



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

Sandton, South Africa, 18-21 June 2024

### Opening address of Dr Christophe Bernasconi, Secretary General of the HCCH

Dear Deputy Minister Jeffery,  
Dear Dean Schoeman  
Honourable Justices,  
Distinguished participants,  
Esteemed guests,  
Dear colleagues, ladies and gentlemen,

Welcome! Welcome to this landmark *Forum on Domestic Violence and the operation of Article 13(1)(b) of the 1980 Child Abduction Convention* (the Forum).

It is truly humbling and gratifying to see that the proposal for this Forum has come to fruition, bringing together such a broad, diverse, relevant and esteemed group of expert participants. With about 100 attendees joining us in person and well over 300 connecting online from around the world, this Forum marks a historic moment. For the first time, the HCCH has convened representatives from all relevant perspectives to engage in an open, informal dialogue on the operation of the Child Abduction Convention within the context of domestic violence.

I wish to extend my heartfelt thanks to all participants for your commitment to this crucial dialogue. Your presence – whether in person or online – signifies our collective dedication to addressing this important and difficult issue.

I am particularly grateful to the Government of South Africa – thank you, Deputy Minister Jeffery, for your kind opening words and all the support from your Government; the University of Pretoria – thank you, Dean Schoeman, for co-hosting the Forum; and the University’s Centre for Child Law – thank you, Director Ozah, dear Karabo, for all your invaluable support and all your work to make this Forum a reality.

I also extend my sincere appreciation to Australia, Brazil, the Philippines, and the United Kingdom for their early support of the Forum and generous financial contributions, which have played a vital role in bringing us together. Thank you to all the Members of the HCCH for endorsing the proposal of the Forum. And, last but certainly not least, thank you to my colleagues at the Permanent Bureau for all their support and hard work in organising this event, in particular, my attaché Louwrens and my assistant Sophie, both of whom you know through numerous email exchanges. Sophie is here with us to provide further support during the Forum; we are also here with our colleague Philippe, the co-head of our Family Law Division, whom many of you of course also know. Additionally, I want to thank Sandrine, Jasmin (an intern from Canada), Leoné (a former intern from South Africa who has also joined us here in Sandton for the Forum), and another former intern, Loren, from Australia. It took a real team effort to make this happen – thank you all!

What brought us here? Allow me to take a moment to reflect on the journey that led us to this pivotal moment. It was through countless messages from domestic violence advocates prior to the 2023 Special Commission meeting that I became acutely aware not only of the real, practical importance of the subject matter but in particular of the huge interest and active engagement in this most delicate issue. The advocates’ impassioned pleas underscored the importance of a platform for an open, broad, and inclusive dialogue – a platform transcending the formalities of a Special Commission meeting (which in addition to HCCH Members and Contracting Parties, may only be attended by a limited number of pre-approved and invited international observers). I am particularly indebted to Roz Osborne and Ruth Dineen, both present here with us, and whose measured voices and commitment to a respectful and productive dialogue strengthened my intention to propose this Forum. Thank you both, you are also one of the reasons why we are here.

In the days ahead, we will have the privilege of hearing from voices representing all relevant perspectives as we examine the operation of Article 13(1)(b) within the context of domestic violence. We will hear real-life experiences from victims of domestic violence. Hear from psychologists, trauma and other related experts. From operators of the

Convention – judges, lawyers and Central Authority representatives. From left-behind or seeking parents. From academics. All these voices – your voices – are relevant. Without your collective input, there cannot be what I call a meaningful, continuing “evolution” of the Convention in an environment that has obviously changed.

As the Rapporteur of the Convention, the distinguished Spanish Professor Elisa Pérez-Vera, recently mentioned in an interview, gender-based violence was simply not taken into account when the Convention, including the 13(1)(b) exception, was drafted. “We had not become aware that it was a phenomenon,” she added. Nowadays, too often, we hear of mothers having been “Hagued”.

The expression does not sit well with me. I am, first and foremost, genuinely disturbed when I hear that a return has exposed a mother to renewed violence, with sometimes tragic endings. We all agree that such tragic endings must be prevented. But as Secretary General, I am also concerned about reputational issues for the HCCH in general and for one of our most visible Conventions in particular.

Because I also firmly believe that we are fortunate to have the Convention. It is the only global instrument dealing with child abduction. The existence of the Convention prevents abductions. Let’s not forget: a wrongful removal is also a form of violence. The Convention supports amicable, peaceful solutions. The Convention also produces good, right outcomes, outcomes that are in the best interest of children. And it does all this operating in an international context, in different cultural and social realities.

So, when I say evolution, it is with a view to making sure that the Convention also operates effectively in the difficult context of domestic violence, even if this issue was not part of the negotiations. Ensuring, and indeed consolidating, this evolution is possible – as evidenced by the cases involving domestic violence where the Convention did indeed operate effectively, leading either to a safe return or a non-return when safety could not be ensured.

My point is that if and when applied correctly, the Convention can provide recourse for victims of domestic violence. But we must ensure its proper operation. For the sake of the children, who are at the very heart of the Convention. For the sake of victims of domestic violence whose lives hang in the balance. But also for the sake of left-behind or seeking parents whose lawful interests must also be considered. As part of our dialogue, and to the extent possible, we must learn the appropriate lessons from the relevant case law – from the cases that went well, and from those that did

not go well. This should also lead to more consistency in the operation of the 13(1)(b) exception.

For this dialogue to be meaningful and effective, it must be inclusive. Hence this Forum. And for our discussions to be informed, we will also address relevant related issues. To name just a few: Time – a factor that often exacerbates the difficulties faced by those involved in child abduction cases, in particular cases involving domestic violence; to me time remains the biggest enemy of the Convention: the more time passes, the more difficult it is to ensure a return in the best interest of the child. The question of how to evidence alleged domestic violence (DV) – frankly, I do not think that simply raising DV is or should be enough, even in summary proceedings. Another most important, closely related topic is the need to provide victims of DV with effective access to support structures in their country – this also helps avoiding an abduction in the first place. Another topic is the adoption and enforcement of protective measures that are effective – a topic which of course also relates to the 1996 Child Protection Convention. The role of mediation and other forms of ADR – even if only to preserve a parental relationship and dialogue, in the interest of the child. Or how to envisage an agreed relocation, with or without the child; a relocation in the best interest of the child and which is also fair and just for the other parent. All important, relevant topics that we will discuss in the days ahead.

I extend my sincere gratitude to the members of the Steering Committee, too many to mention by name, but representing a wide array of stakeholders and experts, including actual operators of the Convention, representatives of victims of domestic violence, and representatives of left-behind or seeking parents. Together, we have crafted a rich and relevant programme (a packed one, I may add), a programme designed to inform and engage participants. So, a big thank you to all Steering Committee members for your time and input. If the spirit and tone of our discussions at the Steering Committee are any indication, I am optimistic about the quality of the dialogue that will unfold in the days ahead.

Looking ahead, what will be the outcome, a possible next step? Well, first I hope we will have an informative, productive and respectful exchange. That we all take valuable insights back home. That we come together and foster a common understanding that at the end of the day, we all pursue the same goal: the effective operation of the Convention. That is: effectively protecting children from the “grave risk” of domestic violence upon return, whether directed towards the child or the taking of fleeing parent. And when necessary, protecting that parent so as to protect the child from the grave risk upon return. But also giving due consideration to

the rights of the left-behind or seeking parent. All of this “expeditiously” and without performing a full assessment of the child’s best interest – because this is not what the Convention is supposed to lead to.

But since this is an informal meeting, we will not adopt Conclusions & Recommendations. Instead, the Permanent Bureau will prepare a Report that will simply summarise and reflect what has been said. During each Session. Without additional analysis or comment. A neutral report thus. This Report will eventually be shared with the Members of the HCCH as part of CGAP 2025 – the yearly meeting of our Council on General Affairs and Policy, and which determines the work programme of the Organisation.

That said, I also hope that this Forum is just a beginning and that our collective journey will continue. I hope this Forum is a catalyst for a continuing dialogue within the framework of the HCCH. That it will mark the inception of further Fora dedicated to addressing the complex issues at hand. Maybe during another Forum next year? Who knows...

Before I conclude, I want to emphasise the importance of maintaining a safe and respectful environment throughout the Forum. It is crucial, particularly as we hear from victims of domestic violence and their advocates who have bravely agreed to share their real-life stories. The same applies to the left-behind or seeking parents. I am committed to ensuring that the Forum remains a safe and secure space. I implore everyone to honour and respect the safety and feelings of all participants.

Similarly, I must also make it clear that open, contentious criticism of judges or Central Authorities’ work will not be tolerated. This Forum presents a historic opportunity for us to engage in an open, productive, dialogue – one that fosters understanding and collaboration.

Thank you for your commitment to these principles.

And so, I look forward to our fruitful and productive dialogue.

Thank you for your dedication, your participation, and your attention.

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