

Family Law

South Africa Hosts The Hague Conference on Private International Laws (“HCCH”)

In June 2024, Sandton, South Africa was the venue for The Hague Conference on Private International Laws (“HCCH”) inaugural forum focusing on “Domestic Violence and the Application of Article 13(1)(b) of the 1980 Child Abduction Convention”. This event’s timing was notably significant, occurring shortly after the establishment of a new governmental regime in South Africa, thereby symbolizing a period of transition while addressing pivotal matters in the realm of child protection.

The conference provided a platform to scrutinize the effectiveness of the 1980 Hague Convention in the context of domestic violence, a critical aspect often influencing decisions on child abduction cases.

The 1980 Hague Convention, ratified by 103 countries and effective in South Africa since October 1997, primarily aims to ensure the prompt return of children wrongfully removed or retained across international borders. The convention stipulates that the court where the child was habitually resident before the abduction should decide on matters of custody. “Each signatory country agrees in respect of a child abduction to its country, that it will not enter into a full investigation of custody, contact, or other parenting arrangements etc. in respect of the child, which instead will be left to the court in the country where the child was last habitually resident, and instead merely secure the child’s early and safe return”.

However, Article 13(1)(b) introduces a significant exception where there’s a ‘grave risk’ that the child’s return would expose such child to physical or psychological harm or otherwise place the child in an intolerable situation.

The conference sought to foster a comprehensive discussion among global delegates, focusing on interpreting and applying Article 13(1)(b) of the 1980 Hague Convention, which addresses the defense against returning a child if his/her home environment in their country would place them in an ‘intolerable situation’ or at ‘grave risk’ of harm. The event aimed to assess the status/functionality of The Hague Convention, examine its global adaptation, and determine its ongoing suitability in contemporary legal contexts.

The conference consisted of 11 sessions, each facilitated by experts from various fields, addressing multiple facets of Article 13(1)(b) in domestic violence contexts. Topics ranged from stakeholder roles, experiences of those affected, judicial considerations of children’s voices, mediation



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options, the risk assessments, post-decision child welfare, potential relocations, and the need for further research into these cases.

Each session was enriched by the participation of global experts, legal practitioners, and academics.

The conference proved highly successful, initiating an essential in-depth examination of Article 13(1)(b) within the framework of the 1980 Hague Convention. The forum reached consensus on the necessity for continued discussions, cooperative efforts, and comprehensive research to address this pressing international issue of the protection of children across borders, safeguarding children’s rights.

This event in South Africa not only reflected a moment of legal introspection but also set the stage for future global efforts in refining child protection laws under The Hague Convention.

The optimism surrounding the outcomes of this conference is palpable. Moving forward, we are hopeful that these collaborative efforts will lead to more robust, compassionate, and effective legal solutions worldwide, ensuring the safety and well-being of children across borders.



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Practice Area News

Pension Law – Established “Two-pot” System – Giving Early Access to Retirement Savings: On June 1st, 2024, President Cyril Ramaphosa has signed into law the Revenue Laws Amendment Bill of 2023 (hereinafter the “RLAB”), which establishes a “two-pot” system that gives members of retirement funds in South Africa access to retirement savings without having to resign or cash out entire pension funds. On 23 July 2024 the Pension Funds Act, 1956 was also amended in accordance with the Pension Funds Amendment Act, 31 of 2024 by inserting certain definitions to make provision for the implementation of the “two-pot” system as established in the RLAB. September 1st, 2024 had been set as the date for commencement of the Act.

Surrogacy Quandary: Does a Child Born from a Surrogacy Agreement have a Right to a Genetically Linked Sibling? Constitutional law – Children's rights – Surrogacy – s 294 of the Children's Act 38 of 2005 – declarator sought that the requirement of use of a gamete of at least one of the commissioning parents to the exclusion of the genetic link between siblings is inconsistent with the Constitution -- provision found to be constitutionally valid. Read more [HERE](#).

Statutory Protection to Customary Marriages: In *Khashane v Minister of Home Affairs and Others* 2024 (5) SA 242 (GP) the applicant entered into a customary marriage before the Recognition of Customary Marriages Act 120 of 1998 commenced, but her spouse died before registration. Seeking to inherit her late husband's estate, she sought late registration, claiming ignorance of the Act's registration requirement.

The issue before the High Court was whether the husband's death before registration invalidated the marriage. The acting judge ruled that the Act should be interpreted broadly to recognise and protect customary marriages, granting them equal status with civil marriages despite registration timing. The court accordingly directed the Department of Home Affairs to condone the applicant's late registration. Read more [HERE](#).

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