

ADOPTION

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**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*

INTRODUCTION

The Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Convention¹ 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: CANADA

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:²
1997**

Information for follow-up purposes

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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.

In Canada, responsibility for adoption rests with the provinces and territories. Legislation implementing the Convention was therefore adopted in each province and territory. While all the Canadian jurisdictions follow and apply Convention principles and safeguards, the practices may vary from one province or territory to another (information is available in the Country Profiles). Accordingly, the responses below are general and may not always reflect the practices in each of the Canadian jurisdictions.

Generally speaking, the main change brought about by the implementation of the 1993 Convention was the establishment of Central Authorities with case management responsibilities in each of the provinces and territories, which resulted in more direct government involvement in the review and approval of intercountry adoptions. In one jurisdiction, implementation of the Convention reinforced already existing government involvement in the intercountry adoption process. Implementation of the Convention also resulted in the establishment of a Federal Central Authority which does not have case management responsibilities. Its role is to facilitate communication and cooperation between adoption authorities in Canada. Where requested, it may also contact foreign governments to assist provincial and territorial Central Authorities in acquiring case specific assistance from Canadian embassies abroad.

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?

In addition to the establishment of federal, provincial and territorial Central Authorities, implementation of the Convention led, in some provinces, to the development of licensed adoption agencies to facilitate intercountry adoptions.

In some Canadian jurisdictions, prior to implementing the Convention, intercountry adoptions were typically considered private arrangements; these provinces and territories did not take the same role they do today in approving applicants and adoptions. With the Convention, all PAPs who habitually reside in Canada must proceed through an adoption agency licensed in

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 >.

their province or territory of residence (in the 4 provinces that license agencies) or, where this is permitted by the province or territory of residence and the licensing province, an adoption agency licensed in another Canadian province or in the United-States of America. In the provinces that have licensed agencies, the role of the Central Authorities may vary depending on the extent of the responsibilities that the province has delegated to the licensed adoption agencies. In some jurisdictions, rules on the preservation of adoption records have also changed as a result of the implementation of the Convention.

3. (a) Please indicate the number of intercountry adoptions which took place from and / or to³ your State:

- (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):

Alberta: 300 adoptions (estimate)

Saskatchewan: 15 adoptions

Ontario: 1150 adoptions

Quebec: 2325 adoptions

New Brunswick: 24 adoptions

Prince Edward Island: 0

- (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):

Alberta: 240 adoptions (estimate)

Saskatchewan: 36 adoptions

Manitoba: 42 adoptions

Ontario: 1500 adoptions

Quebec: 1424 adoptions

New Brunswick: 77 adoptions

Prince Edward Island: 2 adoptions

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

³ Depending upon whether your State is a State of origin, receiving State or both.

- (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).

The statistics provided cover different periods because the Convention came into effect in the Canadian provinces and territories at different times (between 1997 and 2006). This is an important factor to keep in mind in considering the possible impact of implementation on the number of adoptions completed as other relevant variables may have affected the number of adoptions differently depending on the three-year period covered by the statistics.

All provinces and territories have observed a decline in the number of intercountry adoptions completed over the last 10 years regardless of whether or not the States of origin are party to the Convention. Therefore there may not be a direct link between the decrease and the implementation of the Convention.

The application of the subsidiary principle has led to a decrease in the number of healthy children aged 24 months and younger who are available for intercountry adoption. In addition, while the number of PAPs who are open to the possibility of adopting older and special needs children and who are capable to do so has increased, the number remains relatively low as compared with those PAPs who are willing and capable of adopting healthy and young children. The cumulative effect of these factors has led to the overall decline in the number of intercountry adoptions completed.

Other factors that may affect the number of intercountry adoptions completed include changes within the States of origin (whether Hague or non-Hague) such as socio-economic conditions, cultural attitudes towards intercountry adoption and domestic laws that may impact the availability of children for intercountry adoption.

4. In your State, has implementation of the 1993 Convention had an impact on:
- (a) The costs⁵ of intercountry adoption, including the transparency of these costs? If so, please provide details;

In Canada, generally speaking, the implementation of the Convention has increased the costs for intercountry adoption borne by PAPs.

In regard to costs incurred domestically, the increase may be due to, for example, costs resulting from the licensing of new agencies and for meeting licensing requirements, the preparation of home studies and updated home studies, increase in administrative costs, etc. The costs are more closely monitored and transparency has increased as many provinces have regulations dealing with costs and/or undue gain.

In regard to costs incurred by PAPs in the States of origin, the level of information available varies depending on the State of origin. While in some States of origin some information on costs is provided, they may be insufficiently controlled and monitored by the competent authorities. In other States, information on costs is generally lacking and there is not a sufficient level of transparency.

and / or

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".

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

In regard to contributions for cooperation projects that are coordinated directly through the Central Authority of the State of origin, there is more transparency than for other forms of contributions. However, the effectiveness of such projects on intercountry adoption programs and their possible impact on the number of child proposals received by contributing States are unknown.

“Donations” that are not truly voluntary are viewed as contributions. In many cases, transparency regarding how such contributions are used and by whom is lacking. In some States of origin, donations that are not monitored or overseen by the authorities may create an environment where licensed adoption agencies feel they must provide the maximum donations/contributions in order to ensure that child proposals are received.

Overall, all costs, donations and contributions borne by PAPs that are not specifically itemized or verifiable continue to be an important cause of concern.

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.

Implementation of the Convention in Canada has not affected the time to complete preparation of the dossier concerning the PAPs' suitability and eligibility to adopt before it is sent to the State of origin, or to finalize the procedure once a child proposal has been received. However, the average time to receive child proposals has increased and the length of the waiting period varies from one State of origin to another.

It is unclear exactly what factors have contributed to the increase in the waiting periods. However, the following factors may be considered: implementation of the Convention (and the subsidiary principle); changes to socio-economic factors, cultural attitudes towards intercountry adoption and domestic laws that impact the availability of children for intercountry adoption; and the relatively limited number of PAPs capable and willing to adopt older children or children with special needs.

At times, during the intercountry adoption process, changes to the intercountry adoption processes in the States of origin occur that delay or suspend the intercountry adoption program from continuing in the usual manner. As a result, such changes directly impact timelines.

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)?

Canadian provinces and territories apply Hague principles to non-Hague intercountry adoptions to the greatest extent possible. For example, where the conditions in a non-Hague State of origin raise concerns about the integrity of the adoption procedures, the provinces of Ontario and Quebec require that their licensed adoption agencies follow strict protocols to minimize the risks associated to such intercountry adoptions. Where the level of risk is high and where these provinces cannot adequately address the risks, such intercountry adoption programs are not authorized.

State of origin questions

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.

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)*.

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 some provinces, more training and preparation of PAPs is available and homestudy assessments are standardized as a result of implementation, while in others such changes were not a result implementation.

(ii) So far, the tools used for the selection, counseling and preparation of PAPs have been deemed sufficient to properly assess the suitability and eligibility. However, the increased complexities related to the needs of the children proposed for intercountry adoption may cause Canadian jurisdictions to change, adapt or strengthen existing tools.

- (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: The intercountry adoption application process varies from one province to another (see Country Profile Forms). In some provinces, the process was changed following implementation of the Convention.

(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): The provision of information concerning PAPs varies from one province to another (see Country Profile Forms). In some provinces, the applicable criteria have been changed to reflect Convention requirements for intercountry adoptions.

(iii) The procedure to accept a proposed match: The procedure to accept a proposed match varies from one province to another (see Country Profile Forms). In some

provinces, the applicable procedures have been changed to reflect Convention requirements for intercountry adoptions.

(iv) The migration procedures for the child: Implementation of the Convention has not changed migration procedures; however, applicable criteria have been changed to reflect Convention requirements for adoption.

(v) The post-adoption services provided: The provision of post-adoption services varies from one province to another (see Country Profile Forms). Generally speaking, post-adoption services have grown to accommodate and recognize the post-adoption needs of families who have adopted internationally.

(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?

In all cases, commitment by all State actors to truly implement the provisions and underlying principles of the Convention is pivotal. Canadian provinces and territories prefer working with States of origin that have fully and properly implemented the Convention and/or have processes that support the Convention's underlying principles and safeguards. At times, this can include States that are not party to the Convention. Also, it is noted that some States party to the Convention may not have fully and reliably implemented the Convention and/or may not yet be fully applying Convention principles and safeguards.

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.

The most significant changes include:

- the establishment of designated Central Authorities which facilitate the sharing of information on legal requirements and the roles and responsibilities of the competent authorities in their respective States, as well as communication between authorities on specific files;
- the process of accreditation of adoption agencies in the Receiving States coupled with the authorization process in the States of origin that have allowed for a more accountable procedural process; and
- the development of good practices between States (through Special Commission recommendations and conclusions and Guides to Good Practice).

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

The most significant challenges include:

- the need for Receiving States to acknowledge, respect and understand the responsibilities of the Central Authorities of the States of origin, and vice versa;
- the need for States of origin to consider and fully understand the impact of post-adoption reporting requirements on children and families and the fact that, once an adoption is completed and the child arrives in the Receiving State, he or she benefits from the same rights and protection as any other child;
- unresponsiveness of some Central Authorities to requests for information, assistance on specific cases or adoption issues;
- inconsistent governmental oversight or involvement in intercountry relative adoptions;
- lack of a common definition of what constitutes a domestic adoption and what constitutes an intercountry adoption (e.g. adoptions completed by non-resident nationals PAPs processed as domestic adoption); and
- lack of effective control and monitoring of adoption costs, donations and contributions to ensure transparency and that undue gain is not experienced.

C. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE PREVENTION OF THE ABDUCTION, SALE OF AND TRAFFIC IN CHILDREN AND OTHER ILLICIT PRACTICES⁷

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 it has. Where it is not possible to address suspicions or concerns through the competent authorities in the States of origin, Canadian provinces and territories will refuse child proposals or foreign adoptions in cases where PAPs have not followed proper processes or where reliable evidence of the child's availability for adoption has not been provided. These are very difficult decisions that impact a particular child's future. However, we believe that authorities in both States of origin and Receiving States must take a strong position on

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 >).

individual cases to effectively combat the abduction, sale of, and traffic of children. This is a joint responsibility.

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 in the intercountry adoption context:
- (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;
 - (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?

Yes, Canadian authorities have experienced and/or have had significant concerns about such practices in several countries. While implementation of the Convention has reduced the risk of occurrence and the incidence, States of origin and receiving States must remain constantly vigilant in cooperating to ensure that the Convention and best practices are considered and properly followed in each and every case.

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?

In those provinces where judicial recognition of foreign adoption orders was previously required, the automatic recognition has reduced costs and the number of steps for adoptive parents. Once the child enters Canada, the child is recognized as the child of the adoptive parents and is entitled to the rights and benefits of all children.
 - (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? In Canada, none. In other States, addressing situations where we receive incomplete certificates of conformity, or certificates containing inaccurate information.

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.

In Canada, none. We are aware that some Contracting States impose additional procedures (e.g. review of all adoption documentation) to determine attribution of citizenship to children adopted by non-resident nationals.

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)

Three years prior:

British Columbia: 818 adoptions
 Saskatchewan: 153 adoptions
 Manitoba: 509 adoptions
 Ontario: 4660 adoptions
 Quebec: 902 adoptions
 New Brunswick: 148 adoptions
 Prince Edward Island: 98 adoptions

(ii) Three years following:

British Columbia: 445 adoptions
 Manitoba: 544 adoptions
 Ontario: 4013 adoptions
 Quebec: 965 adoptions
 New Brunswick: 160 adoptions
 Prince Edward Island: 89 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 subsidiarity⁸ including promotion of domestic adoption, or a decrease in the number of intercountry adoptions has caused PAPs to turn to domestic adoption).

The statistics provided cover different periods because the Convention came into effect in the Canadian provinces and territories at different times (between 1997 and 2006). We cannot draw any inferences from the statistics. The number of domestic adoptions completed in Canada cannot be correlated to the impact of the Convention, through documentary evidence. Many factors such as new legislative requirements or policy directives regarding domestic adoption that came into force at the time of implementation or following implementation have impacted the number of domestic adoptions completed.

⁸ See Art. 4 b) 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.

Implementation of the Convention did not impact domestic adoption procedures in Canada. Domestic adoption procedures were and continue to be rigorous and involve a high degree of government and judicial oversight.

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) No

(ii) No

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 implementation of the Convention has not impacted the quality of these measures.

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?

The implementation of the Convention has not impacted family preservation or reunification measures.

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?

For most Canadian provinces and territories, the implementation of the Convention resulted in clearer framework and processes for intercountry adoption, as well as greater government involvement.

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

States of origin party to the Convention have fewer children that are available for adoption, and those that are available are usually older children or sibling groups.

Because there are fewer children available for intercountry adoption, licensed agencies in Canada are concerned about their sustainability. They are therefore looking for viable adoption programs from non-Hague States which may be less structured but where more children are likely to be available for adoption. This situation also essentially forces licensed agencies to accept requests for contributions (mandatory "donations") in Hague and non-Hague States to increase the likelihood of child proposals. Because licensed agencies in other receiving States are facing the same

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

dilemma, we observe that contributions have become an acceptable practice (if not, the norm) and that agencies may be forced to play a game of one-upmanship thereby increasing the risks of improper or undue financial gain.

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

The most significant challenges within Canada are:

- to remain constantly vigilant in the application of Convention principles;
- to regularly consider the impact of the Convention in each case; and
- to work with the various authorities or bodies domestically to maintain a high level of commitment to the principles of the Convention in the day to day operations to support the best interests of children.

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?

The most significant improvements globally resulting from the Convention are:

- prohibiting private adoptions;
- setting out clear rules for accreditation and, in particular, requiring that accredited bodies pursue only non-profit objectives;
- reinforcing the responsibility of States of origin regarding the establishment of a child's availability for intercountry adoption (subsidiarity principle, proper consents, proper counseling);
- reinforcing the responsibility of receiving States regarding the establishment of PAPs' suitability and eligibility to adopt;
- setting out clear conditions under which a child may be entrusted to PAPs and, in particular, requiring prior agreement by both States that the adoption may proceed (article 17c));
- requiring government involvement or oversight in States of origin and receiving States in the adoption process;
- prohibiting improper or undue gain;
- establishing official channels for communication and problem-solving between States through designated Central Authorities;
- setting out clear roles and responsibilities for States of origin and receiving States;
- facilitating the recognition of adoptions made in accordance with the Convention; and
- requiring the preservation of information regarding the child's origin and the right of access to such information.

- (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?

See also response to 17 b).

Another adverse effect is that some States of origin may be taking too much time to assess alternative placement measures domestically before a decision is made on the child's availability for intercountry adoption. We fully support the subsidiarity principle and the need to exhaust domestic options. However, we are concerned about the potential impact on children (including on their ability to bond with future adoptive parents and siblings) if decisions regarding their future are not made within reasonable timelines. Authorities must keep in mind the concept of the "dimension of time" for children and the possible consequences that unduly delaying decisions may have on their development.

- (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?

See also responses to 17 b) and 18 b).

Implementation of the Convention may require a fundamental shift in existing adoption practices and the enactment of implementing legislation and regulations. The effective operation of the Convention requires not only an ongoing commitment or willingness on the part of government authorities and all actors to properly and consistently apply the principles and safeguards, but also the capacity to do so. We are aware that there are States party that have not put into place the proper implementing legislation or regulations, that lack the ongoing commitment and/or that do not have the capacity to fully and appropriately apply the principles and safeguards of the Convention. Working or cooperating with these States poses important challenges.

Adoption of some special needs children presents a higher risk of failure, especially where the child's ability to bond with parental figures is severely impaired. The challenge is having the competent authorities in the State of origin and the receiving State working in a truly complementary manner to optimize the chances of successfully matching a child with PAPs suited to respond to their needs.

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?

Canada finds the current monitoring and review mechanisms helpful. We may also be open to considering additional mechanisms. That said, we would support more frequent Special Commission meetings (e.g. every 3 to 4 years) which would focus on specific themes, rather than on the operation of the entire Convention. In addition, as part of these meetings, we would support allocating time for informal workshops or smaller discussion groups on specific challenges identified in advance of the meetings. Consideration could be given to providing short summaries of the discussions in plenary. Canada would be willing to volunteer to chair such a workshop or discussion group if asked to do so.

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.

No

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

Services and assistance must be limited to those directly related to the implementation and the proper operation of the Convention and meet the conditions and criteria of the Strategic Framework for Post Convention Assistance, once adopted.

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