

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: REPUBLIC OF MAURITIUS

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:²
SEPTEMBER 1998**

Information for follow-up purposes

Name and title of contact person: Mr Nayen Koomar BALLAH

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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.

According to the Government Programme 2015-2019, a new Adoption Bill will be enacted this year in order to bring our adoption procedures in line with the Hague Convention.

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?

The National Adoption Council, which was set up in 1988, became the Central Authority for Adoption in 2005.

Since a number of years discussions are ongoing with governmental stakeholders for implementation of the legal framework for the full domestication of the Convention. The Government intends to bring amendments to the legislative and institutional framework for adoption shortly.

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):

1995 - 13, 1996 - 10, 1997 - 13

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

1995 - 5, 1996 - 5, 1997 - 6

- (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):

1998 - 3, 1999 - 8, 2000 - 7, 2001 - 11

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

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.

1998 - 7, 1999 - 11, 2000 - 11

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

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

There has been an increase in the number of adoptions.

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;

Posts of Psychologist, Welfare Officer and Legal Officer have been created under the National Adoption Council in the Budget 2015-2016 and once the new Adoption Bill is passed in the National Assembly, recruitment of the posts will be finalised.

and / or

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

None

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.

We will ensure that the timeframe and proper standards are incorporated in the new Adoption Bill which will be prepared once we finalise the new procedures.

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)?

Main countries with which Mauritius has signatories for Intercountry adoptions are France (Receiving State) and India (Country of Origin) which are convention countries. Mauritius has adapted its procedures under the domestic law pending the full implementation. There are cases from Morocco (country of origin) which are currently processed administratively by Prime Minister's Office and not by the Central Authority.

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.

Not available

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)*.

- (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.

Not available

- (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:

(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: Items listed at (i) to (vii) are being addressed and will definitely change upon domestication of the Hague Convention.

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) The Central Authority will be staffed with a Psychologist, a Welfare Officer and a Legal Officer to provide the necessary assistance and support to PAPs

(ii) Not available

- (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 are requested to apply to the Central Authority of their country. For India, reports are uploaded directly to Central Adoption Resource Authority by Prime Minister's Office

(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):

(iii) The procedure to accept a proposed match: Procedures are facilitated

(iv) The migration procedures for the child:

(v) The post-adoption services provided:

(vi) Other, please specify: Same as 7 above.

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?

Countries of origin such as Morocco & India commonly resorted to by Mauritian PAPs due to cultural similarities. Alignment of our legislation with the Hague Convention will have no impact on the choice of States.

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.

Despite not being in line with the Hague Convention, our procedures have been adapted to the new requirements of such countries like India and France. Our new procedures does not allow contact with intermediaries to avoid trafficking. Also, we ensure that the adopted children are granted permanent residence permits prior to their departure.

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

The new Adoption Bill is expected to be passed in the National Assembly before the end of this year and the most significant challenge remains the declaration of adoptability of the child in the local context and setting up of the appropriate structure.

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. Suspected cases of illicit practices have been avoided as the contact with intermediaries is avoided when proper proceedings are put in place.

Despite not being in line with the Hague Convention, our procedures have been adapted to the new requirements of such countries like India and France

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);

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 >).

- (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?

12.(a) Whilst the National Adoption Council has adopted its procedures to the requirements of the Hague Convention, suspected cases of abuse have come to light and PAPs are advised to refrain from addressing their demands through intermediaries as the latter were claiming fees for medical and other expenses.

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?

Not yet available

- (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? Not applicable

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.

No. Court Judgement are done.

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) Local adoption procedures are entered into directly at the level of the Supreme Court of Mauritius under the Civil Code. Therefore, the National Adoption council does not have any record of these cases of adoption.

(ii)

- (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).

Not applicable

- (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.

Not applicable

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 available.

(ii) Not available.

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).

Not available.

- (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?

Not applicable

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?

Not applicable

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

In your State

17. In your State's view:

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

The appropriate legislations are being reviewed to prevent illicit child trafficking/abduction.

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

Not applicable

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

Procedures have been amended pending domestication of the Hague Convention. New policies are being discussed with relevant stakeholders in order to decide on the category of adoptable children, how they will be declared adoptable, the setting up an accredited agency to take care of the adoption process. Once agreement is reached on this issue, we will go to Cabinet for approval and thereafter, finalise the legislation.

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?

Alignment of procedures with the requirements of the Hague Convention eliminates all risks of child trafficking and illicit practices in adoption.

- (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?

No

- (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?

Full domestication of the Hague Convention.

Reorganisation of the Central Authority and creation of an accredited agency.

Deciding on the categories of adoptable children and mechanism to declare them adoptable.

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 Government would welcome any good practices in respect of domestication/drafting of the Adoption Bill and the monitoring and reviewing mechanism once the Adoption Bill is passed.

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.

A request in that respect was made to the Permanent Bureau but unfortunately so far no assistance has been received.

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

Formulation of new legal and institutional framework for adoption.

Training in the functioning of the Central Authority

Networking/sharing of good practices and technical assistance in the restructuring of our National Adoption Council.

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

Mauritius is getting more and more cases of surrogacy and it is proposed that this issue be also taken up at international platforms on adoption.