ADOPTION

Prel. Doc. No 1
Doc. prél. No 1

July / juillet 2014

HCCH
HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

20 YEARS, 20 QUESTIONS: A QUESTIONNAIRE ON THE IMPACT OF THE *HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION* ON LAWS AND PRACTICES RELATING TO INTERCOUNTRY ADOPTION AND THE PROTECTION OF CHILDREN

drawn up by the Permanent Bureau

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20 ANS, 20 QUESTIONS : QUESTIONNAIRE RELATIF À L'IMPACT DE LA *CONVENTION DE LA HAYE DU 29 MAI 1993 SUR LA PROTECTION DES ENFANTS ET LA COOPÉRATION EN MATIÈRE D'ADOPTION INTERNATIONALE* SUR LE DROIT ET LA PRATIQUE EN MATIÈRE D'ADOPTION INTERNATIONALE ET DE PROTECTION DES ENFANTS

établi par le Bureau Permanent

Preliminary Document No 1 of July 2014 for the attention of the Special Commission of June 2015 on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

Document préliminaire No 1 de juillet 2014 à l'intention de la Commission spéciale de juin 2015 sur le fonctionnement pratique de la Convention de La Haye du 29 mai 1993 sur la protection des enfants et la coopération en matière d'adoption internationale

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INTRODUCTION

The Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Convention[1] will commence with a special day on "20 years of the 1993 Hague Convention" (the Convention was concluded on 29 May 1993 and entered into force on 1 May 1995).

This special day will be an opportunity to reflect upon and discuss the implementation and operation of the Convention over the 20 years it has been in force and to analyse what its impact has been on laws and practices relating to intercountry adoption, as well as child protection systems more generally. It will provide an occasion to assess the improvements which the Convention has brought about, as well as the challenges which remain concerning its implementation and operation.

The responses to this Questionnaire will assist the Permanent Bureau with preparing the discussions for this special day. They will form the basis for the Preliminary Document on this topic, to be drawn up by the Permanent Bureau. This Preliminary Document will outline key questions for States for discussion during the special day.

Please send your response to this Questionnaire to secretariat@hcch.net, for the attention of Laura Martínez-Mora (Principal Legal Officer) and Hannah Baker (Senior Legal Officer) **by no later than 10 October 2014**. The Permanent Bureau will place responses online on the Hague Conference website (< www.hcch.net >) unless expressly requested not to do so.

Please note: if information provided in your State's Country Profile for the 1993 Hague Convention (sent to States for completion at the same time as this Questionnaire) assists with your answer to any question herein, please cross-refer to your Country Profile. There is no need to repeat information.

Thank you for your kind co-operation as the Permanent Bureau prepares for this next Special Commission meeting.

[1] Full title: *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, "1993 Hague Intercountry Adoption Convention", "1993 Hague Convention", "1993 Convention" or simply "the Convention").

NAME OF STATE: Australia

DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:[2] 1 December 1998

<u>Information for follow-up purposes</u>

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A. THE IMPACT OF THE 1993 HAGUE CONVENTION ON LAWS AND PRACTICES RELATING TO INTERCOUNTRY ADOPTION IN YOUR STATE

1. Was the legislation in your State concerning intercountry adoption revised, or was new legislation enacted, as a result of, or in preparation for, implementation of the 1993 Convention? If so, please describe the main changes in practice which the revision / new legislation brought about.

   Treaties which Australia ratifies are not self-executing, requiring incorporation by legislation into domestic law. The Convention was implemented in Australian law through the Family Law (Hague Convention on Intercountry Adoption) Regulations 1998 (the Intercountry Adoption Regulations) made under section 111C of the Commonwealth Family Law Act 1975.

2. What changes, if any, did your State make to the identity and functions of the authorities and bodies involved in intercountry adoption as a result of the 1993 Convention requirements (*e.g.*, the creation / designation of new authorities / adoption bodies, different assignment of tasks)? How, if at all, have these changes affected intercountry adoption procedures in your State?

   Before Australia implemented the Convention, state and territory adoption authorities were responsible for intercountry adoption programs. The Australian, state and territory governments negotiated cooperative legislative and administrative arrangements to enable the Convention to operate in Australia.

   The Intercountry Adoption Regulations designated the Secretary of the Commonwealth Attorney-General's Department as the Commonwealth Central Authority (known as the Australian Central Authority), and allowed state and territory departments to be designated as central authorities under the Convention.

   The Commonwealth, states and territories negotiated the 'Commonwealth-State Agreement for the Implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption'. Under this agreement, the Australian Central Authority has a coordination role, and the state and territory central authorities handle many of the day-to-day functions.

   The Australian Central Authority has primary responsibility for developing and maintaining intercountry adoption arrangements with other countries and promotes Australia's compliance with the Convention. State and territory central authorities process adoption applications (including assessment, approval and allocation services).

3. (a) Please indicate the number of intercountry adoptions which took place from and / or to[3] your State:

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[2] This information is available on the "Status Table" for the 1993 Hague Intercountry Adoption Convention, accessible via the "Intercountry Adoption Section" of the Hague Conference website, < www.hcch.net >.
[3] Depending upon whether your State is a State of origin, receiving State or both.

(i) in the three years *prior to* the entry into force of the 1993 Convention in your State

Number of intercountry adoptions *from* your State (State of origin): n/a
Number of intercountry adoptions *to* your State (receiving State): The following figures were obtained from the Australian Institute of Health and Welfare:
1995-96: 274 intercountry adoptions finalised
1996-97: 269 intercountry adoptions finalised
1997-98: 245 intercountry adoptions finalised

(ii) in the three years *following* the entry into force of the 1993 Convention in your State

Number of intercountry adoptions *from* your State (State of origin): n/a
Number of intercountry adoptions *to* your State (receiving State): The following figures were obtained from the Australian Institute of Health and Welfare:
1998-99: 244 intercountry adoptions finalised
1999-00: 301 intercountry adoptions finalised
2000-01: 289 intercountry adoptions finalised

If precise figures are not available, please provide an estimate, indicating clearly that it is an estimate.

(b) Taking into account the figures provided in Question 3(a) above, please comment upon whether implementation of the 1993 Convention in your State has had an impact on the number of intercountry adoptions undertaken from and / or to your State. If so, please indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of intercountry adoptions undertaken (*e.g.*, implementation of the Convention's principle of subsidiarity,[4] increase / decrease in the number of States with which your State partners on intercountry adoption).

There were no dramatic changes in the number of intercountry adoptions to Australia in the three years following the implementation of the Convention in Australia.

4. In your State, has implementation of the 1993 Convention had an impact on:

(a) The costs[5] of intercountry adoption, including the transparency of these costs? If so, please provide details;

There is no evidence of a change in costs of intercountry adoption as a result of the implementation of the Convention. Both before and after the implementation of the Convention, fees charged by state and territory central authorities are open and transparent. In determining fees, the states and territories take into account Articles 11 and 32 which require that the service is not for profit and only reasonable fees are charged. Parents are given information about fees before formally commencing the process. Each fee is linked to a specific step in the adoption process.

In Australia, fees for intercountry adoption vary between jurisdictions, with each state and territory setting different fees. In 2012, fees ranged from AUD$2,706 to $10,503.

Over the past ten years, the cost to state and territory central authorities of intercountry adoption has increased per adoption. A decrease in the number of applications and child placement numbers has meant the fees contributed by applicants form a smaller percentage of the overall cost of the service. The rise in costs is related to the decreased number of children being adopted, increased waiting times while application files are processed in partner countries overseas and increased supervision periods post placement of adopted children. While these trends coincide with the implementation of the Convention, no causal link can be drawn.

and / or

(b) Contributions, co-operation projects and donations,[6] including their transparency? If so, please provide details.

Australia's 'Financial contributions and donations by prospective adoptive parents' policy paper outlines the difference between contributions and donations, and confirms that compensation should not be a motivating factor for birth families, institutions and authorities when considering placing a child for adoption. The paper also provides families with best practice guidelines given the complexities that can arise during the intercountry adoption process. It is aimed at ensuring families are aware of the Convention, and understand the need for payments made in the course of intercountry adoption to be appropriate, transparent, accountable and not for improper purposes.

The paper is available at:
http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/Pages/Intercountryadoptionpoliciesandkeydocuments.aspx.

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[4] See Art. 4 *b)* of the Convention and the *Guide to Good Practice No 1 on the implementation and operation of the 1993 Hague Intercountry Adoption Convention* at Chapter 2.1.1, available on the specialised "Intercountry Adoption Section" of the Hague Conference website < www.hcch.net >.

[5] For a definition of the term "costs", please see the harmonised *Terminology on the financial aspects of intercountry adoption,* available on the Hague Conference website < www.hcch.net > under "Intercountry Adoption Section" then "Expert Group on the Financial Aspects of Intercountry Adoption".

[6] For definitions of the terms "contributions", "co-operation projects" and "donations", please see the harmonised *Terminology on the financial aspects of intercountry adoption (ibid).*

5. How, if at all, has implementation of the 1993 Convention in your State affected the average *time* which it takes to complete an intercountry adoption?

   Please specify the causes of any change in timeframes, including whether these changes are attributable to a particular aspect of the intercountry adoption procedure and, if so, whether this aspect of the procedure takes place in your State or in other States.

   The average time to complete an intercountry adoption in Australia has been increasing for some time. This is attributed to a range of factors, including the number and characteristics of children in need of intercountry adoption as well as processing times in other States, rather than the implementation of the Convention in Australia.

   According to the Australian Institute of Health and Welfare, the median processing time (from approval of an applicant in Australia to placement of a child) has increased from 37 months (about three years) in 2007-08 to 61 months (about five years) in 2012-13. During this period the state and territory central authorities have maintained or improved their application processing times. The longer waiting times come from signficant increases in processing times in States of origin.

6. How, if at all, has implementation of the 1993 Convention in your State affected the processing of *non*-Convention intercountry adoptions (*i.e.,* intercountry adoptions to which the 1993 Convention does not apply)?

   Australia ensures the principles and standards of the Convention apply in practice to all intercountry adoptions, including those from the non-Convention countries with which we work.

   Australia currently has bilateral arrangements with two countries - South Korea and Taiwan. Australia is confident that adoptions through these programs are ethical and Convention compliant.

   As our two bilateral partners apply the principles and standards of the Convention, there are no significant differences in the adoption processes for these countries compared to our Convention partner countries. Both our bilateral partners require the same consents as our Convention partner countries, and we require the same level of documentation about the legal status or adoptibility of the child. Certificates confirming the consents of the relevant authorities in both the country of origin and the receiving country are also issued (in line with the requirements of Articles 17(c) and Article 23).

<u>State of origin questions</u>

7. (a) Have the main reasons for children becoming adoptable (whether domestically or intercountry) changed following implementation of the 1993 Convention in your State? If so, please identify those changes.

   n/a

   (b) Has the general profile of children in need of *intercountry* adoption in your State changed following implementation of the 1993 Convention? If so, please specify the main reasons for any change.

   n/a

   (c) Has implementation of the 1993 Convention changed the following aspects of the intercountry adoption procedure in your State?

      (i) The establishment of the child's adoptability including, where appropriate, how consents are obtained from the birth parents / family / child and how consideration is given to the child's wishes and opinions: n/a

      (ii) The information provided to, and the counselling and preparation of, an adoptable child: n/a

(iii) The provision of information concerning the child to prospective adoptive parents ("PAPs") (*i.e.*, under the 1993 Convention, the preparation of the report on the child): n/a

(iv) The matching of the child and PAPs: n/a

(v) The entrustment of the child to the PAPs: n/a

(vi) The making of the final adoption decision: n/a

(vii) The transfer of the child to the receiving State: n/a

(viii) The post-adoption services provided (*e.g.,* when and how an adoptee may access information concerning his / her origins): n/a

(ix) Other, please specify: n/a.

Receiving State questions

8. (a) How, if at all, has your State's counselling, selection and preparation of PAPs wishing to adopt *intercountry* changed following: (i) implementation of the 1993 Convention in your State; and / or (ii) if applicable, the changed profile of children in need of intercountry adoption in the States of origin with which your State partners?

(i) In the 20 years since the 1993 Convention, Australia has continued to support the delivery of services to assist in the education and preparation of adoptive families.
Now, preparation not only focusses on preparing families for the adoption process, but also for life after adoption. Australia seeks to ensure that PAPs are well informed about the challenges they may face during the adoption journey. The 'Nationally Consistent Core Curriculum' (NCCC) helps PAPs learn about the process, challenges and realities of adopting from overseas. It also informs families of the support available to them and covers various aspects of intercountry adoption, including:

- the legal framework for intercountry adoption in Australia (including the Convention and its principles)
- the realities of adopting from abroad
- preparation for applying and adopting
- information about adopting children with special needs
- general child development issues
- particular challenges such as attachment and adjusting to family life in Australia.

The NCCC has been implemented in each state and territory, so all Australian PAPs complete this training before adopting a child from overseas.

(ii) Children in need of intercountry adoption are increasingly older children, sibling groups, or children with special needs. To reflect this, during their compulsory adoption education seminars, PAPs learn about adopting a child with special needs and general child development. PAPs are also given information on organisations able to offer assistance and support if required.

When considering the adoption of a child with special needs, state and territory central authorities encourage PAPs to consider care plans. This may involve considering access to specialists (such as psychologists or medical professionals), services a child may require (such as appropriate schools), and the family's support networks in the community (for example, family support close by, or family members or friends who are teachers or health professionals).

(b) Has implementation of the 1993 Convention changed the following aspects of the intercountry adoption procedure in your State?

(i) How PAPs apply for intercountry adoption: No. PAPs continue to apply for intercountry adoption through state and territory bodies. When Australia implemented the Convention, these bodies became designated central authorities under the Convention, and retained many of their functions, including assessing and approving PAPs

(ii) The provision of information concerning the PAPs to the State of origin (*i.e.*, under the 1993 Convention, the preparation of the report on the

PAPs): No. Reports on PAPs were provided by Australian state and territory bodies prior to the implementation of the Convention, and this practice has continued since its implementation.

(iii) The procedure to accept a proposed match: Yes. Prior to the implementation of the Convention, Australian state and territory laws required that consents be obtained from the child's parent or guardian overseas in order for the adoption to be finalised in Australia. Since the implementation of the Convention, adoptions finalised overseas now require the consents under Article 17 to be included in the acceptance of any placement proposal.

(iv) The migration procedures for the child: Yes. Australia's laws were changed as a consequence of the Convention to ensure full and final adoption orders made by other States were recognised automatically by Australia. This means children adopted in Convention countries are permitted to apply for Australian citizenship while in their country of origin, and are then able to travel on an Australian passport.

(v) The post-adoption services provided: Yes. There has been a greater focus on the provision of post-adoption services since the implementation of the Convention in Australia. States and territories are partnering with non-government organisations to deliver appropriate services to adoptees and their families. They are also working closely with adoptees and providing social worker support to adoptees as they undertake origin searching.

(vi) Other, please specify: .

B. THE IMPACT OF THE 1993 HAGUE CONVENTION ON CO-OPERATION BETWEEN CONTRACTING STATES

9. Has implementation of the 1993 Convention had any influence on the choice of States with which your State "partners" in intercountry adoption (*e.g.*, due to the fact that your State has limited the number of States with which it partners or has ended co-operation with *non*-Contracting States)? If so, have these changes affected intercountry adoption procedures in your State?

Yes. When considering a new partner country, the overarching requirement from Australia's perspective is that the country upholds in practice the standards and safeguards of the Convention. Australia's intercountry adoption process is the same, regardless of whether a partner country is a Contracting State.

10. In your State's experience:

(a) What are the most significant changes to co-operation between Contracting States brought about by the 1993 Convention? Have any of these changes led to the safeguards of the Convention being more effectively respected (see Art. 1 *b)*)? If so, please provide examples.

Implementation of the Convention has improved communication between Contracting States and provided clear standards for countries to meet to ensure that the rights of children are respected and the intercountry adoption process is ethical and transparent.

(b) What are the most significant *challenges* which remain concerning co-operation between Contracting States to the 1993 Convention?

None. Co-operation between Australia and other Contracting States has been generally positive and constructive.

C. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE PREVENTION OF THE ABDUCTION, SALE OF AND TRAFFIC IN CHILDREN AND OTHER ILLICIT PRACTICES[7]

11. In general, has implementation of the 1993 Convention led to more effective prevention of the abduction, sale of, or traffic in children and other illicit practices within / from / to your State in the context of intercountry adoption?

If so, please provide specific examples of measures which have been introduced in your State as a result of the 1993 Convention and their effect.

Yes. The Convention sets out a framework for co-operation between State parties that is designed to prevent these illicit practices.

Australia will only open an intercountry adoption programme if satisfied that the partner country has safeguards and frameworks in place to support practical compliance with the standards and principles of the Convention.

Australia also regularly reviews its intercountry adoption programmes to ensure its partner countries' ongoing compliance with the Convention's standards and principles, and to identify risks of illicit practices. Depending on the circumstances, if illict practices occur Australia may close a programme, or introduce safeguard measures such as suspending a programme or limiting new adoption applications.

12. In particular, *prior to* implementation of the 1993 Convention, did your State experience, whether in your State or in other States with which your State co-operated, any of the following problems <u>in the intercountry adoption context</u>:

(a) Improper payments to family members, intermediaries, officials or others;

(b) Other improper inducements of the consent of birth parents / family to adoption;

(c) Fraud, such as misrepresentation of identity or false promises (*e.g.,* misrepresenting to birth parents the reason for a child's removal from his / her home);

(d) Forgery / falsification of documents;

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[7] "Illicit practices" in this Questionnaire refers to situations where a child is adopted without respect for the rights of the child or for the safeguards now contained within the 1993 Hague Convention. "Such situations may arise where an individual or body has, directly or indirectly, misrepresented information to the biological parents, falsified documents about the child's origins, engaged in the abduction, sale or trafficking of a child for the purpose of intercountry adoption, or otherwise used fraudulent methods to facilitate an adoption, regardless of the benefit obtained (financial gain or other)" (from p. 1 of the *Discussion Paper: Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases*, available on the "Intercountry Adoption Section" of the Hague Conference website < www.hcch.net >).

(e) Abduction of children for the purposes of intercountry adoption;

(f) Abuse of guardianship orders (*e.g.*, using such orders to remove children from a State of origin to circumvent intercountry adoption procedures);

(g) Bypassing the matching system of a State of origin (*i.e.*, undertaking matching independently in the State of origin, without the involvement of the appropriate authorities);

(h) Any other illicit practices?

If so, in your State's experience, has implementation of the 1993 Convention in your State *or in other States* had an impact upon the incidence and / or nature of these problems?

Australia is aware of improper practices in some partner countries prior to the implementation of the Convention. These practices occurred in both Contracting and non-Contracting States. The implementation of the Convention has provided clear standards and principles for Australia to meet to support the prevention of these problems, and a more defined process for raising issues.

D. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE RECOGNITION OF INTERCOUNTRY ADOPTIONS IN YOUR STATE

13. In your State's experience:

(a) Has the automatic recognition of adoptions made in accordance with the Convention (see Art. 1 *c)* and Chapter V) led to significant improvements for children adopted intercountry and their families?

Yes. Families do not need to go to court to seek recognition of adoption orders made overseas or 're-adopt' their children. The Australian Government has recently passed measures to ensure that adoptions from countries with which Australia has bilateral arrangements also receive the benefit of automatic recognition.

(b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? The main challenge for families in Australia concerning automatic recognition is that while their child can obtain citizenship with ease, without a legal 'event' in Australia (such as the recongition of an adoption order by an Australian court), their child may not be eligible for an Australian birth certificate in a number of jurisdictions.

In particular, please specify whether either (i) your State, or (ii) any other Contracting State with which your State co-operates, requires an *additional* procedure (*e.g.*, a registration procedure or court proceeding) to be completed in order to recognise an adoption made in accordance with the Convention.

Two Contracting States with which Australia works, the Philippines and Thailand, require trial custody arrangements to be in place for specific time periods before they give final consent to the adoption.

Families adopting from the Philippines are given guardianship orders and are permitted to travel back to Australia with their children during the trial period, and send post placement reports. After receiving the final report and satisfying itself the adoption remains in the best interests of the child, the Philippines central authority sends its final approval for the adoption, and the families finalise the adoption in an Australian court.

Families adopting from Thailand complete a simple adoption. After the trial custody period is completed, the post placement reports are submitted to the Adoption Board. If the Board approves the adoption, they issue the Article 23 certificate and the parents can apply to an Australian court (under Australia's Intercountry Adoption Regulations) to convert the simple adoption to a full adoption.

E. THE IMPACT OF THE 1993 HAGUE CONVENTION ON *DOMESTIC* ADOPTION AND *OTHER* MEASURES OF ALTERNATIVE CARE FOR CHILDREN IN YOUR STATE

Domestic adoption

14. (a) Please provide precise figures regarding the number of *domestic* adoptions which took place in your State: (i) in the three years *prior to* the entry into force of the 1993 Convention in your State; and (ii) in the three years *following* this date. If precise figures are not available, please provide an estimate, indicating clearly that it is an estimate.

(i) For the three years prior to the entry into force of the Convention (1998) the number of domestic adoptions in Australia were (figures from the Australian Institute of Health and Welfare):
1995-96: 217 adoptions
1996-97: 263 adoptions
1997-98: 178 adoptions.

(ii) For the three years following the entry into force of the Convention (1998) the number of domestic adoptions in Australia were (figures from the Australian Institute of Health and Welfare):
1998-99: 127 adoptions
1999-00: 106 adoptions
2000-01: 88 adoptions.

(b) Taking into account the figures provided in Question 14(a) above, please comment upon whether implementation of the 1993 Convention has had an impact on the number of domestic adoptions undertaken in your State. If so, please indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of domestic adoptions undertaken (*e.g.*, implementation of the Convention's principle of subsidiarity[8] including promotion of domestic adoption, or a decrease in the number of intercountry adoptions has caused PAPs to turn to domestic adoption).

While there was a decrease in the number of domestic adoptions after the implementation of the Convention in Australia, it is unclear whether the implementation of the Convention made intercountry adoption more desirable to families considering adoption. As noted in the answer to question 3 above, there was no major impact on the number of intercountry adoptions after the implementation of the Convention.

(c) Has implementation of the 1993 Convention had an impact on domestic adoption *procedures* in your State? If so, please explain how the 1993 Convention brought about these changes.

No. Domestic and intercountry adoption procedures in Australia are well aligned, but Australia is unable to attribute this to the implementation of the Convention.

[8] See Art. 4 *b)* of the Convention.

Other measures of alternative care for children

15. (a) Is there any evidence that implementation of the 1993 Convention has had an impact on the *number* of children: (i) living in institutions; or (ii) living in alternative permanent family care (other than adoption) in your State?

(i) None of which the Australian Central Authority is aware.

(ii) None of which the Australian Central Authority is aware.

If so, please set out that evidence and indicate, if possible, which of the principles or procedures of the 1993 Convention appear to have had a bearing on the number of children living in these situations (*e.g.*, the promotion of family preservation or reunification measures;[9] in-State alternative permanent family care promotion in revised / new legislation in preference to institutionalisation).

n/a

(b) How, if at all, has implementation of the 1993 Convention changed the *quality* of other alternative permanent family care measures available in your State for children who are deprived of parental care or at risk of being so deprived?

The Australian Central Authority is not aware of the implementation of the Convention changing the quality of other alternative permanent family care measures available for children in need in Australia.

16. How, if at all, has implementation of the 1993 Convention affected your State's approach to developing and implementing measures of family preservation and / or reunification?

Australia remains committed to developing and implementing measures of family preservation and / or reunification. Implementation of the Convention has not had a significant impact on Australia's approach.

F. VIEWS ON THE IMPROVEMENTS BROUGHT ABOUT BY THE 1993 HAGUE CONVENTION AND THE CHALLENGES WHICH REMAIN

In your State

17. In your State's view:

(a) What are the most significant *improvements* in intercountry adoption and / or child protection more generally in your State which have resulted from implementation of the 1993 Convention?

The Convention is the cornerstone of intercountry adoption policy in Australia. The most signficant improvement has been the co-operation and communication between central authorities in Australia and overseas. The standards set by the Convention have also allowed for greater recognition in Australia of adoptions finalised in Contracting States.

(b) Has implementation of the 1993 Convention had any *adverse effect(s)* on intercountry adoption and / or child protection more generally in your State?

The implementation of the Convention in Australia has largely been positive.

(c) What are the most significant *challenges* which remain in your State in relation to the proper implementation and operation of the 1993 Convention?

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[9] *I.e.*, implementation of the 1993 Convention's principle of subsidiarity (Art. 4 *b)* of the Convention).

Challenges remain for Australia in supporting some other Contracting States to adequately prepare children for intercountry adoption by an Australian family.

Challenges also remain for Australia to support some other Contracting States to manage intercountry adoptions that occur within the scope of the Convention but outside Australia's general intercountry adoption process. These include:

(i) 'Ad hoc requests' - when an individual requests to adopt a child from a country with which Australia does not have an existing intercountry adoption programme. The relevant state or territory central authority in Australia must accept the request, and have determined the suitability of the PAPs to adopt, before the PAPs are entitled to make a formal application for adoption.

(ii) 'Relative adoptions' - the adoption of a child living overseas by their biological relatives. A state or territory central authority in Australia may only facilitate a relative child adoption if its laws permit this. The child's country of origin must also have determined that the child is legally able to be placed for intercountry adoption, and that the adoption would be in the child's best interests.

Globally

18. In your State's view, *at a global level*:

(a) What are the most significant *improvements* in intercountry adoption and / or child protection more generally which have taken place as a result of the entry into force of the 1993 Convention and its implementation in an increasing number of Contracting States over the last 20 years?

(i) Greater safeguards for children
The most important improvement has been the establishment of international standards for assessing the adoptability of children in countries of origin. The standards and principles set by the Convention ensure the best interests of the child are the paramount consideration in intercountry adoption arrangements in Contracting States. The Convention has enabled these safeguards to be applied consistently across an increasing number of Contracting States.

(ii) Increased and improved coordination and communication between Contracting States
The establishment of a system of co-operation between central authorities in receiving states and states of origin has made communication simpler and more effective. Australia regularly accesses the contact details on the Hague website to contact central authorities to seek advice on individual cases and to investigate the viability of establishing new country programs. Australia regularly participates in discussions with a network of receiving country central authorities to discuss issues and concerns and share best practice models of operation.

(iii) Establishing international standards and principles
The Convention has set the international benchmark for intercountry adoption practices and policies. It has provided a framework for assessing intercountry adoption frameworks in both Contracting and non-Contracting states. Australia uses the standards and principles established by the Convention as the basis for determining which countries it will or will not work with. Australia has also greatly benefited from the expert advice developed and shared by the Hague Permanent Bureau on key intercountry adoption issues, particularly the Guides to Good Practice and Special Commission reports. Australia uses this advice to inform the development of intercountry adoption policies and practices. Australia has also contributed to the development of this advice through participation in working groups, Special Commissions and sharing staff with the Permanent Bureau.

(iv) Assistance for non-Contracting states
The Permanent Bureau's Intercountry Adoption Technical Assistance Program provides an important service to assist non-Contracting States to develop policies and practices consistent with the Convention. Australia supports the Permanent Bureau's work in developing the capacity of non-Contracting States to implement the Convention.

(v) Process for addressing issues of concern
The Convention establishes a transparent process for identifying and addressing improper or illicit practices in intercountry adoption. The standards and system of cooperation established by the Convention have enabled Australia to quickly and effectively deal with issues to better assist adopted people and their families.

(b) Has the entry into force of the 1993 Convention and its implementation in an increasing number of Contracting States over the last 20 years had *any adverse effect(s)* on intercountry adoption and / or child protection more generally?

The Australian Central Authority is not aware of any adverse effects of the Convention in Australia's partner countries.

The Australian Central Authority is aware that countries that have signed but not yet implemented the Convention, may be pressured to begin adoptions before they are ready. In some cases, receiving countries will fund the development of compliance in order for children to become available. Australia does not support receiving states placing pressure on countries of origin to meet the needs of PAPs in receiving states.

(c) What are the most significant *challenges* which remain today in relation to the implementation and operation of the 1993 Convention? Have these challenges changed / evolved over the past 20 years?

The most significant challenge is ensuring that Contracting States effectively implement the standards of the Convention in practice. While many countries are party to the Convention, the standard to which the Convention is implemented differs signficantly, particularly in countries of origin.

G. MONITORING AND REVIEWING THE IMPLEMENTATION AND OPERATION OF THE 1993 HAGUE CONVENTION

19. In your State's view, are the current mechanisms used to monitor and review the implementation and operation of the 1993 Convention satisfactory (*e.g.*, periodic Special Commission meetings, the development of tools to promote consistent interpretation and good practices)? Would your State consider any additional monitoring and / or review mechanisms useful?

Yes, the current mechanisms are satisfactory.

Australia would be interested in further monitoring or data collection in relation to expatriate adoption (citizens of one country carrying out an adoption while habitually resident in another country).

20. (a) Has your State benefitted from the services or assistance of the Permanent Bureau of the Hague Conference in relation to implementation and / or operation of the 1993 Convention? If so, please explain what service or assistance was provided and how it benefitted your State.

While Australia has used information on the Permanent Bureau's website and sought advice from the Permanent Bureau, Australia has not accessed the services and assistance of the Permanent Bureau directly in relation to the implementation of the Convention in Australia.

(b) Resources permitting, what *additional* services or assistance could the Permanent Bureau provide to facilitate the proper implementation and operation of the 1993 Convention?

n/a

If your State has any other comments concerning "20 years of the 1993 Hague Convention", please provide them in the space below: