

Prel. Doc. No 1
Doc. prél. No 1

July / juillet 2014

**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:

Hong Kong Special Administrative Region (HKSAR) of The People's Republic of China

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:²1
January 2006**

Information for follow-up purposes**Name and title of contact person:**

Chief Social Work Officer (Family and Child Welfare)²

Name of Authority / Office:

Family and Child Welfare Branch, Social Welfare Department

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**A. THE IMPACT OF THE 1993 HAGUE CONVENTION ON LAWS AND PRACTICES
RELATING TO INTERCOUNTRY ADOPTIONIN 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 practicewhich the revision / new legislation brought about.

The Adoption Ordinance was amended in July 2004 to give effect to the Hague Convention and the amended Adoption Ordinance has been taken effect since 25 January 2006. It provides a statutory framework for handling intercountry adoptions under the Hague Convention.

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

Upon commencement of the amended legislation, the Director of Social Welfare (DSW) is appointed as the Central Authority (CA) in the HKSAR and an accreditation system is put in place to allow non-governmental organisations duly accredited to perform duties delegated by the CA in relation to intercountry adoption, including assessment of the suitability of the applicants as prospective adoptive parents (PAPs) as well as making arrangements for adoption placements and monitoring such placements. The Court of First Instance of the High Court is empowered to hear Convention adoption applications and to grant Convention adoption orders.

3. (a) Please indicate the number of intercountry adoptions which took place from and / or to³ your State:
 - (i) in the three years prior tothe entry into force of the 1993 Convention in your State

Number of intercountry adoptions *from* your State (State of origin):

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.

Year	No. of children departed from HKSAR for adoption
2003	18
2004	26
2005	30

Number of intercountry adoptions *to* your State (receiving State):

We have not captured the figures for the years from 2003 to 2005

- (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):

Year	No. of children departed from HKSAR for adoption
2006	34
2007	21
2008	16

Number of intercountry adoptions *to* your State (receiving State):

Year	No. of applications (home study approval)
2006	Not available
2007	5
2008	8

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).

No significant impact on the number of intercountry adoptions undertaken from and / or to the HKSAR is observed.

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;

According to the provisions of Adoption Ordinance, the payment to accredited bodies (ABs) for the cost and expenses incurred in relation to adoption should be reasonable. Prior approval of the CA (i.e. DSW) for the fee schedules of ABs is required before the implementation of fee charging and fee revision. Up-to-date schedules of fee charging for adoption services should be also available for the public.

and / or

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

Contributions, co-operation projects and donations made by the PAPs to the ABs are not allowed. To meet the requirements for accreditation, the ABs should have separate and clear accounts for adoption services and submit their annual audited financial reports to the CA for vetting.

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 CA has not captured the figures of average time taken to complete an intercountry adoption.

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)?

The amended legislation also provides a statutory framework for handling non-Convention intercountry adoptions which should be handled by the ABs.

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.

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*).

No change

- (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.
- No change
- (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: No change
 - (ii) The information provided to, and the counselling and preparation of, an adoptable child: No change
 - (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): The information concerning the child provided to PAPs should be gone through the AB in the HKSAR and the CA/AB of the receiving State.
 - (iv) The matching of the child and PAPs: The matching should be conducted by the AB with the endorsement of the CA.
 - (v) The entrustment of the child to the PAPs: The CA and AB should be involved in the entrustment of the child to the PAPs.
 - (vi) The making of the final adoption decision: No change
 - (vii) The transfer of the child to the receiving State: Relevant legal provision to streamline the practice is in place.
 - (viii) The post-adoption services provided (e.g., when and how an adoptee may access information concerning his / her origins): No change
 - (ix) Other, please specify: Nil.

ReceivingState 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) No change
 - (ii) No change
- (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: PAPs should approach the AB in the HKSAR to apply for intercountry adoption.
 - (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 information concerning the PAPs provided to the State of origin should be gone through the AB in the HKSAR and the CA/AB of the State of origin.
 - (iii) The procedure to accept a proposed match: No change
 - (iv) The migration procedures for the child: No change
 - (v) The post-adoption services provided: No change
 - (vi) Other, please specify: Nil.

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?

Nil

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.

In view that all Contracting States are required to comply with the minimum standards and practice of adoption laid down by the Hague Convention, the Convention facilitates the making of intercountry adoption arrangements in the best interests of the children.

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

Nil

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 providespecific examples of measures which have been introduced in your State as a result of the 1993 Convention and their effect.

The CA has no study on this area.

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 circumventintercountry 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?

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 >).

The CA has not kept information on this area.

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?

It has facilitated the intercountry adoption arrangement for children.

- (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? Nil

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.

Nil

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)	Year	No of adoption application
	2003	120
	2004	120
	2005	123

(ii)	Year	No of adoption application
	2006	124
	2007	123
	2008	125

- (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).

⁸ See Art. 4 b) of the Convention.

No significant impact on the number of domestic adoptions undertaken in the HKSAR is observed.

- (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.

Private arrangement/placement for adoptions by unrelated persons are prohibited. The objective of the prohibition on arrangement/placement made by private individuals for adoption by unrelated persons is to ensure that the vital placement decisions are handled by qualified/experienced persons who are not acting for personal profit, i.e. to provide statutory safeguard before the vital first step is taken to place the child. Relevant legal provisions have been amended.

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) The CA has not captured the related figures.
- (ii) The CA has not captured the related figures.

Ifso, 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).

The CA has no comment on this area.

(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 CA has its own policy on service development and monitoring.

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?

No change

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?

In view that all Contracting States are required to comply with the minimum standards and practice of adoption laid down by the Hague Convention, this facilitates the making of intercountry adoption arrangements in the best interests of the children.

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

Nil

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

Nil

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

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?

It safeguards that the intercountry adoption arrangements under Hague Convention are made in the best interests of the children.

- (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?

Nil

- (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 CA has no comment on this area.

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?

The current mechanisms are considered satisfactory and suffice to monitor and review the implementation and operation of the 1993 Convention.

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.

The development of tools to promote consistent interpretation and good practices by the Permanent Bureau of the Hague Conference is beneficial to the intercountry adoption arrangements between the HKSAR and other Contracting States.

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

Continuous contributions by the Permanent Bureau to develop the tools will facilitate the proper implementation and operation of the 1993 Convention.

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

Nil