

**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: The Netherlands

DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:²
June 1st 1998

Information for follow-up purposes

Name and title of contact person: Drs G.R.B. ter Meulen

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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.

1-6 1998

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?

creation of CA, changes in adoption law, see report CA

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): -

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

- (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): -

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

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

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.

- (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).

see report CA; By then, we did not see any changes - over time, more healthy, young children were adopted in the sending countries themselves

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;

We see no difference in the transparency of the cost, there was a difference in height of the adoptionfee in some country´s. In Colombia for instance there was a difference in the adoptionfees, prospective adoption parents had to pay for the care of the children in the children´s home while the parents, who received children from the Children´s Council ICBF didn´t.

and / or

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

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.

In general we see that the time to complete an adoption has been extended, due to the investigation in the country of origin whether intercountry adoption is in the best interest of the child. Before 1993 this investigation was not done or superficially, comparing to modern times.

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 convention is in fact working as a qualityframework, so we try to implement procedures comparing to those of the Convention. The role of the permitholder is less strict defined in 'non-convention-states'. The proces of controlling the procedure in the country of origin is more in the hands of the permitholder/licencee. For instance, in Ethiopia our staff is checking the background of the children and decide on the child´s adoptability, including how the consent of the birth parents is obtained. We decide in the Netherlands whether the adoption is in the best interest of the child.

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*).

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.

yes, although it is difficult to say that the result of the change is due to the implementation of the 1993 Convention. Was poverty in the years before the main reason for intercountry adoption, nowadays poverty is the background of others problems.

- (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.

Yes, we think that the change of the general profile of the children is a result of the implementation of the 1993 Convention. Permitholders/lisencees in the Netherlands hardly mediate for healthy baby's or young children, due to the principle of subsidiary of the 1993 Convention. They are placed in fostercare or adoptionfamily's in their country of origin. In general the profile changed, nowadays only older children, their older siblings or children with medical problems benefit intercountry adoption.

- (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: The CA has to approve the adoptability of the child
- (ii) The information provided to, and the counselling and preparation of, an adoptable child:
- (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):
- (iv) The matching of the child and PAPs:
- (v) The entrustment of the child to the PAPs:
- (vi) The making of the final adoption decision:
- (vii) The transfer of the child to the receiving State:
- (viii) The post-adoption services provided (*e.g.*, when and how an adoptee may access information concerning his / her origins):
- (ix) Other, please specify: We cannot state that all the changes are the result of the implementation of the 1993 Convention. In the last 20 years our society changed and so did our visions on unmarried motherhood, for instance. The emancipation of women led in our opinion also to different views on the theme of adoption. Very important is the increase of knowledge on the subject and the experience of adult adoptees..

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 1991 started a central organised preparation of PAPs in the Netherlands. All PAPs were obliged to participate in 6 meetings about all the important topics on adoption, organised by an independent organisation with employees specialised on the subject. The Netherlands was very progressive on this point.

(ii)

- (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: Around this time the obligatory course for paps started
 - (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 quality and content of the report was always checked by the council of child protection who wrote it, and the adoption organizations
 - (iii) The procedure to accept a proposed match: The CA had to check the proposal, but this did not check much in the procedures as we tried for optimal quality
 - (iv) The migration procedures for the child:
 - (v) The post-adoption services provided:
 - (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?

what we see is that the choise of a State to implement the 1993 Convention enables them to improve the rights of children in general and we see this step as a positive sign of a development of the State itself. When States are fragile/ poor there is no room for children´s rights and intercountry adoption is therefore difficult to establish. Als a licensee we prefer to co-operate with States wich have in any case sign the Hague Convention.

In

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 Hague Convention define the way the adoptionproces must be organised, this reduces the possibilities for licensees to control and act in their own way. This is not always in the best interest of the child. Adoption is in our view a measure of childprotection en every individual child has the right that his/her procedure fitting his/her individual needs. The fact that it is in the interest of the child that everyone is doing his utmost to check the background and investigate all opportunities to keep the child in his/her country of origin, can lead to a longer stay in the children's home. The longer the child is kept from stable care in a family, the more difficult the attachment to the new family can occur.

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

The Hague Convention define the way the adoptionproces must be organised and this exact definitions lead in most cases to an increase of bureaucracy. For licensees the pressure of all regulations is high. The role /accountability of the central authorities are not always clear.

A drawback of the regulations and the burocracy is the the lengths of procedures can be extended, with the result that the child will have to spend a longer time in the institutions. As science proved that it is very negative for a child to stay in an institution, and a longer stay has more negative impact, we see this as a major drawback for the benefit of the child. The balance between good legal procedures and the need to give the child a stable, permanent placement in a family is still a challenge.

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.

see report CA

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);

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 >).

- (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?

Prior to implementation of the convention, the licensees and the countries were held accountable for the way procedures were organised. The implementation of the Convention led to uniform and transparent procedures.

In our history we don't have cases of illpractise or abduction. Off course over the years the awareness,knowledge and vision on children's rights changed the way we organized the proces. In the early years every child had to be 'rescued' and later on the child was more entitled to a family preferably in their own country.

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, this is a significant improvement for children and their families.
- (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? In two States, Thailand and the Philippines their own legislation prevails over the Hague Convention on this subject. A child is the first year after placement still a fosterchild, although the countries implemented the 1993 convention.

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.

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) see report CA

(ii) see report CA

In the Netherlands the licence holders are only entitled to do international adoptions. Domestic adoptions are the field of the Council of child protection. In the Netherland are hardly any domestic adoptions - Permanent foster care is prefered.

(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).

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(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.

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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) Not in the Netherlands. Only this year legislation decided that young children can not be placed in institutions any more. This is a result of more knowledge of the impacts of institutions on the development of children.

(ii)

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).

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(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?

no

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

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?

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

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

⁹ *I.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?
- (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?
- (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?

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?
- 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.
It is important for us to introduce our partner- organisations to the bureau to reinforce the convention in our and their workingpractice. Sharing information and knowledge on each level in de work practice is also important to us.
- (b) Resources permitting, what *additional* services or assistance could the Permanent Bureau provide to 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:

General reaction to this Questionnaire.

We decided that it is hard to answer the questions in this questionnaire, so we decided to give you a more general answer. This answer is the combination of the discussions we had on the questionnaire. The answers in the questionnaire are mostly the answers from Wereldkinderen and my answers.

We find it hard to specify which developments are directly linked to the Hague Convention and which maybe indirect or are a result of the change of times. Many aspects in the adoption procedures have changed since 1993. We think that the major impact of the Convention is a way of thinking, which is not directly linked to procedures and laws and contracting countries, but to a general way of dealing with adoption.

But this may be parallel to the spirit of the age and the developments taking place in thinking about adoption. The starting principle of the best interest of the child is also one of those subjects that sound normal, but had much implication for the practice. This might be a result of the convention, but we are not sure about that. The convention did have a role there, and this really was a guideline in dealing with adoption.

Our obligatory preparation courses of PAPs, starting in 1991 is another example of the developing knowledge on adoption and the visions about what was needed, which ran parallel to the development of the Hague Convention.

The subsidiarity principle had a direct effect in the way that sending countries looked more for families in their own countries which caused a change towards older and special needs children in receiving countries. But we also tried to spread the principle towards non-contracting states, so it was more widely spread to non-contraction countries.

An important effect for our organizations was that the sending countries ratified the Convention, and we could demand procedures and way of dealing, derived from the Convention. Support of our CA is a necessity to make this work.

Proposals from countries that ratified are usually clear and well described, as the proposal has to follow regulations. The regulations should not get too specified, they should be manageable for the sending countries.

The treaty has a spreading effect: many non-treaty countries follow procedures from the Convention, which is a favourable development.

However, we see no real decrease in corruption and illegality. Where people really want to trespass law and act criminally, they often can find a way. We hope that it is made more difficult, but we did experience problems here. We always need trust and vision.

The major drawback of the treaty is the time consuming pressure of more regulation and administration. So not the treaty itself has drawbacks but the implementation of the treaty. The balance between the urgency of procedures to guarantee the rights of the child to stay in its own environment and be safeguarded from illegality and crime on one hand and the urgency of the development of the child to get as soon as possible in a stable family environment on the other hand is still a challenge in the implementation of the treaty.

Another drawback that the general regulations may counteract child-led made-to-measure work.

To answer this questionnaire I contacted members of adoption organizations who worked in the organizations in the '90s and in the 2000s, a.o. Martien Miedema from Wereldkinderen, Marlies Lambers from Meiling and Marleen Braakman from Kind en Toekomst. Stichting Afrika had no people in the organization who worked during this period of time. I also had a conversation with a staffmember of our Ministry of Safety, already working in the field of adoption in the 90's and still working, Jan Vroomans. He is still involved in adoption and received the questionnaire himself. We decided that we would not answer the questions more related to his field of the work.

Gera ter Meulen, Country representative.