

ADOPTION

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**QUESTIONNAIRE ON THE PRACTICAL OPERATION
OF THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION**

drawn up by the Permanent Bureau

*Preliminary Document No 2 of October 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 2 de octobre 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*

Churchillplein 6b, 2517 JW The Hague - La Haye | The Netherlands - Pays-Bas
☎ +31 (70) 363 3303 📠 +31 (70) 360 4867 | secretariat@hcch.net | www.hcch.net

Asia Pacific Regional Office - Bureau régional Asie-Pacifique | S.A.R. of Hong Kong - R.A.S. de Hong Kong | ☎ +852 2858 9912
Latin American Regional Office - Bureau régional Amérique latine | Buenos Aires | Argentina – Argentine | ☎ +54 (11) 4310 8372

INTRODUCTION

This Questionnaire is the second and last to be prepared for the purposes of the upcoming meeting of the Special Commission on the practical operation of the 1993 Hague Convention.¹ The first Questionnaire (Prel. Doc. No 1 of July 2014) requested information from Contracting States concerning the impact which implementation of the 1993 Convention has had on laws and practices relating to intercountry adoption and child protection systems more generally over the past 20 years. That information was sought in order to inform the first day of the Special Commission meeting which will be dedicated to "20 years of the 1993 Convention". This second Questionnaire is the more usual questionnaire on the practical operation of the 1993 Convention. It seeks to elicit information from States concerning their current practices and any problems and / or challenges they may have faced in relation to the implementation and operation of the Convention.

This Questionnaire is addressed to Contracting States to the 1993 Convention. As a result, non-Contracting States (whether Members of the Hague Conference on Private International Law or not) should not feel bound to respond but may provide a response or any comment should they so wish. In addition, please note that questions are addressed to both States of origin and receiving States, save where a heading expressly provides otherwise.

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 22 December 2014**. The Permanent Bureau will place all replies to this Questionnaire on the Hague Conference website < www.hcch.net > unless expressly asked not to do so.

Please note: if information provided by your State in response to the first Questionnaire (Prel. Doc. No 1) or your State's Country Profile for the 1993 Hague Convention assists with your answer to any question herein, please cross-refer to these other responses. There is no need to repeat information.

Thank you for your kind co-operation as the Permanent Bureau prepares for the next Special Commission meeting in June 2015.

¹ This Fourth Meeting of the Special Commission will take place in June 2015. 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:	
Date of entry into force of 1993 Hague Convention in your State:	1 January 2006
<u>Information for follow-up purposes</u>	
Name and title of contact person:	Chief Social Work Officer (Family and Child Welfare) ²
Name of Authority / Office:	Family and Child Welfare Branch, Social Welfare Department
Telephone number:	852 - 2892 5168
E-mail address:	cfcw2@swd.gov.hk

I. ADOPTABLE CHILDREN, ADOPTEES AND PROSPECTIVE ADOPTIVE PARENTS²

A. Adoptable children and adoptees

The profile of children in need of intercountry adoption

States of origin only

1. Please explain any *challenges* your State has encountered, and any *good practices*³ it has developed, in relation to the compilation and provision of information to receiving States regarding the:

- (a) characteristics and needs of adoptable children in your State;⁴ and
- (b) approximate number of children in need of intercountry adoption in your State.

The information of adoptable children in the Hong Kong Special Administrative Region (HKSAR) shall only be provided by the Accredited Bodies (ABs) in the HKSAR to the accredited adoption agencies / Central Authorities of receiving States for securing overseas adoptive homes.

In general, around 80 children with special needs including the children with relatively complicated family background, old age, health issues and disabilities, in the HKSAR are in need of adoption. If no local adoptive homes can be identified for these children, the ABs in the HKSAR will try to secure overseas adoptive homes for them through the ABs' collaboration with overseas accredited adoption agencies / Central Authorities.

Receiving States only

2. Please explain any challenges your State has encountered in ensuring that:

² Part I of this Questionnaire has been prepared in light of Conclusion and Recommendation No 10 from the 2010 Special Commission meeting which states: "The Special Commission recommended that the Permanent Bureau, in consultation with Contracting States and non-governmental organisations, collect information on the selection, counselling and preparation of prospective adoptive parents, with a view to the possible development of the Guide to Good Practice No 3. This may include a discussion on good practices in dealing with failed adoptions and the period of validity of the 'home study' report." **Please note:** hereinafter, Conclusions and Recommendations from past Special Commission meetings are referred to as "SC 20XX C&R No X". All Conclusions and Recommendations are available on the Hague Conference website < www.hcch.net > under "Intercountry Adoption Section" then "Special Commissions".

³ In this Questionnaire, "good practices" should be given a broad meaning and should be taken to include any legislative reform, procedures or practices which your State might have implemented regarding the particular topic.

⁴ See SC 2005 C&R No 12 which states: "[t]he Special Commission recognises the importance of States of origin sending information to receiving States on the needs of children to better identify prospective adoptive parents". Please note that the Country Profile for States of origin requests that States of origin provide information concerning the profile of adoptable children (at question 9) and thus it may be that your State has encountered challenges in responding to this question which you wish to describe here.

- (a) the *nature* and *number* of applications for intercountry adoption which your State sends to States of origin appropriately match the profile of children in need of intercountry adoption in those States;⁵ and
- (b) the information provided by States of origin concerning the characteristics, needs and number of adoptable children is adequately taken into account in the counselling and preparation of prospective adoptive parents ("PAPs").⁶

Please also share any good practices your State has developed in this regard.

The applications for intercountry adoption sent to the State of origin shall go through the ABs in the HKSAR. The ABs in the HKSAR will liaise with accredited adoption agencies / Central Authority of the State of origin for information of adoptable children so as to prepare and provide counselling for the PAPs in the adoption process.

Adoptability

Both States of origin and receiving States

3. (a) Please briefly describe any difficulties your State has encountered in relation to the decision regarding a child's adoptability, including the transparency of any such decision and the independence of the body taking this decision.⁷

Relevant legal provisions and administrative procedures are in place to facilitate Social Welfare Department (SWD) to make decision regarding a child's adoptability.

- (b) Has your State encountered any particular difficulties with adoptability decisions in the context of *intra-family* intercountry adoptions? If so, please explain.

Nil.

Reports on children

Both States of origin and receiving States

4. Please explain any challenges your State has encountered in preparing (States of origin) or obtaining (receiving States) full, accurate and up-to-date reports, including medical reports, on adoptable children in accordance with Article 16(1) a).⁸ Please specify any particular difficulties encountered in the case of children with "special needs".⁹

The administrative procedures in place require the records of adoptable children to be comprehensive, verified and up-to-date.

Receiving States only

5. (a) If reports on children appear deficient or incomplete, what measures, if any,

⁵ See para. 553 of *Guide to Good Practice No 2 "Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice"* ("GGP No 2") which states that receiving States should respect "the requirements of States of origin regarding the profile and number of adoptable children, as well as the desired profile of prospective adoptive parents".

⁶ See SC 2005 C&R No 13: "[t]he Special Commission recognises that as a matter of good practice, authorities in receiving States should co-operate with authorities in States of origin in order to better understand the needs of children in States of origin", and SC 2010 C&R No 8: "States of origin may assist receiving States in establishing their criteria for the selection of prospective adoptive parents by providing information about the characteristics and needs of adoptable children. This information will also contribute to the development of preparation materials on intercountry adoption directed to prospective adoptive parents, and to the management of their expectations."

⁷ See SC 2010 C&R No 1 b).

⁸ *E.g.*, concerning children's physical and psychological health, identity or social situation.

⁹ You may wish to cross-refer to your State's Country Profile at question 13 (States of origin) and question 11 (receiving States) concerning your State's definition of children with "special needs".

does your State take to remedy or ameliorate the situation?

The ABs in the HKSAR have the responsibility to collaborate with the accredited adoption agencies / Central Authority of the State of origin to collect sufficient information of the adoptable children for preparing the PAPs during the adoption process.

- (b) Please specify how, in your State's view, reports on children provided in accordance with Article 16(1) a) could be improved in general.

Nil.

Matching

Both States of origin and receiving States

6. Has your State had any experience of cases in which PAPs are declared eligible and suited to adopt a particular profile of child(ren) but are subsequently matched with a child or children with different needs? (*E.g.*, PAPs are declared eligible and suited to adopt a child under the age of 5 but are subsequently matched with siblings aged 7 and 9.) If so, please explain, in your State's experience, the reasons for this and how your State has dealt with such cases.

Matching aims to find the most suitable PAPs for adoptable children. A basket of factors related to PAPs' suitability to adopt a particular child will be considered in the matching process. At the same time, the PAPs are allowed to indicate their preference of adoptable child in their adoption application. In this connection, PAPs will not be matched with a child if there are discrepancies between the preference of PAPs and the child's profile .

Preparation and counselling of children

Both States of origin and receiving States

7. Please share (a) any *challenges* encountered in your State or in other Contracting States, and (b) any *good practices* implemented in your State or in other Contracting States, regarding the preparation of children for intercountry adoption, including counselling and informing children and ensuring that, having regard to their age and degree of maturity, their wishes and opinions have been adequately heard and taken into account.

Counselling will be rendered to the children by social workers or clinical psychologists in order to prepare them for adoption. The child's wishes and opinions on adoption arrangement will be considered in light of the child's age and degree of maturity. After the matching with an overseas family is approved by the Central Authority of the HKSAR, the child will be further prepared for joining the overseas family by introducing the details of the family, country and the living there as well as the schedule of arrangement to the child depending on his/her age and cognitive ability.

B. Prospective adoptive parents ("PAPs")

Selection of PAPs: eligibility and suitability to adopt intercountry

Both States of origin and receiving States

8. Please explain any challenges your State has encountered, and any good practices it has developed, in relation to preparing (receiving States) or obtaining (States of origin) full, accurate and up-to-date reports on PAPs, as required by Article 15, including eligibility and suitability assessments of PAPs.

Applicants for adoption have to undergo thorough home study including mandatory criminal record check to assess their eligibility and suitability for adoption. The ABs in the HKSAR and Adoption Unit of SWD will look into the applicants' personality, interests, early life experience, coping abilities, marital stability (if applicable), parenting attitudes and capacities, adoption motivation, abilities in meeting the needs and developing the potentials of the children being adopted, etc.

States of origin only

9. (a) If reports on PAPs appear deficient or incomplete, what measures if any does your State take to remedy or ameliorate the situation?

The ABs in the HKSAR shall collaborate with the accredited adoption agencies / Central Authority of receiving States to have comprehensive home study reports and seek clarifications and supplementary information from PAPs.

- (b) Please specify how, in your State's view, reports on PAPs provided by receiving States in accordance with Article 15 could be improved in general.

The reports on PAPs including the areas for assessment as mentioned in Item 8 above and the documents required as listed in Item 19 of the revised Country Profile (as State of origin) submitted to the Hague Convention in September 2014 will facilitate the matching process.

Counselling and preparation of PAPs

States of origin only

10. (a) Has your State encountered any difficulties resulting from inadequate counselling and preparation of PAPs by receiving States? If so, please provide examples and explain what measures your State takes to remedy or ameliorate the situation in these cases.

Nil.

- (b) In your State's experience, what could be done to improve the counselling and preparation of PAPs in general?

Reasonable time shall be allowed for the PAPs to decide if they accept the child after the information of the child they would like to know is provided (except identifiable particulars of the child's birth parents). In the meantime, the overseas AB / Central Authority shall provide counselling to facilitate the PAPs in making decision.

Receiving States only

11. What are the main challenges your State encounters when counselling and preparing PAPs for an intercountry adoption?¹⁰ Please share any good practices your State has developed to address these challenges.

The ABs in the HKSAR will provide on-going counselling and support to PAPs throughout the adoption process.

12. The Special Commission has previously emphasised “the need for country specific preparation and for prospective adoptive parents to have some knowledge of the culture of the child and his or her language in order to communicate with the child from the matching stage”.¹¹ How does your State ensure that this recommendation is complied with? Does your State have any good practices to recommend in this regard?

The ABs in the HKSAR will provide appropriate services and support to facilitate the PAPs' preparation for adoption including providing information of the culture and language of the child.

13. How does your State deal with the waiting time between:

- (a) the eligibility and suitability assessment of PAPs and the transmission of their application to the State of origin?

The ABs in the HKSAR will regularly review and update the report on the PAPs.
and

- (b) the transmission of the PAPs' application to the State of origin and the receipt of the proposed match from the State of origin?¹² (*E.g.*, does your State routinely update the reports on PAPs in this period?¹³ Does your State, or the relevant adoption accredited body, engage in regular communication with the State of origin on this issue?)

The ABs in the HKSAR will regularly review and update the report on the PAPs as well as liaise with the accredited adoption agencies / Central Authority of the State of origin.

C. Intercountry adoptions involving children with special needs¹⁴

Both States of origin and receiving States

14. (a) In your State's experience, what are the most common “special needs” of children adopted intercountry?

Elder age, health issues and disabilities are the most common "special needs" of children who have been placed for intercountry adoption.

- (b) If possible, please specify approximately what percentage of children adopted intercountry from or to your State¹⁵ have “special needs” (as defined by your State)?

All the children adopted intercountry from the HKSAR as State of origin have special needs.

¹⁰ You may wish to refer to your State's response to the Country Profile at question 15. *E.g.*, managing their expectations concerning the profile of adoptable children or waiting times, ensuring preparation materials / courses adequately prepare PAPs for the specific needs of an adoptable child.

¹¹ See SC 2010 C&R No 9.

¹² Your State may engage in a “reversal of the flow of files” with States of origin or other procedures such that waiting times are minimised: see further *Guide to Good Practice No 1 “The Implementation and Operation of the 1993 Intercountry Adoption Convention”* (“GGP No 1”) at Chapter 7.3.3, para. 394.

¹³ You may wish to refer to your State's response to the Country Profile at question 17 d).

¹⁴ See note 9 above regarding your State's definition of “special needs”.

¹⁵ Depending upon whether your State is a State of origin or a receiving State.

For the HKSAR as receiving State, children with special needs are also accepted for adoption. There were only few children including those with special needs adopted over the years.

- (c) What measures, if any, has your State taken to adapt intercountry adoption procedures in light of the needs of these children?

The ABs of the HKSAR are encouraged to extend their overseas network with accredited adoption agencies / Central Authorities to enhance the opportunities of securing suitable PAPs for adoptable children with special needs. The ABs are required to provide information on the PAPs' capabilities and resources with regard to the children's special needs for consideration in the matching process.

- (d) What are the main challenges which your State encounters in relation to the intercountry adoption of children with special needs? How does your State address those challenges?

There is room to increase the opportunities of adoptable children with special needs to be adopted. The ABs of the HKSAR are therefore encouraged to extend their overseas network with accredited adoption agencies / Central Authorities to identify suitable PAPs for adoptable children with special needs.

Receiving States only

15. In relation to the intercountry adoption of children with special needs, how does your State ensure that:

- (a) the parenting abilities of PAPs and their ability to cope with the particular special needs are appropriately assessed?

The ABs in the HKSAR shall be involved in all stages of the intercountry adoption process. The parenting abilities of PAPs and their ability to cope with the children's particular special needs will be comprehensively assessed by the ABs in the HKSAR.

- (b) any PAPs selected are suitably prepared for such adoptions and for the specific needs of each child?

The ABs in the HKSAR shall equip the PAPs as early as possible with the relevant knowledge and skills in taking care of children with special needs.

- (c) adoptive families are provided with appropriate post-adoption support in light of the child's special needs?

The adoptive families may approach the social services agencies in the HKSAR for support / services in regard to the child's special needs after adoption.

D. Post-adoption services for adoptees and adoptive parents

Both States of origin and receiving States

16. How, if at all, has your State implemented the recommendation of the 2010 Special Commission meeting that States should "provide different forms of assistance and counselling for different stages of the child's development to adulthood, including preparation for origin searches and reunions of the adoptees with members of their biological families"?¹⁶

Social services in the HKSAR are provided to the needy families including the adoptive families. On request, the Adoption Unit of SWD or ABs in the HKSAR will render root tracing service to

¹⁶ SC 2010 C&R No 29.

facilitate contact among the adopted persons, their adoptive parents and birth parents.

Receiving States only

17. Please specify any challenges your State has encountered in ensuring that adequate support is in place for adoptive parents and adoptees following an intercountry adoption, including where parents have adopted a child with special needs.¹⁷ Please also share any good practices your State has developed to overcome these challenges.

Social services in the HKSAR are provided to the needy families including the adoptive families.

E. Breakdown of intercountry adoptions

Both States of origin and receiving States

18. If your State has had experience of intercountry adoptions which have broken down subsequent to the adoption (sometimes referred to as "failed" or "disrupted" adoptions), please explain, in general terms:

- (a) what have been the main causes of the breakdowns in these cases (*e.g.*, deficient reports on the child, including failure to identify specific physical or psychological health needs in the report, inadequate preparation of the child or PAPs, inadequate post-adoption support).

No disrupted adoption in the recent three years

- (b) how your State has *addressed* these situations. Does your State have any good practices to share in this regard?

Not applicable

- (c) what steps, if any, your State has taken to try to *prevent* these situations occurring in future.

Not applicable

F. Open adoption

Both States of origin and receiving States

19. Does the term "open adoption" (or similar) exist in your State's domestic legislation or rules? If so, please explain how it is defined. If not, please explain what is understood in your State by the term "open adoption" or "openness in adoption".

The term "open adoption" does not exist in the legislation or rules of the HKSAR. The term "openness in adoption" may refer to accessibility to information of adoption services. For example, the legislation and rules of adoption, the procedures and related charges are easily accessible to the public.

20. Please specify what type of openness in intercountry adoption is: (a) permitted according to your State's domestic *legislation or rules*; and (b) promoted *in practice* in your State.¹⁸

The legislation and rules of adoption, procedures and related charges are posted and regularly updated as appropriate in the websites of the Central Authority and ABs in the HKSAR.

¹⁷ *E.g.*, difficulties coping with an increased demand for post-adoption services or with a need for more specialised services, or difficulties in determining how services should be funded. You may wish to cross-refer to your State's response to the Country Profile at Part IX concerning the services and support which your State provides.

¹⁸ *E.g.*, disclosure of identities of biological and adoptive families, post-adoption contact.

21. If possible, please specify approximately what percentage of intercountry adoptions involving your State include some element of openness. Has this number increased in recent years and, if so, what, in your State's view, are the reasons for this? What challenges have arisen as a result and how has your State sought to address these challenges?

All the PAPs have easy access to information of intercountry adoption through the websites of the Central Authority and the ABs in the HKSAR. There was no significant change in the number of intercountry adoptions in the past years.

G. Discussion at the upcoming Special Commission meeting

Both States of origin and receiving States

22. Which topics / issues does your State consider are the most important to discuss at the Special Commission in relation to the counselling and preparation of children and the selection,¹⁹ counselling and preparation of PAPs for intercountry adoption?

The following two areas are considered worthy of discussion in the Special Commission: (a) the parameters as reference for counselling and preparation of children for intercountry adoption in light of their age and degree of maturity as well as the assistance to the children to go through the separation with their carers and attachment figures; and (b) the coverage of home study reports of PAPs, which is important in facilitating the matching of adoptable children with the most suitable PAPs. (The report may include knowledge and capacity of PAPs and community resources for short term/long term support in taking care of the adoptable children especially those with special needs and / or of elder age.)

23. Does your State consider that there is any merit in developing a Guide to Good Practice on the selection, counselling and preparation of PAPs for intercountry adoption, as recommended by the last meeting of the Special Commission in 2010, and on the preparation and counselling of children?²⁰ If so, which particular issues would your State wish to see addressed in such a Guide?

Developing a Guide of Good Practice on the selection, counselling and preparation of PAPs for intercountry adoption and on the preparation and counselling of children will be beneficial to the successful arrangement of intercountry adoption among Contracting States. The Guide will facilitate the matching of adoptable children with the most suitable PAPs if the following issues are covered:

- (i) assessment on PAPs' knowledge and capacity as well as community resources for short term/long term support in taking care of the adoptable children especially those with special needs and / or of elder age;
- (ii) assessment on adoptable children's views on adoption arrangement in light of their age and degree of maturity; and
- (iii) intervention to help adoptable children to deal with separation with carers and attachment figures.

¹⁹ The "selection" of PAPs in this context is taken to mean the assessment of the PAPs' eligibility and suitability to adopt intercountry.

²⁰ See SC 2010 C&R No 10 (*op. cit.* note 2).

II. SOME SPECIFIC ISSUES ARISING IN THE INTERCOUNTRY ADOPTION PROCEDURE

A. Article 17 agreements

Both States of origin and receiving States

24. Please indicate any operational difficulties which your State has experienced, either in your State or in other Contracting States, in relation to obtaining the agreements required in Article 17 and, in particular, Article 17 c).²¹

Nil.

B. Recognition of adoptions made in accordance with the Convention (Chapter V)²²

Both States of origin and receiving States

25. (a) Previous Special Commission meetings²³ have repeatedly emphasised the importance of:

- clearly designating the authorities competent to issue Article 23 certificates and keeping this information updated;
- promptly issuing such certificates without delay following an adoption decision made in accordance with the Convention;
- providing parents with a copy of the Article 23 certificate before they come to take the child;
- providing a copy of the certificate to the Central Authority in the receiving State;
- using the "Model Form for the Certificate of Conformity of Intercountry Adoption"²⁴ to promote consistent practice; and
- where an Article 23 certificate is incomplete or defective, co-operating to regularise the situation.

Despite the above recommendations, has your State continued to experience difficulties with the issuance or receipt of certificates of conformity under Article 23?²⁵ If so, please explain the difficulties encountered, including how your State has sought to remedy or ameliorate the situation.

Nil.

- (b) Taking into account the previous recommendations made on this topic, does your State have any novel suggestions concerning how to improve practices regarding Article 23 certificates?²⁶

Nil.

²¹ *E.g.*, lack of clarity concerning the body which should provide the Art. 17 c) agreement, breakdown of State-to-State communications concerning the agreement, lack of clarity concerning which State should provide its agreement first.

²² When answering this section, you may wish to cross-refer to your State's response to question 13 of Questionnaire No 1.

²³ *E.g.*, see SC 2000 C&Rs Nos 17 to 19, SC 2005 C&R No 3 and SC 2010 C&Rs Nos 15 to 17.

²⁴ See GGP No 1, Annex 7.

²⁵ *E.g.*, deficient or no certificates issued, delays in sending certificates, confusion concerning which authorities should issue the certificate, confusion concerning to whom the certificates should be sent.

²⁶ *E.g.*, how to better promote the use of the Recommended Form, ensure designations under Art. 23.

C. Delays in intercountry adoption procedures

Both States of origin and receiving States

26. Does your State have any comments on the speed with which Convention adoptions are processed?²⁷ If your State has experienced any unnecessary delays, what has caused these delays and are they at a particular stage of the intercountry adoption procedure?

Nil.

27. Does your State have any good practices to share or recommendations as to how delays in the intercountry adoption procedure might be minimised, whilst still ensuring that the safeguards of the Convention are respected?

Administrative procedures to ensure the ABs in the HKSAR to complete relevant tasks for adoption in a reasonable time frame are in place.

D. Co-operation issues

Both States of origin and receiving States

28. In your State's experience, is the day-to-day co-operation with other Contracting States working well (*e.g.*, sending and receiving documents,²⁸ prompt responses to enquiries and questions, openness to discussing problems and finding solutions)? Please specify any difficulties and concerns.

The day-to-day co-operation between the HKSAR and concerned States is working well.

29. At the meeting of the Special Commission in 2000, "[t]he need for adequate resources and appropriately trained staff in Central Authorities was accepted, as well as the importance of ensuring a reasonable level of continuity in their operations."²⁹ Has your State continued to encounter difficulties in this regard, whether in your State or in other Contracting States?

Nil.

30. Has your State made or received from other Central Authorities any "general evaluation reports" about experiences with intercountry adoption as specified in Article 9 d)?

If so, have these reports proved useful? Please explain to what use they have been put and the follow up undertaken.

If not, does your State consider that the preparation of such reports should be encouraged as helpful in promoting the regular review of practices and co-operation between States?

Nil. The practices and co-operation between the HKSAR and concerned States are reviewed when issues/opportunities arise.

²⁷ See SC 2005 C&R No 14: "[t]he Special Commission reminds States Parties to the Convention of their obligations under Article 35 to act expeditiously in the process of adoption, and notes in particular the need to avoid unnecessary delay in finding a permanent family for the child".

²⁸ *E.g.*, has your State encountered any difficulties due to other Contracting States requesting documents / information which your State is not permitted to provide according to your domestic legislation, or due to your State requesting documents / information from other Contracting States which they are not permitted to provide (such as identities of biological parents, statements of consent, judgments regarding the withdrawal of parental rights, medical reports on PAPs)?

²⁹ See SC 2000 C&R No 3.

III. SPECIFIC TOPICS FOR CONSIDERATION

A. The subsidiarity principle (Art. 4 b))

Both States of origin and receiving States

31. Please describe the laws, procedures and practices in your State which seek to ensure that an appropriate balance is struck between providing sufficient support to biological families to enable the family to be preserved or reunified where possible, while at the same time preventing excessive delay in declaring a child adoptable and finding a suitable alternative permanent family for the child if necessary.

In the HKSAR, family casework services, a variety of child care services, medical and rehabilitation services, as well as financial assistance are available to support the birth parents to take care of their children. In case the parent(s) are unable or unwilling to take care of the child, social workers will work out the permanency plan in the best interest of the child where adoption will be assessed seriously as to its appropriateness for the child. The permanency plan will be reviewed regularly until its materialisation and it can also be modified in accordance with the changing needs of the child.

States of origin only

32. What are the main challenges in implementing and applying the subsidiarity principle in intercountry adoption cases in your State?

While avoiding delay in the adoption arrangement for children whose parents have not provided them a suitable home for their growth, it is a great challenge to assist the birth parents to make the decisions as early as possible as to their relinquishment of the children for adoption or not (especially working with parents who are evasive in attitude and / or lose contacts from time to time).

33. In your State, is the subsidiarity principle applied in the same manner to:

- (i) *intra-family* intercountry adoptions; and
- (ii) intercountry adoptions concerning children with *special needs*?

If not, please describe any different procedures used and explain the reasons for the different procedures.

The subsidiarity principle is applied to all kinds of adoptions.

Receiving States only

34. (a) In accordance with the principle of co-responsibility,³⁰ what information, if any, does your State routinely request *in each intercountry adoption case* to ensure that the subsidiarity principle has been respected in the State of origin?

Information on the adoptable children's background is requested from the State of origin. When the State of origin is the contracting state of Hague Convention, the HKSAR as the Receiving State is trustful that the State of origin has adopted the subsidiarity principle in making decision regarding the adoptability of the children.

- (b) Is it possible and / or common in your State for a proposed matching of child and PAPs to be rejected on the basis that the relevant competent authority / body is not satisfied that the subsidiarity principle has been

³⁰ See, e.g., Chapter 12 of GGP No 2.

respected in the particular case?

No. When the State of origin is the contracting state of Hague Convention, the HKSAR as the Receiving State is trustful that the State of origin has adopted the subsidiarity principle in making decision regarding the adoptability of the children.

35. In some States of origin, the child protection infrastructure necessary to implement the subsidiarity principle does not exist or is severely deficient, making proper implementation of the Convention in this respect challenging. Does your State undertake any programmes to assist States of origin with the development of their child protection systems³¹ in order for them to better implement the subsidiarity principle either:

(a) at State level (*e.g.*, in the form of development aid or technical assistance)?
Nil.

and / or

(b) through other bodies such as non-governmental organisations (which are not adoption accredited bodies)?
Nil.

If so, please specify how it is ensured that any such programmes do not compromise the integrity of intercountry adoption procedures and / or result in a dependence upon these forms of assistance:

Not applicable.

B. Mobility and globalisation

Both States of origin and receiving States

36. How, if at all, does your State define "habitual residence" for the purposes of the Convention? What factors are considered when determining where persons are habitually resident for Convention purposes?

It will be a question of fact to be determined by reference to the circumstances of the case. Each case has to be considered by the Court having regard to the facts of that individual case.

37. What are the most common scenarios in which your State has encountered difficulties in determining the "habitual residence" of PAPs and / or a child?

There is no reported case in the HKSAR which have considered the meaning of habitual residence in the context of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption 1993.

38. Please describe any restriction that your State places on individuals' ability to adopt intercountry based on their:

- (a) nationality; and / or
- (b) immigration status (*i.e.*, permission to reside in your State).

There is no restriction on individuals' ability to adopt intercountry based on nationality and/or immigration status provided that the individuals have valid citizenship at their home countries

³¹ See SC 2000 C&R No 10, which stated that "[r]eceiving countries are encouraged to support efforts in countries of origin to improve national child protection services... However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process", as well as SC 2010 C&R No 6. See also para. 553 of GGP No 2 which states that receiving States have "an additional responsibility to assist States of origin to improve their child protection and adoption systems. This is essential if all of the Convention's safeguards are to be applied...".

and legal permission to stay in the HKSAR.

39. How does your State deal with situations in which PAPs, habitually resident in one State, move to another Contracting State after initiating intercountry adoption proceedings (in accordance with Art. 14) but *while the adoption process is ongoing*? Does your State's response vary if the move is instead to a non-Contracting State?

The ABs in the HKSAR will clarify with the PAPs whether to proceed with their intercountry adoption. If affirmative, the ABs will liaise with Central Authority of PAPs' home countries and receiving States regardless whether Contracting States or not, to see how to facilitate the adoption arrangement and render assistance if possible.

40. How does your State deal with situations in which PAPs are either non-nationals living in your State, or nationals of your State living in another State, and:

- (a) your State does not consider the PAPs to be habitually resident in your State and the other State also does not consider them to be habitually resident in their State (*i.e.*, the PAPs are in a situation where they cannot make an application to adopt intercountry)?

Should the AB in the HKSAR have examined the situation and no alternative could be found, it would not be practicable for the PAPs to proceed with the adoption arrangement.

or

- (b) both your State and the other State consider the PAPs to be habitually resident in their State?

The AB in the HKSAR will liaise with the accredited adoption agency / Central Authority of the other States to look into the situation and work out the alternative(s), if any.

Example: PAPs are nationals of State A but, due to the nature of their work, have to move regularly to live in other countries for varying periods. Recently, they moved to State B for a one-year work contract. They now wish to adopt a child from State C.

- (a) *State A says these PAPs are not habitually resident in State A as they are not currently living there. State B also determines that they are not habitually resident in State B since they will leave the State at the end of one year.*

OR

- (b) *State A says the PAPs are habitually resident in State A as they are abroad for a limited, finite period and State A is the only country in which they have the intention to reside long-term. State B also determines that these PAPs are habitually resident in State B as they are currently living in State B.*

41. How does your State deal with situations in which PAPs are nationals of your State, are habitually resident in another State and wish to adopt a child from a third State? What role, if any, does your State play in the intercountry adoption in this scenario (*e.g.*, is your State involved in securing the nationality of your State for the child, any other role)?

The Central Authority (CA) of HKSAR will advise the applicants to clarify with the related parties including the CA/AB of the State where the applicants are living, the CA/AB of the child's State as well as the Immigration Department of HKSAR, on the nationality issues of the child before proceeding with adoption arrangement.

C. Use of modern technologies³² in intercountry adoption³³

³² In this document "modern technologies" is taken to mean the Internet and modern communication methods, such as e-mail, video-conferencing and social media.

In generalBoth States of origin and receiving States

42. Please briefly describe any laws, regulations or policy guidelines which exist in your State concerning the use of modern technologies in the field of adoption.³⁴ Where possible, please provide a hyperlink to these laws, regulations or guidelines or provide a copy, with a translation into English or French.

Hong Kong has a purpose-built technology court. Access to the court has been explained in Practice Direction 29. It is available for use for both civil and criminal proceedings in the Court of Final Appeal, Court of Appeal, Court of First Instance, District Court, Lands Tribunal, magistrates' courts, coroner's court, the Labour Tribunal and the Small Claims Tribunal.

It is a question of case management whether proceedings should be conducted in the technology court. In making such a decision the court will take into account the views of the parties, the availability of the court, the subject matter of the proceedings and all other relevant circumstances. In particular the court will consider whether the use of the court is likely (1) to promote the fair and efficient disposal of the proceedings; (2) to save costs; and/or (3) materially to delay disposal of the proceedings.

<http://legalref.judiciary.gov.hk/lrs/common/pd/pdcontent.jsp?pdn=PD29.htm&lang=EN>

Pursuant to the Convention Adoption Rules, Chapter 290D, of the laws of HKSAR, an application for Convention adoption order shall be made to the Court by originating summons. Service by way of fax and other electronic communication is not an accepted mode of service of originating summons.

43. Does your State regularly use modern technologies in the field of intercountry adoption, both generally, as well as in individual intercountry adoption cases?³⁵

If so, please describe which technologies are used, at what stage(s) of the intercountry adoption procedure and how the use of these technologies affects your daily work.

If not, please explain the reasons for this (*e.g.*, no access to modern technologies due to resource constraints, infrastructure problems or an absence of training).

Modern technologies such as internet, websites and e-mails are regularly used in the field of adoption to facilitate communication at different stages among the concerned parties such as Central Authority, Adoption Unit of SWD, ABs in the HKSAR, PAPs and social workers of adoptable children. The use of these modern technologies enhance the efficiency of the work process.

44. In your State's experience, what (a) benefits³⁶ and (b) risks have modern technologies brought to the field of intercountry adoption? Please describe how your State attempts to manage any perceived risks.

The use of internet, websites and e-mail facilitates the provision of information about adoption

³³ If your State responded to the 2013 ISS/IRC Questionnaire on new technologies and adoption (ISS/IRC Circular No 118), you may wish to refer to this response in your answers to this section.

³⁴ *E.g.*, legislation might concern data protection and rules concerning the online storage of data in adoption cases, the use of photo-listings, the use of the Internet in searching for origins or the use of DNA testing in adoption cases.

³⁵ *E.g.*, Internet and websites, e-mail, video-conferencing facilities such as Skype, online posting of informational videos, social media, etc.

³⁶ *E.g.*, websites for provision of information, fast sending of applications and reports, facilitation of contact between accredited bodies and PAPs during their stay abroad, facilitation of contact with representatives of accredited bodies, video-conferences to provide information concerning the health of children.

service to the public and communication among the concerned parties during the adoption process. To deter the adoption information from being used improperly, legislation and administrative procedures to govern the advertisements in relation to adoption matters are in place to safeguard the best interests of the child, and to prevent abduction, sale and trafficking of children for adoption.

45. Please briefly explain any specific courses, training or information which is / are provided on the use of modern technologies in the adoption process to:
- (a) the authorities and bodies involved in intercountry adoption in your State.³⁷

Legislation and administrative procedures to govern the advertisements in relation to adoption matters are accessible in the websites of the HKSAR Government.

<http://www.legislation.gov.hk/eng/home.htm>

http://www.swd.gov.hk/doc/fcw/Adoption_Guideline%20on%20the%20Assessment%20of%20Application%20of%20Advertisement_upload%20version_dds_Eng.pdf

and / or

- (b) PAPs, biological families and adoptable children (or adoptees, if the information is provided subsequent to the adoption)³⁸ – *e.g.*, are the risks of the use of these technologies part of the programmes of counselling and preparation of PAPs, adoptable children or biological families and is any post-adoption support provided in relation to these issues?³⁹

Nil.

In either case, where possible, please provide hyperlinks to or copies of any information or training material provided (*e.g.*, publications, leaflets, websites), along with a translation into English or French.

46. Does your State use and / or accept from other States scanned documents in intercountry adoption cases (*e.g.*, scanned and e-mailed Art. 17 c) agreements, Art. 23 certificates)?

Scanned copies of documents provided by overseas adoption agencies are accepted for early processing of applications, provided those listed in (b) below are available to the HKSAR.

If so:

- (a) Please specify which documents are sent or accepted in scanned format:
The scanned copy of documents other than those listed in (b) below are accepted.
- (b) Are these scanned versions used or accepted *instead of* the original documents or *in addition to* the original versions (*i.e.*, the original documents follow later by post)?

Original copy of the following documents are required:

- Assumption of Responsibility pending completion of adoption
- Statement for Acceptance for Adoption
- Confirmation according to Article 5 of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption

³⁷ *E.g.*, in relation to its use by adoptees or families to search for origins, or in relation to the use of online databases of adoptable children.

³⁸ Depending upon whether your State is a receiving State or a State of origin (or both).

³⁹ *E.g.*, concerning making contact via the Internet, posting confidential information on social media websites or using social media to search for origins.

- Adoption Order

- (c) Is any authentication of the scanned document required (*e.g.*, legalisation or apostillisation)?⁴⁰

No

- (d) How are scanned documents stored and how is the security of the information guaranteed?

The storage of scanned documents is governed by the relevant administrative procedures of HKSAR Government and ABs in the HKSAR.

If not, please explain the reasons for this:

Not applicable.

Using modern technologies to assist with finding a suitable family for a child

Both States of origin and receiving States

47. Does your State use, or permit others to create and use, online “photo-listings”⁴¹ of adoptable children?

On-line "photo-listings" is not allowed in the HKSAR.

If so, please explain:

- (a) whether these listings include profiles of *all* adoptable children in your State or only certain categories of children (*e.g.*, children with special needs):

Not applicable.

- (b) which authorities or bodies create / operate these online listings in your State (*i.e.*, is this under State control or the control of other adoption actors?):

Not applicable.

- (c) who is permitted to access the listings:

Not applicable.

- (d) what safeguards have been implemented to protect the privacy of the children concerned (*e.g.* restricted access for Central Authorities and accredited bodies only):

Not applicable.

- (e) how it is ensured that the use of such listings is in conformity with the matching process set forth in the Convention (*i.e.*, matching by the competent authority in the State of origin after the suitability and eligibility of the PAPs has been determined):

Not applicable.

Using modern technologies to search for origins

Both States of origin and receiving States

48. Do the relevant competent authorities in your State use social media (*e.g.*, Facebook, Twitter) to help adoptees search for their origins? If so, are there any

⁴⁰ See the *Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* (the “Apostille Convention”, concluded 5 October 1961).

⁴¹ In this document, “photo-listings” means databases which include photographs and descriptions of the background and characteristics of adoptable children. They often have limited, protected access (*e.g.*, for Central Authorities and accredited bodies only) and may be used to search for families for children who are hard to place.

guidelines or good practices regarding the use of social media by authorities / bodies for this purpose?

Social media is not used in root tracing services.

49. Has your State had any cases in which PAPs / adoptees and birth families have contacted each other via social media or other modern methods of communication after an adoption and without the involvement of professionals? If so, please specify the situations which have arisen, the challenges faced and how these challenges have been overcome.

The PAPs / adoptees and birth families do not have information of each other at the time of adoption. Upon the request of adult adopted persons or adoptive parents on behalf of the adopted children aged under 18, Adoption Unit of HKSAR and the ABs in the HKSAR provide assistance to trace information related to the birth parents and/or to establish contact with the birth parents. After the completion of root tracing service, the Central Authority does not have any study on the means of their subsequent contacts if any.

D. Illicit practices⁴²

In general

Both States of origin and receiving States

50. Please describe the practices relating to the abduction, sale of or traffic in children or other illicit practices which your State has experienced most frequently in the context of intercountry adoption since the last Special Commission meeting (2010), regardless of whether these practices have taken place in your State or in another Contracting State.

The CA of HKSAR has no relevant experience in the context of intercountry adoption.

51. Please provide details of any specific examples in which your State has worked either alone or in co-operation with other Contracting States in order to prevent and / or address practices relating to the abduction, sale of or traffic in children or other illicit practices in the context of intercountry adoption. Was Article 33 ever relied upon in such cases? If so, please describe what measures were taken and the outcome.

Nil

52. Has your State ever suspended or restricted its intercountry adoption programme (*e.g.*, introducing a moratorium, refusing to work with a particular Contracting State) because of concerns about the risk of abduction, sale of or traffic in children or other illicit practices? If so, did the suspension or restriction assist with efforts to combat these practices? What challenges did your State encounter in seeking to resume intercountry adoptions or lift any restrictions once practices had been improved?

The CA of HKSAR has no relevant experience in the context of intercountry adoption.

E. Other international placements of children which result in adoption

⁴² In this Questionnaire, the term "illicit practices" is used in the same sense as in the "Discussion Paper Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases" (October 2012), available on the specialised "Intercountry Adoption Section" of the Hague Conference website: *i.e.*, it "refers to situations where a child has been adopted without respect for the rights of the child or for the safeguards of the 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)."

Kafala resulting in adoption

Receiving States only

53. Are persons, habitually resident in your State who have a child placed into their care under kafala in another State, permitted to subsequently adopt the child in your State?⁴³

Example: a child, habitually resident in State A, is placed into the care of a couple under the regime of kafala by the court in State A. The couple habitually resides in State B (your State) and the understanding is that they will return immediately to State B to live with the child. Under your State's laws, are the couple permitted to subsequently adopt the child in your State, State B?

For adoption application in the HKSAR, there are no particular requirements in respect of children placed into the care of persons habitually resident in the HKSAR in another State. Provided that the requirements laid down in the Hague Convention 1993 are met, such persons may make an application for Convention adoption order to the Hong Kong court. A basket of factors including PAPA's suitability to adopt the child will be considered and an adoption order will be made by the Court if satisfied that the adoption arrangement is in the best interest of the child.

If so, please explain:

- (a) the reasons for this:
Not applicable.
- (b) the procedure, including any involvement of the State of origin:
Not applicable.
and
- (c) whether this would be a "simple" or a "full" adoption:
Not applicable.

Respite care abroad resulting in adoption⁴⁴

Both States of origin and receiving States

54. If your State is involved in respite care programmes⁴⁵ for children, please explain:
- (a) whether such programmes specifically aim to be a precursor to adoption for some children (*e.g.*, for children with special needs):
Not applicable.
 - (b) whether such programmes have, in fact, resulted in the adoption of children and, if so, approximately what percentage of children involved in the programmes are adopted:
Not applicable.

⁴³ **N.B. the provision of care by kafala falls within the scope of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (the "1996 Convention") (Art. 3 e) of the 1996 Convention) and thus kafala placements benefit from its unified rules on jurisdiction, applicable law and the recognition and enforcement of measures between Contracting States. In addition, the 1996 Convention contains mandatory co-operation provisions with which Contracting States must comply when a cross-border kafala placement is contemplated between them (Art. 33 of the 1996 Convention). For further information concerning kafala and the 1996 Convention, see the [Practical Handbook on the 1996 Convention](#) available on the Hague Conference website < www.hcch.net >.**

⁴⁴ See GGP No 1 at paras 561 to 563.

⁴⁵ *I.e.*, programmes in which children from certain States of origin, often children living in institutional or other non-family based alternative care, are hosted temporarily by families in other States for "holidays" to improve the child's mental and physical well-being.

- and
- (c) where a child is adopted following such a programme, how it is ensured that the safeguards of the Convention have been respected (bearing in mind that it is likely that the child remains “habitually resident” in his / her State of origin and thus the adoption falls within the scope of the Convention according to Art. 2):⁴⁶
- Not applicable.

Foster care resulting in adoption

Both States of origin and receiving States

55. Is your State aware of cases in which a domestic foster care placement has been used in order to circumvent Convention intercountry adoption procedures? If so, please provide details, including the challenges which these cases have presented and any good practices your State has developed to deal with such cases.

Example: a couple, usually resident in State A, travels to State B and applies to foster a child. They intend to apply to adopt this child in State B and to return shortly thereafter to live in State A.

Administrative procedures to govern foster care placement in the HKSAR are in place to prevent the abuse of foster care for adoption purpose.

F. Triangular adoptions⁴⁷

Both States of origin and receiving States

56. Does your State allow PAPA wishing to adopt intercountry to use an accredited body located in a *third* State to mediate the adoption (*i.e.*, an accredited body *not* located in the State of origin or in the receiving State)? If so, please briefly describe any conditions imposed by your State,⁴⁸ the procedure used and any challenges encountered. Please also share any good practices your State has developed in relation to such cases.

Triangular adoptions are not allowed in the HKSAR.

G. International surrogacy arrangements⁴⁹ and intercountry adoption⁵⁰

Both States of origin and receiving States

57. Following the recommendations of the 2010 Special Commission meeting,⁵¹ has your State experienced any cases of international surrogacy arrangements in which use of the 1993 Hague Convention has been sought in order to remedy the situation of the legal status of the child? If so, please explain the circumstances in which this occurred, how it was ensured that the safeguards of the Convention were respected,

⁴⁶ *E.g.*, how it is ensured that: the child is legally and psycho-socially adoptable; the subsidiarity principle is respected; the eligibility and suitability of the PAPA is appropriately assessed; the Convention requirements concerning professional “matching” are met; and the child and parents are appropriately prepared, informed and counselled for the adoption.

⁴⁷ For a definition of “triangular adoption”, please see GGP No 1 at Chapter 8.8.7.

⁴⁸ See the good practices recommended at para. 555 of GGP No 1.

⁴⁹ The term “international surrogacy arrangement” is used in this Questionnaire to mean “a surrogacy arrangement entered into by intending parent(s) resident in one State and a surrogate resident (or sometimes merely present) in a different State”. (See further the Glossary attached to the “Report on the desirability and feasibility of further work on the Parentage / Surrogacy Project” (Prel. Doc. No 3B of March 2014).)

⁵⁰ Please note that the issue of international surrogacy arrangements is being studied separately by the Hague Conference in the context of its “Parentage / Surrogacy Project”: for further information on this Project, please see the specialised section of the Hague Conference website, under “Parentage / Surrogacy Project”. These questions therefore only relate to the use of the 1993 Convention and related bodies / authorities in these cases.

⁵¹ See SC 2010 C&R Nos 25 to 26 in which it was stated that the Special Commission “viewed as inappropriate the use of the Convention in cases of international surrogacy”.

and the outcome for the child and family.

Nil.

IV. SERVICES AND SUPPORT PROVIDED BY THE HAGUE CONFERENCE

Both States of origin and receiving States

58. Are the following documents used in your State as tools to assist with the operation of the Convention and / or to periodically review your State's intercountry adoption system and processes:
- (a) the Conclusions and Recommendations of previous Special Commission meetings:
Reference has been made to the related parts where appropriate.
 - (b) Guide to Good Practice No 1 *"The Implementation and Operation of the 1993 Intercountry Adoption Convention"*:
Reference has been made to the related parts where appropriate.
 - (c) Guide to Good Practice No 2 *"Accreditation and Adoption Accredited Bodies"*:
Reference has been made to the related parts where appropriate.
 - (d) the tools⁵² developed by the Experts' Group on the Financial Aspects of Intercountry Adoption:
Reference has been made to the related parts where appropriate.
 - (e) the "Discussion Paper on Co-operation between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases":⁵³
Reference has been made to the related parts where appropriate.

Please explain how these tools are currently promoted in your State and how they could, in your State's view, be more effectively promoted at the regional and / or international level:

The tools will be shared with AU of SWD and ABs in the HKSAR for review of adoption service in the HKSAR.

59. In light of the fact that the importance of ICATAP (the "Intercountry Adoption Technical Assistance Programme" of the Hague Conference) to the proper implementation and operation of the 1993 Convention has been reiterated by Special Commission meetings and by meetings of the Council on General Affairs and Policy for many years, does your State have any suggestions as to how to secure more regular and consistent funding for this work at the Permanent Bureau, including for the key position of the ICATAP Co-ordinator?

Nil.

Is there any other comment your State wishes to make concerning the implementation and / or operation of the 1993 Convention?

Nil.

⁵² See the tools developed by the "Experts' Group on the Financial Aspects of Intercountry Adoption", available on the Intercountry Adoption Section of the Hague Conference website, under "Expert and Working Groups": *i.e.*, the harmonised Terminology adopted by the Experts' Group on the financial aspects of intercountry adoption, the Note on the financial aspects of intercountry adoption, the Summary list of good practices on the financial aspects of intercountry adoption and the Tables on the costs associated with intercountry adoption.

⁵³ Available on the Intercountry Adoption Section of the Hague Conference website, under "Expert and Working Groups".