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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: Portugal

DATE OF ENTRY INTO FORCE OF 1993 HAGUE CONVENTION IN YOUR STATE:²
11/02/2003

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.

Yes, the legislation was revised and a few changes were introduced, namely:

- a) An Intercountry Adoption can only occur after a decree of adoptability in favour of the adoptee;
- b) Judicial transfer of guardianship of the adoptee to the prospective adoptive parents after a successful period of integration between the child and the pap's (if the requirements for the decision of adoption), in case of Intercountry Adoption;
- c) Principle of Subsidiarity of Intercountry Adoption;
- d) Should the receiving State not contemplate a pre adoption period, the pap's and the adoptee should remain in Portugal for the period of time necessary to confirm the real advantage of the adoption;
- e) Strategies for alternative protection measures, as per Article 21 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?

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):

Information prior to 2006 is not available

Number of intercountry adoptions *to* your State (receiving State): Information prior to 2006 is not available

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.

- (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):

Information prior to 2006 is not available

Number of intercountry adoptions *to* your State (receiving State): Information prior to 2006 is not available

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).

Not possible to answer since we have no information for the dates in question.

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;

There was no impact, since adoption in Portugal has no costs.

and / or

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

No contributions or donations are required and should never occur before the judicial transfer of guardianship that enables the pap's to travel back to their State of origin with the adoptee in pre-adoption.

5. How, if at all, has implementation of the 1993 Convention in your State affected the average *time* which it takes to complete an intercountry adoption?

Please specify the causes of any change in timeframes, including whether these changes are attributable to a particular aspect of the intercountry adoption procedure and, if so, whether this aspect of the procedure takes place in your State or in other States.

The timeframes of the intercountry adoption have been reduced, in the case where Portugal is a country of origin, due to the implementation of the reverse flow for children with special needs.

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 non-Convention intercountry adoptions occur mostly when Portugal is a receiving State. In this case, all our procedures are done in accordance with the Hague Convention. However, the State of origin acts according to their internal law, and the Courts of Law in the State of origin determine which proceedings are applicable in a determined case.

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, the reasons that determine adoptability are the same.

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.

The general profile of children in need of intercountry adoption is the same, but today we have more information on that profile, because of the increase of the intercountry adoptions. This increase is due to the accredited bodies as per Article 10 of the 1993 Convention.

- (c) Has implementation of the 1993 Convention changed the following aspects of the intercountry adoption procedure in your State?

- (i) The establishment of the child's adoptability including, where appropriate, how consents are obtained from the birth parents / family / child and how consideration is given to the child's wishes and opinions: No changes, since our internal law was already adequate.
- (ii) The information provided to, and the counselling and preparation of, an adoptable child: No changes.
- (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): No changes due to the implementation of the Convention, but the reports concerning the children were improved and enriched since then.
- (iv) The matching of the child and PAPs: No changes due to the Convention. However, significant changes have been introduced in 2003 in matching for national adoptions.
- (v) The entrustment of the child to the PAPs: No changes.
- (vi) The making of the final adoption decision: No changes.
- (vii) The transfer of the child to the receiving State: Changes were introduced in the Procedures, that started to follow the proceedings on the Convention.
- (viii) The post-adoption services provided (*e.g.*, when and how an adoptee may access information concerning his / her origins): This area is still in development in our State.
- (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) it has not changed because of the implementation of the Convention. However, an adoption training program has been implemented for all PAP's residing in Portugal.
 - (ii) no changes were perceived in the profiles of children in the cases where Portugal is a receiving State.
- (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: Yes. PAP's can only apply to intercountry adoption through the Portuguese Central Authority for Intercountry Adoption or accredited bodies, and always following the procedures of the Convention.
 - (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): No changes.

- (iii) The procedure to accept a proposed match: The proposed match must be presented directly to the Portuguese Central Authority for Intercountry Adoption or the accredited body, and then transmitted to the local adoption team and to the PAP.
- (iv) The migration procedures for the child: Changes occur only when the States of origin operate according to the Convention.
- (v) The post-adoption services provided: No changes.
- (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?

The implementation of the Hague Convention has had an important impact on the decrease of intercountry adoptions with non-Convention States (which is now residual). Moreover, this Central Authority has cancelled cooperation with non-Convention countries that are not in a position to assure the respect for children's rights (following, among other sources, the information acquired through the Hague Convention site).

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 most significant changes occurred in the implementation of the procedures contained in Article 15th number 2 and following.

Regarding Art. 1b), there were no changes, since the Portuguese Law already establishes safeguards to ensure those rights.

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

The most significant changes occurred in the implementation of the procedures contained in Article 15th number 2 and following.

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.

There was no impact from the Hague Convention in the prevention of these crimes, since they already were object of major concern by the competent Portuguese authorities (Immigration and borders Service), and the cases that occur are mostly due to forgery of identifications - presently, Portugal is the chose country for launching and starting the pilot project "Smart Borders European Project".

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);

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 >).

- (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?

The problems identified prior to the implementation of the Hague Convention were residual, and were (and are) considered crime - and therefore receive police and judicial treatment.

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? On occasion we have had difficulty with the issue of the Certification of the Adoption having been made in accordance with the Hague Convention (Art 23°, number 1).

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.

Portugal has no additional requirements between Contracting States, and we have no knowledge of other Contracting States that would require so.

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) No information available, since our database was created only in 2006
- (ii) No information available, since our database was created only in 2006

- (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

⁸ See Art. 4 b) of the Convention.

number of intercountry adoptions has caused PAPs to turn to domestic adoption).

No information available on figures.

- (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 procedures in place in Portugal were already in accordance with the principles defended by 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
- (ii) No

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 applicable.

(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?

There was no impact, since the Child Protection Law was updated in 1999 (Law n.^o 147/99, from September 1), updating the strong child protection legislation.

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?

There was no impact.

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 implementation of the Convention brought great improvement in:

- aa) the uniformization of the procedures in intercountry adoption;
- ab) increased the security in intercountry adoptions;
- ac) the intercountry adoption procedures are now easier and faster;
- ad) the implementation of the Convention also promoted the intercountry adoption of children residing in Portugal with special needs.

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

No.

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

The harmonization between the internal legislation of the different Contracting States regarding new situations (e.g. surrogacy parentage, etc).

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?

The implementation of the Convention brought great improvement in:

- aa) the uniformization of the procedures in intercountry adoption;
- ab) increased the security in intercountry adoptions;
- ac) the intercountry adoption procedures are now easier and faster;
- ad) the implementation of the Convention also promoted the intercountry adoption of children residing in Portugal with special needs.

- (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?

New forms of parentage and compatibilization of internal legislation between the different Contracting States.

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?

We believe that the present monitorization is adequate. It would be interesting to have a global vision of the number and characteristics of children and PAP's of intercountry adoptions in the Contracting States.

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.

No.

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

For now, the Guides of Good Practise and other publication of the Bureau have been a great help in the deeper implementation and interpretation of the principles of the Convention.

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