She added that there needs to be greater recognition that domestic violence towards the mother can amount to a grave risk to the child, as it is a well proven fact that exposure to violence perpetuated by one parent towards another, regardless of its nature, frequency and intensity, is tantamount to violence perpetrated against the child. She stressed that the interpretation of “grave risk” under Article 13(1)(b) as the most exceptional of circumstances undermines this reality. Exposure to domestic violence is extremely damaging to the child and can cause depression, anxiety and post-traumatic stress disorder (PTSD). Even babies in utero experience adverse outcomes when intimate partner / family violence takes place during pregnancy. She emphasised that these outcomes surely amount to grave risks and intolerable situations.

44 She stated that, in cases under the 1980 Convention, a failure by decision-makers to recognise these realities means that the domestic violence problems of the Contracting Parties become the Convention’s domestic violence problem. She noted that this presents a risk not only to the parties and subjects of individual 1980 Convention proceedings, but also a reputational risk to the Convention itself, which places its continued relevance and scope in jeopardy.

45 Following the interventions from the panellists, **Justice Mocumie** opened the floor for questions. Participants discussed immigration considerations in the context of returns, issues pertaining to hearing the testimonies of children, the efficacy of protective measures, and the importance of training. Participants also discussed jurisprudence from their own States.

### **C. Session 2 – The trauma caused by domestic violence and child abduction on victims**

46 This session was moderated **Dr Adrienne Barnett (United Kingdom), UK lead on the international strategy group of Hague Mothers (a FiliA legacy project) and Reader in Law at Brunel University.** Dr Barnett introduced the panel of speakers for Session 2, which consisted of:

- Louise Godbold (United States of America), Executive Director of Echo (Center for Nonviolent Education and Parenting)
- Dr Josimar Mendes (United Kingdom / Brazil), psychologist and research associate at University of Oxford, Department of Computer Science (online)
- Dr Sarah Calvert (New Zealand), Clinical psychologist and Family Court expert (online)
- Anne McKechnie (Scotland, United Kingdom), Consultant Forensic Clinical Psychologist at Scottish Child Abuse Inquiry (online)
- Aleisha Ebrahimi (United Kingdom), Senior Policy Advisor to the Domestic Abuse Commissioner for England and Wales (online)

47 **Louise Godbold** noted that trauma lies at the essence of discussions taking place at the Forum, as the separation between parents and children and experiences of domestic violence are all potentially traumatic.

- 48 She explained that an experience is traumatic when there is a threat to one's physical or emotional wellbeing. This threat may be real or perceived. Underlying such an experience is a feeling of intense fear, lack of control and the feeling of an inability to protect oneself. She noted that experiencing trauma changes the way people see themselves and the world around them. She clarified that the response to trauma is highly individual and that two people experiencing the same potentially traumatic events will be affected differently, depending on their degree of resilience.
- 49 She elaborated on factors that impact resilience, such as age, the relationship between the victim and the abuser, and the degree to which an organisation / institution validates or disbelieves the victim.
- 50 Importantly for cases under the 1980 Convention, she referred to multiple studies which reveal that the interruption of a safe, stable, nurturing relationship between a child and their primary caregiver gives rise to attachment trauma. Attachment is programmed within humans for survival. Regarding the degree of awareness children have of domestic abuse regardless of whether they witness the violence, she referred to a study which has shown that babies from high conflict homes respond to angry voices even while they sleep. She then proceeded to briefly explain the neurological impact of traumatic experiences and their effect on the sympathetic nervous system. She explained that traumatic experiences tend to shrink the window of tolerance within which individuals are able to remain emotionally regulated and traumatised individuals may more easily become activated and enter a hyper- or hypo-aroused state (*i.e.*, fight, flight or freeze).
- 51 In closing, she highlighted the principles of trauma informed care, which are safety, choice, collaboration, empowerment and trustworthiness.
- 52 During his remarks, **Dr Josimar Mendes** noted that unsafe, unstable and precarious family environments can contribute to a myriad of complications in a child's development and early life (prenatal – 3 years). He emphasised that unsafe, unstable and precarious family environments are harmful to children's wellbeing and best interests.
- 53 Presenting recent studies on the matter,<sup>4</sup> he highlighted that violence towards the mother will undoubtedly affect the child in a multitude of ways, as domestic violence promotes an unsafe, unstable and precarious family environment which leads to early life stress. Early life stress can then lead to anxiety, depression, social adjustment issues, substance abuse issues and can also have an impact on brain development and sexual health.<sup>5</sup> He further noted that a child's exposure to domestic violence has deleterious effects on parenting, which can disrupt the development of the child, which subsequently affects neurological development, attachment, emotional regulation, academic performance and can even result in PTSD.<sup>6</sup>
- 54 **Dr Sarah Calvert**, spoke about one of the unheard voices in the context of family violence – that of the adult(s) the child(ren) will become. She reminded participants that human beings are social animals, that family is essential to survival and that family relationships are hard to replace. She mentioned that significant research has been conducted across various subject groups, in order to facilitate a better understanding of the impact of relationship loss. She noted that the loss of (connection to) family equates to the loss of parts of one's identity.
- 55 She mentioned Article 8 of the [1989 United Nations Convention on the Rights of the Child \(UNCRC\)](#), which requires States to respect the right of the child to preserve their identity, including nationality, name and family relations and to provide appropriate assistance and protection to allow the child

---

<sup>4</sup> Fong *et al.* (2019), Bogat *et al.* (2023).

<sup>5</sup> Hardi *et al.* (2023), Koizumi *et al.* (2023), Kobulsky *et al.* (2022), Conrad-Heibner *et al.* (2020).

<sup>6</sup> Bogat *et al.* (2023).

to re-establish their identity speedily. However, she added that, for some individuals and cultures, identity is regarded as collective, historical, intergenerational and embedded in the lived environment. Identity holds intergenerational family information concerning relationships, migrations, environments, landscapes, adjustments, sacrifices and achievements, traumas and stories of survival and familial patterns of behaviour.

- 56 Citing the work of Professor Marilyn Freeman, among other research,<sup>7</sup> she noted that adults who have faced loss of (connection to) family by being wrongfully removed or retained as children suffer a multitude of adverse outcomes in their adult lives, including but not limited to mental health issues such as depression and suicidal ideation, difficulties in personal relationships, issues with self-worth, sense of personal identity and insecurity.
- 57 **Anne McKechnie** pointed out the lack of research on the effect of working with traumatic / toxic stress on legal professionals but noted that this is a growing area of research. She noted that working with cases of domestic violence and child abduction without being impacted in some way is as likely as expecting to walk into the sea and not get wet. In fact, research has shown higher levels of work-related stress in legal professionals than are seen in mental health professionals. The impact of such stress can be seen in poor concentration levels, poor decision-making, poorer mental and physical health as well as impacting negatively on professional and personal lives.
- 58 Specific risk factors for secondary trauma include cases involving domestic violence and child abuse, high levels of public scrutiny, lack of organisational structures offering guidance and support, lack of experience or autonomy as well as the potential for professionals to have their own histories of trauma. Where there is a culture of long hours or last-minute frantic work, this exacerbates the risk factors.
- 59 She highlighted the potential signs of secondary trauma including irritability, poor sleep, poor concentration, inability to “switch off” as well as avoiding work or working overly long hours. She noted that gathering data on this issue is important, as the impact of trauma on the decision making of legal professionals must be considered. In this regard, she highlighted the importance of building resilient systems within the family law and child protection professions. Some possible ways of doing so could be to acknowledge the potential for stress at the highest levels of management so an organisation can establish supportive networks for safe reflection among professionals, enhancing the ability among leadership and staff to recognise and deal with warning signs of stress, burnout and other similar effects on staff.
- 60 **Aleisha Ebrahimi** elaborated on the United Kingdom’s [Domestic Abuse Act of 2021](#), a pioneering statute which extended the definition of domestic violence to include psychological, emotional and other non-physical forms of abuse. The statute acknowledges that abuse does not stop once a relationship ends and enshrines the inherent trauma associated with children experiencing the effects of, or witnessing, domestic violence, making them victims of domestic violence in their own right.
- 61 She analysed the international legal framework pertinent to this area, including Article 9(3) of the UNCRC, as well as Article 31 of the Istanbul Convention and Articles 2, 3, 6, 13 and 14 of the [European Convention on Human Rights](#) (ECHR). She noted that all the aforementioned provisions overlap and intersect with the 1980 Convention to some extent. She reminded participants of the importance of reading, interpreting and applying international human rights law holistically. In

---

<sup>7</sup> Fidler and Bala (2013).

closing, she underlined that identifying domestic violence in order to prevent and address it is part of States' international obligations.

- 62 Following the interventions from the speakers, **Dr Barnett** opened the floor for questions. Participants discussed the complexity of reconciling harm suffered from domestic violence with harm suffered from abduction and noted that a balance between the two notions can only be struck on a case-by-case basis, following a holistic examination of the relevant facts, including the child's best interests. Participants noted that a blanket position in this area would not be helpful.

#### **D. Session 3 – Lived experiences of abduction cases involving domestic violence**

- 63 This session was co-moderated by **Roz Osborne (United Kingdom)**, CEO of GlobalARRK and **Ruth Dineen (United Kingdom)**, International Coordinator, **FILiA Hague Mothers**, who introduced themselves along with the rest of the panel of speakers which consisted of:

- Representatives of survivor and advocacy groups Revibra, Her Hague Story (Australia), New Zealand Hague Collective and the Narkis Golan Initiative (USA)
- Janaína Albuquerque (Brazil), Lawyer, and legal coordinator at Revibra

- 64 **Ruth Dineen** introduced the session by clarifying the meaning and scope of domestic violence, which can be understood as "...coercive control encompassing a constellation of behaviours utilised by batterers, including physical, economic, sexual and emotional abuse".<sup>8</sup> She also added the notion of legal systems abuse to that definition.<sup>9</sup> She emphasised that, contrary to some perceptions, domestic violence is not an exceptional occurrence but rather, represents one of the predominant sources of violence, humiliation and death worldwide. She shared some statistics regarding child abduction cases involving domestic violence, noting that 75% of taking parents are mothers who are the primary / joint caregiver of the child<sup>10</sup> and that, in 78% of those cases, allegations of domestic violence are raised.<sup>11</sup> She suggested that victim-survivors should not be considered "abductors" but as protective mothers, seeking to keep their children and themselves safe from harm.

- 65 **Roz Osborne** built on the statistics shared by Ruth Dineen, by adding that 60% of taking mothers return to their home country with their child(ren) and 88% report domestic violence, according to data gathered by GlobalARRK from 219 taking parents. She shared a sample of responses from taking parents when GlobalARRK asked them to provide reasons why they felt they needed to take their child back to their home country. Reasons included feelings of danger / lack of safety, the need to flee abuse and a lack of support / protection in the State of habitual residence. She also shared some findings from GlobalARRK's latest research ([International Child Law: the mental health effects on 'Stuck' parents](#)). The report investigates the mental health impact of being a 'stuck parent' (i.e., a parent who is unable to lawfully return to live in the country they consider 'home' with their child(ren) after an international residence dispute with the other parent) and the impact on family life including the impact on the child(ren) of the family. The study collates the experiences of parents who have been involved in cross-border cases, particularly those where allegations of domestic abuse were raised.

- 66 Following their introductory remarks, the co-moderators introduced the speakers and representatives from the survivor and advocacy groups Revibra, Her Hague Story (Australia), New

---

<sup>8</sup> Definition by Dr Evan Stark, 2007.

<sup>9</sup> Masterton, Flood, Rathus Tranter, 2023.

<sup>10</sup> Lowe & Stephens, 2023.

<sup>11</sup> Weiner, 2021.



Zealand Hague Collective and the Narkis Golan Initiative (USA) who shared their lived experiences of abduction cases involving domestic violence via pre-recorded videos and in-person presentations.

- 67 **Samantha Fill (NZ), co-founder of The New Zealand Hague Collective**, shared her lived experience of family violence and navigating the 1980 Convention with her child. She urged participants to understand why mothers flee and to recognise the different forms of family violence, especially coercive control, financial abuse, and their psychological impacts. She highlighted the significant challenges faced when trying to leave an abusive situation in a country where the victim(s) are not citizens, and how organisations like the Salvation Army step in to help them safely return home after exhausting all options. She spoke about her experience upon returning to her home country, emphasising the lack of awareness about the 1980 Convention and the difficulty in finding legal representation experienced in this niche area of law. She noted that the lack of understanding of family violence was evident, with the burden placed on the "taking parent" to relive their trauma and justify their actions. When a return order is made, there are insufficient safeguarding measures and follow-up support upon returning with a child, with help only coming from NGOs. She noted that in today's society, individuals in violent relationships are encouraged to leave and are provided with support systems, yet they are sent straight back when facing a 1980 Convention case. What happens to those who return? Why is there no follow-up or involvement from child protection agencies? To truly make a difference, she underlined the need to take genuine action and work with survivors to understand what not to do in these cases. The disruptive "ping pong effect," as described by Luke Brown, where children are bounced between two countries multiple times in a short period, must be addressed. Change and action must follow. In closing, she noted that, at the end of the day, the most important thing in the world is safeguarding the children.
- 68 The **representative from Her Hague Story** opened with her own experience of the operation of Article 13(1)(b) in the context of domestic violence, noting that such experiences are echoed by "Hagued" mothers and children all around the world. She provided excerpts from multiple judgments pertaining to the 1980 Convention, to show that, in her view, when judges are deciding whether or not to order the return of a child, they do not assess the best interests of the child, or the Indigenous child. In her view, this amounts to a grave violation of the rights of the child and a failure in the implementation of the 1980 Convention. She then presented the results of an online survey conducted by Her Hague Story, which showed that the failure to assess the best interests of the child is likely to occur in around 75% of cases. To illustrate the types of violence that mothers have reported fleeing to protect their children, she presented four recent court decisions, the outcome of which was that the children were all suddenly removed from their protective mothers, their primary attachments, and returned to their fathers who were known to authorities as abusers. In the light of these cases, she emphasised that, when mothers report domestic violence, it must be understood that there is a grave risk that the same patterns of violence will be directed towards the child if ordered to return. Finally, to illustrate the inadequacy of protective measures in 1980 Convention cases involving allegations of domestic violence, she presented the case of Cassandra, an Australian mother whose children were forced to return and who was murdered by the applicant father, despite the protective measures in place that were meant to mitigate the grave risk of harm. Throughout her presentation, she showed photographs and played audio recordings of "Hagued" children displaying trauma and making disclosures of violence and abuse, following the implementation of a return decision. In closing, Her Hague Story called for three legislative changes to be urgently and retrospectively passed:

1. The best interests of the child, and the best interests of the Indigenous child, must be completely assessed, and must be held as the primary and determinative factor throughout all proceedings under the 1980 Convention.
2. Violence and abuse perpetrated against a mother and or child, must be seen as a grave risk of harm, and an intolerable situation for the child.
3. Protective measures must not be used to override a finding of a grave risk or an intolerable situation.

- 69 **Nicole Fidler (U.S.), Senior Project Director, Pro Bono Project and Narkis Golan International Child Abduction Initiative, Sanctuary for Families**, spoke about a client of her organisation whose 1980 Convention case set positive legal precedent for survivors of domestic violence who flee with their children to seek safety in the United States. This client was a mother and a survivor of severe and on-going domestic violence perpetrated by the father of her son, often in front of him. She gave examples of the many barriers to safety and stability that this client faced, which she emphasised were common barriers faced by many of the clients that her organisation serves, including but not limited to unrecognised or overlooked forms of abuse like economic abuse, immigration abuse, and forced / coerced isolation; the increased risk of danger post-separation; and unequal access to legal representation. In her client's case, the trial court found evidence of serious abuse, including threats to murder the client should she try to return to the left-behind country, and further found that her son was at grave risk of exposure to harm should he be returned. She expressed her view that the court should have denied the petition to return the child but that, despite the finding of a grave risk of harm under Article 13(b), a return order was made, with a set of problematic protective measures in place. Four years later, the United States Supreme Court unanimously overturned this decision and held that courts were not obliged to consider protective measures and that in some situations, such as domestic violence, protective measures may never be appropriate. She explained that, despite the Supreme Court ruling, the trial court refused to allow the client's son to stay safely in the U.S. for another two years. She described her client as an incredibly courageous survivor who continued to fight this decision until she tragically passed away while one of her appeals was pending. It was not until two years later that the court denied the father's petition for return, finally recognising that the risk of harm was so grave it could not be mitigated, and the child should stay in the USA with his maternal family. She noted that her client's unrelenting legal battle exemplifies how the rigid focus on return at all costs comes at the expense of the safety and well-being of children and the re-victimisation of survivors. She concluded by noting that, in her view, the system should be improved to fairly assess the circumstances that caused victims of violence to flee in the first place and prioritise the safety of their children over the default of prompt return.
- 70 **Janaina Albuquerque** also shared some statistics from Revibra. She informed participants that between 2019-2022, 277 parents sought Revibra's support, 272 of which were mothers. In 249 of those cases, allegations of domestic violence were raised. She reminded participants that violence comes in many forms, including psychological, physical, sexual, financial and through immigration processes.
- 71 The presentations made by the individuals with lived experience of abduction cases involving domestic violence were deeply emotional and impactful for participants. At the end of this session, the Secretary General declared that these personal experiences would not be commented on, and specifically, that no legal analysis of these cases would be conducted. In acknowledging these powerful presentations, the moderator of the next two sessions reversed their order, and invited trauma specialist, Louise Godbold to firstly lead a short breathing and grounding exercise with all conference participants.

## E. Session 4 – Approaches to hearing the child in return proceedings where domestic violence is raised

- 72 This session was moderated by **Freia Carlton** (Australia), Associate Director Mediation Victoria Legal Aid. The session consisted of contributions by the following speakers:
- Dr Noelle Hunter (United States of America) Clinical Assistant Professor, University of Alabama in Huntsville, and Founding Partner in the Coalition to End International Parental Child Abduction
  - Ana Quintella (United States of America), lead counsellor of Learn4life High Schools, adult survivor
  - Dr Michelle Fernando (Australia), Senior Lecturer in Law, University of South Australia (online)
  - Dr Stephanie Brandt (United States of America), Adult and Child Psychiatrist and Clinical Assistant Professor of Child Psychiatry at Weill Cornell Medical College (online)
  - Kerri Phillips (Australia), Independent Children’s Lawyer for the Child
  - Judge Martina Erb-Klünemann (Germany), Judge at the Family Court, District Court of Hamm
- 73 **Dr Noelle Hunter** introduced **Ana Quintella**, who shared her experience of being abducted prior to the entry into force of the 1980 Convention. She detailed the complexities of having to navigate the psychological, emotional and cultural effects of international child abduction and the negative effect the abduction had on her relationships with both of her parents. She highlighted the importance of hearing children and creating safe and brave spaces for honest conversations between family members, including the children involved.
- 74 **Dr Michelle Fernando** noted that the individual rights of children to be heard are not considered essential to proceedings under the 1980 Convention, as they are summary proceedings. She emphasised, however, that such rights are especially important in cases where an exception to return has been raised. She noted that, although most Contracting Parties to the 1980 Convention are also bound by the UNCRC and despite the rich commentary on both Conventions, there are significant variations in how States approach hearing children, with some jurisdictions having mandatory rules to hear children in all cases and other jurisdictions offering limited opportunities for children to be heard. In this regard, she highlighted the need for consistency. She noted that, in cases where a grave risk of harm is raised under Article 13(1)(b), it is particularly important for courts to hear the child’s views and to consider the impact of family violence on children when examining the existence of a grave risk. In closing, she emphasised the importance of a consistent approach to hearing the views of children in cases under the 1980 Convention.
- 75 **Kerri Phillips** spoke about the role of independent children’s lawyers, which encompasses a wide range of tasks, including but not limited to ensuring the child’s views are put before the court, obtaining expert reports, participating in mediation and, if appropriate, raising a defence on behalf of the child. She highlighted the difficulties in obtaining the relevant and necessary information pertaining to the case, particularly when the case is cross-border in nature.
- 76 **Dr Stephanie Brandt** spoke of her experience as a forensic expert in child psychiatry in cases under the 1980 Convention where the Article 13(1)(b) exception has been raised. Using the case of [\*Davies v. Davies \(S.D.N.Y. 2017\)\*](#) as an example, she highlighted that the contribution of mental health experts can be extremely helpful in cases where a federal judge needs to evaluate a grave risk in the context of abduction cases where domestic violence is involved. In the particular case, she noted that her evaluation contributed greatly to the court’s decision. She emphasised that only

a formal evaluation made by a mental health professional can convey a particular child's strengths and vulnerabilities, as well as any relevant diagnosis, which are highly relevant to the assessment of grave risk. Her report: *"The impact of domestic violence and coercive control on children: applying evidence-based assessments of children to 'the grave risk exception'"*, was circulated among Forum participants. The report emphasises the importance of understanding that children are equally, if not more, affected by witnessing or being around domestic violence than being the direct recipients of it. Dr Brandt also provided the scientific basis for the irreversible and severe consequences of untreated chronic childhood traumatising and noted that, if the child remains unprotected or is separated from their primary caretaker, the risk of psychological and medical consequences is very high. She emphasised that these notions are fundamental for judges to take into account when assessing grave risk and the appropriateness of protective / ameliorative measures.

- 77 **Judge Martina Erb-Klünemann** explained the German model for hearing children in court. She clarified that, within the EU, the practice of hearing children in court varies greatly from jurisdiction to jurisdiction but that all EU Member States are bound by the Brussels IIb Regulation, which obliges States to provide a child who is capable of forming their own views with a genuine and effective opportunity to express those views, either directly, or through a representative or an appropriate body. She explained that, for the past 25 years, German courts have been obliged to give all children from the age of 3 and above the opportunity to be heard in all cases. In the context of 1980 Convention cases, German judges will hear from children regardless of whether an exception to return was raised or not. She clarified that German judges never cross-examine adults and children. When domestic violence has been alleged, judges must avoid putting victims in danger and prevent re-victimisation. In closing, she highlighted the importance for judges who interview children to be highly specialised and trained.

#### **F. Session 5 – Mediation and other alternative dispute resolution (ADR) methods in return proceedings where domestic violence is raised**

- 78 This session was moderated by **Freia Carlton** (Australia), Associate Director Mediation Victoria Legal Aid, who introduced the speakers, **Craig Schneider** (South Africa), Mediator and Attorney at Craig Schneider Associates and **Valentina Shaknes** (United States of America), Attorney specialising in The Hague Convention Child Abduction issues / Krauss Shaknes Tallentire & Messeri LLP.
- 79 The session consisted of a conversation between Craig Schneider and Valentina Shaknes about their mediation practice / experience and how mediation can be used in cases under the 1980 Convention. They noted that mediation appears to be increasingly used in 1980 Convention cases.
- 80 As such, they highlighted the importance of mediation processes being child and parent focused. They noted that the advantage of mediation is that the process can be crafted and tailored according to the needs of the persons involved and to the circumstances of the particular case. They acknowledged that cases under the 1980 Convention are highly complex and that the level of complexity is even higher when domestic violence is involved, as domestic violence can take many forms and transcends gender, class, socio-economics, education, religion and belief systems. They also acknowledged the difficulty in obtaining evidence in such cases. They recognised that, in 1980 Convention cases involving domestic violence, the process of mediation may re-victimise or otherwise put victims in danger and the likelihood of an imbalance of power between the parties is greater, all of which can impact the effectiveness of mediation. However, in their view, mediation is appropriate in most cases where domestic violence is involved, bearing in mind the interests of the child as well as the victim, by taking a trauma-informed approach or by employing a model of

mediation such as shuttle mediation (a form of mediation where the parties do not meet face to face and the mediator communicates between them). They mentioned the useful trainings offered by [Echo \(Center for Nonviolent Education and Parenting\)](#). They highlighted the importance of mediators being properly trained in child abduction cases where domestic violence is raised. The training of mediators should be globally accepted / accredited, and a bespoke training programme should be crafted and adopted. Allied to this is the importance of a bespoke mediation process to be adopted and adapted to these cases.

- 81 In closing, they emphasised the need to start working towards a universal mediation process regarding cases under the 1980 Convention, which should be adaptable to the particularities of each case. They also emphasised the advantage of securing a global network of suitably trained mediators.

#### **G. Session 6 – Return and non-return decisions in abduction cases involving domestic violence (incl. risk assessment)**

- 82 This session consisted of a judge-led discussion, moderated by **Justice Stephen Cobb** (United Kingdom), Justice of the High Court in the Family Division, pertaining to the judicial decision-making process in the context of cases under the 1980 Convention. During this session, panellists shared their experiences and views regarding the various factors they take into consideration when deciding whether to make a return or non-return order. The panel consisted of:

- Justice Stephen Cobb (United Kingdom), Justice of the High Court in the Family Division
- Judge Guilherme Calmon Nogueira Da Gama (Brazil), President, Regional Federal Court of the Second Region, Rio de Janeiro
- Judge Martina Erb-Klünemann (Germany), Judge of the Family Court, District Court of Hamm
- Justice Steven Arnold Majiedt (South Africa), Justice of the Constitutional Court

- 83 **Justice Cobb** presented the case in [Re A \(Article 13\(b\): Mental ill-health\) \[2023\] EWHC 2081 \(Fam\)](#), in which he had decided not to return a child and his mother.<sup>12</sup> Justice Cobb noted that domestic violence is one of the most challenging issues for family courts in the UK to deal with, even in cases that do not involve cross border movement. In providing some context for the *Re A* decision, he shared the 2000 decision of [Re L, V, M, H](#), a decision that led to significant amendments of domestic laws on family violence. He acknowledged that the ways in which domestic violence is understood in the UK has significantly grown in the last two decades. He added that, in more recent years, the significance of family violence in domestic law acquired greater prominence, leading to a number of important initiatives led by organisations such as Women’s Aid. Citing the presentation by **Aleisha Ebrahimi** during Session 2, he noted that the most significant development in the UK in this area was the pioneering Domestic Abuse Act 2021.

- 84 He then spoke about how domestic principles on domestic violence are applied in 1980 Convention cases. He explained that UK family courts seized to make a decision on the return of a child will assess future risk by assessing past harm. He noted that the courts do not generally determine the truth of the allegations of domestic violence but proceed as if the allegations of domestic violence are true. Judges then assess whether the alleged domestic violence would amount to a grave risk for the child and, if so, they assess whether it is possible to protect the child against such a grave risk, if a return decision is to be made. In making such considerations, UK family judges examine

---

<sup>12</sup> The Secretary General had asked Justice Cobb to present this case as it is an example of the Convention’s effective operation in cases involving domestic violence.

the case on its own individual facts and take all relevant issues into account cumulatively and holistically. He clarified that the exception under Article 13(1)(b) is only applied, leading to a non-return decision, if protective measures are deemed not to be enough to protect the child upon their return from the alleged domestic violence. He emphasised that, while there is a clear need for protective measures in such cases, there is an even greater need for such protective measures to be effective.

- 85 Justice Cobb explained the various factors and evidence he considered in the case of *Re A*, as well as the various possible protective measures which were at his disposal under both the 1980 and the 1996 Conventions. He also shared the challenges involved in making a decision in this case. Finally, he shared some key aspects of the court's analysis and determination. He clarified that, although he did not make any findings on the allegations of domestic abuse raised in the case (as is customary), he considered that, if such allegations were true, the return of the child would likely present a "grave risk" to their psychological wellbeing. He noted that, although he was satisfied that the available protective measures would diminish the risk to the child, he found that the return would have a significantly debilitating effect on the child's mother (the taking parent) who was suffering from serious mental ill-health, underlining his material reservations about whether the proposed protective measures sufficiently addressed the mother's need to access effective health care. For those reasons, he issued a non-return decision in the case of *Re A*.
- 86 **Judge Guilherme Calmon** informed participants that, since the beginning of the COVID-19 pandemic, at least 16 new cases have been initiated in the state of Rio de Janeiro in Brazil. Of those 16 cases, thirteen involved allegations of domestic violence under Article 13(1)(b) of the 1980 Convention.
- 87 He presented participants with the [2006 Maria da Penha Law](#),<sup>13</sup> Brazil's domestic violence law. He also informed participants that, in May 2024, the first Regional (Latin America and the Caribbean) meeting of the IHNJ took place in Rio de Janeiro, which culminated in the [Letter of Rio de Janeiro](#). The Letter concluded that, among other things, domestic violence and its repercussions on children's well-being and family life are issues that make the decision-making process in 1980 Convention cases more challenging in Latin American and Caribbean States.
- 88 **Judge Martina Erb-Klünemann** informed participants that the previous general position of German courts deciding on return cases under the 1980 Convention was that the evaluation of domestic violence allegations must be undertaken by the courts in the State of habitual residence. By contrast, the current approach taken by German courts is to evaluate the situation in its entirety, including any allegations of domestic violence. She noted that, while the threshold must not be too high, allegations must be sufficiently detailed and, if disputed, proven, in order to constitute a grave risk. She noted that the burden of proof should account for the fact that domestic violence takes place in private and highlighted that the evidence should focus on establishing that the domestic violence alleged poses a grave risk to the child, not only on whether the violence has taken place.
- 89 Citing the 2010 ECtHR case of [Neulinger](#), she highlighted that a fair balance must be struck between competing interests at stake: those of the child, the parents and of public order, always bearing in mind that the child's best interests are paramount considerations which must be assessed in each individual case. She also mentioned a recent decision by the German Constitutional Court, wherein it was emphasised that courts must base their decisions in return proceedings on the best interests of the child. She mentioned in this respect that the German

---

<sup>13</sup> An English translation of the law can be found [here](#).

Constitutional Court always makes clear that this does not entail a full best interest assessment, but an assessment of the best interest of the child for the purposes of the 1980 Convention.

- 90 Judge Erb-Klünemann presented a 2023 decision she issued in the Family Court of Hamm. The case involved domestic violence against both the mother and child, with criminal charges being filed against the perpetrator / father. The parents in this case were separated and the father had supervised visitation rights. The mother initiated relocation proceedings but did not wait for the outcome before moving with the child without the father's consent, resulting in return proceedings being initiated by the father. In this case, Judge Erb-Klünemann made use of direct judicial communications in order to gather additional information on the case from the authorities of the State of habitual residence. She informed participants that she decided to issue a return order in this case as, in her view, this case did not meet the threshold of Article 13(1)(b) since the authorities in the State of habitual residence were already addressing the issue of domestic violence (criminal charges were brought and the father was convicted and contact between father and child was already in place). In closing, she noted that the decision was rendered within the 6-week time frame suggested by the Convention and that resolving the case within the suggested time frame is feasible with effective and efficient cooperation.
- 91 **Justice Steven Arnold Majiedt** presented the 2023 decision of South Africa's Constitutional Court in the case of [\*The Ad Hoc Central Authority for the Republic of SA and Another v Koch N.O. and Another \[2023\] ZACC 37 \(Koch\)\*](#). He explained that the Constitutional Court was faced with the question of whether the return of the child in the case would amount to a grave risk of harm or an intolerable situation. The court was tasked with balancing the short and long-term interests of the child with the Convention's deterrent policy and with determining the weight to be given to the absence of existing custody or access rights by the party opposing the child's return. He noted that the majority judgment in *Koch* held that Article 13(1)(b) of the Convention sets a high threshold: the harm must be grave and of a serious nature. Harm that is the natural consequence of the removal or court-ordered return would not meet this threshold. Based on this principle, the court held that the harm alleged by the taking parent in *Koch* was not grave enough to satisfy Article 13(1)(b) and that there were adequate support services and systems in place in the State of habitual residence that would mitigate the alleged risk of harm and impact of the child's return. He further highlighted that no evidence was provided to substantiate the allegations made under Article 13(1)(b).
- 92 Justice Majiedt observed that, in his view, the Conclusions and Recommendations adopted by the Special Commission at its Eighth Meeting in October 2023 are in line with the decision rendered in *Koch* and, generally, with the approach adopted by South African courts in cases under the 1980 Convention.
- 93 Following the interventions from the speakers, **Justice Cobb** opened the floor for questions. Participants discussed the importance of following up on the case post-return. Participants further discussed the various mediation models that could be appropriate for cases involving domestic violence, such as shuttle mediation.

#### H. Session 7 – Risk assessment and protective measures (incl. benefits of the 1996 Convention)

- 94 This session was moderated by Professor Costanza Honorati (Italy), Full Professor of European Union law and Private International Law at the University of Milano-Bicocca, School of Law. The session consisted of contributions by the following speakers:

- Professor Costanza Honorati (Italy), Full Professor of European Union law and Private International Law at the University of Milano-Bicocca, School of Law
- Professor Mari Nagata (Japan), Professor of law at the Osaka University Graduate School of Law and Politics, Department of Law and Political Science
- Janaína Albuquerque (Brazil), Lawyer, and legal coordinator at Revibra
- Dr Adrienne Barnett (United Kingdom), UK lead on the international strategy group of Hague Mothers (a FiliA legacy project) and Reader in Law at Brunel University
- Justice Baratang Constance Mocumie (South Africa), Justice at the Supreme Court of Appeal
- Lord Justice Andrew Moylan (United Kingdom), Court of Appeal of England and Wales, Head of International Family Justice for England and Wales

95 **Professor Costanza Honorati** presented the POAM project: Protection of Abducting Mothers in Return Proceedings – Intersection between Domestic Violence and Parental Child Abduction, also on behalf of **Dr Onyoja Momoh** (Nigeria/United Kingdom) and **Professor Katarina Trimmings** (United Kingdom). She reminded participants that the aim of the 1980 Convention is to protect children’s interests and safety, and that Article 13(1)(b) provides a framework to deal with cases that involve domestic violence, as there is no doubt that domestic violence is traumatic for the child and affects their development. She further reminded participants that a non-return order can also be in line with the correct application of the Convention and that it should, therefore, not be alarming that, in some cases, the interests of children may be best served by a non-return order.

96 She noted, however, that there may be cases where both a return and non-return order will provide inadequate solutions. The variety in the level and patterns of domestic violence requires a third option. Protective measures may serve to bridge that gap. She acknowledged that this, however, may be quite challenging, as protective measures can be an ambiguous concept. While it is usually emphasised that protective measures must be effective, she clarified that this must mean that they are enforceable in the State where they are needed, in order to fully address the risk of non-compliance. She added that, where courts find that there is domestic violence, ordering undertakings, ameliorative measures or soft-landing measures may not guarantee safety upon the child’s return and such measures should not be categorised as ‘protective measures’.

97 She described that, under Article 27(5) of the Brussels IIb Regulation, the State of refuge may now adopt protective measures which are directly enforceable in the State of habitual residence and that similar results can be achieved with the 1996 Convention, under the combined operation of Article 11 (jurisdiction ground for measures in cases of urgency), Article 23 (recognition of measures by operation of law, *i.e.*, automatically, save for some exceptions) and Article 26 (declarations of enforceability). Other ways of ensuring protective measures are enforceable could be through bilateral treaties on recognition and enforcement of family decisions which may be in force between the relevant States or national procedures in the State of habitual residence, such as mirror orders or safe harbour orders. In closing, she emphasised further requirements for protective measures, including that they must be crafted and adopted swiftly so as not to delay return proceedings, they must minimise the risk and not affect the substance of the case, they should be available *ex officio* in addition to being ordered upon request of a party and they should already be put into place in the State of habitual residence in advance of the child’s return.

98 **Professor Mari Nagata** explained the Japanese legal framework for cases of domestic violence to participants. She cited Article 28 of the [Act for Implementation of the 1980 Convention](#), which sets out and elaborates on the exception to return under Article 13(1)(b). She noted that Article 28(2)



explicitly sets out that domestic violence can be a grave risk to the child even if they are not the direct victims of it. She also mentioned the [2001 Act on the Prevention of Spousal Violence and the Protection of Victims](#) (last amended in 2023), which sets out the various protection orders that victims of domestic violence can obtain, as well as the [2000 Child Abuse Prevention and Treatment Act](#) (last amended in 2020), which defines what can constitute abuse perpetrated against children and provides for protective measures. She informed participants that currently, Japan has 19 cases dealing directly with the 1980 Convention. In 12 of those cases, the exception under Article 13(1)(b) was raised. Of those 12 cases, only 3 resulted in a non-return due to grave risk.

- 99 She shared a recent Japanese case under the 1980 Convention ([Tokyo HC, Jul. 14, 2015H.T. \(1457\) 136 \[2019\], INCADAT HC/E/JP 1439](#)). In that case, the court of first instance did not find that there was a grave risk to the child under Article 13(1)(b) because, even though the court found that the father was violent to the mother, there was no evidence to support the allegations that the father was violent and sexually abusive to the child. The court also took into account the restraining order already in place in the State of habitual residence and the availability of shelters there. On appeal, the High Court of Japan found that there was sufficient evidence of sexual abuse towards the child and found that there was indeed a grave risk under Article 13(1)(b), as it found that the available protective measures were not sufficient.
- 100 She noted that, in Article 13(1)(b) cases, courts in Japan will consider the availability and effectiveness of protective measures in the State of habitual residence but they are not actively engaged in the implementation of such protective measures in that State. She noted that Japan has not yet ratified the 1996 Protection of Children Convention. In closing, she highlighted the need to further discuss the recognition and enforcement of foreign protection measure orders.
- 101 **Janaína Albuquerque** shared her experience as an international family lawyer working with 1980 Convention cases. She emphasised the importance of recognising that domestic violence is not linear and that cultural and religious values may also play a crucial role. She made reference to Article 7 of the Maria da Penha Law (domestic law of Brazil), which defines domestic violence. She noted the difficulty in proving domestic violence even when the abuse is physical and underscored the increased difficulty when the effects of abuse do not manifest themselves physically. She added that the standard of proof may be even more challenging for migrant women to meet, given language barriers, bureaucratic / administrative hurdles and financial constraints. She noted that the lack of a universal conception of domestic violence makes matters even more challenging. Finally, citing the Istanbul Convention, she noted that protective measures may be inadequate, particularly for migrant women due to several structural inequalities.
- 102 **Dr Adrienne Barnett** spoke about assessing a “grave risk” and an “intolerable situation”. She quoted Professor Elisa Perez-Vera, the author of the [Explanatory Report of the 1980 Convention](#), who said in a 2024 interview that “[...] almost 50 years later, we need to reinterpret the letter of the Convention in light of the new social realities in which it has to be applied. [...] the fundamental element of change that was not taken into account was gender-based violence.” She noted that a restrictive approach to Article 13(1)(b) does not sufficiently recognise the harmful effects of domestic violence on children and the links between parental and child abuse, leading to potential risks to the safety of the taking parent and/or the child upon return. She further recalled that the European Parliament, in 2016, concluded that a restrictive approach to Article 13(1)(b) colludes with perpetrators of domestic violence. Dr Barnett cited UK Supreme Court judge Lady Hale’s judgment in the case of [Re E \(2011\)](#), wherein she stated that there is no need for Article 13(1)(b) to be narrowly construed because, by its terms, it is of restricted application. In the case of [Re D \(2006\)](#), Lady Hale noted that, while the term “intolerable” is rather strong, when applied to a

child it must mean “[...] a situation which this particular child in these particular circumstances should not be expected to tolerate”. She noted that the HCCH [Guide to Good Practice on Article 13\(1\)\(b\)](#) is a good resource on the interpretation of the terms “grave risk” and “intolerable situation” for the purposes of applying Article 13(1)(b).

- 103 Dr Barnett emphasised that assessing risk in the context of a return application under the 1980 Convention requires an understanding of the nature, prevalence, risks and impact of post-separation domestic violence, including litigation abuse. It requires understanding that coercive control, a non-physical form of domestic violence, is the most prevalent and dangerous form of domestic violence. She added that risk assessments should take into account the context from which the victim and child(ren) fled.
- 104 She noted that, while in some cases protective measures may be effective, they tend to respond only to physical forms of domestic violence. In addition, research suggests that there is a high level of recidivism by perpetrators and a failure to adhere to protective orders as well as high prevalence of undertakings being breached.<sup>14</sup> As such, she noted that it is dangerous to rely on protective measures where there has been a finding of grave risk based on domestic violence. She recalled the importance of Article 3 of the ECHR which prohibits torture and “inhuman or degrading treatment or punishment”, adding that it takes precedence over the 1980 Convention. She shared that the UK High Court confirmed that Article 3 of the ECHR should be taken into consideration when assessing the Article 13(1)(b) exception. She also emphasised that the human rights of the taking parent themselves should be assessed in their own right in the context of Article 13(1)(b). She noted that, although this was not the intention of the drafters, the Convention seems to take into account the safety of the taking parent only insofar as this affects the child. In this regard, she pointed to the importance of trauma-informed, accredited training on domestic violence for competent authorities and other actors involved in risk assessments in the context of the 1980 Convention. Such training should include raising awareness of the nature of coercive control, gendered dynamics, tactics that perpetrators use to gain control, the effects of domestic violence on child and adult victims, as well as the tactics employed by perpetrators in litigation.
- 105 **Justice Baratang Constance Mocumie** emphasised the importance of training judges on the operation of the 1980 Convention generally and on Article 13(1)(b) more specifically. She highlighted the role the IHNJ could play in that regard.
- 106 In her presentation, she addressed the 1996 Convention and its potential to complement the operation of the 1980 Convention through the wide array of measures of protection available thereunder and its robust cooperation mechanisms. She informed participants that South Africa has not yet ratified the 1996 Convention, as other priorities around that time diverted attention from it, such as the coming into force of the South African Constitution, the UNCRC and the [African Charter on the Rights and Welfare of the Child](#). She also noted that perhaps there has not been strong interest in ratifying the 1996 Convention in the continent as the Convention does not appear to provide for, or understand, the role of the extended family in Africa or the African concept of communitarian responsibilities, despite *kafala* being reflected in its text. She also pointed to the general lack of visibility of the HCCH in Africa and to the adverse socio-economic conditions and lack of political will which impede countries across the continent from becoming Members of the HCCH.
- 107 **Lord Justice Andrew Moylan** noted that domestic violence is a very broadly defined term that includes a wide array of behaviours. He, therefore, posed the question whether domestic violence

---

<sup>14</sup> Reunite studies (2003); Edleson & Lindhorst (2012); GlobalARRK & Hague Mothers (2024).

should be a category of its own in risk assessments under Article 13(1)(b). He reiterated Mr Justice Cobb's point during the previous session that, in the context of cases under the 1980 Convention, issues are often complex and overlapping. Citing the 2022 UK Court of Appeal decision in [Re B](#), he noted that the court must evaluate whether there is a grave risk based on the allegations as a whole and must consider the cumulative effect of those allegations for the purpose of evaluating the nature and level of any grave risk(s), as well as the protective measures available to address such risk(s).

108 He noted that risk assessments must be proportionate. Judges must look at whether the removal or retention was proportionate to the risk of harm to which the child would be exposed if they remained in their State of habitual residence. He emphasised that there is no uniform approach to risk assessments and that the manner in which they are undertaken will depend on the legal and factual context of the particular case.

109 Lord Justice Moylan cited the 2011 UK Supreme Court decision in the case of [Re E](#), which reflects the approach of UK courts in risk assessments under the 1980 Convention. UK courts do not order return automatically and mechanically but examine the particular circumstances of the specific child in order to ascertain whether a return would be in their interests and in accordance with the Convention. He noted, however, that this examination does not involve a full-blown assessment of the child's future.

110 He noted that risk assessments involve consideration of a broad range of available and appropriate protective measures which must be balanced against the nature and degree of risk being assessed. He shared a quote from the 2023 UK Court of Appeal decision of [G v. T and another](#), which provided that, when determining whether to make a return order, the court must be "[...] satisfied ... that the proposed protective measures are going to be sufficiently effective in the requesting State to address the Art 13(b) risks." Indeed, he emphasised that there are several UK decisions that resulted in a non-return order due to the court's view that the proposed protective measures would not sufficiently address the grave risk.<sup>15</sup>

111 In closing, he noted that Article 23 of the 1996 Convention provides robust provisions for the recognition and enforcement of "measures of protection" for children, which has also enhanced the protection for children who are to be returned under the 1980 Convention.

112 Following the interventions from the speakers, **Professor Costanza Honorati** opened the floor for questions. Participants further discussed protective measures, including those that can be ordered under the 1996 Convention.

### **I. Session 8a – "Post-decision" – preserving the best interests of the child (supporting children and their families)**

113 This session consisted of interventions from the following speakers:

- Dr Noelle Hunter (United States of America), Clinical Assistant Professor, University of Alabama in Huntsville, and Founding Partner in the Coalition to End International Parental Child Abduction
- Juliana Santos Wahlgren (Belgium / Brazil) – Founding Director of Revibra Europe (online)

---

<sup>15</sup> For instance, *VI v. VM* [2021] EWHC 2451 (Fam), *L (A Child - Article 13: Protective Measures) (No 1)* [2022] EWHC 3427 (Fam), *L, Re (Article 13: Protective Measures)(No 2)* [2023] EWHC 140 (Fam), *JC v. SS* [2023] EWHC 2063 (Fam) and *Re S (a child) (abduction: article 13(b): mental health)* [2023] EWCA Civ 208.

- Roz Osborne (United Kingdom), CEO of Global Action on Relocation & Return with Kids (GlobalARRK)
- John Gomez (Japan), Chairperson Kizuna Child-Parent Reunion
- Eleni Bailey (Australia), International Family Mediation Coordinator, Accredited Family Dispute Resolution Practitioner, Senior Social Worker & Child Consultant

114 **Dr Noelle Hunter** underlined the importance of ensuring the well-being of the child following a return or non-return decision. She noted that it is crucial to ensure the enforcement of safety protocols and protection measures in return decisions and pursue meaningful access / contact in non-return decisions. She highlighted that the trauma-informed care for all family members should continue after the formal resolution of the case. She underlined that not every reunion with a left behind parent will be a happy one and that it is important to minimise potential or exacerbated trauma for the child while maximising the potential to facilitate a healthy transition, repair their ruptured identity and rebuild their family relationships. In this regard, she spoke about the promising role of family coaching in providing post-decision support. She explained that family coaching combines the fields of coaching psychology and family life education (FLE) to help families improve their relationships and foster positive change. She also noted that peer-based support programs such as the iStand Survivor Network (a trauma-informed NGO) can support children and young people in their healing by providing formal and informal opportunities for survivors of traumatic childhood experiences to speak to and support each other in a safe way (e.g., through “Survivor Camp”, a one-week, co-ed camp for families who have experienced child abduction).

115 **Juliana Santos Wahlgren** reminded participants that child abduction proceedings are not linear and that each case uniquely reflects the system and environment in which the 1980 Convention operates. She noted that it is important to bear in mind that there are many factors that affect a return to the State of habitual residence, aside from strictly applying the Convention, such as access to income, the labour market and social benefits. She noted that, in particular, these factors disproportionately affect migrant women. She shared some data on legal aid collected by Revibra between 2020-2023 on 20 cases involving Brazilian migrant women, most of which involved the initiation of criminal proceedings against the women, leading to convictions. Seven of those cases involved the imposition of heavy fines, 10 cases involved complications relating to residence permit and migration status and, in two cases, the women had to wear ankle monitors. In most of those cases, the mothers were barred from seeing their children for long periods of time and once they received access / contact, it was supervised. She highlighted the risk of exposure to financial precarity in such cases, due to the complex reintegration process these mothers face as migrants and the difficulty in accessing free legal assistance or legal aid when undocumented. In closing, she shared a quote by Paulo Freire, author of the book *Pedagogy of the Oppressed*: “One cannot conceive of objectivity without subjectivity”, noting that there cannot be meaningful discussions about the 1980 Convention without discussions about the people affected by its misapplication.

116 **Roz Osborne** reminded participants that the 1980 Convention does not deal with matters of custody and that the [Guide to Good Practice on Article 13\(1\)\(b\)](#) specifies that “[...] as a rule, the courts of the child’s State of habitual residence are best placed to determine the merits of a custody dispute (which typically involves a comprehensive “best interests” assessment). In dealing with the prompt return of children, the Convention does not deal with the merits of custody and access, which are reserved for the authorities of the State of habitual residence.”

117 She noted that the reality on the ground is oftentimes very different and that many cases are resolved following the return of the child without a full best interests assessment done by the

authorities in the State of habitual residence. Sharing some GlobalARRK statistics, she noted that, in approximately 10% of cases, the child is returned alone and in another 10% of cases, the taking parent leaves after the return for fear of their own safety, due to lack of funds, visa / immigration complications and criminalisation for having wrongfully removed / retained the child in the first place. Therefore, in 20% of cases, custody is automatically or by default granted to the left behind parent, with little to no contact with the taking parent. Sharing a case handled by GlobalARRK, she illustrated that when children return alone, no best interests assessment is made nor are follow-ups done after the return.

- 118 She noted that the Guide to Good Practice presumes that a return will be uncomplicated for parents but, in practice, this is not true for most cases. She added that it is often unrealistic to expect the restoration of the *status quo ante*, as prescribed by the Convention, as the relationship between the parents has been completely ruptured, in cases of abuse the situation becomes even more dangerous following the return, the taking parent is labelled an “abductor” which is disadvantageous for subsequent (custody) proceedings and, in some jurisdictions, criminal charges are involved. She showed the results of a [research study](#) on the effectiveness of Protective Measures undertaken by GlobalARRK and FiLiA Hague Mothers which showed that a high number of mothers experienced further abuse after return. In closing, she underscored the importance of fostering a better understanding of post-return realities, through data collection and monitoring.
- 119 She suggested there could be scope for a new monitoring role such as a Hague domestic abuse commissioner to gather evidence, as per a [report](#) published by GlobalARRK in June 2024.
- 120 She emphasised the need for a global approach to ensure a best interests assessment for every child returned and the need for post-return support services.
- 121 **John Gomez** noted that the question of return is not the only one to be resolved under the 1980 Convention. Access / contact is also a matter to be considered. He introduced participants to Kizuna Child-Parent Reunion, an NGO registered in Japan that advocates for the human rights of children and their development, in a child centred and gender-neutral way. He explained that *Kizuna* means “special bond” in Japanese and that the terms “Child-Parent Reunion” were intentionally chosen as they abbreviate to CPR, reflecting the aim of the NGO to resuscitate the beating heart of the parent-child relationship.
- 122 He emphasised that, although return proceedings under the 1980 Convention are binary, either-or, zero-sum decisions, the child themselves does not have a zero-sum relationship with their parents. Therefore, in order to maintain a balance for the child’s relationship with their two parents, access / contact should be ensured for the seeking parent in a non-return decision and for the taking parent in a return decision under Article 21 of the Convention. He noted that lack of access / contact for either parent will only serve to prolong the conflict between the parents and adversely affect the child’s well-being.
- 123 He echoed points made by other speakers that the formal resolution of return proceedings under the 1980 Convention is not an endpoint but rather the beginning of a new phase in the child’s life, the beginning of a healing process and a reconciliation with both parents. In this regard, he emphasised the importance of a trauma-informed approach to all processes relating to the 1980 Convention proceedings and beyond.
- 124 **Eleni Bailey** noted that, statistically, the vast majority of victims of family violence are women and children and that women are disproportionately represented as taking parents in cases of international child abduction. She added that the term “abductor” can be damaging and exacerbate systems abuse against victims. Reminding participants that violence towards the mother is

tantamount to violence towards the child, she highlighted that post-decision follow-up is crucial to ensure physical safety and stability. She noted that, in order to achieve this, local authorities need to coordinate and cooperate with one another. She also noted that post-decision emotional and psychological support, such as access to crisis support lines and cultural services, is crucial in facilitating reintegration. In this regard she highlighted the role of local social workers as well as the role of organisations such as the International Social Service.

#### **J. Session 8b – The voice of the seeking parents – keeping contact with the child after a decision**

125 This session consisted of an online presentation by **Sean Fackrell** (United Kingdom), who shared his experience of 1980 Convention proceedings from the perspective of a seeking parent. He noted that, despite a return order being made in his favour, he faced difficulty in having the decision enforced, and, as a result, he continues to have very little contact with his children. He indicated that the enforcement of return orders needed to be improved and should, for example, include assistance provided to the children.

126 Following Sean Fackrell's intervention, questions were opened for both sessions 8a and 8b. Participants asked questions relating to the availability of mediation in various jurisdictions, the rate of enforcement as well as the efficacy of protective measures. In response to a question regarding what can be done to address the issue of a particular State misapplying the 1980 Convention, the Secretary General reminded participants that the HCCH does not have the mandate to police the implementation and practical operation of HCCH Conventions. The most effective way to address any practical issues is through a meeting of the Special Commission on the practical operation of a particular HCCH Convention, which in the past has proven to be quite an effective channel for change and improvement. In between meetings of the Special Commission, bilateral meetings between the States concerned or meetings between several States sharing a similar concern can be facilitated by the PB, in order to resolve specific issues.

#### **K. Session 9 – Assessment of possible relocation in situations involving domestic violence**

127 This session was moderated by **Luke Brown** (Australia). The session consisted of the following speakers:

- Luke Brown (Australia), Assistant Secretary – International Cooperation, Attorney-General's Department
- Roz Osborne (United Kingdom), CEO of Global Action on Relocation & Return with Kids (GlobalARRK) / Dr Ruth Lamont (United Kingdom), University of Manchester, Reader in Child and Family Law
- Dr Martin Strous (South Africa), educational psychologist and Court-appointed expert in children and family law cases
- Joy Brereton KC (United Kingdom), practitioner (online)
- Judge Liina Naaber-Kivisoo (Estonia), Judge of the Viru County Court, Ida-Viru maakond

128 **Luke Brown** informed participants that Australia is currently taking steps to address the high rates of domestic violence and femicide in the country. He noted the difficulty Australia and New Zealand face in relocation cases, due to their geographical remoteness. He noted that the Australian Central Authority endeavours to facilitate voluntary agreements between parents regarding relocation. He

added that when relocation applications are brought before the courts, the best interests of the child is the guiding principle. In cases where there is real concern for safety, he noted that courts have the discretion to expedite the relocation decision.

- 129 He noted that, although there is no need for substantive changes to be made to the 1980 Convention, the way in which it is applied needs to evolve in the light of new understandings about domestic and family violence. Recalling the presentations of the individuals with lived experience earlier on in the Forum, he noted that if relocation proceedings can be expedited, this may serve to mitigate the occurrence of mothers taking their children across borders out of desperation to flee a dangerous situation. This will then have an ameliorative effect on the child's well-being, as the child will not be relocated more times than necessary, minimising disruption and trauma. In closing, he invited participants to consider how best to make use of available resources such as the 1996 Convention and information technology.
- 130 **Dr Ruth Lamont** and **Roz Osborne** made a joint presentation. **Dr Ruth Lamont** recalled a point made earlier during the Forum on the impact and influence of trauma on decision-making. She noted that lawful applications for relocation can be difficult due to the significant variation of procedures from one jurisdiction to another. She cited a [UK report published by law firm Penningtons Manches Cooper](#), which examines the divergence in relocation proceedings between a sample of countries. The report illustrates that, in some jurisdictions, a full welfare assessment is required for a decision on relocation, and, in some other jurisdictions, the concept of relocation is not familiar at all. She also noted that relocation proceedings can have uncertain outcomes and can come with high costs and long delays. She made reference to the [HCCH 2010 Washington Declaration on International Family Relocation](#), which provides that “[...] States should ensure that legal procedures are available [for individuals] to apply to the competent authority for the right to relocate with the child” and that a “history of family violence or abuse, whether physical or psychological” should be a relevant factor in relocation decisions. She informed participants that, at the regional level, the European Union and the Council of Europe are taking steps to harmonise relocation procedures between Member States.
- 131 **Roz Osborne** presented the results of a [GlobalARRK survey](#) on relocation. She informed participants that, out of 116 respondents, 53 responded that they had made an application for relocation while 37 had not and 24 responded that they were trying to make an application. She informed participants that 37% of respondents reported that they had been successful in their applications, while 63% were unsuccessful. She noted that 34% of the cases took between 6-12 months to be resolved while 49% took two years, which illustrates that time is a significant problem in relocation proceedings. She informed participants that, when asked about the reasons why respondents were not able to succeed in their relocation applications, the main reasons cited were the lack of relocation processes in some States, lack of funds or legal aid barring some parents from even lodging an application in the first place, the existence of a return order under the 1980 Convention adversely affecting the outcome of the relocation application and fear of further abuse. She informed participants that nearly 90% of respondents to the survey had reported suffering domestic violence, something that stigmatised them in the eyes of some courts to the extent that they were advised not to disclose the violence during relocation proceedings. In closing, she offered participants some suggestions for consideration. She suggested that new Contracting Parties to the 1980 Convention should have an effective relocation system, that relocation proceedings should be swift and supported by access to means tested legal aid, domestic violence should not stigmatise applicants and States should develop processes for an expedited / emergency relocation hearing for at risk applicants. She added that the HCCH could also develop further guidelines on international relocations.

- 132 **Dr Martin Strous** noted that balancing the competing rights and interests of the parties involved in international relocation cases is a significant challenge. He noted that, although the best interests of the child are to be the primary considerations in relocation proceedings, he has observed through his practice that expert opinions and court judgments can be influenced by a wide range of issues, including personal views. He noted that, although South African courts have acknowledged children's individual rights, this does not mean that the best interests of the child are the only factor considered in relocation proceedings. He highlighted that relocation applications are complicated and deserve a case-by case approach. In making their decisions, courts should consider the well-being and parenting role of both parents, the general benefits of both parents actively parenting, and the psychological risk when a child perceives threat to a trusted relationship with a parent. Courts should also take into consideration cultural rights and the ability of the child to adapt to another culture. He added that, in cases involving domestic violence, a relocation can help protect children and keep them safe from an abusive parent. He noted that, in such cases, the parent opposing the relocation may counterclaim parental alienation, which can be a powerful strategy in preventing relocation. He added that, although the notion of parental alienation is highly contested in academic and scientific research, many forensic evaluators consider active alienating behaviour as emotional abuse and domestic violence. In closing, he highlighted that it is crucially important for courts deciding on relocation to examine all relevant factors, including the history and intentions of both parents.
- 133 **Joy Brereton** KC spoke about relocation cases where there are allegations of domestic abuse from the perspective of a legal practitioner. She echoed Martin Strous in that relocation cases are some of the most difficult cases that the courts deal with and they require a detailed assessment of competing rights and multiple factors, even without the added complexity of domestic violence allegations. She noted that every case is fact-specific and involves an assessment of any risk of harm and the child's welfare. She informed participants that, in her experience, at least 50% of relocation cases involve allegations of domestic abuse / violence. She echoed previous speakers that the general approach in the UK supports and favours contact and a relationship with both parents. The 'Harm Report' in 2020, which has spearheaded a change of approach and shift in culture indicated that applicants were being discouraged from raising domestic abuse / violence in cases including relocation. She noted that courts are rightly interested in the capacity of the applicant to prove that the relationship between the child and the non-relocating parent can continue after the relocation and where there are allegations of domestic abuse, this creates a tension in respect of supporting a relationship. She shared her experience with one case, where the court of first instance in the relocation proceedings held that the mother fabricated the allegations of domestic violence but, on appeal, it was found that she was dealing with the significant effects of abuse. On appeal, the court allowed her to relocate in order to ensure the other parent was not able to exercise coercive control over her and to enable her to have the support of family. There are now more examples of the court recognising and taking into account domestic abuse / violence and the impact on those who have experienced it in the context of relocation cases. In closing, she emphasised that, in her view, non-disclosure or advising people against raising domestic abuse / violence in relocation cases was not right and is not productive, as the court requires the full range of information in order to make an informed decision about the welfare of the child including any risk of harm.
- 134 **Judge Liina Naaber-Kivisoo** shared her experience with adjudicating relocation cases. She informed participants that there are no specific relocation procedures in Estonia, so matters of relocation are dealt with in the context of custody cases. She informed participants that, during custody proceedings, all children are heard no matter their age (for children who cannot yet speak, their



interactions with their parents are observed by judges). An independent child lawyer is appointed in every case, with the fees covered by the State, and the expert opinions of social workers are sought. She noted that legal aid is available to parties in certain cases and that mediation is encouraged unless there is domestic violence. She informed participants that the Estonian Court of Appeal held that the existence of a previous case under the 1980 Convention is not a determining factor in the relocation decision. She emphasised that, although the best interests of the child are the primary considerations, all relevant factors are taken into consideration by Estonian courts, including allegations of domestic violence.

135 Following the interventions by the panellists, **Luke Brown** opened the floor for questions. Participants discussed the importance of parents having a legal route back to their home country, as this will ultimately serve to prevent abductions. The need to raise the awareness of parents and practitioners that such routes or processes exist, regardless of whether they are dealt with as standalone proceedings or in the context of custody proceedings, was also emphasised. Participants also noted that the 2010 Washington Declaration would benefit from increased visibility. Participants noted that the subject of relocation would benefit from further discussions.

#### L. Session 10 – Identifying the need for further research and collection of data on abduction cases involving domestic violence

136 This session was co-moderated by **Professor Miranda Kaye** (Australia), Associate Professor at the University of Technology Sydney and **Dr Adrienne Barnett** (United Kingdom), UK lead on the international strategy group of Hague Mothers (a FiliA legacy project) and Reader in Law at Brunel University. They introduced the panellists which consisted of:

- Professor Jeffrey Edleson (United States of America), Distinguished Professor of the Graduate School and Harry & Riva Specht Chair Emeritus in Publicly Supported Social Services in the School of Social Welfare at the University of California, Berkeley (online)
- Professor Miranda Kaye (Australia), Associate Professor at the University of Technology Sydney
- Dr Adrienne Barnett (United Kingdom), UK lead on the international strategy group of Hague Mothers (a FiliA legacy project) and Reader in Law at Brunel University
- Professor Costanza Honorati (Italy), Full Professor of European Union law and private international law at the University of Milano-Bicocca, School of Law
- Juliana Santos Wahlgren (Belgium/Brazil) – Founding Director of Revibra Europe (online)
- Professor Clement Marumoagae (South Africa), University of the Witwatersrand, Family law lecturer and specialist (online)

137 **Professor Jeffrey Edleson**, presenting via a pre-recorded video, underlined that domestic violence has always existed in cases of child abduction and has been present in the research since the time the Convention was drafted.<sup>16</sup> He noted that children are often involved in domestic violence within the family, either by being threatened or being injured, intentionally or unintentionally, during the abuse perpetrated against the other parent. He informed participants that domestic violence often co-occurs with child abuse. He noted that domestic violence has long lasting effects on children, with impacts well into their adulthood, affecting their health, emotional competence, academic performance, their ability to have meaningful social relationships and hold gainful employment,

<sup>16</sup> See, for instance, Agopian (1981), Grief & Hegar (1993).

among other things. Adults who have witnessed / experienced domestic violence in their childhood are also more likely to accept such violence as normal, are more likely to blame themselves for such violence and are more hypervigilant in their relationships with other people.<sup>17</sup>

- 138 He noted that the development of secure attachment is key to a child's development and if their life is disrupted by a separation from their primary caregiver, this significant developmental milestone would be adversely affected which, in his view, would amount to an intolerable situation. He also acknowledged that, sometimes, the wrongful removal or retention of the child can be a protective measure taken by the primary caregiver that can lead to more safety than the *status quo ante*.
- 139 He emphasised that much more research is needed on how abduction may be a protective measure carried out by the taking parent. Children's voices and experiences need to be heard from a multitude of angles, including their views on how the abduction served to protect them, their experience of risk and protective measures to mitigate such risk upon their return as well as their continuation of access / contact with the primary care giver following their return. He highlighted that this research needs to be widely disseminated and included in the Guide to Good Practice on Article 13(1)(b).
- 140 **Professor Miranda Kaye** presented alongside **Dr Adrienne Barnett**. **Professor Kaye** highlighted the need to update INCADAT and noted that the choice of what is considered a significant case to be included in the database should not only be made by Central Authorities. She pointed to the need for further information on what happens after a return is made, as well as to the need for short-, medium- and long-term studies on children and parents when no return order is made, on children who return alone, on children who return with their taking parent, on outcomes of mediation as well as on adults who were wrongfully removed or retained as children. Additionally, she suggested that research is required on the representation status of parties to the Convention, noting that in most jurisdictions there is a huge inequality of arms in terms of legal representation between left behind and taking parents. She noted the measures brought in by Australia to enable respondent parents to have equivalent access to legal representation as applicant parents. Lastly, she suggested the need for research on the use of virtual hearings for matters pertaining to the 1980 Convention.
- 141 **Dr Adrienne Barnett** informed participants that there are currently various research projects ongoing in this area. She noted that the systematic collection of data about the availability of protective measures in each State would be highly useful, as would information on the most common protective measures in each jurisdiction. She added that both further quantitative and qualitative research could be done on the implementation and effectiveness of protective measures, as there is little data to show how they are implemented and how effective they are. Additionally, she noted that it would be useful to know if perpetrators of domestic violence are obliged to follow perpetrator programmes as a condition for the return of the child. Finally, a study into the domestic infrastructure that exists in each State for domestic violence victims and survivors (e.g., work assistance, shelters etc) would be highly informative.
- 142 Echoing the previous speakers, **Professor Costanza Honorati** added that more scientific research needs to be done on giving effect to protective measures and following up on such measures after the child's return, in addition to the need for general data on post-return. She also highlighted the need for neutral and objective data collection, which may prove difficult when small-scale surveys are conducted. On a different note, more training needs to be done on how to assess domestic violence in various jurisdictions, which should eventually inform more holistic training for judges,

---

<sup>17</sup> Holmes et al. (2022).

on the legal, psychological, medical and behavioural issues involved in domestic violence cases. Finally, she stressed the importance of further, comprehensive research on the ways in which abduction can be prevented, including more research on relocation processes and judicial trends. In closing, she highlighted that there is a need to promote the 2010 Washington Declaration and inform new parents that reside in a country other than that of their nationality about the risks and consequences of international child abduction.

- 143 **Juliana Santos Wahlgren** emphasised that, when gathering additional specific data, it is important to keep in mind that women are not a homogenous group but have various intersecting factors that impact their experience and outcomes of return proceedings under the 1980 Convention, including but not limited to socio-economic status, education status, employment status, migration status, race, religion, age, language, sexual orientation / gender identity and disability.
- 144 She pointed to a lack of disaggregated data on the different manifestations of domestic violence, as there is a lot of research on physical violence but not as much on other forms of violence. She noted that there is a possible data gap on the availability of protection mechanisms for victims of domestic violence and on how migration status and socio-economic status can impact women's access to justice. She acknowledged the difficulty in gathering disaggregated data due to considerations of confidentiality, among other things. However, she explained that gathering such data is possible, for instance, when express consent is given to process such data, when the data is self-declaratory or when the data is gathered for the purpose of protecting children.
- 145 **Professor Clement Marumoagae** presented his paper, entitled *The Conundrum of Shared Care Where There is Abuse*. Many studies show that generally, children benefit from receiving care from both parents. He highlighted that a proper assessment of domestic violence allegations could determine whether or not relocation should be granted.
- 146 Following the interventions by the speakers, **Professor Miranda Kaye** and **Dr Adrienne Barnett** opened the floor for questions. During discussions, participants added that another necessary statistic would be to gather data on deaths in the context of proceedings under the 1980 Convention as well as data on how many victims of domestic violence are deterred from fleeing and what happens to them. Participants also discussed the ways in which the research can be taken forward, for instance, through training. The importance of raising awareness to the 1980 Convention was also discussed in this context. Participants also acknowledged the difficulty of quantitative research in this area, as directly interviewing high risk and vulnerable groups of people must be approached with care and takes a very long time.

#### **M. Session 11 – Moderated discussion on the lessons learned from the Forum and possible next steps**

- 147 This session was co-moderated by **Judge President Cagney John Musi** (South Africa), Free State High Court and **Justice Amy Lazaro-Javier** (Philippines), Associate Justice of the Supreme Court of the Philippines.
- 148 In summarising the discussions that took place during the Forum, **Judge President Cagney John Musi** remarked that, although it takes a village to raise a child, discussions during the Forum demonstrated that it takes the whole world to protect a child.
- 149 **Justice Amy Lazaro-Javier** noted that the Forum was extremely illuminating for the Philippines, having become a Contracting Party to the 1980 Convention recently, and expressed her gratefulness on behalf of the Philippines for the valuable lessons learned. In summarising the discussions, she noted that one of the main messages coming out of the Forum is the challenge in

balancing the various competing interests and rights involved. She noted that judges have a crucial role to play in the proper implementation of Article 13(1)(b) and in realising the core objective of the Convention which is to protect children.

150 The moderators then opened the floor for discussion among participants.

151 While some participants expressed a view that Article 13(1)(b) should be amended, others recalled and stressed that, there is no need to amend the provision but that the interpretation of Article 13(1)(b) should evolve in the light of current research and realities on the ground. It was acknowledged that the operation of Article 13(1)(b) is not strictly limited to legal issues and that its operation would benefit from a more harmonised interpretation and consistent application. In this regard, some participants suggested that the Guide to Good Practice on Article 13(1)(b) could potentially benefit from an eventual update, to reflect lessons learned, expertise and statistics pertaining to domestic violence and the operation of Article 13(1)(b). A representative from FiLiA Hague Mothers suggested that, as part of the process of a possible update of the Guide to Good Practice, the relevant Working Group should consult individuals with lived experience of child abduction involving domestic violence. On this matter, other participants expressed the view that more time is needed for practitioners to utilise the Guide to Good Practice before any amendments can be envisaged, given that the Guide was published relatively recently in 2020. The representative from FiLiA Hague Mothers also suggested that the HCCH work towards a recommendation encouraging States to award equal legal aid to both parties in cases under the 1980 Convention. Participants recalled the importance of effective relocation procedures as a means to prevent child abduction and noted that further work in this field is needed, including the wider promotion of the 2010 Washington Declaration.

152 Participants warmly welcomed **the proposal from the Brazilian delegation that the next Forum should take place in Brazil in the second quarter of 2025.**

153 Finally, participants suggested that, although they appreciated the breadth of topics presented and discussed at the first edition of the Forum, the next Forum could be more focused in terms of subject matter, in order to allow for more in-depth discussions and exchanges on a specific issue or subset of issues.

#### **N. Concluding Remarks / Forum closing**

154 In concluding the first edition of the Forum, the Secretary General thanked all participants for their active, meaningful and respectful engagement. He thanked all panellists for their contributions and renewed his thanks to the organisers and co-hosts, and all who were involved in the organisation of the Forum, including the members of the Steering Committee for their outstanding commitment and for setting an inclusive, collaborative, and respectful tone for this Forum. He commended the bravery of the panellists with lived experience of domestic violence and thanked them for their powerful and moving stories. He recognised that he was aware of the risk he took in proposing the Forum, but also stressed that in his view, the Forum was both necessary and timely, providing a platform where all voices could be heard.

155 In the Secretary General's view, the Forum firmly confirmed that domestic violence is a profoundly traumatic experience, not only for the direct victims but also for the children that are exposed to it. He stressed that his primary, and probably most important, takeaway was that the Child Abduction Convention can address cases of domestic violence under Article 13(1)(b): "We are becoming better equipped – more 'sophisticated' – in identifying and addressing domestic violence cases under the Convention. Perhaps the biggest deficiencies lie not within the Convention itself but within the framework States have in place to support its operation and indeed support the victims

of domestic violence – structures that may prevent abductions in the first place.” He also stressed the importance of training on domestic violence matters to ensure the Convention’s effectiveness, as well as the importance of evidence to substantiate and support domestic violence allegations. He emphasised the benefits of the 1996 Convention as an effective, complementary instrument to the 1980 Convention, particularly when it comes to the recognition and enforcement of protective measures. Furthermore, he highlighted the great potential of mediation before, during, and after return procedures, and the importance of effective relocation procedures based on the child’s best interests and considering the need for continuing contact with both parents.

- 156 He reiterated that, while time remains the biggest enemy of the 1980 Convention, the discussions during the Forum also clearly showed that domestic violence is the single most challenging factor in operating the Convention. Referring to the Convention’s evolution that he had mentioned in his welcome address, the Secretary General added: “We must also reconsider how we measure [the Convention’s] success and effectiveness. It is not about the sheer number of returns but really about the correct application of the Convention. When there is a grave risk, based on sufficiently substantiated and evidenced domestic violence allegations, and protective measures are not effective, a non-return is most likely the right and correct application of the Convention. The reality of the typical fact pattern has changed. And we are now [...] much more aware of the pressing global issue of domestic violence and its harmful, traumatic effects. Fortunately, the Convention does provide a mechanism to address this.”
- 157 The Secretary General stressed that with a little more resources, the HCCH and its Secretariat could do significantly more to support the effective operation of HCCH Conventions, including of course the Child Abduction Convention. And he recalled that holding this momentous event in South Africa was also part of his continuing efforts to increase the visibility of the work of the HCCH in Africa, recalling that only 15% of African States were Members of the HCCH, and that not even 8% of all ratifications / accessions to HCCH Conventions come from African States.
- 158 In closing, the Secretary General extended his warm appreciation to Brazil for offering to host the second edition of the Forum in 2025.