

Title	Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, October 2025, Brazil
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Objective	To reflect the content of the presentations made during the Second Forum on domestic violence and the operation of Article 13(1)(b) of the 1980 Child Abduction Convention, which took place from 27 to 30 October 2025 in Fortaleza, Brazil.
Action to be Taken	For Decision ☐ For Approval ☐ For Discussion ☒ For Action / Completion ☐ For Information ☐
Annexes	Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention (available in English only)
Related Documents	N/A

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Report on the Second Forum on Domestic Violence and the Operation of Article 13(1)(b) of the 1980 Child Abduction Convention, October 2025, Brazil

I. The First Forum

- 1 The First Forum took place in Sandton, South Africa, in June 2024. It was attended by approximately 100 participants in person and a total of over 340 participants online from around the world. The First Forum marked a historic moment where, 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, psychology 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.¹

II. The Second Forum

- 2 From 27 to 30 October 2025, the HCCH and the Government of Brazil co-hosted the Second Forum *on Domestic Violence and the 1980 Child Abduction Convention – with a focus on the Operation of Article 13(1)(b)* (hereinafter the Second Forum) in Fortaleza, Brazil.² The Second Forum had almost 500 registered participants, of which over 150 attended in person, representing HCCH Members, non-Member Contracting Parties, intergovernmental organisations, non-governmental organisations, and independent experts.
- 3 The Second Forum built on the discussions held during the First Forum in June 2024. The Second Forum once again brought together representatives from all relevant perspectives, including persons with lived experience, to deepen the open, informal dialogue on the operation of the Child Abduction Convention in cases involving domestic violence. This time, participants focused their discussions on practical solutions – identifying concrete and workable approaches to ensure the effective operation of the Convention, in particular Article 13(1)(b), in cases where domestic violence has been alleged.
- 4 Like with the First Forum, the programme of the Second Forum, including the selection of speakers, was developed with the support of a Steering Committee representative of the wide range of participating parties, which included advocates for victims of domestic violence and left-behind parents, judges, Central Authorities, legal practitioners, psychological experts, academic researchers and non-governmental organisations.
- 5 The Second Forum was divided into 10 sessions covering different subjects and perspectives relevant to the intersection between the operation of the 1980 Convention and domestic violence. Each session consisted of a discussion by a panel of speakers with relevant expertise and / or experience followed by a Q&A session. At the start of the Forum, in Session 1, participants took stock of developments in the area within their various jurisdictions since the First Forum. Session 2 focused on raising awareness about the impact of wrongful removal / retention and of the impact

¹ More information on the First Forum can be found on the HCCH website [here](#) and [here](#). See also [C&D No 31 of CGAP 2024](#) and [C&D Nos 25 and 26 of CGAP 2025](#). The report summarizing the discussions at the First Forum (Prel. Doc. No 8A of September 2024) is available on the Secure Portal of the HCCH website at www.hcch.net under “Governance” then “Council on General Affairs and Policy” and “Previous Councils on General Affairs and Policy”.

² See [Conclusion and Decision No 26 of CGAP 2025](#).

of domestic violence on a child. In Sessions 3 and 4, speakers elaborated on the use of support, awareness raising, legal mechanisms and access to justice to prevent international child abductions in situations involving domestic violence. Sessions 5, 6 and 7 were devoted to discussions around assessing allegations of domestic violence and determining grave risk under Article 13(1)(b), obtaining evidence of domestic violence, and using protective measures (with references to the 1996 Child Protection Convention and other relevant mechanisms). These three sessions were followed by break-out groups, where participants discussed [hypothetical cases and targeted questions](#) prepared in advance of the Forum. Discussions in Session 8 explored the effects of return and non-return decisions. Towards the end of the Forum, a dedicated session reviewed references to the Guide to Good Practice on Article 13(1)(b) by courts in the five years since its publication and reflected on the possible need to update it. Finally, Session 10 consisted of an open discussion about lessons learned and next steps. The full programme can be found [here](#).

- 6 The Permanent Bureau (PB) of the HCCH is grateful to the Governments of Brazil, the Philippines, and the United Kingdom for their generous financial contribution to the organisation of the Forum.
- 7 A report summarising the presentations and discussions that took place during the Second Forum, in English only, can be found in the Annex of this document.

III. Conclusion

- 8 Based on the foregoing, the PB invites CGAP to consider the following Conclusion & Decision:
- 9 CGAP took note of the reporting on the Second Forum *on Domestic Violence and the 1980 Child Abduction Convention – with a focus on the Operation of Article 13(1)(b)*, held in October 2025, in Fortaleza, Brazil (Prel. Doc. No 8B of January 2026). CGAP thanked the Government of Brazil for having hosted the Forum, as well as the Philippines and the United Kingdom for their generous financial contributions.

ANNEX



Report on the Second Forum

I. Welcome session & reception

- 1 The welcome session of the Second Forum took place in the afternoon of 27 October 2025.¹
- 2 A number of officials, both in person and online, took turns to warmly welcome all participants, in order of appearance: [Flavio José Roman](#), Deputy Attorney General of the Union (Brazil), [Maria da Penha](#), Founder and President of the Instituto Maria da Penha (Brazil), [Reem Alsalem](#), UN Special Rapporteur on violence against women and girls, its causes and consequences, [Dr Christophe Bernasconi](#), Secretary General of the HCCH, Senator [Mara Gabrilli](#), [Márcia Loureiro](#), Secretary for Consular and Legal Affairs at the Ministry of Foreign Affairs (Brazil), [Enrique Ricardo Lewandowski](#), Minister of Justice, and [Jade Romero](#), vice-governor of Ceará (Brazil).
- 3 The welcome session was followed by a reception at the Centro de Eventos do Ceará.

II. The Forum sessions

A. Opening addresses

- 4 On Tuesday 28 October, the Second Forum officially commenced with its substantive discussions with opening remarks by [Jean Keiji Uema](#), National Secretary for Justice, [Clarice Calixto](#), Solicitor General, and [Dr Christophe Bernasconi](#), Secretary General of the HCCH. They all warmly welcomed participants to Fortaleza and emphasised in their opening remarks the importance of the discussions ahead.

B. Session 1 – Sharing developments on domestic violence and Article 13(1)(b) since the First Forum in Sandton

- 5 This session was moderated by [Judge Martina Erb-Klünemann](#), Judge at the Family Court, District Court of Hamm, Germany and Member of the IHNJ. Judge Erb-Klünemann introduced the panel of speakers for Session 1, which consisted of:
 - Judge Guilherme Calmon (Brazil), President, Regional Federal Court of the Second Region, Rio de Janeiro, Member of the International Hague Network of Judges (IHNJ)
 - Adrienne Barnett (United Kingdom), Reader in Law at Brunel University & Yuko Nishitani (Japan), Professor at Kyoto University Graduate School of Law (*online*)
 - Merle Weiner (United States of America), Philip H. Knight Professor, University of Oregon
 - Judge Baratang Constance Mocumie (South Africa), Justice at the Supreme Court of Appeal Member of the IHNJ (*online*)
 - Aagje Ieven (Belgium), Secretary General, Missing Children Europe

¹ Many of the officials during the welcoming and opening sessions delivered their remarks in Portuguese. Unfortunately, the online broadcast of the Second Forum did not provide for linguistic interpretation. Therefore, the staff members of the Permanent Bureau responsible for preparing the report were not able to summarise their remarks. Links to the full written remarks of the officials can now be found in the report, accompanied by a courtesy translation into English where relevant.

- Lord Justice Stephen Cobb (United Kingdom), Court of Appeal of England and Wales
- Chief Justice William Alstergren AO (Australia), Chief Justice's Chambers, Federal Circuit and Family Court of Australia, Melbourne, Member of the IHNJ (*online*)

- 6 **Judge Guilherme Calmon** reported on two major developments since the First Forum in Sandton. The first was the creation of a Protocol for Judicial Decisions from a Gender Perspective in cases under the 1980 Convention involving possible domestic violence. After the [First Regional Meeting of Judges of the International Hague Network](#), held in Rio de Janeiro, Brazil, from 15-17 May 2024, a Brazilian working group was formed to address issues related to child abduction and domestic violence. The group approved the Protocol, drafted by IHNJ Members Judge Daniele Maranhão and Judge Inês Virgínia Prado Soares. It sets parameters for judges when analysing exceptions under Article 13(1)(b), clarifying that the child does not need to be a direct victim of domestic violence to establish a grave risk for non-return. The Protocol recognises all forms of abuse - physical, emotional, psychological, and coercive control - as relevant, promoting a broader interpretation of domestic violence and intolerable situations under Article 13(1)(b). It also considers the harm caused by separating the child from the abducting parent and warns that protective measures alone do not eliminate risk and should be evaluated carefully. It outlines possible protective measures when return is considered and stresses the need for sufficient time to gather evidence in domestic violence cases despite the Convention's short deadlines. The Protocol calls for mitigating economic and social vulnerability of the taking parent and acknowledges intersectionality, noting that women from marginalised groups such as black, indigenous, disabled, or LGBTQIA+ women may face specific forms of violence and discrimination.
- 7 The second development was a decision by the Brazilian Federal Supreme Court on two actions confirming the constitutionality of the 1980 Convention, particularly Article 13(1)(b), under the Brazilian Constitution. The Court affirmed that the Convention has supra-legal status as an international treaty protecting children's rights. It held that the grave risk exception must be interpreted consistently with the best interests of the child and from a gender perspective, allowing its application when there are objective indications of domestic violence even if the child is not a direct victim.²
- 8 Judge Calmon concluded by encouraging all Contracting Parties to consider adopting similar gender-sensitive protocols and to reference the Guide to Good Practice on Article 13(1)(b). He recommended assessing domestic violence prevention and response mechanisms within each jurisdiction, prioritizing judicial training and specialization, and strengthening cooperation between Central Authorities and the IHNJ to facilitate the exchange of best practices and information on domestic violence and international child abduction.
- 9 **Professor Yuko Nishitani** informed participants that domestic violence is a crucial issue for many Asian countries as they join the 1980 Convention. In Japan, the Convention has proven effective in protecting victim mothers under Article 13(1)(b). However, some challenges remain. She spoke of a recent case, whereby a Japanese mother living in an Eastern European country removed her child to Japan. After proceedings under the 1980 Convention were initiated, the mother agreed to voluntarily return to the State of habitual residence. She was then tragically killed by her husband. Domestic violence is a complex issue that necessitates various approaches. According to Professor Nishitani, almost 70% of the incoming abduction cases are settled amicably in Japan. Thus, protection needs to be sought beyond Article 13(1)(b). In return proceedings, in-court conciliation can be conducted by hearing the parties separately and out-of-court mediation can be conducted online, in order to avoid contact. In high-risk cases, children often return to the State of habitual

² For more information on the judgement of the two cases by the Brazilian Supreme Court, please consult the following website, which contains "Informativo 188":
https://www.stf.jus.br/arquivo/cms/informativoSTF/anexo/Informativo_PDF/Informativo_stf_1188.pdf.

residence alone, while the taking mother remains in Japan. As courts in the State of habitual residence cannot resolve custody disputes without the presence of the mother, parties may refer to mediation to determine custody. Professor Nishitani noted that the Japanese Central Authority, embassies and consulates assist Japanese mothers living abroad by liaising with local institutions in the United States of America, United Kingdom and Germany, among others, to offer support before and after abductions, namely to prevent Japanese mothers from removing their children to Japan and also to assist in the return of children to the State of habitual residence after a return is ordered or agreed. She stressed that awareness raising is crucial in this area because many mothers are often unaware they are victims of domestic violence and perpetrators of violence do not recognise their actions as a criminal offense. In addition, inclusive support for all, including psychological counselling, is key. Notably, authors from India and Nepal report that domestic violence issues prevent them from joining the Convention. Professor Nishitani expressed the hope that the Forum can be a milestone in tackling domestic violence in the context of child abduction and facilitate countries in joining the Convention.

- 10 **Dr Adrienne Barnett** spoke about the importance of achieving systemic change in the understanding, perceptions, attitudes and approaches of all those working to apply and implement the law. This entails a willingness to interpret and apply the law in the spirit in which it was intended and a willingness to put oneself in the shoes of those affected. Dr Barnett noted that research has for some time shown the dangers domestic violence poses to children, in particular coercive control. The biggest challenges to achieving systemic change are persisting issues in the understanding of domestic violence, its dynamics and effects. She noted that this can be particularly difficult in relation to proceedings under the 1980 Convention, for example in the assumption that protective measures can always mitigate risk.
- 11 Dr Barnett pointed to recent case law which shows promise of a more informed perception of domestic violence and risk. In the 2025 decision of *J v K*, the UK courts made clear that the developing understanding of controlling and coercive behaviour should inform a judges' approach when determining the exception under Article 13(1)(b). She noted that *J v K* also examined how financial dependence upon return can lead to subsequent financial abuse. In the case of *M v A*, the court investigated how the fathers' conduct would create a problem with the execution of protective measures. In that case, the court concluded, as per Baroness Hale in *Re D* (2007), that no one ever intended that an instrument designed to secure the protection of children from the harmful effects of international child abduction should itself be turned into an instrument of harm. Dr Barnett then referred to a recent decision from Australia (*Helmi v Helmi* (2025)), wherein the court held that children exposed to family violence are considered victims of child abuse and that family violence, particularly cumulative or repeated exposure of children to family violence, amounts to a grave risk for the purposes of Article 13(1)(b).
- 12 Dr Barnett emphasised that all relevant actors must recognise the barriers involved, including the adversarial system, which does not put victims on a level playing field, the insufficiency, inadequate or the absence of training on domestic violence for courts and professionals, and the lack of a holistic system to understanding children's experiences. Dr Barnett explained the Pathfinder Courts model from the UK, which aims to improve the family court experiences of particularly parent survivors of domestic abuse and their children, by ensuring appropriate participation in the court process, adopting a multi-agency approach to improve the assessment of allegations of domestic abuse, reducing delays whilst ensuring all orders are safe and appropriate to the case and reducing the risk of re-traumatisation. She informed participants that thus far, the Pathfinder Courts model has been evaluated positively. Additionally, Dr Barnett informed participants that, in 2023, the Domestic Abuse Commissioner for England and Wales proposed a new court role: Domestic Abuse Best Practice Lead (DABPL), a proposal which has not yet been implemented.

- 13 In closing, Dr Barnett invited participants to consider a potential model for the 1980 Convention that relies on having a domestic abuse best practice coordinator in each Central Authority that would be overseen by a domestic violence best practice lead situated within the HCCH.
- 14 **Professor Merle Weiner** presented recent research showing that Article 13(1)(b) of the 1980 Convention often fails to protect victims of domestic violence. She suggested that much can be done to make the Convention work better. She stressed that any reform must be grounded in data and facts. She noted that U.S. data shows that victims rarely succeed when invoking this exception. Journalist Olivia Gentile’s [analysis of U.S. cases from July 2022 to June 2024](#) revealed that 77% of petitions were filed by fathers against mothers, which is consistent with [international data from 2023 compiled by Professor Nigel Lowe and Victoria Stephens](#). Over half of these fathers (53%) lived apart from the children before the alleged abduction. Seventy-nine percent (79%) of respondent mothers alleged domestic violence or child abuse, and only 17% of those who raised an article 13(b) defence at trial succeeded in proving it. Gentile found that defences often fail because judges deem abuse against the mother irrelevant to the return case, question mothers’ credibility, find inadequate corroboration, or deem the allegations insufficiently dire. Overall, 55% of fathers accused of abuse were able to obtain their children’s return. Interviews with 17 mothers whose children were returned showed severe consequences. Fifty-nine percent (59%) of the American mothers had very adverse outcomes with respect to custody; most had their relationships with their children severed entirely. This outcome was often due to the mother’s inability to return to the child’s habitual residence because of safety concerns, deportation from the child’s habitual residence, an award of minimal or supervised visitation, and the other parent’s noncompliance with an award.
- 15 Professor Weiner outlined systemic obstacles to the successful use of Article 13(1)(b) including: a heavy burden of proof, minimisation of violence, disregard for coercive control, and inequality of arms. To address these, she proposed a new parallel treaty – the Convention on Safety for Survivors of Family Violence in International Custody Disputes – to operate alongside the 1980 Convention.³ She emphasised that the recommended provisions could be embodied in soft-law instruments promoted by the HCCH or incorporated into case law that might constitute binding or persuasive authority. They include:
- Defining domestic violence as coercive control
 - Applying a “preponderance of evidence” standard
 - Using a rebuttable presumption of grave risk when coercive control is proven
 - Disallowing protective measures to rebut this presumption
 - Engaging consular officials for support and reporting when the defence is unsuccessful
 - Risk assessment by judges and Central Authorities
 - Assistance in obtaining foreign evidence
 - Mandatory disclosure of family violence on applications for assistance
 - Equal access to legal counsel for respondents who allege domestic violence
 - Domestic violence training for judges and Central Authority staff
- 16 Beyond return proceedings, she urged adopting sensible jurisdictional rules for non-return cases, expediting relocation proceedings where violence is alleged (and ensuring safety gets substantial

³ Her proposal can be found here: Merle H. Weiner, [Convention on Safety for Survivors of Family Violence Involved in International Custody Disputes](#), 46 Cardozo L. Rev. 1167 (2025).

weight in the decision criteria), and ensuring that fleeing abuse is never penalised in custody proceedings if the parent fled in good faith.

- 17 Professor Weiner also referenced recent scholarship on coercive control, notably Edleson and Katz's forthcoming article, *Protecting Children from Coercive Control: A Case for Denying Return under the 1980 Convention*. The authors emphasise that coercive control gravely harms children, separately from direct exposure to physical and psychological abuse, causing hypervigilance and psychological damage, and often accompanies emotional abuse. Research by Leslie M. Tutty, H. Lorraine Radtke and Kendra L. Nixon⁴ shows coercive control persists after separation and involves such subtle and widespread tactics that protective measures cannot necessarily address, nor can survivors necessarily prove violations. In closing, Professor Weiner called on all stakeholders to collaborate on solutions.
- 18 **Justice Baratang Constance Mocumie** updated participants on developments in South Africa since the First Forum in Sandton. She highlighted a landmark decision by the Supreme Court of Appeal in *N M v Central Authority for the Republic of South Africa and Another* (2024), which recognised domestic violence as a global epidemic and reaffirmed principles from cases such as *Koch*, *Sonderup*, and *Penello*. The Court confirmed that prompt return remains central to 1980 Convention proceedings, with the grave risk exception under Article 13(1)(b) requiring exceptional and compelling evidence. Importantly, attachment to the abducting parent or primary caregiver does not, by itself, constitute grave risk. Courts must consider protective undertakings and maintain balance between return orders and child safety.
- 19 Following *N M*, two High Court judgments shaped evolving jurisprudence:
- *K.Z-S* (2024): A primary caregiver's personal struggles and anxieties, without proven direct harm to the child, do not meet Article 13(1)(b) requirements.
 - *C.M* (2025): Grave risk was found based on domestic and economic abuse, applying the Domestic Violence Amendment Act of 2021.
- 20 Justice Mocumie noted that these cases reflect a growing recognition that domestic violence can constitute grave risk, while maintaining a high evidentiary threshold. Evidence must show direct and substantial harm to the child; protective measures are integral to return orders; and, courts discourage misuse of domestic violence claims to evade return. Appellate courts' interpretation aligns with South Africa's Domestic Violence Act, which includes a child's exposure to domestic violence. She stressed the need for early identification of domestic violence, evidence-based claims, and consistent protective frameworks among Contracting Parties.
- 21 Justice Mocumie also addressed efficiency in return proceedings. Article 11 of the 1980 Convention and Regulation 23 of South Africa's Children's Act require prompt decisions; if unresolved within six weeks, the requested State may seek an explanation. Since the Sandton Forum, the Supreme Court of Appeal issued a Practice Directive for expedited hearings, allowing cases to be heard out of term. High Court divisions in Western Cape, Gauteng, and KwaZulu-Natal updated directives to prioritise Hague Convention cases. Gauteng established a specialised family court to expedite such matters. Additionally, specialised judicial networks were formed in these provinces, and a Model Law is being developed to unify national procedures for Article 13(1)(b) inquiries.
- 22 In conclusion, Justice Mocumie urged all stakeholders to handle domestic violence allegations responsibly, ensuring they are not used to frustrate parental rights. Allegations should be treated seriously, with the child's best interests being paramount. Central Authorities must investigate and

⁴ Leslie M. Tutty, H. Lorraine Radtke and Kendra L. Nixon, "*He Tells People That I Am Going to Kill My Children*": Post-Separation Coercive Control in Men Who Perpetrate IPV, 30 *Violence Against Women* 2853 (2024).

inform courts of such claims early. Contracting Parties should recognise foreign protective measures, strengthen national laws, and prioritise judicial education, especially for judges handling 1980 Convention cases. She closed by noting South Africa's measurable progress since the First Forum.

- 23 By way of introduction, **Aagje Ieven** informed participants of Missing Children Europe's role, which coordinates 33 Members (all NGOs) across 27 EU Member States to prevent child disappearances, including abductions, and protect against violence and exploitation. The organisation runs a network of hotlines for missing children (116000), which exist in 33 States (all EU Member States and 5 more). Missing Children Europe is responsible for providing tools, training, awareness raising and research regarding missing children. The organisation works in four main focus areas, of which international child abduction is one. Missing Children Europe also has a network of cross border family mediators who are available to support parents in the interests of children, as mediation can oftentimes be the most sustainable avenue through which such cases can be resolved.
- 24 She informed participants that 16% of all missing children cases that were reported to hotlines in 2024 were related to international child abduction. She then elaborated on some of the research undertaken by Missing Children Europe. She spoke about the E-well study, which looked at children's wellbeing before, during the abduction and during court proceedings and mediation, around the end of the abduction and after the proceedings concluded. Over 350 parents were interviewed and the study encapsulated many perspectives – cases where the child was returned as well as cases where the child was not returned, the views of taking parents and left behind parents, primary caregivers and non-primary caregivers. Domestic violence was examined as a pre-stressor circumstance prior to the abduction. The study found that the pre-existence of domestic violence prior to an abduction had an adverse influence on the child's wellbeing even following the abduction. This means an abduction does not cancel out the harm of the domestic violence. In this regard, she recalled Secretary General Bernasconi's point that both abductions and domestic violence are harmful for the child and that, based on the e-Well study's data, a distinction between protective abductions and harmful abductions cannot meaningfully be made. In interviewing children in the E-well study, it was found that the children were adversely affected both by the domestic violence and the abduction itself. They noted in particular that the more abrupt the abduction was, the more harmful it was for them and that having contact with both parents following the abduction was helpful (if a professional deemed such contact appropriate).
- 25 In the VOICE legal study, coordinated by Missing Children Europe, researchers looked at 1000 cases of international child abduction from 17 countries to review the assessment of the best interest of the child. Aagje Ieven noted that in only 5 of those cases, the best interests assessment was ascertained in the context of violence proven for the purpose of Article 13(1)(b), which probably suggests how difficult it is to prove allegations of violence. She informed participants of a recent short survey conducted with the hotline operators in 2024. She noted that 87% of parental abduction cases recorded by hotline operators also involved elements of violence and when operators were asked how the child abduction impacts the wellbeing of a child in cases of domestic violence, responses were divided: some believed abduction improved wellbeing by reducing conflict, others saw negative impacts due to trauma and instability, highlighting the need for further research.
- 26 She informed participants of legislation adopted by the EU in May 2024 addressing violence against women and domestic violence, which recognises children witnessing such violence as victims and aims to ensure access to relevant information in civil proceedings. She added that the Council of Europe issued recommendations emphasising child protection in parental separation, referencing domestic violence and warning against mediation in such cases.

- 27 One of the members of Missing Children Europe, the Dutch Centre for International Abduction's Mediation Bureau (IKO), has added a module in their mediator training comparing the Council of Europe's Istanbul Convention and 1980 Convention approaches in mediation. Aagje Ieven highlighted that Missing Children Europe will do the same with its own network of mediators and will bring mediators and hotline operators together in trainings in order to look at how to screen for domestic violence in such cases and how to look at the child's best interests and put them at the centre of the mediation. Finally, she informed participants that Missing Children Europe will update its Hotlines Handbook to include a section on gender based and domestic violence.
- 28 **Lord Justice Stephen Cobb** noted that the First Forum provided the opportunity to discuss the difficult and invariably painful issues arising in international family law cases against the backdrop of domestic abuse. He underlined that these cases are agonising for the victims and survivors of domestic abuse (both adults and children) and they are challenging cases for the judges who are charged with deciding them.
- 29 Justice Cobb informed participants of six developments in England and Wales which show an evolution of the thinking with regards to domestic violence. He drew attention to two cases – [H v O \(2025\)](#) and [Re S \(2025\)](#). *H v O* involved an asylum seeker who arrived in England and Wales against the background of very serious allegations of domestic abuse. Although the father offered a wide range of protective measures, the High Court found them inadequate to mitigate the risks that had been described and refused to order return. Similarly, *Re S* involved a mother and child who arrived in England and Wales from Ireland, also against a background of very serious allegations of domestic abuse involving post-separation coercive control, which Justice Cobb characterised as a strong and regular feature of international abduction cases involving domestic violence. In that case, the Court of Appeal was of the view that the protective measures offered by the father were inadequate to address the risks and made a non-return order.
- 30 He underlined that, to be *protective* the measures need to be *effective*. He informed participants of the Judiciary's recently published [Fact Sheet on Protective Measures](#), which mirrors a similar fact sheet developed by the Federal Circuit and Family Courts of Australia. The aim of the Factsheet is to assist actors responsible for deciding international child abduction cases to quickly gather accurate and practical information regarding protective measures in England and Wales, including information about recognition and enforcement as well as domestic abuse legislation and the role of local authorities. He encouraged participants to promote clarity and consistency by developing their own Factsheets for their respective jurisdictions. Justice Cobb added that a year-long data-gathering survey was recently launched to obtain comprehensive data on cases under the 1980 Convention, which specifically includes information regarding domestic abuse. In terms of prevention, he underlined the importance of accessible court authorised relocation. He recalled the conference which took place in April 2025 in Washington to mark 15 years since the adoption of the 2010 Washington Declaration and highlighted that one of the Declaration's important messages was the need for research into international court ordered relocation.
- 31 On the topic of relocation, he cited the recent relocation decision from the Court of Appeal in [Re O \(2025\)](#), in which an unmarried mother of two children requested to relocate to the United Arab Emirates, fleeing domestic abuse. Notwithstanding the significant challenges she would face in moving to a jurisdiction which did not recognise her status and notwithstanding the challenges the father would face in seeking to enforce any contact orders there, the court approved her relocation knowing and recognising the fact that she was fleeing continued post-separation coercive control. He noted that while one case does not necessarily represent a trend, it provides a useful marker for other judges to follow.
- 32 Justice Cobb also informed participants that earlier in October 2025, the Domestic Abuse Commissioner published their most recent report, ["Everyday Business: Addressing domestic abuse"](#)

[and continued harm through a family court review and reporting mechanism](#)”, following an earlier Report, [“Victims in their own right? Babies, children and young people’s experience of domestic abuse”](#), published in April 2025. He highlighted that both reports are important reading for family court judges, as they highlight the lack of services available for children and young people who experience domestic abuse and the high incidence of abuse in domestic cases and offer some examples of good practice as well as bad practice.

- 33 The final development shared by Justice Cobb for England and Wales was the announcement by the government of a proposal to repeal the presumption of contact contained in the Children Act, which was introduced in 2014. This development has been widely welcomed by Women’s Aid and many advocacy groups for victim survivors of domestic abuse and is one important step towards changing the “pro-contact” culture.
- 34 **Chief Justice William Alstergren** explained that the Federal Circuit and Family Courts of Australia receive over 100,000 family law filings each year across Australia. He noted that, even though there are cultural and legal differences between the various jurisdictions within Australia, family law more than any other area is a direct reflection of the issues that concern everyday people in their day to day lives. One of the key social issues that families across Australia (and around the world) are facing is family violence. He noted that over 86% of parenting matters that find their way before the courts involve allegations of family violence and 73% of cases concern matters involving four or more risk factors (a rise from 38% in 2013), including child abuse, family violence, drug and alcohol abuse, threats of harm or risk of abduction. More broadly, research shows that 1 woman a week, one child every 11 days and one man a month die from family and domestic violence in Australia. 35% of men aged between 18 – 65 have committed intimate partner or family violence in their lives and 120,000 men nationally start to commit violence every year. Alarming, children who experience and witness violence are nine times more likely to later use violence themselves, compared to those who are not. Justice Alstergren emphasised that it is not an acceptable outcome for victim survivors to become perpetrators themselves.
- 35 He informed participants that, over the past several years, the courts in Australia have been working to address the high levels of family violence in family law proceedings and to ensure the needs of victim survivors are met through trauma informed programs and services. These important services aim to assist families in navigating the family law system in a safer way. However, Justice Alstergren contended that simply responding is not enough. It is also necessary to prevent the violence from happening in the first place. Despite significant investments and efforts focused on family violence prevention, the male population have not yet been galvanised to address this issue meaningfully. He stressed that it is time for men to step up and lead other men towards more accountability and to provide positive role models and examples of positive behaviour to break the cycle of family violence. Recent Australian research has found that men who strongly agreed they received affection from a father or father figure in childhood were 48% less likely to perpetrate intimate partner violence than those who did not receive such affection.
- 36 In this regard, Justice Alstergren spoke about the national campaign he initiated in November 2024 called “Family Violence: It’s Just Not On”, aimed at starting a national conversation about prevention of family violence by calling men in to lead the effort. The campaign video consists of contributions from many notable Australians across the world, advocating for zero tolerance towards family violence. The campaign video was subsequently played at sport stadiums across the nation. To continue the momentum of the campaign, Justice Alstergren plans to hold a family violence prevention forum in the courts in December 2025. The campaign video “Family Violence: It’s Just Not On” can be viewed [here](#).

C. Session 2 – Raising awareness about the impact of wrongful removal / retention and of the impact of domestic violence on a child

- 37 This session was moderated by **Laura Martinez-Mora, First Secretary at the HCCH**. Ms Martinez-Mora introduced the panel of speakers for Session 2, which consisted of:
- Ms Pereira (Brazil), taking parent with lived experience of domestic violence
 - David, young adult with lived experience of domestic violence and return proceedings under the 1980 Convention (*online*)
 - Jeffery Morehouse (United States of America), Executive Director and Co-Founder, Bring Abducted Children Home
 - Annelies Hendriks (Netherlands), Psychologist, Anaguía Practice for mediation, psychology and pedagogic consultation (*online*)
 - Noelle Hunter, Clinical Assistant Professor, Founding Partner in the Coalition to End International Parental Child Abduction and Maayimuna N'Diaye (United States of America), University of Alabama in Huntsville
 - Jessica Raffal (Australia), Managing Lawyer ISS Australia (*online*)
- 38 **Ms Pereira** shared her deeply personal journey as a mother navigating domestic violence, international custody disputes, and the challenges of raising two children with severe disabilities. Her story began in Canada, where she lived with her ex-partner, both Brazilian immigrants. During her pregnancy with twins, the babies were born prematurely and required extended hospitalisation. Despite this critical period, their father was largely absent and displayed controlling and aggressive behaviour, even suggesting she leave the babies in the hospital to spend time with him. His repeated outbursts turned motherhood into a nightmare.
- 39 Seeking safety, Ms Pereira temporarily returned to Brazil with her four-month-old sons, where they received essential medical care, including the diagnosis of a food allergy. Believing her partner had changed, she returned to Canada, hoping for a harmonious family life. However, violence escalated, prompting couple's therapy. The psychologist advised her to call the police if aggression continued. After another violent episode during the boys' first birthday, she followed this advice and filed for separation. She was placed in a women's shelter, where she realised the extent of the abuse she had endured.
- 40 Her sons exhibited developmental delays, and she asked for specialised diagnosis. However, the Canadian doctors were of the view that those could only be evaluated around the age of five or six. Concerned, Ms Pereira returned to Brazil for specialised care. There, neurologists suspected autism and initiated intensive therapy. The boys made remarkable progress—walking and developing skills within months. When Ms Pereira returned to Canada with her sons for the final visit with the Canadian paediatrician, she and the father agreed that Ms Pereira and the boys should move back to Brazil for a year. A few hours before her return flight was scheduled to take off, the father refused to sign a travel authorisation, citing the 1980 Convention. Shortly after Ms Pereira's return to Brazil, he filed a return application against her.
- 41 Throughout the legal process, Ms Pereira's evidence of domestic violence and medical documentation was ignored. The first court ordered the children's return to Canada without considering their diagnoses or treatment needs. Appeals eventually recognised the boys' progress in Brazil, their father's instability, and the severe risk posed by a return to Canada. The appellate court unanimously ruled in favour of the children remaining in Brazil, supported by the Federal Prosecutor's Office and Attorney General's Office. Despite multiple appeals by the father, the Superior Court of Justice upheld the decision.

- 42 Ms Pereira recounted a traumatic visitation period in Brazil in which the father removed the boys from their structured environment. He failed to comply with court orders to maintain therapy, resulting in severe regression and psychological trauma. The children returned malnourished, dysregulated, and exhibiting self-harm behaviours. Medical professionals confirmed the damage, and both children required antipsychotic medication. These events underscored the critical importance of stability and specialised care for children with disabilities.
- 43 Today, her sons are nine years old, diagnosed with Autism Level 3, ADHD, and intellectual disability. They require lifelong support and a robust care network. Despite living in Brazil for two years, the father remains disengaged from their medical and educational needs, visiting briefly under supervision. His lack of understanding and refusal to acknowledge their disabilities continues to destabilise the children.
- 44 Ms Pereira concluded by calling for urgent reforms: awareness campaigns about the 1980 Convention, stronger protections for victims of domestic violence, and psychosocial support for families in cross-border disputes. She emphasised that denying or minimising a child's disability violates their rights and urged society to prioritise the best interests of vulnerable children. Her closing message was clear—she will keep fighting for her sons' well-being and dignity every single day.
- 45 **David**, a young adult with lived experience of domestic violence and return proceedings under the 1980 Convention recalled that the most difficult part of his experience was witnessing and experiencing the detrimental impact of domestic abuse on his mother. He noted that the biggest factor that led his mother to flee across borders with him was the level of isolation and fear she was experiencing due to the emotional and physical abuse she suffered at the hands of David's father. David stressed that despite the lack of access to support systems and healthcare in the State of habitual residence, the inability of his mother to maintain employment due to the effects of abuse and the resulting lack of financial resources, he and his mother kept being continually returned to an environment of abuse and trauma. He noted that despite a protective measure being put in place for the return, the order was not obeyed by his father and he and his mother were out on the street for several weeks. David noted that he has not been able to recover from this experience and doubts he will ever be fully able to do so. He highlighted that his story is just one of many and that there are many children and parents being forced to return to their State of habitual residence without proper support and resources. In closing, David underlined that it is the responsibility of every actor involved in these cases including judges to ensure that they do not contribute to the perpetuation of the cycle of abuse and trauma.
- 46 After sharing a short video, **Jeffery Morehouse** emphasised that the wrongful removal of his son was a dreadful and traumatic experience which is still ongoing, as he continues to not have any contact with him. He described that the environment prior to the abduction was increasingly tense and precarious, with his son's mother making threats to take their son to the country of her birth. He also noted that she had a drinking problem, to which she admitted in court, and on one occasion had left a large knife stabbed into a loaf of bread, which he later found. He stressed that despite court ordered travel limitations and passport restraints being in place at the time of his son's abduction, these were not honoured by the taking parent. After he lodged an application for access via the Central Authority,⁵ the authority in the requested State delayed in processing the application by 3 months. In that time, the mother made her own application in the family courts of the requested State, citing Jeffery Morehouse's application as a reason for removing his legal sole custody order and giving her sole custody of their son. The case lasted 2 years and in 2014 and 2017, the courts in the requested State affirmed the US sole custody order in favour of Jeffery

⁵ It was not possible for Jeffery Morehouse to lodge a return application under the 1980 Convention, since the Convention had only come into force between the States concerned after the wrongful removal had taken place.

Morehouse. He emphasised that, in that time, he never saw his son which was very distressing. He noted that the mother refused multiple requests to consider alternative dispute resolution and that any order issued pertaining to the application and access to his son would have been at the taking parent's discretion, something that he contends was confirmed during a meeting with officials from the requested States' embassy in Washington DC in 2018.

- 47 Jeffery Morehouse explained that he is a long-time advocate for parents seeking reunification and the return of their children and the prevention of future cases.⁶ He highlighted that greater awareness is needed to strengthen the operation of the 1980 Convention and that in some cases the goals of the Convention are sometimes frustrated by legal approaches that prioritise retaining the child over upholding the spirit of the Convention and its provisions. He stressed that he does not consider himself a “left-behind parent” but a “seeking parent” – active in trying to reunite with his child. He highlighted that the voices of children, free from influence, need to be heard more in return proceedings and given more weight. He emphasised that children who endure international parental child abduction are trauma survivors, and this trauma does not stop when they become adults. In closing, he noted that this Forum is an opportunity for nations to demonstrate leadership in helping reunite abducted children with their seeking parents regardless of their age and train professionals to understand the long-term trauma caused by abduction. This is essential in supporting families to overcome these barriers and rebuild their relationships.
- 48 **Annelies Hendriks** spoke about children's loyalty and its significance in international child abduction cases in general as well as in those cases involving domestic violence. She explained that children have an existential loyalty towards their parents – an unbreakable bond which is also intergenerational (extending to grandparents and extended family members). When parents separate, the child must learn to express that existential loyalty in two different places which can create an internal conflict, when for instance one parent openly criticises the other parent in front of the child or when they expressly forbid the child from expressing their loyalty to the other parent. This causes a rupture within the child's psychological landscape, causing guilt, sadness and anger.
- 49 This is of course also applicable to cases of international child abduction, but with the added complexity of the child having to leave their familiar environment and begin adjusting in a new one. She explained that in situations of abuse within the family and in situations of child abduction, the child's feelings of loyalty persist. Therefore, as a mediator and guardian ad litem, one of the primary focuses is establishing contact as early as possible between the child and the parent in whose care the child is not in. Of course, this contact must be safe for the child. In some cases, professional support may be required to assist in the exercise of this contact. When emotional or physical abuse is present, the child is in an unsafe situation – the child does not experience the safety and protection they ought to expect from their caretaker. Instead, the child experiences unpredictability and anxiety. Removing a child from a situation of abuse can certainly reduce this experience of anxiety, fear and unpredictability in the short term. However, scientific research shows that even if insecure attachment to, or fear of, a parent exists this does not mean the child no longer wants any contact with that parent. When a child is abducted by the parent they have previously associated with safety and predictability, the abduction can also represent a breach in the child's trust in that parent.
- 50 Annelies Hendriks informed participants that hearing children during mediation or court proceedings is very important for children and their parents. Children feel empowered to express themselves in a difficult situation and have their feelings taken into consideration. This can also be

⁶ He frequently testifies before the U.S. Congress: September 10, 2024, May 23, 2023, September 29, 2021, December 10, 2018, October 27, 2017, March 25, 2015, and contributes to the [AMBER Alert Family Survival Guide Video Library](#), providing expert peer-to-peer guidance and resources to help families navigate the complex legal and emotional challenges of a missing child crisis.

very enlightening and humbling for the parents, who have perhaps been far too focused on the conflict between them to pay attention to the effect the conflict has had on the child. She acknowledged that, of course, not every case works this way.

- 51 **Dr Noelle Hunter** presented a study recently undertaken by her organisation (Coalition to End International Parental Child Abduction), which aims to explore the perceptions and lived experience of abducted and reunited youth and their parents. Adapted from the E-well study, mentioned earlier by Ms Aagje Ieven, Dr Noelle's study examines themes of identity, safety and connection before during and after abductions. The study involved a total of 15 participants, 10 of whom were survivors of international parental child abduction aged 8-17 and five of whom were seeking parents. All survivors interviewed had been reunited with their seeking parent. The methodology was a mixed method phenomenological cohort study, to identify what participants experienced and how they perceived those experiences. An original survey instrument was developed for the study called YAEPI (Youth Abduction Experience Perception Inventory) and was administered at the beginning and end of an annual camp called the iStand Survivor Network Summer Camp, organised for abducted children who have been reunited with their seeking parent. In addition to the YAEPI survey, semi-structured interviews were conducted by Maayimuna N'Diaye with camp participants. Dr Hunter explained that the data extracted from the survey and interviews are still being processed to ensure it is in line with scientific data collection standards. She added that, although she could not report on the findings of the YAEPI survey, she could report on the findings of the open-ended questions that accompanied the YAEPI survey. She noted that the themes that emerged from those questions were memory (abducted children remember their entire experience vividly), regret, resentment, trust and expressions of trust issues as well as belonging. She acknowledged that the limitations of this study are the fact that the sample size is rather small coupled with the fact that participants were in a setting where they might have been prompted, given they were surrounded by fellow survivors. Therefore, this study will be tested over time to build validity and reliability. She noted that the next steps for the study are thematic analysis of the YAEPI survey and interviews, the findings of which will be presented at the 42nd International Symposium on Child Abuse, to take place in March 2026 in Alabama. Phase two of the study will begin at the upcoming iStand Survivor Network summer camp in July of 2026.
- 52 **Maayimuna N'Diaye** shared her personal reflections as a survivor of international child abduction and as a junior researcher in the study. She noted that conducting the interviews offered her a sense of connection with fellow survivors and made her realise the importance of representation and survivor-led story telling. She also noticed a pattern of guilt, isolation, confusion, anger and resilience that lingered even after the children has been returned to their seeking parent. She then presented a short, animated film sharing the story of one of the survivors that participated in the iStand Survivor Network summer camp, called "Unicorn" for the purpose of the video. She explained that this animated short film forms part of the research programme presented by Dr Hunter and was created by one of the students in the art department of the University of Alabama in Huntsville. This video, along with other stories from survivors, will be shared as part of a special topics course hosted by the University of Alabama in Huntsville in the spring of 2026. The aim is to expand survivor-led storytelling to bridge lived experiences, education and public awareness.
- 53 **Jessica Raffal** reflected on the evolution of discussions around domestic violence and the 1980 Convention since the First Forum in South Africa. She expressed admiration for the commitment of all parties but dismay at the growing polarisation. The debate, she noted, seems to have hardened into two camps: those prioritising protection for victims of domestic violence and those defending the integrity of the return mechanism. Each side is understandably passionate — advocates for victim survivors of domestic violence fear that victims will be sent back to harm, while left-behind

parents focus on the trauma of losing their children. Institutional defensiveness also plays a role among those dedicated to making the Convention work.

- 54 She emphasised that this polarisation erodes nuance and obscures urgent questions about how the 1980 Convention operates for real families. Simplistic slogans such as “every abduction is an act of domestic violence” or “every case is a mother fleeing violence” are misleading and conceal complex realities. Cases under the Convention are not data points but family stories, often involving neither villain nor hero. Many removals involve mothers fleeing horrific abuse, while others involve children taken from loving parents. Insisting on a single moral narrative denies this complexity.
- 55 She then highlighted an overlooked group: victims of domestic violence whose children are taken by their abuser, forcing them to rely on the Convention to seek their return. These parents do not fit partisan narratives and face unique challenges. The Convention’s structure leaves no room to address abuse endured by left-behind parents, focusing instead on habitual residence and custody rights. Unlike taking parents, they cannot invoke the grave risk exception. She offered an example of a mother, who was coerced by her abusive husband to consent to a family relocation, while making her own plans for an escape with her children. Suspicious, her husband takes the children to the country of intended relocation without informing her and, during return proceedings under the 1980 Convention, relies on text messages, emails and flight tickets to prove that she consented to the removal. Like many victims of abuse, she had not reported anything to authorities and could, therefore, not prove the abuse she experienced that explained her behaviour.
- 56 She argued that this cohort’s plight reveals the false binary between protecting victims and preserving the Convention. Both aims must coexist within a coherent framework. Domestic violence is not a peripheral issue but intrinsic to many cases, shaping wrongful removals for both taking and left-behind parents. Courts must move beyond narrow procedural reasoning and engage with the full human realities of each case. This requires a trauma-informed, fact-sensitive approach that recognizes coercive control and its evidentiary challenges. Victims may appear passive, inconsistent, or act counterintuitively—behaviours courts must interpret through the lens of abuse.
- 57 The Convention’s lack of explicit recognition of domestic violence is, in her view, a failing. Like all living instruments, its relevance depends on confronting weaknesses and adapting to modern social realities. While the Convention cannot guarantee perfect safety or justice, judges must pursue genuine fact-finding informed by sophisticated understanding of violence and control, even within urgent timelines. Patterns of coercion can persist across borders as effectively as physical relocation.
- 58 Jessica Raffal concluded that the Forums offer a vital opportunity to address these realities. If actors cling to slogans and simplistic solutions, the chance will be lost, and those most in need will suffer. Protecting victims and preserving the 1980 Convention are not opposing goals—they rise and fall together. The responsibility of all stakeholders is to ensure they rise.

D. Session 3 – Using support and awareness-raising to prevent international child abduction in situations involving domestic violence

- 59 This session was moderated by Gustavo Teixeira Chadid (Brazil), Diplomat, Ministry of Foreign Affairs. Mr Chadid introduced the panel of speakers, which consisted of:
- Janaína Albuquerque (Brazil), Lawyer and legal coordinator at Revibra
 - Chisato Kitanaka (Japan) Co-chair, All Japan Women’s Shelter Network (*online*) and Makiko Ishii (Japan) Lawyer, All Japan Women’s Shelter Network (*online*)
 - Elsa Sobral Noura (France / Brazil), Deputy consul, Consulate General of France in Recife (*online*)

- Braden Clark (New Zealand), New Zealand Hague Collective

- 60 **Janaina Albuquerque** stressed that understanding the causes of international child abduction is essential for improving protection and cooperation to prevent such cases. In situations involving domestic violence, listening to victims' experiences is crucial to grasp the complexity of the problem. From a victim's perspective, these cases reveal a failure of protection. Women are most often the taking parent, so cases must be examined through a gender lens. However, women are not a homogenous group; vulnerability is structural and cumulative, intersecting with migration status, race, class, and culture. Migration plays a significant role, as women in cross-border cases often face language barriers, unfamiliar legal systems, and lack of support networks. These challenges are compounded by biases related to race and economic status. She emphasised that protection must be intersectional, considering how power and dependence affect a person's ability to seek help and be believed.
- 61 Domestic violence rarely begins with physical assault; it manifests through coercive control, including surveillance, economic deprivation, and deportation threats, which deeply affect children. Abusers often use children as tools of control. Women typically seek help only when abuse impacts the child, by which time they are trapped in coercion and face societal judgment and institutional disbelief. Victims who appear frightened or inconsistent are often deemed unreliable, compounding harm.
- 62 She highlighted gaps between legal frameworks and practical implementation. Victims may struggle to file police reports or lack knowledge of legal procedures. Abusers often file counter-reports to intimidate victims. She cited a case where a mother, despite filing a report after severe violence, lacked medical documentation, leading to case dismissal. Shelters provide limited protection, often excluding children or imposing contact bans that later harm mothers in custody disputes. Being a non-national can exclude victims from welfare and psychological care, while cultural bias distorts assessments of parental fitness. Migrant mothers are frequently labelled unfit or seen as potential abductors, creating inequality in legal proceedings. Civil society and consular services offer support but cannot replace state responsibility or intervene in judicial processes.
- 63 In conclusion, Janaina Albuquerque argued that preventing child abduction in domestic violence cases requires early and effective victim protection, not reactive measures. Obstacles faced before abduction — such as inability to gather evidence — carry over into return proceedings, influencing risk assessments and protective measures. Listening to victims is essential to understand structural barriers. While domestic protection systems fall outside private international law, these issues inevitably become international matters, making early intervention critical.
- 64 **Kitanaka Chisato** explained that the All Japan Women's Shelter Network is a national liaison organisation of domestic violence shelters across Japan. Currently, their membership is comprised of 65 NGO shelters which operate on a voluntary basis. She noted that, for many victims of domestic violence and child abuse, the core issue is not the physical violence but the underlying dynamics of control, domination and isolation. In her experience, the most challenging aspect of victim support is helping victims to break free from this control and empowering them to make their own decisions about their future. Coercive control lies at the core of abusive behaviour and relationships that profoundly impact spouses and their children. Equating domestic violence with physical violence is an underestimation of the problem. She emphasised that it is vital for victims to have adequate access to counselling, specialist support and shelters.
- 65 The Istanbul Convention as a global standard requires State parties to take the necessary legislative measures to enable victims to access recovery support, medical care, social support services and specialist support. It also requires States to set up a sufficient number of appropriate and easily accessible shelters. However, Japan has faced issues implementing these measures. There have been fatalities resulting from domestic violence in Japan every year. Publicly operated

shelters were run under the Anti-prostitution Act until 2024, which meant a lack of a victim-centred philosophy of support. Efforts towards normalisation only began with the introduction of the new Women's Support Act 2024. Public shelters in Japan only permit stays of around 20 days for emergencies and to access them, victims must be referred by the city office or the police. In 2023, domestic violence centres were consulted 120,000 times and domestic violence was reported to the police 80,000 times. Yet only 3061 people were able to secure accommodation in the 47 publicly run shelters across the country. Unlike public shelters, NGO shelters provide more flexible and comprehensive support, but these are on a much smaller scale. In some areas, there are no NGO shelters. It is, therefore, extremely difficult for non-Japanese speakers or women fleeing from abroad to find protection in the Japanese shelters. She underlined the importance of recognising that many victims are currently undertaking difficult evacuations with their children under these circumstances.

- 66 **Makiko Ishii** shared her experiences of the typical issues international couples face when their relationships break down. She informed participants that she receives many consultation requests from Japanese women living abroad. Many of them suffer abuse at the hands of their foreign husbands because power imbalances such as economic disparities and language barriers within a marriage can make abuse more likely to occur. These women become mentally exhausted and sometimes even physically ill from their abusive relationships and wish to return to Japan. In many cases, these women have young children they care for and cannot leave behind. Her advice to these women is to try and obtain a relocation order in their country of habitual residence. However, they are often informed by local lawyers that the chances of obtaining such an order are 50-50 at best and the legal fees involved are often extremely high.
- 67 She shared an example from one of her cases which involved a foreign woman residing in Japan. Her client was co-parenting with her husband living in Japan but was still being emotionally abused by him and wished to return to her home country. Ultimately, a relocation order was obtained, permitting her to return abroad with her children. This took 2 years to achieve and, during that time, she suffered from poverty. As a foreigner, she was unable to receive any public support in Japan. She should have been allowed to return to her own country where she could receive support and be granted the right to a fair trial in a safe environment. However, the 1980 Convention prevented this from happening. The implementation act of the 1980 Convention in Japan provides an exception for cases involving domestic violence when the child faces serious danger. This exception is interpreted very narrowly. She noted that most women who come to her for advice have suffered psychological, emotional, sexual or economic abuse and do not have physical or visible injuries. In such cases, getting the court to recognise this treatment as domestic violence is extremely difficult. Women are therefore forced to choose between enduring further abuse from their husbands or returning to Japan / their home country prepared to lose their children under the 1980 Convention. From the child's perspective, either choice means losing their mother. In closing, she invited participants to reflect on whether the 1980 Convention truly serves the best interests of children as it is intended to do.
- 68 **Elsa Sobral Noura** provided some information on the French consular services in cases of violence against women and children. From experience, she noted that situations of wrongful removals or retention of children are often the consequence of different forms of domestic violence within the family. The protection of victims, especially women and children, is a priority of the French consular network as an essential part of feminist diplomacy with the aim to ensure the security of the French community abroad. She noted that, in recent years, France has increased its human and financial resources in this sector and tries to include these issues in all diplomatic negotiations around the world. In cases of domestic violence abroad, French consulates and embassies play an essential role in helping and protecting French nationals. The main challenge in this area is ensuring action is as expeditious as possible to respond to the urgency of the situations. In this regard,

communication and cooperation are essential. Like other French institutions abroad, consulates and embassies act within the legal framework of the 1963 Vienna Convention on Consular Relations and bilateral agreements. Action is based on several components: information, support and assistance.

- 69 French consular officers are trained to listen to victims, who are often isolated. All exchanges with consular services remain confidential. The consulates inform victims about their rights and possible steps, both in the host country and in France. Victims are directed to local support services such as health and psychosocial support facilities, emergency accommodation and legal assistance. Each consulate has a directory of contacts that can be called and who can intervene quickly to assist the consulate in the management of these situations. Consular officers can assist victims in administrative and legal procedures, for instance by accompanying them to the local authorities to file a complaint, assisting in obtaining identity/travel documents and arranging the return to France when possible as well as providing a list of local Francophone lawyers and explaining local legal procedures. French consulates can also help victims find emergency accommodation and connect victims to services like *France Victimes* that can provide free psychological assistance to French nationals abroad. Elsa Sobral Noura also mentioned dedicated online platforms such as [Save You](#), which offers French women the opportunity to provide each other with support and assistance, without of course substituting the intervention of police, courts and other authorities. Another platform, www.arretonslesviolences.gouv.fr, allows French nationals abroad to securely report violence to specially trained police officers. She noted that the facts and complexity of each case differ, but the French consulates apply a multidisciplinary approach to address those complexities and provide comprehensive support. Above all, French consulates rely greatly on local structures to facilitate collaboration with the police and social services of the host country. In this regard, she commended Brazil's action in this area.
- 70 She further informed participants that the French Ministry of Foreign Affairs has developed a protocol for victim support to ensure coherent and effective care regardless of the country. Each consulate has appointed at least one specially trained official and a specialised service in Paris supports all the consulates around the world, providing guidance and information on the different services available in France. French consulates also heavily engage in awareness raising and community outreach by providing information about domestic violence on websites and social media platforms.
- 71 **Dr Braden Clark** echoed the words of Jessica Raffal that discussions around the topic of domestic violence and the 1980 Convention involve a multitude of very diverse factual realities that are equally valid. He shared a [graphic](#) with participants that elaborates on the complexities of the various realities that coexist in situations of domestic violence. He noted that abductions are indeed harmful and equally, there are also situations in which victims of domestic violence are fleeing life-threatening circumstances and the Forum focuses on the application of Article 13(1)(b) to those cases. To illustrate the extent of the problem, he noted that over the three days participants will be meeting at the Forum, over 420 women and girls will lose their lives as a result of domestic violence. This number increases if deaths by suicide as a result of domestic violence are also considered.
- 72 He underlined that the only way to prevent abductions is by working to prevent family violence. Where there is a high prevalence of coercive control, there is emerging evidence that shows this is a high risk for lethality, even when there has not been physical violence. In a 2020 inquiry, the Australian New South Wales government found that coercive control was present in 99% of intimate partner homicides. Its 2022 report found that in one quarter ($\frac{1}{4}$) of those homicides, no physical violence was previously reported. Based on this information, he stressed that judges in return proceedings should look beyond a perceived lack of reported violence when assessing risk. Separation, or attempting to separate, from an abusive partner is the greatest time of risk for victims, noting that 77% of Australian women killed by their partners had separated or were in the

process of separating from them. In many cases, protective measures were in place for these women but were not effective at keeping them safe. Dr Clark emphasised the need to look at coercive control and family violence from a holistic perspective and within the broader intersectional contexts which enable such violence to be perpetuated.

- 73 Dr Clark explained that a lack of financial means and an inability to meaningfully engage in gainful employment in the state of habitual residence will inevitably result in an intolerable situation. He added that family court systems can also become instruments of further harm and coercive control, minimise the experiences of victims and make relocation orders difficult for victims to obtain. In closing, he emphasised that, to prevent abductions, domestic violence must be eliminated. Until domestic violence is eradicated, he proposed the following concrete actions:

- If a victim of domestic violence says they are afraid for their life, this needs to be taken seriously as it is very often valid.
- States and the Guide to Good Practice on Article 13(1)(b) need to be informed by victims lived experience.
- Evidence before the Court should fully reflect the realities and complexities of the victim's situation as well as that of the children. This may look like specialist risk assessments undertaken by individuals who are experts in domestic violence and child protection.
- Training in this area must be informed by the lived experience of victims of domestic violence, to strengthen understanding of the relationship between coercive control and the risks of homicide and suicide, as these constitute intolerable situations for children.

E. Session 4 – Using legal mechanisms and access to justice to prevent international child abduction in situations involving domestic violence

- 74 This session was moderated by **Nadia Rusinova** (Netherlands / Bulgaria), Lawyer, lecturer in European / International private law at the Hague University and consultant. The session consisted of contributions by the following speakers:

- Nishat Hyder-Rahman (Belgium), Postdoctoral Fellow, MSCA Impact Fellowship Programme, Vakgroep privaet- en economisch recht (PREC) Vrije Universiteit Brussel
- The Honourable Associate Chief Justice Gwen B. Hatch (Canada), Court of King's Bench of Manitoba (Family Division), Winnipeg (Common Law), Member of the IHNJ
- Yvette Cehtel (Australia), lawyer & DV professional Women's Legal Services Australia
- Javiera Verdugo Toro (Chile), Lawyer, Ministry of Foreign Affairs Chile (*online*)

- 75 **Dr Nishat Hyder-Rahman** presented the results from a recent in-house study on the lived experience of relocation by GlobalARRK. She noted that globally, relocation is the primary pathway to avoid wrongful removals and retentions under the 1980 Convention. Therefore, clear, accessible and efficient relocation systems are essential components of the ecosystem of the Convention. The 2010 Washington Declaration offers some guidance on how to approach the matter. However, she noted that there remain limited global consistency and clarity on international relocation. The conference held in April 2025 to mark 15 years of the Declaration revealed both the commonalities but also the considerable disparities between national approaches to relocation, both conceptually and procedurally. Not all countries have a pathway for relocation within their legal systems. To create and maintain effective relocation procedures, it is important to examine how those procedures that are currently in place, operate, and how they are experienced by those who go through them.

- 76 In that regard, GlobalARRK undertook a qualitative study to better understand the lived experience of relocation proceedings. This was an online survey which gathered 165 responses, of which 160 respondents were mothers and 5 were fathers. Dr Hyder-Rahman used the findings of that study to elaborate on the impact of domestic violence on relocation proceedings. She explained that domestic abuse was cited as one of the most common reasons for applying for relocation, with 93.2% of those who responded to the survey question on whether they / their child had experienced domestic violence since moving abroad reporting that they had experienced domestic violence.⁷ When asked whether the disclosure of domestic violence impacted their relocation case, those who had disclosed the abuse reported that it had limited weight on the proceedings or was ignored / dismissed. Only a minority of those who had disclosed the abuse felt it was taken seriously by the courts. The respondents who reported they had *not* disclosed the violence, explained that they had either chosen not to do so themselves, for fear of how they might be perceived or not being believed. Others had been advised by their lawyer not to disclose the violence in order to appear on good terms with their former partner, even against a background of ongoing abuse, as this shows that they will be able to facilitate contact with the child after relocation.
- 77 Dr Hyder-Rahman noted that one of the key insights gained from the GlobalARRK study was that parents applying for relocation often feel unheard and unseen during proceedings due to a lack of understanding of all forms of domestic abuse and the complex ways in which it operates, particularly when compounded by other obstacles such as language barriers, different legal and support systems as well as social norms. She noted that more can and should be done to ensure relocation procedures are in place and that it remains accessible, appropriately assessed and facilitated when circumstances demand. The [GlobalARRK report](#) sets out nine recommendations in this regard, two of which are specific to domestic violence.
- 78 **Gwen Hatch** presented the 2021 amendments to Canada's Divorce Act, which now includes specific provisions on relocation. She explained that the Divorce Act now includes a child-centred definition of relocation, foresees a mandatory notice of intention to relocate and provides burdens of proof as well as additional best interest factors specific to relocation cases. As a result of this legislative amendment, courts now seem to be more likely to allow applicants to relocate with their children.
- 79 Under the Act, relocation is a change in the place of the child or parent's residence that is likely to have a significant impact on the child's relationship with the other parent. Justice Hatch clarified that the test for this definition is not an issue of distance. She explained that the mandatory written notice and associated timelines create an orderly process and encourage negotiation without necessitating the involvement of the court. The relocating parent must complete the notice of relocation form, in which they must set out the date of expected relocation, the address of the new residence, contact information and a proposed parenting plan. This form is then served to the other parent. If the other parent objects to the move, they must complete an objection to relocation form, in which they must set out the reasons for their objection, their views on the other parent's parenting plan as well as their own counter proposal for a parenting plan. The parties can then enter negotiation. She clarified that, in a number of relocation decisions, the courts considered that, in the light of family violence or abuse, the relocating parent did not need to go through the process of the written notice of relocation and granted the moves regardless. Justice Hatch noted that the Act contains different burdens of proof, depending on the amount of parenting time of each parent. For instance, when the parenting time is essentially equal, the relocating parent has the burden of proving that the move is in the child's best interests. On the other hand, if the relocating parent is the child's primary caregiver, the burden shifts to the parent opposing the relocation to

⁷ For clarity, 88/165 participants responded to this question; 82/88 responded that they / their child had experienced domestic violence.

prove that the relocation is not in the child's best interests. These burdens of proof establish a structure for the best interests analysis and provide greater certainty and consistency and guidance to parties, their lawyers and the court.

- 80 The Divorce Act provides a very broad definition of family violence, which recognises the various forms of abusive behaviour and the role of coercive and controlling behaviour. In line with the principle that the child's physical, emotional and psychological safety and wellbeing as the paramount consideration, the Act now obliges courts to consider family violence in proceedings and to evaluate in the light of such violence the ability and willingness of the perpetrator to meet the needs of the child, as well as the appropriateness of ordering a person who has suffered abuse to cooperate with their perpetrator. Justice Hatch noted that since these amendments were enacted, relocation has been allowed in almost all cases where the mother was the primary caregiver and family violence was present.
- 81 **Yvette Cehtel** spoke about the role of Tasmania's Women's Legal Service in providing frontline domestic violence support to women, as one of thirteen (13) women's legal services across Australia operating as a special measure under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Experience shows that domestic violence does not end following a separation but just changes. She noted that despite receiving increased funding recently, the Women's Legal Service network remains unable to take on all cases under the 1980 Convention. Like Brazil, there are geographical gaps in service delivery, expertise and funding, meaning resources only permit the network to take cases on an *ad hoc* basis. She added that, unfortunately, there are no other specialists in the legal assistance sector to fill this gap in Australia.
- 82 She noted that in the last year, 52,000 women in Australia approached the thirteen (13) Women's Legal Services for support but had to be turned away due to lack of resources – about 1,000 women per week. Statistics show that this is a gendered problem, reflecting a pervasive system that normalises family violence. She noted that so long as confidence in the ability of the legal system in Australia to respond and protect women and children remains low, abductions will continue to occur, as they are, in many cases, the only protective measure women have left when all other legal options have failed.
- 83 National statistics confirm that women are unsafe across the country, with 1 in 4 women experiencing family violence in Australia. The Australian Lighthouse Project, a risk assessment tool developed by the Family Law Court of Australia, showed that 86% of cases before the courts had indications of family violence. She noted that not all these matters resulted in substantiated allegations, as not all incidents were reported. She emphasised that, since family violence and abuse is a societal, cultural and structural issue, it is wrong to assume that everyone comes before the law equally, as structural inequality affects how women give evidence and may undermine their credibility. Women's Legal Service surveys demonstrate that 2 in 5 women do not know where to seek help, affecting how they engage in the return proceedings. She noted that the 1980 Convention does not recognise structural inequality; treating everyone as equal is deficient in a family violence context. Another deficiency is the incident-based investigation approach, which fails to identify patterns of behaviour. Women remain reluctant to report violence and often do not recognise the behaviours they describe as family violence, especially when the abuse is not physical. Looking at each incident in isolation does not help. In closing, she noted that, in Australia, abductions will not stop until domestic laws and responses are improved.
- 84 **Javiera Verdugo Toro** described child abductions in the context of domestic violence as an action that prevents harm by causing harm and rather than spending time deciphering which harm is the lesser of the two, she emphasised the need for a system designed to protect without causing any harm at all by creating efficient legal and judicial frameworks that confront domestic violence and offer victims immediate help and real protection.

85 She noted that, although far from perfect, the Chilean system offers several concrete examples of mechanisms that can be used to protect victims of domestic violence and potentially avoid child abductions. Chile has a specific family court proceeding for cases of domestic violence whereby any necessary protection orders are immediately granted, even before the alleged perpetrator is informed that a report has been filed. Victims are granted free legal assistance and children are appointed a guardian *ad litem*. The law foresees that abusive conduct in and of itself is enough to trigger a fault separation / divorce. Ministry of women and equity has 122 women's shelters across the country where psychosocial support and legal advice is provided. The Ministry also operates an emergency hotline and discrete WhatsApp line for victims to request help / advice. She emphasised that domestic violence is not an acceptable situation and from a legal standpoint that entails ensuring the victim's safety first and then having a system that allows adequate investigation, effective protection and concrete solution. If leaving the country is the only solution available to victims, that is a systemic failing to victims but also to the child.

F. Session 5 – Assessing allegations of domestic violence and determining grave risk under Article 13(1)(b) in international child abduction cases where domestic violence is raised

86 This session was moderated by **Mary Sheffield** (United States of America), senior judge at the Missouri Court of Appeals and Member of the IHNJ. She reminded participants that for Sessions 5, 6 and 7, panellists were asked to ground at least a part of their presentations in the facts of a guiding [hypothetical case accompanied by some targeted questions](#), in order to offer participants a comparative overview of the various approaches across jurisdictions to the practical issues of assessing allegations, obtaining evidence and issuing protective measures. Judge Sheffield then introduced the speakers for Session 5:

- Justice Steven Arnold Majiedt (South Africa), Justice of the Constitutional Court (*online*)
- Judge Martina Erb-Klünemann (Germany), Judge at the Family Court, District Court of Hamm, Member of the IHNJ
- Judge Marcela Trillini (Argentina), Judge at Family Court No 9, San Carlos de Bariloche, Río Negro, Member of the IHNJ
- Vitor Veloso Barros e Santos (Brazil), Coordinator for International Law Disputes, Attorney General's Office
- Lord Justice Andrew Moylan (United Kingdom), Court of Appeal of England and Wales, Head of International Family Justice for England and Wales, Member of the IHNJ

87 **Justice Steven Arnold Majiedt** focused on the complexities of Article 13(1)(b) of the 1980 Convention, particularly when domestic violence has been alleged. He noted that, South African courts do not apply a strict test to Article 13 exceptions, a position that was affirmed by the Constitutional Court, the country's highest court. He noted that delays in litigation – often spanning years – complicate these cases, especially when circumstances change significantly during proceedings. He recalled a key case from the Constitutional Court, *Koch*, which involved a six-year-old girl, E., born in the UK but living in South Africa with her aunt after her mother's terminal illness and death. The father sought E's return to the UK under the 1980 Convention. The High Court ordered the return, citing adequate support services in the UK. The decision was later reversed by the Supreme Court of Appeal. Ultimately, the Constitutional Court reinstated the return order. Justice Majiedt explained that the case illustrates how prolonged litigation alters circumstances, complicating decisions. He elaborated by referring to two other decisions from South Africa. In the case of *Family Advocate v. Chirume* (Cape Town High Court), the respondent opposed the return of a child to the UK, citing intolerable conditions and domestic violence. The court ruled that domestic

violence alone does not justify refusal under Article 13(1)(b) unless harm to the child is proven. In the *North Embers Case* (Supreme Court of Appeal), a mother refused to return her child to Australia after a holiday, alleging marital unhappiness and domestic violence. Both the High Court and Supreme Court of Appeal held that allegations were insufficient to meet the high threshold of Article 13(1)(b).

- 88 Turning to the hypothetical case, Justice Majiedt explained that a South African member of the IHNJ can liaise with counterparts in other countries to verify welfare investigations, ensuring transparency. Central Authorities in each Contracting Party can coordinate evidence collection and manage applications. They may involve social services for shelter or law enforcement to enforce return orders. With regards to cases involving domestic violence, he pointed to challenges such as allegations arising late in proceedings, creating doubts about their credibility and that evidence is often one-sided. However, he acknowledged that courts risk returning victims to abusive environments if allegations are genuine but unproven. In this regard, he underscored the need for judicial sensitivity and proactive measures to bridge the gap between victims' experiences and institutional responses. In closing, Justice Majiedt emphasised that judges must strive to close this gap in South Africa's handling of the Article 13(1)(b) defence, to better protect victims of domestic violence.
- 89 **Judge Martina Erb-Klünemann** noted that in Germany, the 1980 Convention is applied in conjunction with the UN Convention on the Rights of the Child, the Istanbul Convention, the European Convention on Human Rights (ECHR), the Brussels IIb-Regulation in case of an application for return to another EU-Member State (except Denmark), as well as German legislation. Turning to the hypothetical case, she noted that in Germany, a specialised court would handle this case, and a highly trained judge will evaluate the facts and any allegations made in the context of an Article 13(1)(b) defence. The German Central Authority also closely collaborates with the specialised courts and IHNJ liaison judges facilitate cross border cooperation and exchange of information.
- 90 Judge Erb-Klünemann emphasised the need for a child-centred approach to evaluating allegations of domestic violence in return proceedings, involving a holistic assessment in the light of Article 8 of the ECHR that considers all relevant factors, including the violence. In addition, there is a need for a sufficient reasoning of the decision. In that regard, German judges see and hear children of all ages, even infants. She noted that, allegations must be sufficiently detailed. Referring to the 2013 ECtHR decision in [X v. Latvia](#), she noted that, where credible indications of violent behaviour have been made, the court must conduct more detailed investigations. When assessing risk, the judge will take into account, among other things, the risk of the child's exposure to domestic violence, a risk of recurrence of that violence, the risk of significant psychological stress on the child if returned or if separated from the taking parent, whether it is reasonable to expect the taking parent to return with the child and whether the child themselves is objecting to the return. She noted that German courts do not automatically consider protective measures early on, although the more foreseeable the danger under Article 13(1)(b), the earlier such measures are considered. She added that there is a need to balance expeditious proceedings with the imperative to avoid danger. In this regard, courts must investigate and make their decisions based on the best interests of the child, without making custody determinations. She explained that in most cases, support from Central Authorities and the IHNJ is needed to obtain as much information as possible. In closing, she noted that proceedings and outcomes depend entirely on the individual case, and judges need to be specialised in handling these matters.
- 91 **Judge Marcela Trillini** explained that Argentina does not yet have a country-wide procedure to deal with cases under the 1980 Convention. Each province has its own procedural framework and its own interdisciplinary technical team, typically comprised of psychologists, social workers, lawyers, and others, though the composition of these teams varies by province. Some provinces do not have

such multidisciplinary teams but instead rely on a type of social worker team to manage these cases. These teams can assist the court in evaluating the exception under Article 13(1)(b) when raised. Many courts in Argentina consult and apply the Guide to Good Practice on Article 13(1)(b) but some courts still remain unfamiliar with it. She, therefore, underlined the importance of continued efforts in raising awareness to it. In return proceedings, the judge does not decide where the child should live or with which parent. The exceptions to return are subject to a restrictive interpretation. She explained that broad and general assertions of violence in return proceedings are unlikely to be sufficient to meet the threshold of Article 13(1)(b). Even if the court is satisfied that there is a grave risk of harm under Article 13(1)(b), if the court is satisfied that there are appropriate protective measures available which can effectively mitigate the risk, the court can order the return.

- 92 She noted that domestic violence is difficult to prove because it occurs behind closed doors. In Argentina, there is an obligation to apply a gender perspective to the adjudication of cases, which consists of analysing whether there are contextual and structural issues of inequality in each specific case. Particularly in cases of multicultural partnerships, where one partner is a migrant, issues such as language barriers, lack of support networks, economic dependence among others could be factors of vulnerability but not necessarily domestic violence. Judge Trillini gave an example of a case where an Argentinian woman migrated to rural Northern Ireland to be with her partner. They eventually had a daughter. The woman struggled to adjust to life in rural Northern Ireland and at one stage, during a tumultuous time in the couple's relationship, she went to Argentina with their child, with the father's consent. There, she filed a complaint of domestic violence before the courts and informed the father that she did not want to return. When assessing the initial domestic violence complaint (bearing in mind an imminent return application), the interdisciplinary technical team found that, although the couple's dynamic was patriarchal, the woman's struggles were likely not due to domestic violence but rather due to the cultural and lifestyle differences between Argentina and rural Northern Ireland. Considering that the child had been unduly removed from her familiar environment, the Argentinian court ordered the return to Northern Ireland. In closing, she underlined the importance of assessing the family situation and particular complexities of each individual case, keeping the focus particularly on the child and having in mind that CEDAW and the 1980 Convention ought to be interpreted harmoniously.
- 93 In response to the targeted questions in the hypothetical case, **Vitor Veloso Barros e Santos** noted that many measures have been taken in Brazil to ensure the expeditious determination of cases under the 1980 Convention, including where allegations of domestic violence had been raised. At the judicial level, Resolution 449/2022 aims to accelerate return proceedings and the new Supreme Court decision (referred to by Judge Calmon above) recommended that the government take steps to concentrate jurisdiction in 1980 Convention cases and establish specialised courts. The Supreme Court also recommended enacting specific domestic legislation on the operation of the 1980 Convention in Brazil. On the administrative level, the AGU's office has disseminated guidelines on handling cases under the 1980 Convention involving allegations of domestic violence, which recommend producing evidence early and discourages filing appeals in cases where the first instance court decision confirms that domestic violence has occurred, among other things.
- 94 Turning to the steps that can be taken in assessing allegations of domestic violence, Vitor Veloso Barros e Santos noted that a request for early production of evidence can be made, which may include a psychosocial evaluation of the parent alleging the violence and, if appropriate, the child themselves. If evidence is insufficient, the court can then request additional information from the Central Authority in the requesting State. An evaluation of the facts and all available evidence will determine whether a grave risk is established or not. If objective and concrete indications of domestic violence are identified, the consideration of any protective measures would not be

necessary, as the threshold for an exception to return has been met. In closing, he explained that the main challenges in these cases are the collection of evidence, particularly from abroad, as well as superficial assessments and reasoning by judges which in principle violate the principle of the best interests of the child.

- 95 **Lord Justice Andrew Moylan** explained that concentrated jurisdiction greatly assists the courts in England and Wales in ensuring cases of international child abduction are handled expeditiously. All cases are heard in the High Court's Family Division in London. All appeals (both first instance to the Court of Appeal and second instance to the Supreme Court) are subject to the litigant receiving permission to appeal from the court. Additionally, a specialist team of social workers (CAFCASS officers) supports the determination of the cases. In cases of international child abduction, a summary (i.e., simplified) procedure is employed. A very detailed [procedural guidance document](#) drafted by the court sets out what is expected of the parties. Lord Justice Moylan emphasised that the court is proactive in seeking to ensure all relevant information is provided as quickly as possible, with the parties having the primary obligation to provide any evidence or information. The court has the discretion to call upon the Central Authority or make use of the IHNJ to seek additional information. The court then seeks to identify what issues (including allegations) are relevant to a fair and proper determination of the return application and determines what documents are to be provided and whether expert evidence is needed. Consideration is also given to the voice of the child, with CAFCASS officers seeing the child for the purposes, primarily, of conveying their wishes and views to the court and also, when appropriate, of considering whether the child needs to be separately represented in the proceedings. To further expedite the process, the issue of protective measures is examined at the very beginning of the proceedings, the onus being on both parties to put forward the measures they are prepared to offer or seek, in the event of a return. Generally, the final hearing does not involve the taking of oral evidence and the application is determined based on the written evidence and information the parties have provided in advance. However, exceptionally, for example when there is expert mental health evidence, the court will hear oral evidence.
- 96 Lord Justice Moylan reminded participants that Article 13(1)(b) involves a high threshold, requiring the risk to be "grave". It is, therefore, necessary for the person opposing the return of the child to clearly articulate, with sufficient detail, why a return would give rise to a grave risk of harm. In this exercise, all evidence and information put before the court are considered cumulatively (not individually), in order to paint a broad picture of the family dynamic and help identify any risks. In a case where allegations of domestic violence have been made, the court must ask itself, on the basis of reasoned and reasonable assumptions ("of such a nature and of sufficient detail and substance" in the Guide to Good Practice), whether a grave risk exists if the allegations were to be true. If the answer is affirmative, the court must then ask itself if there are any appropriate and effective protective measures available that can address or sufficiently ameliorate the risk. This process can be described as risk assessment and risk management – not risk elimination. The court evaluates the nature of the risk, the likelihood of it materialising and the potential consequences to the child and their parent if it does materialise. In closing, Lord Justice Moylan underlined the challenge in balancing the risk assessment and the risk management to ensure that the risk of harm is not underestimated and the efficacy of the protective measures is not overestimated or, conversely, there is too low a threshold of risk and too high a threshold for the efficacy of protective measures.
- 97 Following this session, participants had the opportunity to examine a set of [hypothetical cases and targeted questions](#) in breakout groups and discuss the topic of assessing allegations of domestic violence in the light of those hypothetical cases. Each group then reported their findings to plenary.

G. Session 6 – Obtaining evidence of domestic violence in international child abduction cases where such allegations have been made

- 98 This session was moderated by **Myriam de Hemptinne** (Belgium), Family and Juvenile Judge at the Court of Appeal of Brussels and Member of the IHNJ. The panel consisted of:
- Ben Keith (New Zealand), barrister at Woodward Street Chambers (*online*)
 - Rodrigo Santos Meira (Brazil), General Coordinator, ACAF (Central Authority)
 - Judge Joanna Guttzeit (Germany), Judge of the Family Court, Local Court of Pankow, Member of the IHNJ
 - Miguel Vara (Portugal), Head of the International Judicial Cooperation Division, Portuguese Central Authority
 - Nthabiseng Thokoane (South Africa), Chief Family Advocate, RSA Central Authority (*online*)
 - Forum Shah (United Kingdom), Practitioner at Dawson Cornwell, London
- 99 **Ben Keith** spoke about the importance of robust and fair evidence gathering in Article 13(1)(b) cases and the challenges surrounding it. He stressed that decisions in these cases must be robustly and fairly evidence-based to comply with both the 1980 Convention and the UN Convention on the Rights of the Child (UNCRC). However, he noted that doctrinal obstacles often prevent proper fact-finding. Courts frequently describe cases under the 1980 Convention as “summary,” which is a misleading term. The High Court of Australia and the New Zealand Court of Appeal have emphasised that decisions should be prompt but cannot be made on the basis of incomplete records or, particularly, the inability of one parent to adduce evidence.
- 100 He highlighted the persistent, systemic failure to recognise domestic violence as a human rights violation and criticised assumptions that protective measures in the State of habitual residence are always sufficient. In consulting the periodic reviews of 27 States under CEDAW and the UNCRC Committees, he noted that all 27 States, which were also Contracting Parties to the 1980 Convention, were found to have inadequate or ineffective protections against violence. He also pointed out that supervening human rights obligations and evolving interpretations of Article 13(1)(b) have been neglected in some jurisdictions, including New Zealand, which had ignored those rights and significant comparative decisions until 2020.
- 101 Ben Keith then outlined some of the tools available for evidence gathering: requests under Article 13(3) for social background information from Central Authorities, direct judicial communications through established networks, remote and audio-visual court appearances for witness testimony, production orders requiring parties to provide social services or criminal records from the State of habitual residence, and proactive case management to ensure necessary evidence is obtained before hearings. That would enable a fair and robust assessment of available protections, given that the presumption followed by courts in many Contracting Parties is, empirically, false. He noted that, despite their availability, these tools are rarely used. For example, Article 13(3) is described by one leading specialist on the 1980 Convention as “useful but hidden” because it was adopted to address evidential difficulties but has been largely ignored. More broadly, in New Zealand, the Central Authority refuses requests for evidential information except when assisting applicant parents. Judicial communications are infrequent and usually limited to procedural guidance rather than substantive evidence. Remote appearances, production orders, and proactive case management also see minimal application. Ben Keith concluded that careful, fact-based inquiry is essential and required under the UNCRC. He called for clear, robust practice, rejection of unsound doctrines, and systematic data collection on the use of evidence-gathering tools. Strengthening these practices is vital to uphold the best interests of the child and ensure

compliance with international obligations and to avoid the 1980 Convention falling into discredit as a charter for abusers.

- 102 **Rodrigo Santos Meira** began his presentation by sharing some statistics from Brazil regarding incoming applications under the 1980 Convention that involved domestic violence allegations. The Brazilian Central Authority received 5 such incoming applications in 2021 and 9 applications in 2022. This number rose in 2023, with 15 incoming applications and rose again in 2024 with 26 incoming applications. Over the course of 2025, the Brazilian Central Authority received 15 incoming applications. He then explained how the Central Authority deals with these incoming applications. Usually, upon receipt of the application, the Central Authority notifies the taking parent and, if there are allegations of domestic violence, the Central Authority looks into whether there any police, social welfare reports or any documentation has been filed in Brazil or in the State of habitual residence on this matter.
- 103 From the beginning of proceedings, the Central Authority tries to assist in gathering as many details about the case as possible. He underlined the importance doing so, particularly in cases involving allegations of domestic violence, while being cognisant of the risk of revictimisation. He acknowledged that this is often a very challenging exercise, particularly when it comes to gathering information about events that occurred in the State of habitual residence. He noted that a good way to overcome this obstacle is through the use of liaison judges from the IHNJ, but there can be barriers to gathering supporting evidence for domestic violence, such as data protection laws or issues relating to the legal mandate of the Central Authority in Brazil and the State of habitual residence, as these matters fall within the scope of criminal law. He noted that one of the main challenges is properly balancing speed with the requisite thoroughness in seeking information regarding the allegations made. He added that Brazilian authorities and courts do not tend to hear the voice of the child in such cases, particularly younger children, which is a challenge Brazil is currently trying to overcome.
- 104 He explained that, according to jurisprudence from the Brazilian Supreme Court, the allegations of domestic violence must be supported by concrete, sufficiently detailed and sufficiently substantiated evidence. In this regard, he emphasised the importance of obtaining police reports and social service reports. He underlined the synergies between the Central Authorities involved, networks such as the IHNJ as well as social and law enforcement authorities, all of which greatly contribute to the effort in obtaining the necessary information for the court to proceed with the case. He highlighted the work of CAF/CASS, in the United Kingdom, as an inspirational example to be followed. Aside from obtaining sufficient evidence domestically, he noted that other challenges in this area include the criminalisation of international child abduction in some jurisdictions, obtaining information or evidence from the requesting State (particularly evidence against the applicant) and engaging in effective cooperation.
- 105 **Judge Joanna Guttzeit** highlighted that in any case, there is no such thing as too much evidence. The court will always appreciate more information. However, particularly in the limited 6-week timeframe of return proceedings, evidence and information is also limited and judges must work with what they can get. There are many types of evidence that a judge can rely on, beginning with the factual statements by the parties and, in disputed cases, objective proof of alleged violence is required. In the beginning of proceedings, any and all evidence or information is important – police and medical records, investigation reports, protection orders, passports, flight tickets, correspondence and photographs. Information or documentation from foreign authorities also plays an important role in connecting the dots.
- 106 Judge Guttzeit explained that in Germany, social workers are also involved in the proceedings, especially professionals from the youth welfare office, who produce useful reports to assist in the court's deliberations. A representative for the child is appointed at the beginning of the

proceedings, who speaks with the family and also prepares a report. However, due to the time constraints, expert reports are not always sought by the courts and dedicated witness hearings are very exceptional. Usually, the return proceedings involve one hearing, during which all relevant witnesses / actors are heard, including the child. Recalling one case in which the left-behind parent (father) pulled the trigger of an unloaded pistol in front of the children, she noted that the children were so terrified to return that no protective measure could possibly ameliorate that situation. In the end, the case concluded with a non-return decision. This is why, she underlined, it is important for judges to see and hear from the children themselves. Citing another extremely difficult case involving domestic violence, she noted that cooperation and collaboration with other members of the IHNJ assist greatly in obtaining additional information or even perhaps confirmation of allegations made. In closing, she noted that one of the challenges particularly in the context of domestic violence cases is ascertaining / assessing whether protection measures ordered for the return will be reliable, enforceable and obeyed in the State of habitual residence.

- 107 **Miguel Vara** noted that the Central Authority of Portugal can provide general legal information, assist in instituting return proceedings and cooperate with the competent and Central authorities in the other State. He highlighted that it is always preferable for applicants to start proceedings via the Central Authority as opposed to going directly to the court (although they are permitted to do so under the 1980 Convention), as the Central Authority can then provide a better, more expeditious service from the very beginning of proceedings. He explained that there are only two situations where the Central Authority has the mandate to reject an application: when it is manifest that the requirements of the Convention are not fulfilled and when the application is not well founded.
- 108 He highlighted that the criminalisation of international parental child abduction in many jurisdictions and the false impression that custody rights are being decided in return proceedings remain challenges in achieving voluntary returns. In cases of domestic violence in particular, a challenge is ensuring that the taking parent and the child can voluntarily return to a safe environment, which requires guaranteed shelter, legal assistance and protection, as well as assistance with issues relating to migration. Turning to the hypothetical case, he noted that the parties must furnish the court with all the information and evidence they have to substantiate their assertions as early as possible in the proceedings. The Central Authority can assist in obtaining information that is usually difficult for the parties to obtain (e.g., information about any ongoing criminal or child protection proceedings against one of the parties, medical reports, social or school reports). He underlined that this ability of the Central Authority to obtain such information, bypassing the need to go through the 1970 Evidence Convention, ensures efficiency. In closing, he emphasised that the primary aim of a Central Authority is to do its utmost in removing any obstacles to the expeditious determination of a return application.
- 109 In her presentation, **Nthabiseng Thokoane** outlined the role and processes of the South African Central Authority in handling cases under the 1980 Convention, particularly where domestic violence allegations arise. Under South African law, the Chief Family Advocate serves as the designated Central Authority. The Central Authority has the duty to obtain evidence when South Africa is the requested country and to provide evidence when it is the requesting country. When a child is located in a specific province, an *ad hoc* central authority, typically a family advocate from that province, is appointed to manage the case. Most cases involve South Africa as the requested country, with fewer instances where it acts as the requesting country.
- 110 Once a child has been located, the *ad hoc* Central Authority seeks an amicable resolution by engaging the taking parent. If the parent agrees to return the child, arrangements are made without court intervention. However, if the parent refuses, the central authority instructs the State Attorney to file an urgent application for the child's return. Private counsel may also be appointed to represent the authority.

- 111 Domestic violence claims typically surface in the taking parent's answering affidavit, often as part of their Article 13(1)(b) defence. The Central Authority forwards these affidavits to the Central Authority in the State of habitual residence, enabling consultation with the left-behind parent and the collection of evidence. Evidence may include medical records, affidavits from relatives or acquaintances and statements from attorneys involved in possible prior divorce proceedings, to confirming whether there is a history of domestic violence. This evidence is attached to the replying affidavit submitted to court. Importantly, the Central Authority does not evaluate the evidence; its role is limited to facilitating its collection and transmission.
- 112 Cases under the 1980 Convention are heard urgently, but courts may request additional information, which the Central Authority must obtain from the State of habitual residence. Challenges include time zone differences, difficulties in contacting the left-behind parent promptly, and generally the urgent timelines involved. South African courts may appoint a legal representative for the child, who may also require a psychological assessment. These assessments can cause delays as psychologists interview parents and extended family before preparing reports for court.
- 113 In cases where South Africa is the requesting country, the relevant authorities can furnish the foreign Central Authority / court with police records and finalised orders, domestic violence court orders, if applicable, and reports from social institutions familiar with the family. These documents can support the requesting authority's application for the child's return to South Africa.
- 114 In closing, Nthabiseng Thokoane emphasised that the Central Authority's role is strictly facilitative and does not decide whether or not a child should return. That determination rests solely with the court after reviewing affidavits and hearing arguments. Even when the authority believes return is inappropriate, the matter proceeds to court for adjudication. The South African Central Authority plays a critical role in supporting courts by coordinating evidence collection and communication between jurisdictions. While challenges such as delays and logistical hurdles exist, the authority ensures compliance with international obligations under the 1980 Convention, focusing on child welfare and legal due process.
- 115 From a practitioner's perspective, **Forum Shah** outlined the approach in England and Wales to obtaining evidence for return proceedings. She noted that the burden of proof lies on the person opposing the return (the respondent) to produce sufficient evidence and the standard of proof is the ordinary civil standard (balance of probabilities). In England and Wales, specialist lawyers are appointed to represent parties to return proceedings. Legal aid is available to both parties but is only subject to a means and merits test for the respondent (taking parent). She emphasised the importance of building trust with her clients when obtaining evidence, which ordinarily takes time but is a challenge in the context of return proceedings due to the expedited but high stakes nature of the case. When representing a respondent to a return application, she noted that the limited amount of time makes it difficult for a respondent to wrap their mind around what domestic abuse even is and the various forms it can take, making it challenging to establish a comprehensive defence. In addition, cultural and interpretation issues make matters even more complex. On average, lawyers have 10-14 days to prepare the statements on behalf of their clients before the hearing. In preparing for the hearing, she would contact the lawyer in the other State that represents the other party to exchange any evidence. If needed, she could contact the International Family Justice Office (the office responsible for liaising with Members of the IHNJ) in order to request information or evidence that would otherwise be difficult to obtain directly from the foreign lawyer. She noted that the Central Authority is also very helpful to gain information about past proceedings or what protection measures would be available upon return. For efficiency, practitioners will more often than not apply for an expert report for commentary on particular issues such as migration considerations or protection mechanisms available in the other State.

116 She noted that, in her practice, one of the challenges in relation to obtaining evidence is actually sifting through the vast amounts of social media correspondence furnished by clients in order to identify what is relevant for the summary proceedings. With the advent of AI, she noted that she also encounters faked or doctored correspondence. She underlined that general challenges include the time constraints and delays. In closing, she noted that these cases are a particularly heavy burden on practitioners, as they have to balance the best interests of their client with their duties to the court. However, it is a privilege to be trusted and instructed by clients and to have the opportunity to think of creative ways to help them. She emphasised that the children remain at the heart of these cases, and it is imperative that they are protected. In doing so, the spirit of the Convention will be upheld.

H. Session 7 – Using protective measures (with references to the 1996 Child Protection Convention and other relevant mechanisms)

117 This session was moderated by **Annette C. Olland** (Netherlands), Senior Judge, Family Law and International Child Protection Division, District Court of The Hague and Member of the IHNJ. The session consisted of contributions by the following speakers:

- Nieve Rubaja (Argentina), Professor of Private International Law and Family Law, University of Buenos Aires
- Roz Osborne (United Kingdom), CEO of Global Action on Relocation & Return with Kids (GlobalARRK) & Ruth Dineen (United Kingdom), FiLiA Hague Mothers, International Coordinator
- Judge Myriam de Hemptinne (Belgium), Family and Juvenile Judge at the Court of Appeal of Brussels, Member of the IHNJ
- Justice Steven Arnold Majiedt (South Africa), Justice of the Constitutional Court (*online*)
- Lady Morag Wise (United Kingdom), Judge of Scotland's Supreme Courts, President of the Scottish Tribunals, Member of the IHNJ
- Alexandre Boiché (France), Practitioner at Alexandre Boiché & Associés

118 **Nieve Rubaja** highlighted some key features and challenges in the implementation of protective measures in Argentina in order to protect the human rights of all persons involved. The context which protective measures and their implementation inhabit is the human rights framework determined by the UNCRC, CEDAW, the American Convention on Human Rights and the regional instrument Belém do Pará Convention, among others. She also referred to goal 5 of the 2023 Agenda for Sustainable Development, which calls for a gender perspective wherever relevant. The Inter-American Court of Human Rights dealt with its first child abduction case in 2023 in [*Córdoba v. Paraguay*](#). The court held that the wrongful removal or retention of a child does not belong exclusively to the field of private international law but also relates to human rights, particularly the rights of children. All international human rights obligations must be observed by States in proceedings relating to child abduction. The real challenge lies in finding a harmonious solution in each case that respect the rights of all persons involved. One such way of doing so is through taking appropriate protective measures depending on the particularities of each case. Protective measures must be reasonable, proportional and feasible. If protective measures cannot fulfil these criteria, the return of the child should not be ordered. She emphasised the need for effective cooperation among the authorities of both States to ensure the effectiveness of protective measures. In Latin America, several applicable private international law instruments facilitate such cooperation and ensure the effectiveness of protective measures, such as the 1996 Convention, the CIDIP-II Convention (which deals with the enforcement of protective measures) and two relevant

instruments under Mercosur,⁸ which includes an agreement for the recognition of protection measures for women in situations of gender-based violence (not yet in force).

- 119 The Argentina Civil and Commercial Code (2015) also includes relevant provisions with regard to international abduction cases, including the duty of the judge to supervise the safe return of the child and to order anticipative protection measures regarding the child and/or the accompanying adult, if needed. In Argentina, protective measures can be considered either at the very beginning of the evaluation of the “grave risk” exception under Article 13(1)(b) or at the time of enforcement of the return order. Courts have been increasingly making use of the Guide to Good Practice on Article 13(1)(b), which Nieve Rubaja contends contributes to a better and more unified interpretation of the Convention. Even in cases where the court has not found that the “grave risk” threshold has been met, protective measures are nevertheless ordered as a condition for the return of the child. Direct judicial communications, including via the IHNJ, are an essential cooperation tool in Argentina. In closing, she emphasised that the consideration of protective measures is a highly case-specific task that must above all aim to protect the human rights of every person involved.
- 120 **Roz Osborne** and **Ruth Dineen** focused on the realities of implementing protective measures under the 1980 Convention. Ruth Dineen began by recalling that Article 13(1)(b) is based on the principle that return should not occur when there is a real danger to the child. Elisa Perez-Vera’s Explanatory Report states that the child’s interest in remaining in their habitual residence gives way to the primary interest of avoiding physical or psychological harm or an intolerable situation. Although the Convention does not mention protective measures, the concept found in case law was included in the 2020 Guide to Good Practice on Article 13(1)(b) to address concerns about domestic violence allegations and low return rates. She noted that this framing prioritises return over child safety. The Guide recommends returning children even when the Article 13(1)(b) threshold is met, provided protective measures are in place. However, research shows that domestic abuse often continues or escalates post-separation, with lifelong impacts on children. Evidence over decades suggests protective measures rarely provide sufficient protection. Statistics from Australia, Canada, and the UK show that protective measures fail in 20% - 80% of cases. These figures are likely underestimated due to underreporting. Data from FILiA Hague Mothers and GlobalARRK from 2024 reveals that 71.4% of returning mothers face further abuse despite protective measures, echoing findings from reunite in 2003. Ruth Dineen underlined that if protection orders fail domestically, they cannot be expected to work across borders.
- 121 Roz Osborne explained that courts often order the return of children even when a finding of grave risk has been made, relying on unenforceable undertakings or mirrored orders. GlobalARRK has also seen returns ordered without any protective orders when a risk has been identified. She shared a parents’ experience with undertakings in one case: protections were ignored, leading to destitution, criminalisation, and loss of custody. She emphasised that perpetrators frequently breach court orders. Citing [Edleson and Shakness \(2024\)](#), Roz Osborne noted that relying on an abuser’s compliance perversely places the effectiveness of protective measures in the hands of the person whose conduct necessitated the protection in the first place.
- 122 She added that protective measures are often short or medium-term, creating safeguarding gaps. In one case, rent support lasted only three months, leaving the mother unable to work and financially insecure. In another, promised domestic abuse services proved inadequate; the mother became homeless and eventually returned to her home country without her child. Victims also struggle to navigate foreign legal systems without assistance. She emphasised that real safety

⁸ See, in particular, the Ouro Preto Protocol on Precautionary Measures of 1994, currently in force within Mercosur, and the Agreement on the Recognition of Protection Measures for Women in Situations of Gender-Based Violence, adopted in 2020, which has not yet entered into force.

depends on support networks, legal rights, language skills, healthcare, and financial security—factors that go beyond court orders. In closing, Ruth Dineen stressed that the Guide to Good Practice must recognise that mirrored orders can be just as ineffective as undertakings in mitigating grave risk. She made reference to [GlobalARRK's report: 'The Guide to Good Practice on Article 13\(1\)\(b\): Domestic Abuse Perspective'](#), which advocates for a revision of the Guide to Good Practice, including a victim-centred approach. When grave risk is identified, the safest option is a non-return order.

- 123 **Judge Myriam de Hemptinne** described the approach to protective measures in Belgium, a civil law State. Based on the facts provided in the hypothetical case, the court seised of the return decision could oversee the separation of the parties prior to the return of the child, as well as the arrangement of the child's custody, even on a provisional basis, as part of a matrix of protective measures for the return of the child. Ensuring that the taking parent feels safe and protected in returning and not interrupting the child's system of primary care is an extremely important element. To do so, many protective custodial measures can be taken, both by the court of the State of habitual residence acting expeditiously within summary proceedings as the case may be and by the courts seised of the return application, which can work together – securing accommodation for the taking parent and the child, ensuring separation between the parents, child support, welfare orders and access rights. Even a provisional relocation decision by the judge in the State of habitual residence can be considered a protective measure, pending further investigation by this judge. All this could form part of the aforementioned matrix of protective measures, which can either be shorter- or longer- term, depending on the needs of the child and the facts of the particular case. She underlined the usefulness of the 1996 Child Protection Convention in this regard, as it provides common rules for jurisdiction and for the recognition and enforcement of protective measures, which is crucial in the context of international child abduction cases.
- 124 She mentioned some common misconceptions regarding return proceedings / decisions, for instance that, upon return, the taking parent is expected to hand over the child to the left behind parent and that the return decision is determinative of where the child ought to live in the future. This is not the case. She noted that, if both the State of habitual residence and the State to which the child has been removed or retained are Parties to the 1996 Child Protection Convention, taking compatible protective measures that can facilitate a safe return is much more straightforward. Direct judicial communications, including via the IHNJ, would make this task even more efficient and contribute to the protection of the child. She added that, if taken by the judge seised of the return application, such protective measures should be included directly in the return decision or subsequent decisions, thus avoiding the potential ineffectiveness of mirrored orders or undertakings.
- 125 Judge de Hemptinne noted that, particularly in a context of domestic violence, it is in the child's best interests that a new assessment is made as to their welfare, custody and best interests as soon as possible, and that this assessment be undertaken by the courts in the child's State of habitual residence, if possible and appropriate, and without any punitive mindset. In this regard, she underlined the importance of enhancing communication and cooperation between the judges involved in the case. In some cases involving domestic violence, it may be advisable for a relocation decision to be issued (either provisionally or as a final decision) before the case under the 1980 Convention is pleaded, as this would respect both the best interests of the child and the objectives of the 1980 Convention. The return proceedings remain subsidiary to the jurisdiction of the courts in the State of habitual residence and the decision on whether or not the child should return shall depend on any measures taken by the latter.
- 126 In closing, she noted three challenges in relation to protective measures: lack of experience / specialisation of judges who have jurisdiction on custodial matters, particularly with regard to taking decisions for a child who is not present in their territory while bearing in mind that the role of those

judges is to protect the child and not to sanction the taking parent, timing and coordination of the proceedings in both States concerned, as well as the need to raise awareness of all actors and parties about the potential benefits of coordinating the different proceedings.

- 127 In his presentation, **Justice Steven Arnold Majiedt** addressed the legal and practical challenges faced by victims of domestic violence who flee across borders with their children, only to confront applications under the 1980 Convention for the children's return. He noted that the dilemma lies in reconciling the Convention's goal of deterring international child abduction and respecting custody arrangements with the need to protect victims and children from harm. The Convention's "grave risk" exception under Article 13(1)(b), which allows courts to refuse return if doing so would expose the child to a "grave risk" of physical or psychological harm or an otherwise intolerable situation, has generated extensive litigation, particularly involving domestic violence allegations. In 2011, the HCCH identified domestic violence in return proceedings as a critical issue, emphasising the need for effective protective measures.
- 128 Justice Majiedt questioned whether current safeguards are adequate and whether courts fully utilise available mechanisms. South African law, consistent with global norms, mandates that custody decisions occur in the child's habitual residence. However, domestic violence complicates this principle, shifting judicial focus toward risk assessment and protective measures. Despite this, jurisprudential clarity is lacking both in South Africa and internationally, leaving courts struggling to balance competing interests. He noted that several South African cases illustrate these tensions. In **Central Authority v SC**, the court refused return due to insufficient safeguards, stressing the duty of the courts to implement effective protective measures. In **ES v T**, the Constitutional Court recognised domestic violence as a legitimate factor prompting the mother to flee and warned against trivialising such allegations. Conversely, in **Central Authority v LD**, the majority prioritised family unity over taking protective measures, a stance criticised for ignoring safeguards that could have mitigated risks. The minority opinion argued that return orders should include protective measures, aligning with earlier rulings. Justice Majiedt noted that delays in return proceedings remain problematic in South Africa despite regulations requiring their resolution within six weeks. Dedicated judges and prioritisation have not eliminated these delays, undermining timely protection.
- 129 Turning to the hypothetical cases, he outlined the need for any order issued by the court to balance return obligations with safety concerns: requiring maintenance payments, ensuring medical coverage, connecting the taking parent with the necessary social services, expediting custody hearings, restricting international travel without consent and refraining from criminally prosecuting the abduction. If enforceable in the other State, he noted that mirror orders may be of use in addition to adhering to the other recommendations contained in the Guide to Good Practice on Article 13(1)(b). He acknowledged that South Africa has not yet ratified the 1996 Child Protection Convention and that protective measures may lack recognition in some jurisdictions. In closing, Justice Majiedt underscored the need for courts to integrate effective and enforceable protective measures into return decisions to reconcile the Convention's objectives with safeguarding victims of domestic violence. Failure to do so risks exposing vulnerable parents and children to harm, undermining justice and the best interests of the child.
- 130 **Lady Morag Wise** noted that Scotland has concentrated jurisdiction for cases under the 1980 Convention, meaning that only 2 or 3 High Court (Court of Session) judges deal with all return applications. There are bespoke rules for Scottish cases of international child abduction, captured in Chapter 70 of the Rules of the Court of Session, involving a streamlined, expedited procedure the current version of which was introduced in 2014. The primary legislation, the Child Abduction and Custody Act 1985 is UK wide. Proceedings in Scotland are adversarial, but since the judges handling return cases are highly specialised, they employ careful case management to keep proceedings efficient.

- 131 After being served, the taking parent has 4 days to respond with their defence, if they want to raise one. The first hearing takes place 7 days after the initial 4-day notice period. At the first hearing, the judge will make orders for the production of affidavits, reports and any other documentation the parties would like to present to the court within 2 or 3 weeks after the first hearing. The taking of oral evidence is rare since the introduction of the expedited procedure, although it can be ordered in some cases. Lady Wise added that, since its recent incorporation of the UNCRC into domestic legislation, Scotland is moving towards hearing the views of children in all return cases, regardless of whether a defence has been raised. The second hearing takes place within 6 weeks of the filing of the return application. The written decision is issued within 3 to 4 weeks after the second hearing, sometimes sooner. If one of the parties feels that, for instance, protective measures were not sufficiently investigated or are not appropriate, an automatic appeal applies to all first instance return decisions as an extra safeguard to ensure decisions made in 1980 Convention cases are well considered and correctly decided. All judges who handle return applications in Scotland have received training on trauma, informed by the voices of those with lived experience of domestic abuse.
- 132 Applying the Scottish framework to the hypothetical case, Lady Wise noted that, at the second hearing, the judge will determine where, on the sliding scale of seriousness, the allegations sit, based on all the documentation provided and the submissions made by counsel. The judge will also examine whether the State of habitual residence can provide sufficient protection to ensure safety upon return. In the facts of the hypothetical case, the left behind parent offered, as a protective measure, to vacate the family home, change the locks and give the taking parent the only set of keys. Lady Wise noted that a Scottish judge would request specific, concrete information on the arrangements made to enforce this promise.
- 133 Lady Wise referred to a Scottish Court of Appeal decision from 2023, [AD v SD](#), where on appeal, the return decision was reversed because the court was not satisfied that the left behind parent, who had a history of breaching court orders, would abide by the panoply of protective measures he offered. In a more recent decision, [Petition of DBH \(2025\)](#), the court refused to order the return of a child due to the existence of an arrest warrant against the taking parent, as this would place the child in an intolerable situation upon return. Lady Wise emphasised that bringing criminal charges against the taking parent is counterproductive. She drew participants' attention to the [Scottish Fact Sheet on protective measures](#), published in October 2025. In closing, she underlined that judicial impartiality and compassion are not mutually exclusive concepts and are particularly prerequisites in cases as sensitive as these.
- 134 **Alexandre Boiché** introduced himself as an international family lawyer specialised in cases under the 1980 Convention and clarified that he only accepts left behind parents as clients because he does not want to make submissions related to Article 13(1)(b) before a court. In general, he considers that appearing before a court to plead a case under the 1980 Convention is in a way a failure because, in his view, if both parties understand the provisions of the Convention, there should be a way to settle the case out of court. He explained that his left behind parent clients surprisingly do not necessarily want to secure the return of the child with their application under the 1980 Convention. Rather, they want to assert their rights vis-à-vis the child and have those rights respected. In some cases, the left behind parent has no issue with the child relocating abroad, so long as they have regular access to the child. He expressed his surprise at the current discourse that seems to suggest that the problem is the text of the Convention, particularly its Article 13(1)(b). He contended that perhaps the real issue lies at the domestic and societal level, with countries and communities failing to protect victims of domestic violence. He noted that it is not an acceptable solution to escape domestic violence by returning to one's country of nationality, thereby severing the child's links to their State of habitual residence. He noted that such a "nationalistic" solution could have perilous implications to the operation of international law as it

stands. He also expressed concern that some jurisdictions are in favour of non-return decisions being issued if a grave risk of re-exposure to domestic violence is established, calling it “catastrophic” because this will result in lawyers advising parents to obtain travel bans against the other parent to such jurisdictions out of fear that they will abduct the child and claim domestic violence to guarantee a non-return decision. He added that such an outcome would also be detrimental to victims of domestic violence.

135 He emphasised the importance of States who are Parties to the 1980 Convention also becoming Parties to the 1996 Convention. While the 1980 Convention can be seen as a tool, the 1996 Convention should be regarded as a box of tools. In closing, he noted the difficulty in France in obtaining proactive or pre-emptive protective measures in return cases, as in many cases the French juvenile judge will want to see the child and assess the case themselves before taking any protective measures.

136 Following this session, participants once again had the opportunity to examine the same set of [hypothetical cases and targeted questions](#) in breakout groups and discuss the topics evidence and protective measures in the light of those hypothetical cases. Each group then reported their findings to plenary.

I. Session 8 – The effects of return and non-return decisions

137 This session was moderated by **Dr Noelle Hunter** (United States of America), Clinical Assistant Professor, Founding Partner in the Coalition to End International Parental Child Abduction. The session consisted of interventions from the following speakers:

- Philippe Lortie, First Secretary, HCCH
- Juliana Wahlgren (Belgium / Brazil), Founding Director of Revibra Europe (*online*)
- John Gomez (Japan), Chairperson of Kizuna Child-Parent Reunion
- Alison Shalaby (United Kingdom), Chief Executive Officer at reunite International Child Abduction Centre (*online*)
- Judge Liina Naaber-Kivisoo (Estonia), President of the Viru County Court, Ida-Viru maakond, Member of the IHNJ

138 **Philippe Lortie** presented on the effect of return decisions, particularly on the legal conditions of the return. He noted that, in cases where the taking parent opposes the return under Article 13(1)(b) due to fear of domestic violence but the court finds that the exception’s threshold has not been met, it is crucially important to ensure the taking parent feels safe in returning to the State of habitual residence and that they will not be returning to a risk of continued violence both inside and outside the court. He added that the return decision must not prejudice the merits of any subsequent custody decision issued in the State of habitual residence and that there must not be inequality of arms between the parties in possible future custody proceedings. In this regard, he reminded participants of Article 19 of the 1980 Convention, which provides that a decision on the child’s return shall not be taken to be a determination on the merits of any custody issue. Swift return proceedings are paramount in the efforts to ensure that a return is safe and that it will help preserve the factual circumstances and assist in the proper determination of custody, if necessary.

139 He underlined that the State of habitual residence is generally the best placed jurisdiction to make a determination on custody and that, in accordance with Article 16 of the Convention, the courts in the State to which the child has been removed or retained should not make any custody decisions until a decision is made on whether or not the child should return. Simply put, in relation to their custody rights, neither the taking parent nor the left behind parent should derive any advantages, or suffer any disadvantages, as a result of the wrongful removal or retention. Custody decisions

following the decision on return or non-return should take into account all relevant circumstances and should be taken in the best interests of the child as the paramount consideration. In that regard, he emphasised that left behind parents and competent authorities should consider the adverse effect that criminal proceedings may have on the taking parent and their feeling of safety, which in turn jeopardises the effective operation of the 1980 Convention. If ordered to return, the taking parent and the child should feel safe in every regard – physically, psychologically but also in relation to possible future custody proceedings. In closing, he reiterated the importance of continuing effective administrative and judicial cooperation and raising awareness among Contracting Parties and relevant actors of the proper implementation of the Convention in these difficult cases.

- 140 In her presentation, **Juliana Wahlgren** emphasised that any discussion of the 1980 Convention today must consider systemic discrimination, gender-based violence, and anti-migrant policies. She introduced the concept of intersectionality, citing Kimberlé Crenshaw’s argument that without a lens trained to see overlapping forms of discrimination, laws and policies will fail to be inclusive. This perspective frames her analysis of two cases that illustrate the complexities of return decisions. She referred to two cases.
- 141 The first case involves a non-return decision in a case involving Hungary, Germany, and Brazil. A German father sought the return of his child after the Brazilian mother fled domestic abuse. The child, who held both Brazilian and German nationality, had spent most of his life in Brazil and was deeply integrated into the culture. Brazilian courts ultimately decided to keep the child in Brazil after ten months of deliberation. Factors influencing this decision included the child’s cultural and linguistic ties to Brazil, the father’s refusal to provide financial support, the binational status that eased residency issues, and the ongoing psychological support required by both mother and child. Legally, the father retained visitation rights but refused to exercise them, continuing instead to harass the mother online.
- 142 The second case concerns a return decision between Belgium and Brazil. A Belgian father requested the return of his 11-year-old son after the mother fled Belgium following severe domestic violence. Despite recognition of the violence, Belgian authorities failed to provide protective measures, prompting her to flee to Brazil. After two years, Brazilian courts ordered the child’s return, which was enforced through an armed police intervention at the mother’s home. Post-return challenges were significant: the child struggled to reintegrate into Belgian school and family life, the mother faced financial hardship and loss of residency status, and neither received adequate psychological support. Legally, the situation worsened when Belgian authorities initiated criminal proceedings against the mother, resulting in a prison sentence and a substantial fine.
- 143 Juliana Wahlgren argued these cases expose institutional discrimination and systemic bias against migrant women, compounded by inadequate protective mechanisms and inconsistent legal standards. She highlighted the justice gap created by courts’ failure to investigate thoroughly, lenient sentencing for aggressors, and burdensome proof requirements. Anti-migrant policies in Europe further stigmatise and criminalise women seeking safety for themselves and their children. She concluded by stressing that criminalisation—through fines, imprisonment, and travel bans—creates long-term barriers to child welfare and parental rights. These penalties vary widely across jurisdictions, adding unpredictability and complexity to cases under the 1980 Convention cases. She called for harmonised definitions of violence, operational guidance, and stronger protective measures to ensure justice and prevent further harm.
- 144 **John Gomez** emphasised the importance of children having access to both their taking parent and their left behind / seeking parent following a decision under the 1980 Convention. While such decisions are zero sum results where only one parent succeeds, children do not have zero sum relationships with their two parents. Children continue to have “existential loyalty” towards both

their parents (as mentioned by Annelies Hendriks earlier in the Forum) and want contact with both of them, even if a parent is a perpetrator of violence against the other parent. Ensuring access following a return or non-return decision is an element of prioritising the best interests of the child so that children can heal and reconcile with both parents after they have experienced or witnessed domestic violence and have been abducted internationally. In response to a question, he stated that all due appropriate precautions are needed to protect all parties when access is granted.

145 He suggested that practitioners representing left behind / seeking parents or taking parents, as well as others participating in the Forum, consider the perspective, feelings and motives of the other party. In his view, undertaking this role reversal exercise enables taking a child centred perspective, since the child observes and experiences both parents and not just the perspective of one of them. Doing this exercise may also promote more fruitful mutual understanding and discussion among Forum participants, which is the purpose of the Forum.

146 **Alison Shalaby** underlined that the continued research gaps prevent a thorough understanding of the short-, medium- and long-term effects of return decisions. She then dedicated the rest of her presentation to sharing a short video of a young woman sharing her experiences of being abducted twice as a child. The young woman was born in England to a Polish mother and a British Algerian father. When she was five years old, her mother retained her in Poland at the end of a holiday. Her father then used the 1980 Convention to request her return to England, but the Polish courts decided not to return based on a grave risk under Article 13(1)(b), due to the allegations of domestic abuse made by the mother. When she was 8 years old, her father abducted her from Poland to Algeria. When she was 12, she and her father returned to England, at which time her mother used the 1980 Convention to request her return from England to Poland. During those proceedings, she was appointed her own solicitor and the court decided not to return her on the basis of her own objections. The young woman noted that the two abductions and subsequent return proceedings meant that she had to adjust to new environments, cultures and languages three times, which had adverse effects on her mental health and resulted in a strained relationship with her parents, which is still healing. She emphasised that parents contemplating fleeing their State of habitual residence under any circumstances should carefully consider the effect an abduction will have on a child.

147 **Judge Liina Naaber-Kivisoo** spoke about the effects of return. By way of introduction, she noted that custody under Estonian family law is rather broad, encompassing many rights and responsibilities in relation to the child and their property. The right of a parent to relocate with the child falls within the scope of custody rights. Therefore, Estonia does not provide for a specific relocation process. The issue of relocation is determined during custody proceedings. Following a return order to Estonia, parents usually request termination of joint legal custody and visitation rights. Upon receiving such an application, the judge will grant legal aid for the child and assess whether the parties require legal aid and grant it. The judge will proceed to assess the access requests in the application and refer the parents to State funded mediation, but not in cases involving domestic violence. If mediation does not succeed, court proceedings begin. When assessing whether to terminate joint custody and grant primary custody to one of the parents, the court shall make its decision based on the best interests of the child and must take into account all relevant factors, including but not limited to the mental and physical capability of the parent to raise the child, their commitment to doing so, their emotional relationship with the child and the child's future living conditions. Cases are assessed and determined on the basis of their individual facts, with the best interests of the child as the paramount consideration. Abduction can be one of the many facts taken into consideration in custody proceedings, but it is not determinative. In closing, judge Naaber-Kivisoo discussed two cases decided in Estonia, which supported this notion.⁹

⁹ The cases referred to by judge Naaber-Kivisoo can be found at [this link](#) (in Estonian).

- 148 After the presentations from the panellists, participants watched a short video from **Jennifer Tveter**, wherein she shared her family's experience of proceedings under the 1980 Convention. Nearly three decades ago, Jennifer Tveter's mother struggled to safeguard herself and her children from domestic violence while habitually residing in the United States of America. Despite medical evidence and repeated pleas, U.S. family courts awarded custody to a violent parent. Faced with an impossible choice — remain in a system that endangered her children or seek protection abroad — Jennifer Tveter's mother decided to flee the U.S. and seek safety in her country of nationality, the Netherlands, triggering return proceedings under the 1980 Convention. Jennifer Tveter emphasised that the Convention's purpose is not bureaucratic enforcement alone, but the protection of children from harm. When the case reached the Netherlands, Dutch authorities confronted a moral and legal dilemma: would returning the children to the U.S. expose them to grave risk, thereby contradicting the Convention's protective intent? After thorough examination of evidence and listening to the children's voices, the Dutch government determined that returning them would endanger them rather than protect. In doing so, they upheld the spirit of the Convention, prioritising protection above procedure. This decision marked the first time a European State granted asylum to American citizens on the basis of domestic violence. More importantly, the case set a precedent for interpreting the 1980 Convention through a human rights lens. Article 13(1)(b), which allows for non-return when a child faces grave risk of harm, was applied broadly and compassionately, ensuring the children's safety. Jennifer Tveter contended that this case demonstrates the Convention's dual role: a mechanism of international cooperation and a sanctuary of safety.
- 149 She urged States to reaffirm the Convention's protective purpose, calling for the affirmation of Article 13(1)(b) as a human rights safeguard and for the application of the exception with compassion and diligence, prioritising safety over expediency. She highlighted the importance of ensuring independent child protection reviews before any return order, including trauma informed evaluations aligned with the UNCRC as well as the importance of transparency and data sharing so outcomes in domestic violence cases can inform best practices globally. She added that the Convention ought to be treated as a living instrument guided by the moral imperative to protect children and that judicial cooperation in the application of the Convention grounded in protection, treating the Convention as a living framework guided by the moral imperative to protect children.
- 150 Jennifer Tveter stressed that the 1980 Convention did not fail in her case; it fulfilled its promise. It became a bridge between law and humanity, justice and refuge. Because of the courage and compassion of those who applied it, three children were able to grow up in a safe environment. In closing, she noted that, when interpreted with integrity and empathy, the 1980 Convention does more than simply resolve jurisdictional disputes—it can save lives. She urged all relevant actors to reaffirm this vision, ensuring the Convention stands not only as a treaty between nations but as a testament to the global commitment to place the protection of children above all else.

J. Session 9 – Domestic violence in the Guide to Good Practice on Article 13(1)(b) - five years after

- 151 This session was moderated by **Ignacio Goicoechea**, Representative ROLAC, HCCH and consisted of presentations from the following speakers:
- Boni de Moraes Soares (Brazil), National Solicitor for International Affairs
 - Lord Justice Andrew Moylan (United Kingdom), Court of Appeal of England and Wales, Head of International Family Justice for England and Wales, Member of the IHNJ
 - Leslie Kaufman (Israel), Central Authority under the 1980 Convention

- Judge Graciela Tagle de Ferreyra (Argentina), Coordinator of the Office of International Judicial Cooperation of the High Court of Justice in the Province of Cordoba, Member of the IHNJ
- Christian Höhn (Germany), Central Authority under the 1980 Convention (*online*)
- Caroline Harnois (Canada), Lawyer at Lavery, Montreal

152 **Boni de Moraes Soares** highlighted three aspects of the Guide to Good Practice on Article 13(1)(b) for discussion - the notion that harm against a parent can constitute a grave risk to the child only in exceptional circumstances, the high threshold established for domestic violence to be considered a grave risk for the purposes of Article 13(1)(b) and the three factor assessment the Guide recommends regarding domestic violence (nature, intensity and frequency). He noted that these three elements of the Guide do not seem to reflect the reality of the cases coming before the Brazilian courts nor do they seem to be congruent with the current understanding of domestic violence. In addition, these elements arguably go beyond what the Convention provides, creating further restrictions and higher thresholds than the text of the Convention foresees. He noted that psychological research points to an interrelation between violence perpetrated against the mother and the impact such violence has on the child, even when the child is not the direct victim of such violence. He added that it is extremely difficult in some circumstances of violence, for instance sexual abuse, to go into assessments of frequency and intensity. The fact that such violence was perpetrated, even once, should be enough to constitute a grave risk. There should not be a requirement to examine how many times sexual abuse occurred and how intense it was. He noted that the Guide does not distinguish between, nor does it provide any further guidance on, the various types of violence that exist. While an examination of the frequency and intensity of psychological or financial abuse may be reasonable, other types of violence such as physical or sexual abuse by its very nature ought to merit no further examination in order to be considered grave enough for the exception under Article 13(1)(b).

153 Citing the recent decision from the Brazilian Supreme Court, he explained that the standard of proof in international child abduction cases that involve allegations of domestic violence is not the traditional standard of beyond reasonable doubt or even the balance of probabilities standard. Instead, the Supreme Court of Brazil indicated that concrete and objective indications of domestic violence will suffice. In his view, this slightly lower standard of proof in cases of domestic violence embodies the gender perspective which ought to be applied in this context. The Guide recommends putting protective measures in place when grave risk is found, in order to mitigate said risk and facilitate a return. In some jurisdictions, this is an obligation for the courts while in others it is optional. In Brazil, if a grave risk is found and the exception under Article 13(1)(b) is established, courts are prohibited from putting protective measures in place in order to mitigate it. In such cases, the Convention already provides a solution to situations of grave risk: non-return. A finding of grave risk should not be ameliorated but avoided. He emphasised that protective measures are highly useful tools in situations where a grave risk has not been found but the judge nevertheless finds that some safeguards would be in the best interests of the child for their return to their State of habitual residence. There also seems to be a missed opportunity for the Guide to address and recall the responsibilities of the State of habitual residence in preventing both domestic violence and abduction, assisting in the collection of evidence as well as providing support for victims and access to justice. He further underlined that the 1980 Convention must be applied in conjunction with other international and regional human rights instruments (UNCRC, CEDAW, Istanbul Convention, Belém do Pará Convention etc). In closing, he highlighted that the 1980 Convention provides a solid framework to solve the problem but there needs to be a balanced and human rights informed interpretation of its provisions. He pondered whether the solution lies in amending the Guide or in drafting a standalone document dedicated to cases involving domestic violence.

- 154 **Lord Justice Andrew Moylan** noted that, prior to the drafting of the Guide, there was concern about variability of practice and lack of uniformity in the application of Article 13(1)(b), which led to the Conclusion and Recommendation to draft the Guide by the Special Commission at its 2011/2012 meeting, with the aim to promote consistency in the interpretation of Article 13(1)(b). A Working Group was established in 2013, which met over the course of 6-7 years. The drafting process involved considerable discussions and revisions, although members of the Working Group were aware they were producing general guidance and not drafting a legal instrument. The Guide collates a large volume of information, knowledge and experience in a single place, which is helpful for judges in their swift determination of cases under the 1980 Convention. The Guide is designed to inform and assist those who operate the Convention and must do so among a very broad range of experience and understanding. For instance, some judges may only handle one case under the 1980 Convention in their entire career and other judges may handle 100 cases. Lord Justice Moylan noted that consistency and coherence are foundational principles of the rule of law, and the Guide seeks to promote that in the context of Article 13(1)(b).
- 155 Lord Justice Moylan then made reference to some key aspects of the Guide and how those are applied in court decisions in England and Wales. From 2020-2025, the Guide has been referred to in 58 reported cases and is considered an important resource for judges. The Guide elaborates that Article 13(1)(b) addresses three types of grave risk: physical harm, psychological harm or an intolerable situation and the provision demands a forward-looking approach so that judges must consider the circumstances of the child upon return and whether those circumstances would expose them to any of the aforementioned grave risks. He noted that the courts in England and Wales follow the step-by-step analysis proposed by the Guide, which includes consideration of any available and appropriate protective measures (both general and specific). Lord Justice Moylan also recalled the distinction made in the Guide between protective measures (e.g., stay away order) and practical arrangements for the return (e.g., who will book and pay for the flights). He added that the Guide specifies that, unless undertakings can be enforced in the State of habitual residence, they should be used with caution, particularly in cases involving domestic violence. In closing, he recalled that, at its meeting in 2023, the Special Commission encouraged the wider dissemination of the Guide and underlined that it should be read as a whole.
- 156 As a member of the Working Group that drafted the Guide, **Leslie Kauffman** recalled the challenge of creating a tool that could be used in all States regardless of their system of internal law. The goal of the Guide is to promote uniformity and consistency among States in the interpretation of Article 13(1)(b). She noted that cases involving Article 13(1)(b), including those cases where allegations of domestic violence have been made, are fact specific. She underlined that cases involving domestic violence are extremely sensitive and complex which requires relevant actors to be sufficiently trained. If interpreted and applied properly, Article 13(1)(b) can provide recourse and protection in such cases, whether the outcome is a return or non-return, and the Guide is designed to assist in this endeavour.
- 157 She explained that the role of the Central Authority in such cases is to ensure that the application goes before a court as quickly as possible in order for a judge to evaluate the claims therein. It is not the role of a Central Authority to do its own evaluation or dismiss any application under the 1980 Convention. The Central Authority is also responsible for disseminating the Guide and raising awareness to it among national judges. The Central Authority may also monitor the application of the Convention domestically in order to identify if there are any legal reforms that may be necessary, to facilitate or enhance its operation. Keeping the Country Profile up-to-date and complete is also of crucial importance, as this allows the operators of the Convention to evaluate whether a protective measure will be available or enforceable in the State of habitual residence. She emphasised the importance of effective cooperation and informed participants that, following the initiative of Central Authorities under the 1980 Convention, periodic meetings will be taking place

in order to facilitate the exchange of good practices and the resolution of practical issues in the implementation of the Convention. It is intended that one such meeting among Central Authorities will be dedicated to the topic of domestic violence. In Israel, domestic violence claims are made in many cases under the 1980 Convention but always in conjunction with other claims. According to the IHNJ Member from Israel, in almost all such cases, the claims of domestic violence are poorly substantiated.

- 158 She provided an example of a case in Israel¹⁰ where the court, on appeal, referred to the Guide. Although the appeal was ultimately dismissed, both the majority and minority judgments made extensive reference to the Guide. The majority judgment held that, in the light of the particular facts of the case, the return could be made, as social and welfare authorities were monitoring the family, and the Israeli court trusted the authorities in the State of habitual residence to continue their work with the family. The minority judgment held that there was a need to seek an expert opinion on the matter, which was not done at first instance. In another decision, issued by a U.S. court¹¹ regarding an application for a return to Israel, the court overturned a return decision on appeal, citing that abusing a parent results in psychological harm against the child. In closing, she emphasised the importance of continuing to disseminate the Guide and to keep resources like INCADAT up to date, in order to inform practitioners and relevant actors informed of best practices and new developments in the area.
- 159 **Judge Graciela Tagle de Ferreyra** noted that, in Argentina, in all cases where the grave risk exception is relied upon, a technical team composed of a psychologist, a social worker and sometimes a psychiatrist, intervenes in the case. The voice of the child is heard, and the decision is made in the best interests of the child. She referred to a [leading case from 2022](#) where the Supreme Court of Argentina overturned the first instance ruling of non-return and ordered the return of the child to Mexico. In that decision, the Court established important criteria that structure the interpretation of Article 13(1)(b), namely that evidence of grave risk must be compelling and clear and domestic or gender-based violence is not an autonomous assumption, but rather a type of grave risk. The court highlighted that the focus must be on the child, the subject to whom the assessed risk applies. The court's analysis requires proof that the return would pose a grave risk to the child, and that no effective protection measures are available in the State of habitual residence.
- 160 Making reference to several recent decisions from Argentinian courts, Judge Tagle noted that although the Guide is not explicitly referred to in the text of the decision, it is clear that its content is being considered and applied in the judges' deliberations and that the Guide has become an indispensable tool. Referring to a recent case between Argentina and Uruguay, Judge Tagle noted that despite the advances made in the application of the Guide and the gender-based approach to addressing Article 13(1)(b) cases, the grave risk does not end once a non-return order is issued nor is it eliminated by ordering an isolated protective measure. These cases require follow up and sustained international agency. The Guide cannot operate in isolation – its effectiveness depends on an articulated response system between the judiciary, administrative authorities and social services. In closing, she noted that the Convention is capable of adapting to social and legal changes and can adequately respond to cases involving domestic violence, since the text is given practical effectiveness through Guides to Good Practice and caselaw, which serve as dynamic tools of interpretation.
- 161 In his presentation, **Christian Höhn** reflected on the principles, implementation and impact of the Guide to Good Practice on Article 13(1)(b) in Germany and across the European Union. He noted that the Guide is built on the fundamental scheme of the 1980 Convention, wherein the return of the child is the rule, and the non-return is an exception. It offers practical recommendations for

¹⁰ Family Case Appeal 4378-12-20, District Court of Haifa, 30 December 2020.

¹¹ United States District Court Southern District of Florida, case no. 24-24340-CIV-ALTONAGA/Reid, 7 March 2025.

managing cases, including structural and organisational measures such as court specialisation, judicial training, and effective case management, as well as guidance on determining grave risk, particularly in cases involving domestic violence.

- 162 Since the Guide's publication, he noted that significant developments have taken place. Germany and the EU have strengthened legal frameworks addressing domestic violence through instruments like the Istanbul Convention and related EU and domestic laws. Germany has established specialised courts and holds annual judicial seminars. Training and resources have also expanded at the EU level, supported by the European Judicial Network. Legislative changes influenced by the Guide include Article 27 of the Brussels IIb Regulation, which allows courts to impose provisional protective measures in child return cases.
- 163 According to the Guide, Central Authorities should not evaluate exceptions or allegations of domestic violence; these determinations are for the courts seised of the return application to make. Germany adheres to this principle, forwarding all such matters to judicial authorities. When assessing grave risk, the Guide insists on a case-by-case, forward-looking approach. Risk factors must directly relate to the child and persist upon return. Past incidents alone are insufficient, and the threshold for grave risk is intentionally high to ensure exceptions remain narrow.
- 164 Protective measures play an important role when risk is established. Courts are encouraged to mitigate harm through such measures, though challenges like jurisdiction and enforceability do persist. The 1996 Convention and EU instruments help address these issues. Christian Höhn underlined that cooperation and communication between Central Authorities and judges are essential for implementing adequate arrangements.
- 165 He noted that, globally, there is a tendency towards more refusals of return, reflecting stricter adherence to the rule-exception framework. In Germany, courts maintain a high threshold for grave risk and favour settlements, which often include undertakings or protective measures. German jurisprudence emphasises that return concerns only the child's relocation and does not relate to issues custody.
- 166 Domestic violence remains a sensitive issue requiring careful, individualised handling. He noted that the Guide is widely accepted, integrated into training programs, and translated into all EU languages. However, he stressed the need for greater dissemination and awareness to ensure its continued relevance and effectiveness. In closing, he noted that the Guide remains valid, practical, and comprehensive. Its key principles—return as the rule, non-return as an exception, grave risk assessed rigorously, and protective measures considered where necessary—continue to shape practice. The challenge ahead lies in promoting the Guide among practitioners.
- 167 **Caroline Harnois** explained how the Guide is used in Quebec, Canada. Quebec does not have concentrated jurisdiction – the Superior court deals with both domestic family cases and cases under the 1980 Convention. She emphasised that domestic violence is taken very seriously in Canada which led to amendments in the country's Divorce Act, significantly strengthening the way courts deal with domestic violence. The Act now has a very extensive and broad definition of domestic violence, reflecting the full range of abusive behaviours that may manifest. Courts are obligated to consider the impact of abuse within the family when making any orders regarding the child and to ensure a better coordination between the family orders and any criminal orders in place. Canadian authorities also take their obligations under the 1980 Convention very seriously. She referred to the landmark decision of the Canadian Supreme Court in [Balev \(2018\)](#), which affirmed that a non-return is an exception under the 1980 Convention, the elements of which must be established by the parent opposing the return, and the court must interpret that exception in a way that does not erode the general rule.

168 She noted that the Guide has been disseminated in Quebec by the Central Authority. However, there is still some work to be done in its promotion, as not all lawyers and judges are familiar with it. In Quebec, applications are brought to the court by the left behind parent and not the Central Authority, but the Central Authority is represented in all court proceedings by the Attorney General of Quebec. It is the Attorney General of Quebec that makes sure the court is familiar with the principles of the 1980 Convention and is aware of the Guide. The first time the Guide was referred to in a published court decision was in 2022, in the Supreme Court judgment of *F. c. N.*, which was an abduction case involving a State that was not Party to the 1980 Convention. The decision quotes several paragraphs of the Guide. Since the 2022 decision, the Guide has been referred to in two published decisions coming out of Quebec, from 2023 and 2024. Both cases quote extracts from the Guide.

169 She noted that case law in Quebec is clear that domestic violence does not necessarily equate to a finding of grave risk and that such a determination depends on the circumstances of the particular case. There is a presumption in Quebec that the authorities of the State of habitual residence are as capable as the authorities of Quebec to respond and address domestic violence and to protect victims. However, when the taking parent can show that protection would not be available or sufficient in their particular case, the return will be refused. She elaborated on one such case, where the taking parent received death threats against herself and the child both before and after the separation with the father. Threats were also made to extended family, and her apartment was vandalised. In addition, the father had forcibly removed the child from her care and ran away, endangering the child's life. The court, looking at the evidence available, refused the return as it was not convinced the taking parent and the child would be sufficiently protected upon return. In closing, Caroline Harnois noted that the 1980 Convention is capable of protecting victims of family violence when interpreted and applied correctly. The Guide and further training are essential and open discussions in Fora such as this must continue.

K. Session 10 – Lessons learned and next steps

170 Session 10 was an open session during which participants could share their views on lessons learned and next steps. The session was co-moderated by **Lord Justice Andrew Moylan** (United Kingdom), Court of Appeal of England and Wales, Head of International Family Justice for England and Wales, Member of the IHNJ and **Justice Jhosep Y. Lopez** (Philippines), Associate Justice, Supreme Court of the Philippines.

171 **Lord Justice Andrew Moylan** noted that the presentations made during the Forum demonstrated the complexity and variety of the facts in cases under the 1980 Convention which involve allegations of domestic violence. He highlighted the importance of continuing discussions both internationally and domestically, in the context of events and conferences such as the Forum, as these promote the development of expertise and encourage the sharing of good practices among colleagues. This inevitably leads to development and evolution in the way in which the 1980 Convention is applied. The wide range of circumstances in which the Convention is being applied necessitates flexibility in order to be able to adapt to changing social realities. He noted that, out of the 67 cases reported in England and Wales during the period of 2020-2023, 40 resulted in a return order and the remaining 27 resulted in a non-return order. In some of those cases, the mother was the applicant and the father, in opposing the application relied on Article 13(1)(b), which included allegations of domestic violence. Nine of those cases resulted in a return order and four resulted in a non-return order. He repeated that there is a wide range of circumstances in which courts are having to make determinations, making open-minded, flexible, but careful approaches all the more important.

172 **Justice Jhosep Y. Lopez** expressed his gratitude to the government of Brazil for hosting the Second Forum. He noted that this Forum underscored domestic violence and coercive control as key factors

in determining whether a grave risk exists that justifies the removal / retention of children across borders. He emphasised that there should be no distinction between harmful and protective abductions, as all forms are inherently wrongful and cause profound harm to the child. However, the Convention provides flexibility in its exceptions to the general duty to return and allows courts to refuse a return if a grave risk of harm is established. Nuances in this regard necessitate continued dialogue and collaboration. Justice Lopez shared three key lessons that could be derived from the discussions during the Second Forum:

- The battle against child abduction and domestic violence necessitates a multidisciplinary approach. Legal frameworks alone are insufficient if detached from social realities. Laws and policies must be informed by interdisciplinary knowledge in the field of psychology, gender and human behaviour. Domestic violence is not merely a legal problem but a complex social and psychological issue that necessitates various approaches. The overarching principle that should guide all of these approaches is the best interests of the child. Lived experiences should also inform the way in which laws and policies are shaped and applied. Operators of the Convention must remember that the perspectives of both the left behind and the taking parent merit understanding. Every case is unique, and States must consider the complex human contexts underlying them.
- The battle against child abduction and domestic violence requires strong cooperation between and among jurisdictions. A common thread runs across all presentations – a critical factor in the Convention’s proper operation is strong inter- and intra-jurisdictional cooperation, which has the ability to transform the Convention from a static legal instrument to a living framework of protection and of justice. When Central Authorities, judges, social institutions and the private sector effectively collaborate, they honour international obligations and uphold human dignity. No country or institution can face domestic violence and child abduction alone.
- The battle against child abduction and domestic violence is not won by mere dialogue but by the timely enforcement of responsive law and policy. Discussions must be transformed into concrete action. Without enforcement, real change cannot take root. The Convention risks becoming obsolete if laws and policies remain unenforced. Inaction not only stalls progress but also perpetrates harm, allowing children and families to continue to suffer. The breakout groups and case studies during the Forum assisted participants in deepening their understanding of the Convention and helped contextualise its application within their own systems and cultural realities. They revealed both the promise and challenges of ensuring meaningful enforcement. In closing, he noted that the Forum stands as a collective vow to never be silent in the face of suffering and marks a renewed commitment to keep speaking, listening and acting, to ensure that no one who experiences domestic violence and child abduction is faced with silence ever again.

173 The moderators then opened the floor for interventions by participants.

174 Many participants emphasised that the operators of the 1980 Convention share fundamental objectives: safeguarding children from the harmful effects of international child abduction and ensuring that domestic violence is never tolerated. They acknowledged the complexity of cases where these issues intersect, noting that simplistic solutions are inadequate. Judicial authorities must assess the facts of each case and render decisions appropriate to the specific circumstances. While concerns regarding the Convention were acknowledged, a number of participants reiterated that it is a legal instrument operating within a broader framework; systemic deficiencies beyond its scope cannot be addressed by the Convention alone. National standards of proof and procedural rules must be respected, and it is not within the mandate of the HCCH to enact changes in this regard.

- 175 Other participants noted that absolutism is unhelpful and called for nuanced analyses that fully consider all relevant issues, including the complexities and pervasiveness of domestic abuse. It was noted that protective measures do not always mitigate grave risks, and the Guide to Good Practice should reflect this reality and ought to be viewed as a living instrument that requires periodic updating. Significant gaps in social support for victims before, during, and after proceedings were identified as requiring urgent attention.
- 176 Some participants acknowledged that inequality of arms adversely affects the proper implementation of the 1980 Convention and it is, therefore, critical to provide parties with speedy simple and accessible legal aid that is trauma informed. Collaboration with domestic violence experts was recommended to develop training for judges, Central Authorities, and practitioners. Further work is needed to improve protective mechanisms and collect data on their effectiveness. The need to clarify what constitutes an intolerable situation under Article 13(1)(b) was also highlighted.
- 177 Finally, some participants suggested that a future instrument on cross-border recognition and enforcement of protection orders may strengthen the global protection of victims and complement the Convention.

L. Concluding Remarks / Forum closing

- 178 The **Secretary General** offered some reflections as to concrete next steps and clarified which of those possible next steps would fall squarely within the HCCH mandate, which would require approval by CGAP, and which would go beyond it.¹² While actions to prevent international child abductions, which include creating support systems for victims of domestic violence, training on domestic violence and raising awareness of the impact of both domestic violence and child abduction, do not fall within the mandate of the HCCH, they are incredibly valuable tools that will have an impact on the operation of the 1980 Convention. He urged States to take concrete steps to work towards strengthening such support systems, to contribute to the prevention of international child abductions.
- 179 The Secretary General noted that work to ensure the sound operation of the 1980 Convention and Article 13(1)(b) in particular falls squarely within the mandate of the HCCH. This work includes monitoring the implementation of the Convention and facilitating discussions around its practical operation by holding meetings of the Special Commission, participating in conferences, providing technical assistance and training to States and the various operators of the Convention, gathering statistics and caselaw for INCADAT, publishing editions of the Judges' Newsletter, facilitating judicial cooperation via the IHNJ and promoting the utility of effective relocation proceedings (2010 Washington Declaration) and the availability of enforceable, effective protective measures. However, he noted that the development of relocation frameworks and the gathering of evidence required for the purpose of Article 13(1)(b) form part of domestic procedural laws, which goes beyond the mandate of the HCCH. He added that the development of practice guidance, protocols or model laws to complement and enhance the sound operation of the Convention in the context of domestic violence is very much welcome but also depends on the Contracting Parties themselves.
- 180 The Secretary General explained that the modality and form in which this interdisciplinary dialogue will continue will depend on a decision taken by CGAP. He noted that, in his view, the outcome of both the First and Second Forum need to inform discussions at the next meeting of the Special Commission. Until the next meeting of the Special Commission, he highlighted the need to find a way to continue the dialogue, subject to the approval of CGAP. He clarified that any consequential

¹² To access the visual material used by the Secretary General during his closing remarks, please click [here](#).

updates to the Guide to Good Practice will depend on a decision by CGAP, which will want to be informed by the outcome of a Special Commission meeting. This means that work on a possible revision of the Guide, or the development of a separate Guide specifically on cases involving domestic violence allegations, cannot realistically begin within the next 5 years.

- 181 Regarding the call for the gathering of more specific statistics, while this would be extremely helpful, such an exercise would need to be approved by CGAP following a specific proposal. The Secretary General welcomed the suggestion to resume work on the recognition and enforcement of protection orders that would guarantee the automatic cross border recognition of protection orders and ensure their transportability. He underlined that such work would be subject to a decision by CGAP.
- 182 In closing, he reaffirmed the PB's commitment to do everything within its mandate to continue to further nurture the operation of the 1980 Convention, and particularly Article 13(1)(b).
- 183 The Secretary General thanked the government of Brazil for the fruitful cooperation with the PB in organising the Forum. He thanked all participants for their active, meaningful and respectful engagement and all panellists for their contributions. He thanked the on-site technical teams, the master of ceremony as well as the spoken and sign interpreters for their invaluable assistance in ensuring the Forum ran smoothly and discussions could take place. He also thanked the PB team for their work in organising the Forum.
- 184 **Boni de Moraes Soares** thanked all participants for their engagement and spirit of collaboration. He emphasised that the Forum is not simply an academic exercise but a space for honest dialogue and collective reflection about some of the most complex challenges in international family law. He thanked the HCCH, the Ministry of Justice of Brazil and the government of Ceará for their partnership and commitment. He thanked the United Kingdom and the Philippines whose generous voluntary contributions made the Forum a reality. He also thanked his colleagues at the Office of the Attorney General for their support in organising the Forum. He noted that participants leave with the shared understanding that the application of the 1980 Convention and the duty to protect victims from domestic violence are not opposing goals but two sides of the same commitment: to protect human dignity. International cooperation only thrives when rooted in respect, empathy and mutual learning. The mission continues in the courts and in the daily practice of the operators of the Convention.