

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 THE PHILIPPINES

**DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:²
November 1, 1996**

Information for follow-up purposes

Name and title of contact person: Bernadette B. Abejo, Executive Director

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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.

New legislation was enacted prior to implementation of the convention. Main change is the establishment of a autonomous authority for inter-country adoptions separate from the Department of Social Welfare and Development and the disallowance of independent placements and pre-identification of children.

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 Intercountry Adoption Board was created as the Central Authority on intercountry adoption by enactment of Republic Act 8043 or the Philippine Intercountry Adoption Act of 1995. RA 8043 is considered a landmark legislation in the field of child welfare. It provided the legal basis for the implementation of the Philippine inter-country adoption program. The convention has caused the creation of new legislation on child welfare in general and has created an awareness on the concerns of adopted children. It has affected policies on domestic adoption and the protection and welfare of children.

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): (1995-1996 only : children cleared for ICA - 432; Children matched - 372; Children entrusted - 288 and Children with Final Adoption Decree - 3 [Data for other years are not available.]

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

- (ii) in the three years following the entry into force of the 1993 Convention in your 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.

Number of intercountry adoptions *from* your State (State of origin): 1997-99
Children cleared for ICA- 950; Children Matched - 1,035; Children entrusted -
844 and Children with Adoption Decree -828. No data available for previous
years.

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

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).

The ratification of the convention shows a statistical decrease in the number of children cleared for intercountry adoptions. The application of the convention principle of subsidiarity has increased the awareness of finding local solutions prior to processing the child for intercountry adoption. (This is prior to the enactment of RA 9523 because RA 9523 now requires that, with the exception of relatives within the 4th degree, all children including those for domestic adoption must have been subject to clearance procedure)

The increase in matching is attributable to carry over cases from the previous years (ie. delayed entrustment) . However, the increase in the issuance of adoption decrees highlights increased compliance with the convention procedure of ensuring that the adoption is finalized and that the receiving state will gurarrantee the childs right to enter and enjoy rights of citizenship (under Philippine procedure, adoption is finalized in the receiving country). Prior to the convention, monitoring of the finalization of the adoption and post adoption services was dependent on the willingness of the PAP's to comply (there was lack of authority to demand the finalization).

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;
- No. Costs in the country of origin have always been regulated. The ICAB and its predecessor the Philippine Intercountry Adoption Office (PIAO) being government entities strictly conforms to the Philippine accounting and auditing systems and procedures for government agencies. It ensured that the structure and procedures will not allow improper practices and promote transparency.
- and / or
- (b) Contributions, co-operation projects and donations,⁶ including their transparency? If so, please provide details.
- Policy on contribution, cooperation projects and donations related to intercountry adoptions was impacted by disallowing donor agencies from getting a match from the agency with whom they have contributed to or have ongoing projects.
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.

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)*.

Considering that prior to the ICAB it was the PIAO that was handling intercountry adoptions, it has always been a government to government transaction hence the time frames have stayed more or less the same in terms of issuance of travel documentation and visa issuance. In the early years of the implementation of the intercountry adoption program, the average time involved in the placement of the child with approved adoptive applicant approximated that of a normal pregnancy, nine months. However, the growing number of adoption applications endorsed by partner adoption agencies and the limited number of children cleared for intercountry adoption has caused an imbalance triggering a protracted waiting period for child referrals to the approved adoptive applicants.

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 number of non-convention adoptions have been gradually reducing. However, some countries allow the "ratification" of domestic adoptions. The "ratification" process is in effect a repeat of the domestic adoption process to bring the adoption within the requirements of a convention adoption. However, this still allows pre-identification which is contrary to the 1993 convention principles. ICAB allows the process as an exception to the rule and only if it serves the best interest of the child. However there is an increasing trend (by former Filipino's or dual citizens) to apply domestically and seek ratification.

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.

No change.

- (b) Has the general profile of children in need of *intercountry* adoption in your State changed following implementation of the 1993 Convention? If so, please specify the main reasons for any change.

Yes, due to the awareness of the plight of special needs children, the children who were considered unadoptable due to their age, being part of a sibling group, with special needs are now being accepted for adoption. Foreign adoption agencies willingly advocate for placement of the "hard to place" children.

- (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: Principles and processes are the same.
- (ii) The information provided to, and the counselling and preparation of, an adoptable child: Yes. Changes are due to feedback from parents and partner agencies
- (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): yes
- (iv) The matching of the child and PAPs: yes
- (v) The entrustment of the child to the PAPs: yes
- (vi) The making of the final adoption decision: yes
- (vii) The transfer of the child to the receiving State: yes
- (viii) The post-adoption services provided (*e.g.*, when and how an adoptee may access information concerning his / her origins): yes
- (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)
 - (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:
 - (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:
 - (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?

No influence on choice of partners.

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.

Yes, the availability of mechanisms to collect and share information with other Contracting States on intercountry adoption practices and experiences.

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

Explaining to receiving countries why it is necessary to put an allocation system in place for intercountry adoption due to the increased volume of adoption applications.

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, the existing law on the trafficking in persons used to define trafficking of children only for the purpose of exploitation, prostitution and the like. Amendment of the law has defined trafficking for the purpose of interntional adoption when monetary gain is the purpose.

12. In particular, *prior to* implementation of the 1993 Convention, did your State experience, whether in your State or in other States with which your State co-operated, any of the following problems in the intercountry adoption context:

- (a) Improper payments to family members, intermediaries, officials or others;
- (b) Other improper inducements of the consent of birth parents / family to adoption;
- (c) Fraud, such as misrepresentation of identity or false promises (*e.g.*, misrepresenting to birth parents the reason for a child's removal from his / her home);
- (d) Forgery / falsification of documents;
- (e) Abduction of children for the purposes of intercountry adoption;
- (f) Abuse of guardianship orders (*e.g.*, using such orders to remove children from a State of origin to circumvent intercountry adoption procedures);
- (g) Bypassing the matching system of a State of origin (*i.e.*, undertaking matching independently in the State of origin, without the involvement of the appropriate authorities);
- (h) Any other illicit practices?

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 >).

If so, in your State's experience, has implementation of the 1993 Convention in your State *or in other States* had an impact upon the incidence and / or nature of these problems?

Yes, the state did experience all stated circumstances. The existence of the Central Authority focused on the prevention of trafficking in children for the purpose of adoption has significantly decreased the incidences. The continued advocacy and information campaigns by the Central Authority in partnership with the competent authorities continue to impact the problems.

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

- (b) What challenges remain regarding the automatic recognition of adoptions made in accordance with the Convention? Some states still question the necessity of in-family adoptions.

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.

The Philippines requires finalization of the adoption in the receiving state. A six (6) month trial custody period is required before a final consent to adoption is given which should trigger the finalization of the adoption.

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)
(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)

⁸ See Art. 4 b) of the Convention.

including promotion of domestic adoption, or a decrease in the number of intercountry adoptions has caused PAPs to turn to domestic adoption).

There is a clear increase in domestic adoptions. However, the increase may be attributed to PAP's legally adopting children as opposed to the practice of "simulation of births" (falsifying birth certificates to make it appear that they are the biological parents; adoption was considered taboo culturally). However, the promotion of domestic adoptions is also an effect of the implementation of the principle of subsidiarity.

- (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.

Domestic adoption policies have benefited from implementation of domestic adoptions by the application of the same standards for the screening and selection of PAP's and ensuring that the children's availability for adoption has been well vetted.

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) yes

(ii) yes

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).

The Philippines has always promoted the policy of deinstitutionalization. However, there are still numerous NGO's that run child caring facilities. But it must be noted that government child caring institutions are able to keep the numbers of children in a manageable level. A fostercare bill has been recently passed to ensure compliance with the principle of subsidiarity.

- (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?

Increased awareness in adoptions and the international policies on adoptions have led to the creation and crafting of new legislation that safeguards the rights of the neglected and abandoned child. Improvement of the criteria to become adoptive parents, fostercare and the prevention of simulation of births are a few of the effects.

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?

Family preservation has always been a priority and the policy. It has always been the first step in any alternative child care process.

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?

Awareness and continued creation of new laws to improve alternative child care for abandoned, neglected and abused children.

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

None whatsoever.

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

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

Management of applications from PAPs and although only 2% to 3%, the management of disruptive placements.

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?

Increased cooperation and heightened sense of protection of the rights of children placed for intercountry adoptions.

- (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?

None. It has improved and strengthened the protection of the children and guaranteed the implementation of their rights set out in the Convention on the Rights of the Child.

- (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?

Financial aspects of the process is a serious challenge. However, the continuous work of the Permanent Bureau on the matter keeps the actors conscious of this pressing concern.

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?

Yes, additional monitoring and exchange of information between the Central Authorities is more than welcome. This will promote best practices among all actors, due to constant sharing of updates on trends and concerns.

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.

Yes, participation in the discussions has given the Philippine Central Authority a global perspective of the issues.

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

Training support for countries of origin for protection of children and training on intercountry adoptions; A brief manual/guidebook for receiving countries authorities on their obligations will be beneficial for use by the authorities granting visas there seems to be a lack of coordination or awareness by "State" authorities of the guarantee to allow automatic recognition of the adoption.

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