

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 Convention<sup>1</sup> 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](mailto: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](http://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.

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<sup>1</sup> 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: New Zealand**

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:<sup>2</sup>**

**1 January 1999**

**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.

Where legislation is required to enable New Zealand to fulfil treaty obligations, this country's invariable practice is to pass the implementing measure prior to ratifying or acceding to the treaty. This is to ensure that New Zealand is not in breach of its treaty obligations when the treaty becomes binding on New Zealand.

New legislation, the Adoption (Intercountry) Act 1997, was needed to implement the Convention into New Zealand law. The Act came into force on 1 January 1999. Since then, any adoptions by New Zealanders of children habitually resident in other contracting states have had to comply with the requirements of the 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 Chief Executive of the Ministry of Social Development (MSD) was designated as the New Zealand Central Authority (NZCA). The practical operation of the Central Authority is delegated by the Chief Executive to certain officials within Child, Youth and Family (CYF). CYF is a service of MSD, and provides statutory adoption, child protection and youth justice services.

Standards for the accreditation of bodies have been developed. Non-Government agencies can be accredited to undertake:

- the assessment and home study reporting for New Zealand applicants in New Zealand seeking to apply to a Contracting State with which New Zealand has an intercountry adoption programme; and
- the facilitation of intercountry adoption functions from Contracting States with which New Zealand has an intercountry adoption programme and which has authorised the New Zealand accredited body to work in that State.

Accredited bodies cannot be accredited to undertake both functions.

<sup>2</sup> 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](http://www.hcch.net) >.

3. (a) Please indicate the number of intercountry adoptions which took place from and / or to<sup>3</sup> 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):  
Zero to the knowledge of the NZCA.

The term "intercountry adoption" (and its associated meaning under the Convention) did not exist prior to the Convention being implemented. New Zealanders who adopted children overseas (generally while living in that overseas country) had the adoption recognised under s 17 of New Zealand's Adoption Act 1955.

Another smaller number of adoptions were of children brought to New Zealand (generally by family members) and adopted under s 3 of the Adoption Act 1955. These adoptions are known as "overseas adoptions". Adoptions of children from non-Convention countries are still possible using these provisions.

Number of intercountry adoptions *to* your State (receiving State):  
Fiscal 96/97 (ie 1 July 1996 to 30 June 1997) - 506. 436 of these were overseas adoptions by New Zealanders in overseas countries that were recognised under s 17 of the Adoption Act 1955. The other adoption orders were made under s 3 of the Adoption Act.

Fiscal 97/98 - 460. 358 of these were overseas adoptions by New Zealanders in overseas countries that were recognised under s 17 of the Adoption Act 1955. The other adoption orders were made under s 3 of the Adoption Act.

Fiscal 98/99 - 403. 350 of these were overseas adoptions by New Zealanders in overseas countries that were recognised under s 17 of the Adoption Act 1955. The other adoption orders were made under s 3 of the Adoption Act.

- (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):  
Zero to the knowledge of the NZCA. New Zealand is not a sending state.

Number of intercountry adoptions *to* your State (receiving State):  
Fiscal 99/00 - 380. 274 of these were overseas adoptions by New Zealanders in overseas countries that were recognised under s 17 of the Adoption Act 1955. The others (106) were intercountry adoptions under the Convention or intercountry adoptions involving non-Convention countries but finalised in compliance with the Convention in the New Zealand Family Court by orders under s 3 of the Adoption Act.

Fiscal 00/01 - 408. 344 of these were overseas adoptions by New Zealanders in overseas countries and recognised under s 17 of the Adoption Act 1955. The others (64) were intercountry adoptions under the Convention or overseas adoptions involving non-Convention countries that were finalised in

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<sup>3</sup> Depending upon whether your State is a State of origin, receiving State or both.

compliance with the Convention in the New Zealand Family Court by orders under s 3 of the Adoption Act.

Fiscal 01/02 - 311. 256 of these were overseas adoptions by New Zealanders in overseas countries that were recognised under s 17 of the Adoption Act 1955. The others (55) were intercountry adoptions under the Convention or intercountry adoptions involving non-Convention countries that were finalised in compliance with the Convention in the New Zealand Family Court by orders under s 3 of the Adoption Act.

It is not possible to say how many of the above adoptions occurred under the Adoption (Intercountry) Act 1997.

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,<sup>4</sup> increase / decrease in the number of States with which your State partners on intercountry adoption).

The number of overseas adoptions has not changed significantly. There has been a decrease in the number of adoptions of identified children (usually relatives) from Contracting States.

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

- (a) The costs<sup>5</sup> of intercountry adoption, including the transparency of these costs? If so, please provide details;

Prospective adoptive parents (PAPs) now have a choice of assessment agencies and placement agencies. CYF does not charge for its services. Non-Government organisations charge on a fee-for-service basis with full cost recovery.

Translation, notarisisation and legalisation costs are paid by the applicants. The accredited bodies review their fee structures regularly.

Costs have increased since 1999. However, NZCA does not consider the fees charged by accredited bodies to be unreasonable.

and / or

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

Accredited bodies must pursue non-profit objectives. Accredited bodies are audited annually by MSD and must provide audited accounts, including statements of the money received and the expenses paid to other persons. One of the financial management standards to which bodies are accredited requires that no donations to, or by, organisations in the sending country are sought, facilitated, or accepted.

Accredited bodies may receive donations in New Zealand, but not in relation to an adoption. Articles 8 and 32 of the Convention have been incorporated into New Zealand's adoption legislation, which prohibits payment for any adoption (domestic or intercountry), except the payment of reasonable costs and expenses to any organisation approved as a New Zealand accredited body.

These restrictions did not exist prior to the Convention.

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.

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<sup>4</sup> 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](http://www.hcch.net) >.

<sup>5</sup> 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](http://www.hcch.net) > under "Intercountry Adoption Section" then "Expert Group on the Financial Aspects of Intercountry Adoption".

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

The Convention has created efficiencies through its uniform processes. However, it is difficult to estimate whether there has been any change in timeframes, as our experience with individual Contracting States varies. In some circumstances, timeframes can be longer because of the Convention's more stringent requirements or the challenges faced by some Contracting States, for example, states that have a large number of other Contracting States wishing to work with them.

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)?

Overseas adoptions by New Zealanders living overseas may be recognised under s17 of the Adoption Act 1955. Children brought from overseas, usually by relatives, are adopted under s3 of the same Act. Although these are not intercountry adoptions, where possible, CYF applies the Convention's principles and processes.

CYF reports to the New Zealand Family Court and makes a recommendation about the granting of an Adoption Order. Some Family Court decisions have held that adoptions from non-Contracting States should follow the Convention processes so that the Convention's safeguards can apply. One way to manage this is to obtain child study reports from the country of origin. New Zealand did this before acceding to the Convention. However, the non-Contracting State country of origin does not have to provide such a report.

#### 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 applicable as New Zealand is not a sending state.

- (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:

(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: .

### 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) Courses to prepare PAPS have been mandatory in New Zealand since the implementation of the Convention. Since the introduction of the Convention, specific mandatory courses have been developed. Adoption service social workers at CYF provide the courses. The accredited body AFS also provides education, support, and advice to PAPS. Two non-governmental organisations, Compassion for Orphans (CfO) and Intercountry Adoption New Zealand (ICANZ), provide country-specific education when PAPS have been approved.

Pre-Convention, most overseas adoptions would have been private adoption arrangements, and, while CYF could encourage people to attend an education programme, it was not mandatory. Adoptive applicants wishing to be assessed to enter a national pool of approved applicants held by CYF for a domestic adoption would be required to attend an education programme.

CYF has recently revised its education programmes for people wishing to become caregivers to children not born to them, by fostering, respite care, adoption and intercountry adoption. The 'Ways to Care' education programme includes a module focussing solely on intercountry adoption. The programme gives more attention to children's brain development and attachment than in the past.

The courses are held at regular intervals (based on demand) in the region closest to where the children will reside. PAPS attend the education programme with other PAPS. Applicants are assigned a CYF social worker whom they can contact as required and who will meet with them formally to gain information for the social worker's report about the applicants' eligibility and suitability to adopt.

PAPS may engage AFS to assess their suitability. However, the NZCA considers the police, child protection, medical and reference reports before any assessment by AFS, as required by the Adoption (Intercountry) Regulations 1998.

AFS assessing intercountry adoptive applicants uses an on-line education programme before the assessment process. The courses PAPS study are available before the assessment process.

Many PAPS attend additional parenting courses and many also undertake basic foreign language education for the state of origin to develop and confirm their cultural awareness and familiarity.

(ii) There has been an increase in the number of children identified as special needs children available for intercountry adoption for New Zealand applicants.

- (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: When undertaking an adoption under the Convention, PAPS must now apply to Contracting States through the NZCA rather than directly in the overseas country. PAPS must be assessed and must obtain evidence of this through an Article 15 certificate of suitability. PAPS in New Zealand have a choice of using the State to undertake education and assessment and a home study, or contracting with an accredited body on a fee-for-service basis.

(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): When undertaking an adoption under the Convention, the PAPS intercountry adoption application, the home study assessment report and the

other supporting information for the dossier is notarised and legalised as required in the state of origin. Translations required are undertaken by official translators and the translated dossier is also legalised, as required in the state of origin.

(iii) The procedure to accept a proposed match: The match proposal of a child for adoption under the Convention must be presented to the NZCA either directly from the overseas Central Authority or through the New Zealand accredited body before being presented to the PAPs. The NZCA considers the Article 17 requirements when it considers the match. The match is approved or declined by the NZCA in the first instance to confirm that the child will be authorised to enter and reside permanently in New Zealand should the PAPs accept the match. The NZCA may consult with medical professionals to inform the decision regarding the match, and may also advise the PAPs of matters to consider in their decision making. The NZCA must approve the match under Article 17 before it can be presented by CYF or the accredited bodies to the PAPs.

(iv) The migration procedures for the child: The NZCA is required to formally support the child's entry to New Zealand. The NZCA can support a medical waiver for the child, if one is needed and an extended length of a temporary visa for the child if the child's adoption is to be finalised in New Zealand.

(v) The post-adoption services provided: New Zealand has no specific post-adoption support services. However, CYF may refer adoptive parents to appropriate services if they need support. Support options are also available through non-government organisations. Compassion for Orphans (CfO) operates a telephone help-line. Intercountry Adoption New Zealand (ICANZ) supports regional support volunteers. Since New Zealand became a Contracting State, there have been many more intercountry adoptive family support groups operating in the community, with some being country-specific. Where countries of origin require post-placement reports (PPRs), CYF or accredited bodies meet with and support families as part of the PPR process.

(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?

New Zealand had some historic intercountry adoption relationships when it acceded to the Convention in 1999, and those countries have now all become Contracting States, except one. If the New Zealand Government chooses to expand its intercountry adoption partnerships, it would look to do so with other Contracting 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.

The obligations on Central Authorities under the Convention have created an expectation of co-operation among Contracting States, as well as providing the mechanism for this to occur. This has helped ensure that the safeguards in the Convention are better respected. How well this is achieved can sometimes depend on resources in other countries.

The Convention has also enabled Contracting States to get together to discuss regional or mutual issues on an informal basis, which has led to greater understanding between states.

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

The ability to expedite an adoption when the adoption decision has been made, so that the child may join the adoptive family without delay.

Managing adoption proposals by relatives, including assessing the child's adoptability and motivation for the adoption proposal, to ensure the adoption is not one of convenience.

### C. THE IMPACT OF THE 1993 HAGUE CONVENTION ON THE PREVENTION OF THE ABDUCTION, SALE OF AND TRAFFIC IN CHILDREN AND OTHER ILLICIT PRACTICES<sup>7</sup>

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.

The safeguards in the Convention mean that children are better protected against being sold or trafficked when they are adopted between Contracting States.

New Zealand amended the Adoption Act 1955 in 2011 to make it a criminal offence for a person to "induce another person by fraud, duress, undue influence (by payment or other improper means), to consent to an adoption". The amendment enabled New Zealand to ratify the Second Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

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;

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<sup>7</sup> "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](http://www.hcch.net) >).

- (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?

Before the implementation of the Convention, there was some evidence of inappropriate "gifts" being provided by PAPs to overseas orphanages where New Zealand PAPs were adopting independently. The NZCA is not aware that any of the other types of abuses outlined above occurred before the implementation of the Convention.

#### **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 made the adoption process easier.

- (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? Prompt issue of the Article 23 certificate of compliance with the Convention in the correct format (which is *prima facie* evidence of the entitlement to New Zealand citizenship) remains a challenge in some Convention partnerships.

(c)

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.

There are two country partnerships who require an interim reporting period in New Zealand before finalising the adoption, either in the New Zealand Family Court or through an administrative process under the Convention. The NZCA requires nothing additional, other than the issue of an Article 23 certificate if the adoption is finalised administratively by the country of origin.

#### **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) Fiscal 1996/97 - 159, Fiscal 1997/98 - 138, Fiscal 1998/99 - 137

(ii) Fiscal 1999/00 - 95, Fiscal 2000/01 - 87, Fiscal 2001/02 - 113

(iii)

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

Implementation of the Convention has not affected domestic adoptions, which are declining. Most domestic adoptions are family or step-parent adoptions. "Stranger" adoptions are few. With fewer babies available for adoption domestically, there has been an increase in intercountry adoption applications.

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

No. The Convention reinforces the existing approach in New Zealand legislation to care arrangements for children who have been removed from their parents' care because of abuse or neglect. The Children, Young Persons, and Their Families Act 1989 favours permanent care options within the family or with people with whom the child has a strong psychological attachment rather than adoption.

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<sup>8</sup> 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) No. New Zealand is not a sending state, nor does it have state-run orphanages. Children who need a permanent alternative to state care are placed with relatives as the preferred option, where possible.

(ii) No, as noted in 14(c) and 15(a) above, New Zealand's care and protection legislation favours permanently placing children who are in state care with family members, where possible. The legal relationship between the child and permanent carer is generally achieved through parenting and guardianship orders under the Care of Children Act 2004. It is very rare for a child in state care to be adopted by his or her permanent carers.

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;<sup>9</sup> in-State alternative permanent family care promotion in revised / new legislation in preference to institutionalisation).

- (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?

Implementation of the Convention has not changed the quality of alternative care available for children who are without parental care either for a period of time or permanently.

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 Convention complements domestic law and practice. New Zealand is not a state of origin.

## **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?

Improvements include the reassurance that the subsidiarity principle has to be considered before an intercountry adoption occurs.

Another improvement is the requirement for information about the adoption process and participants to be retained, so that in the future a child may understand their identity and how the adoption occurred.

The benefit to the child in having dual citizenship of their birth country and New Zealand.

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

An improvement is the mandatory consideration of multiple factors by the NZCA to decide about an adoption are of significant benefit to the child. These include:

- \* the child's welfare needs, including the care being provided in the country of origin
- \* the child's attachment to their caregivers, family members, siblings, access to and continuity of schooling
- \* subsidiarity considerations (whether there are extended family members able to provide a home for the child in their country of origin)
- \* the child's age, development and views, peer relationships
- \* cultural considerations, and
- \* whether an intercountry adoption is in the child's best interests.

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

Yes, the Central Authority must consider intercountry adoption proposals that would generally not be considered appropriate under domestic law, for example, adoptions of convenience of older children by relatives.

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

Adequacy of information from the country of origin for matching purposes.

Ensuring access to adequate/reliable information and contact with birth families by adopted children.

A lack of consistency and variable practice in how Central Authorities facilitate co-operation.

Timeliness - finalising an application within an appropriate/child-centered timeframe.

**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 Convention has promoted general acceptance internationally that intercountry adoptions should not be facilitated in a country in a national crisis or in a state of unrest.

International recognition of the need to gather and retain identifying information to be available for the adopted person.

The application of the subsidiarity principle has (in many states) resulted in many more domestic alternatives for children and has reduced the need for intercountry adoptions.

For identified children where intercountry adoption is being considered, implementation of the Convention has increased awareness of the child's right to live in their country of origin, speaking their first language, where a family placement is available in their country of origin.

The protection offered for all parties by regulated practices, especially for the child.

The role of the Central Authorities. A Central Authority will be the first contact in the future when intercountry adopted persons seek information about their identity and adoption.

Recognition and acceptance of adoption as an option in cultures where previously it was not accepted.

The Convention has succeeded in reducing corruption and has helped develop child care systems in order to implement the Convention.

- (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?

A tension can exist when accredited bodies, who are being paid by PAPs, locate children to adopt from "wait lists" or "special needs profiles" rather than those matched by countries of origin.

When a Central Authority will not cooperate in respect of an identified child adoption, it may be impossible for the child to be adopted in another contracting State.

- (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?

There remains the challenge of how to manage the expectations and understanding of PAPs about intercountry adoption and to help them be realistic about the nature and the needs of children for whom an intercountry adoption is the only option for a home and family life.

Parties applying to adopt in another country (their country of origin) without saying that they are permanently resident in New Zealand. For example, the Convention sometimes has to be applied retrospectively between New Zealand and the other Contracting States.

Contracting States that continue to permit intercountry adoption in non-contracting States that are in especially vulnerable situations.

The adequacy of information from the country of origin about what attempts have been undertaken to find local and domestic solutions before an intercountry adoption is proposed and for matching purposes; and ensuring adopted children have access to adequate/reliable information about their birth families.

Timeliness - finalising an adoption within an appropriate or child-centred timeframe. Some Contracting States have introduced conditional moratoria or quotas in order to manage the demands on them as states of origin and to reduce waiting times. The NZCA supports this approach.

A lack of consistency and variable practice in the extent to which Central Authorities facilitate co-operation.

There are situations where there appears to have been very little consideration given to exploring domestic alternatives and relinquished children appear to be pre-matched with registered intercountry adopters. As a result, the child waits until a proposal can be put before the overseas Central Authority to approve the pre-match.

## **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?

It is hard to monitor realistic costs for intercountry services provided overseas. Sharing of information about agency charges internationally might help confirm that fees are reasonable and correlate with the earning and salary ranges in the local context. The permanent Bureau may be able to assist in this area.

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 NZCA has sought clarification and advice from the Permanent Bureau and has appreciated the response and the assistance received. As an Affiliated Bureau of ISS, the NZCA also benefits from the ISS relationship with the Permanent Bureau. The Permanent Bureau is to be commended on the excellent response it provides within its resources and within the complex international adoption environment.

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

N/A.

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