

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*

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

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<sup>1</sup> 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").

<b>Name of State:</b>	New Zealand
<b>Date of entry into force of 1993 Hague Convention in your State:</b>	January 1999
<b><u>Information for follow-up purposes</u></b>	
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## **I. ADOPTABLE CHILDREN, ADOPTEES AND PROSPECTIVE ADOPTIVE PARENTS<sup>2</sup>**

### **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*<sup>3</sup> 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;<sup>4</sup> and
- (b) approximate number of children in need of intercountry adoption in your State.

- Please insert text here -

##### Receiving States only

2. Please explain any challenges your State has encountered in ensuring that:
  - (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;<sup>5</sup> 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").<sup>6</sup>

<sup>2</sup> 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](http://www.hcch.net) > under "Intercountry Adoption Section" then "Special Commissions".

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> 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".

<sup>6</sup> 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

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

Social workers work to manage the expectations of prospective adoptive parents (PAPs), particularly regarding the availability of children. PAPs are encouraged to reframe what they, the PAPs, will "accept" to what the PAPs have to "offer".

Information about the nature and needs of children from various States of origin is discussed with PAPs in preparation for adoption.

The information provided by States of origin assists in identifying the core needs of adoptive children. The New Zealand Government has developed an assessment framework focused on the core needs of children, and PAPs are assessed using an evidence-based assessment on their ability to meet those needs.

## ***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.<sup>7</sup>

Difficulties regarding a child's adoptability include the New Zealand Central Authority (NZCA) often having no understanding of the State of origin's process for determining the child's adoptability and the consideration of the principle of subsidiarity.

States of origin often do not provide information about considerations of the subsidiarity principle and any domestic options that may have been considered before an intercountry adoption is proposed. Information about children is often very limited and the child's social history can be missing from the child study. The absence of this information creates a difficulty for the NZCA because an understanding of the reasons that a child entered the care system in the State of origin informs the NZCA and PAPs of the child's likely needs and behaviours.

A lack of information provided by the State of origin can cause concern for the NZCA that inadequate consideration has been undertaken about the adoptability of the child in the decision-making process.

There can be tension between the decision making process of the Central Authority and an accredited agency in a State of origin. Accredited agencies in some States of origin conduct a pre-match between an adoptive child and PAPs. The State of origin Central Authority may only consider the pre-match proposal a year later. Confusion can arise in the decision-making process when PAPs are made an offer by an agency that has guardianship of the child, but the Central Authority in the State of origin has not determined the outcome.

One practice that has been developed in the NZCA is to write up the consideration of the match, including the information known about the child's birth family and siblings and the decision making process. This information is available for the child in the future and provides some transparency about the adoption placement.

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

Relative adoptions raise special considerations. Frequently, the child's voice is not heard. The adoption proposal can come about through a feeling of family obligation or family pressure. The child may be within an intact family and the reason for adoption is immigration convenience. This can disrupt the child's life while authorities in the State of origin gather information about the child,

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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."

<sup>7</sup> See SC 2010 C&R No 1 b).

conduct a child study report and consider the responsibilities under Article 17.

Sometimes, family members can explore adoption instead of maintaining an existing care arrangement, which is working well for the child. This can disrupt the child and is not in the child's best interests, particularly if the proposal is likely to be declined.

PAPs can also misunderstand that the consequence of adoption is to create a parent-child relationship, rather than to formalise an existing caregiver role for the child's relative. The change in the expectations and dynamics of the relationship in the new context of adoption can lead to the relationship between the child and their relative adoptive parents breaking down.

Despite best efforts, New Zealand has in the past returned a child to their State of origin and their original family when a relative adoption deteriorated and could not be remedied.

## **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).<sup>8</sup> Please specify any particular difficulties encountered in the case of children with "special needs".<sup>9</sup>

State of origin reports can be out of date and can lack focus on the appropriate subject matter. Any "special needs" focus is on medical or health issues and often does not identify the child's emotional state, psychological state, any behaviours the child exhibits, and appropriate behavioural management strategies. Photographs are often not recent.

### Receiving States only

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

If a child study is deficient or incomplete, the NZCA will seek additional information from the State of origin, if possible.

- (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.

The State of origin needs to provide more information about why the child is in care and needs an intercountry adoption. There is often no information about the views of the child. Having more information about the child's birth family, sibling relationships and family dynamic would help. The match approval and the PAPs' decision-making would be helped by more information about the child's behaviours and how to manage them.

The birth father is often not mentioned and his views on the adoption are not known. Understanding how the law governs birth fathers' rights in the State of origin would be helpful.

## **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

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

<sup>9</sup> 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".

how your State has dealt with such cases.

Profiles of children have not matched the PAPs declared eligibility and suitability, particularly as to the child's age. In some cases, the PAPs themselves have declined the match, and in others they have been re-assessed for their ability to parent an older child.

### ***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.

(a) Some children have been ill-prepared for an intercountry adoption. This has occurred despite the child being of an age where they would be capable of understanding the concept of travel and adoption. This adds to the trauma for the child.

(b) Some children have been extremely well prepared for an intercountry adoption. There have been exchanges of photos, videos, and welcome albums. The caregivers of some children have taught the child some important English words. Some children in the guardianship of accredited agencies are in foster care with ex-patriate families and the child gains experience of English, and European food and fashion.

Some Indian placement agencies have prepared extensive life books for children who are matched with New Zealand families. Matches from Chile have an extensive discourse on the considerations that were given to the particular PAPs who have been chosen for the particular child. These carefully argued considerations give the PAPs a strong feeling of empowerment and are also reassuring to the social worker who has provided the analysis of the PAPs.

### **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.

New Zealand has encountered a number of challenges in preparing reports on PAPs, including:

- confirming that PAPs understand how to parent a child who has experienced trauma and disruption
- confirming that PAPs can access adequate support
- obtaining criminal record and other suitability information on PAPs who have lived overseas before applying to adopt in New Zealand
- ascertaining PAPs' motivation to adopt and whether there is equal commitment to an adoption within a couple, and
- explaining a decision to refuse an application to adopt, particularly when the circumstances are complex.

#### 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?

- Please insert text here -

- (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.

- Please insert text here -

### ***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.
- Please insert text here -
- (b) In your State's experience, what could be done to improve the counselling and preparation of PAPs in general?
- Please insert text here -

#### Receiving States only

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

Determining that PAPs have an appropriate motivation and confirming that they are realistic in their expectations.

The NZCA supports the practice required by Lithuania that PAPs consider first only the written material on the child in the Article 16 child study report. This allows the PAPs to absorb and understand the background information relating to the child before they consider photographs.

Education is part of the PAPs' preparation. Education for PAPs includes panels and videos of other adopters who share their experience. Families are put in touch with each other to share information and to provide support. PAPs are assessed for a specific State of origin rather than generically.

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".<sup>11</sup> How does your State ensure that this recommendation is complied with? Does your State have any good practices to recommend in this

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<sup>10</sup> 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.

<sup>11</sup> See SC 2010 C&R No 9.

regard?

PAPs often choose to adopt from a country they have visited or lived in, and many PAPs take a pre-custodial trip to the country in order to understand a child's life there.

As part of good practice, PAPs are expected to engage with cultural consultants from the child's culture who are made available to the adoptive family. This allows the adoptive families to learn more about the child's culture.

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?

After education and preparation, the assessment is done as quickly as possible. NZCA advises PAPs that regular updates will not be sought from other Central Authorities about individual applications. PAPs are also discouraged from approaching Central Authorities on their own behalf, and Central Authorities are encouraged to refer such direct inquiries from New Zealanders back to NZCA.

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?<sup>12</sup> (E.g., does your State routinely update the reports on PAPs in this period?<sup>13</sup> Does your State, or the relevant adoption accredited body, engage in regular communication with the State of origin on this issue?)

To manage the pressures on PAPs, NZCA seeks to reframe the "wait time" as "preparation time" and to encourage PAPs to engage in preparatory activities, including learning basic language skills.

### C. Intercountry adoptions involving children with special needs<sup>14</sup>

#### 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?

The most common special needs are minor correctable medical conditions, such as cleft palate, bronchial and respiratory conditions, and skin conditions.

- (b) If possible, please specify approximately what percentage of children adopted intercountry from or to your State<sup>15</sup> have "special needs" (as defined by your State)?

About 60%.

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

The PAPs are provided with non-identifying descriptions of typical special needs children. Information about these children is available during the education and preparation process to better educate the PAPs about the specific needs of each condition. PAPs are also encouraged to research specific support services and professionals in their neighbourhood. The NZCA can obtain professional medical advice when considering a match. The NZCA encourages PAPs to consult their own paediatric practitioner and local professional specialists for additional information and support.

- (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

<sup>12</sup> 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.

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

<sup>14</sup> See note 9 above regarding your State's definition of "special needs".

<sup>15</sup> Depending upon whether your State is a State of origin or a receiving State.

address those challenges?

Ensuring that PAPs are adequately informed on and prepared for parenting special needs children, and that their commitment to adopting such children is realistic. This is achieved by providing education and information.

#### 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?

PAPs must demonstrate a degree of self-education regarding special needs criteria defined by the State of origin to which they are applying. They are expected to understand treatments and services the child will need. They must also demonstrate that they are able to fund services for the child that are not publicly funded in New Zealand.

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

When a matching proposal is made, the PAPs' understanding is again canvassed regarding the child and his or her particular needs.

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

Adoptive families are linked with existing support groups for families with children with specific conditions. Medical and educational specialist services normally available to New Zealand children are made available to intercountry adopted children. New Zealand accredited agencies also provided adoption support networks.

### **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"?<sup>16</sup>

For more than 20 years, New Zealand law, the Adult Adoption Information Act 1985, has allowed parties to past adoptions to obtain identifying information. Through our Affiliated Bureau status with the International Social Service, we have facilitated reunions between birth relatives and adopted people living overseas. Adopted people have access to their files in the future, and all information we hold is available to them. One accredited body has assisted some Romanian and Russian adopted children to meet members of their birth family.

#### 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.<sup>17</sup> Please also share any good practices your State has developed to overcome these

<sup>16</sup> SC 2010 C&R No 29.

<sup>17</sup> *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.

challenges.

Please see question 15 (c) above.

## 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).

The reasons for failed adoptions include:

- insufficient information about the child's behaviours
- inaccurate assessment of the skills and abilities of the parents and their expectations
- family crises, such as a marital breakdown
- the child being too old to adjust to a new family
- adoptive parents being unable to bond with the child, and
- relative adopters not adjusting to a parental role.

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

If problems emerge post placement, support is provided to try and sustain the placement. Counselling and therapeutic services are recommended. A statutory care and protection response is provided when warranted. The child may be placed in temporary alternative care.

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

New Zealand tries to prevent the breakdown of adoptions through education and information for PAPs.

## 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".

New Zealand adoption social work practice supports "open adoption". "Open adoption" is not required by law in New Zealand, but most domestic adoptions in New Zealand would be considered open adoptions. This is because parties to the adoption, previously unknown to each other, often meet at the time of the placement and continue to maintain on-going contact of a nature that works for the parties for the benefit of the child over his or her life.

"Openness in adoption" is usually considered as an adoption which allows an adopted person to have access to personal identifying information as opposed to closed records and secrecy.

New Zealand has information sharing legislation (the Adult Adoption Information Act 1985), which allows access to information in adoptions that were previously closed.

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.<sup>18</sup>

See answer to 19 above.

New Zealand law neither prohibits nor requires open intercountry adoption arrangements. The degrees of openness in the adoption process is determined by the parties involved in the adoption.

Many States of origin do not offer open intercountry adoptions, but some do. The preferences of PAPs for an open or closed intercountry adoption vary.

The NZCA would make contact with other Central authorities on behalf of adopted people who were seeking possible reunions or additional information in respect to adoption that the NZCA has facilitated.

It is not possible to specify what percentage of intercountry adoptions in New Zealand are open adoptions.

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?

It is not possible to specify what percentage of intercountry adoptions to New Zealand are open in respect to ongoing or later established contact with birth family in the State of origin. Openness and extensiveness of identifying information from States of origin has increased in the experience of the NZCA.

## **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,<sup>19</sup> counselling and preparation of PAPs for intercountry adoption?

NZCA is interested in educating, preparing and assessing PAPs who wish to adopt children with special needs. Having an agreed definition across States on what are considered special needs would be helpful.

NZCA considers that States of origin and receiving States should discuss how evidence of the voice of the child has been sought, considered and is expressed in a child study report and what information is required in child study reports.

Clearer timeframes, risks, and outcomes of a match might help in managing the PAPs' expectations.

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?<sup>20</sup> If so, which particular issues would your State wish to see addressed in such a Guide?

Yes. NZCA would wish the following addressed:

- educating, selecting and assessing PAPs, particularly regarding the adoption of older children, sibling groups and special needs children

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

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

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

- guidance on how adoptive parents can respond to an intercountry adopted child's need for information about their origins and identity.

## **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).<sup>21</sup>

Sometimes a State of origin will support the adoption, but New Zealand, as the receiving State, will not because the child has adequate care arrangements with existing family in the State of origin.

The same inconsistency in support for the adoption between States occurs when New Zealand determines, usually in the case of a relative proposal, that the child is of an age or maturity where intercountry adoption seems inappropriate and would not be considered in a domestic scenario.

In cases of an identified child proposal clarification it would be helpful to have clarity about whether the home study report and Article 15 certificate should be provided before the child study report, or whether a child study report should be provided first to assist in the assessment of the PAPs and issue of the Article 15 certificate. A full exchange of information is needed to fulfil the considerations in Article 17.

### **B. Recognition of adoptions made in accordance with the Convention (Chapter V)<sup>22</sup>**

#### Both States of origin and receiving States

25. (a) Previous Special Commission meetings<sup>23</sup> 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;

<sup>21</sup> *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.

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

<sup>23</sup> *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.

- using the "Model Form for the Certificate of Conformity of Intercountry Adoption"<sup>24</sup> 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?<sup>25</sup> If so, please explain the difficulties encountered, including how your State has sought to remedy or ameliorate the situation.

The NZCA still experiences incorrect information on Article 23 certificates that require correction and cause considerable delays. This delays the child's access to New Zealand citizenship and impedes their ability to travel with their adoptive parents to other countries that do not allow the child to travel on their State of origin passport.

The dates on the Model Form for the Certificate of Conformity of Intercountry Adoption are somewhat confusing. It is hard to determine what exact action the dates are referring to. The dates often do not match the decision points. The NZCA has received Article 23 certificates from States finalising the adoption that do not correspond to the dates the NZCA understood decisions were made during the adoption process. It is unclear what the "Date of Agreement" on the Model Form for the Certificate of Conformity of Intercountry Adoption refers to.

Article 23 certificates issued to New Zealanders who are temporarily resident in a contracting State and have adopted domestically are not recognised. This is because the NZCA has not been able to give prior confirmation of conformity and compliance with the Convention to the concerned New Zealand Government agencies responsible for immigration and citizenship.

- (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?<sup>26</sup>

NZCA has adapted its processes to accept certificates which have been scanned electronically and sent to the NZCA website.

### **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?<sup>27</sup> 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?

The NZCA has no issue with the speed of the match proposal from a Central Authority. However, the NZCA experiences considerable delays in relative adoption proposals and, in particular, in receiving child study reports needed for the adoption to be approved. This is in part because the child is usually not already known to the State care services before an Article 16 child study report is requested. As stated previously, this creates a state of suspension for the child involved. This is particularly hard if the child needs family reunification through adoption because of insecurity of care,

<sup>24</sup> See GGP No 1, Annex 7.

<sup>25</sup> *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.

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

<sup>27</sup> 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".

welfare issues, or having been orphaned.

The NZCA has also experienced considerable delays in concluding adoptions that have been initiated by other contracting States of children in their State care who are being adopted by relatives or adoptive parents of the child's siblings living in New Zealand.

Following the acceptance of the adoption proposal and the exchange of Article 17 agreements, the NZCA has experienced considerable delays because of Court availability in the State of origin. The NZCA cannot easily identify the additional factors which attribute to the delays. Similarly, there are often delays between when a pre-match by accredited bodies is completed and when the Central Authority makes its determination.

Some of the reasons for delays, particularly in adoptions proposed for identified children, (usually relatives), directly relate to the resources available to the State of origin. Resource availability, appropriate adoption experience within the contracting State and competent authorities to assist the Central Authority are all needed to facilitate the intercountry adoption process. It would help for Central Authorities, their accredited bodies, and PAPs for realistic timeframes to be stipulated and maintained.

Perhaps more consideration could be given to Convention adoptions being finalised administratively between the Central Authorities without the need for a Court hearing.

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?

#### **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,<sup>28</sup> prompt responses to enquiries and questions, openness to discussing problems and finding solutions)? Please specify any difficulties and concerns.

In the main, cooperation between contracting States works well, however the NZCA has the experience of receiving limited information in the match for PAPs but assurances from accredited bodies that when the PAPs travel full information will be provided about the child and the legal process that has transpired in the State of origin. Fully informed decisions should be made from the outset in order not to have the child declined upon meeting. Full documentation should also be retained by the Central Authority and archived for the child.

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."<sup>29</sup> Has your State continued to encounter difficulties in this regard, whether in your State or in other Contracting States?

No. Some Central Authorities have designated social workers to manage New Zealand cases and, over time, we have developed excellent relationships and co-operative practices.

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

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<sup>28</sup> *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)?

<sup>29</sup> See SC 2000 C&R No 3.

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?

No.

### **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.

The Children, Young Persons and Their Families Act 1989 in New Zealand incorporates the subsidiarity principle and promotes family decision making.

When a notification of concern regarding a child occurs, a family group conference is held to decide the care arrangements for the child. It is decided whether the child can be supported to remain in the home, or whether he or she should be placed in alternative care. If a care placement is made, one with family caregivers is preferred, if appropriate. The agreement reached at the family group conference is recorded in a plan, which is later reviewed. Serious cases are dealt with by the Family Court, which will also review the plan for the child.

Where a child cannot remain in, or return to, the home, alternate orders in favour of caregivers can be made under the Care of Children Act 2004. Such orders can include providing for contact with birth parents. Adoption of a child previously in care is extremely rare in New Zealand.

##### States of origin only

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

- Please insert text here -

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.

- Please insert text here -

##### Receiving States only

34. (a) In accordance with the principle of co-responsibility,<sup>30</sup> 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?

In the case of a match, New Zealand relies on the counterparty State to ensure this has been considered.

If the child is an identified child, usually a relative, we routinely provide a template for the State of origin to answer specific questions and to provide a family genogram.

- (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 respected in the particular case?

Yes, but this is not common. An Article 17 decline to approve a placement has occurred in the case of known children when the child is not in need of a new family by way of intercountry adoption as he or she is being cared for by extended family.

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 systems<sup>31</sup> 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)?

The New Zealand Law Commission has been involved in the Pacific Judicial Development Programme, which has assisted in the drafting and implementation of new care and protection legislation in Pacific nations. The NZCA has also been invited by the Chief Justice and relevant Tongan Government Departments and non-governmental organisations to address the Hague Convention about adoption matters in Tonga. The New Zealand Ministry of Social Development has hosted interns from the Ministry of Women, Community and Social Development of Samoa to discuss adoption issues and the Hague Convention. The NZCA has dialogue with Fiji in a strictly advisory role as it implements the Convention.

and / or

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

The Tongan Women and Children's Crisis Centre has been encouraged to become a partner with New Zealand by becoming an International Social Service correspondent.

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:

- Please insert text here -

## **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

<sup>30</sup> See, *e.g.*, Chapter 12 of GGP No 2.

<sup>31</sup> 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...".

Convention? What factors are considered when determining where persons are habitually resident for Convention purposes?

“Habitual residence” is not defined in New Zealand domestic legislation relating to intercountry adoption (the Adoption (Intercountry) Act 1997) or in the Convention because habitual residence is a question of fact in each 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?

Children who enter New Zealand on temporary student visas who later become subject to an adoption application in the New Zealand Family Court. Ex-patriates living overseas for varying lengths of time, but not necessarily considered habitual residents is also a common scenario.

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).

(a) None.

(b) To participate in the New Zealand domestic pool of registered and approved PAPs or to lodge an intercountry adoption application, PAPs must be New Zealand citizens or hold a New Zealand residence class visa.

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?

A State of origin “transferred” a case to New Zealand that had been lodged by PAPs living in another contracting State who then moved to New Zealand. The PAPs were reassessed in their New Zealand context to confirm their articles 15 and 17 status.

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)?

PAPs need to physically reside in New Zealand for the NZCA to confirm their suitability under Article 15 of the Hague Convention. If the NZCA has not completed an assessment of the PAPs suitability to adopt in New Zealand, no comment or assurance is given in respect of any adoptions.

or

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

If the Department of Internal Affairs considers the PAPs to be habitually resident in a contracting State, it will consider recognising a domestic adoption in that country to secure New Zealand citizenship for the adopted child.

*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)?

If New Zealanders habitually resident in a contracting State and seeking to adopt in a third contracting State present an Article 23 certificate of conformity to the New Zealand Department of Internal Affairs, the adoption in the third State of origin will be recognised and the adopted child may obtain New Zealand citizenship.

### C. Use of modern technologies<sup>32</sup> in intercountry adoption<sup>33</sup>

#### *In general*

##### Both 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.<sup>34</sup> Where possible, please provide a hyperlink to these laws, regulations or guidelines or provide a copy, with a translation into English or French.

N/A.

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

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).

N/A.

44. In your State's experience, what (a) benefits<sup>36</sup> and (b) risks have modern technologies brought to the field of intercountry adoption? Please describe how your State attempts to manage any perceived risks.

N/A.

45. Please briefly explain any specific courses, training or information which is / are

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

<sup>33</sup> 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.

<sup>34</sup> 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.

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

<sup>36</sup> 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.

provided on the use of modern technologies in the adoption process to:

- (a) the authorities and bodies involved in intercountry adoption in your State.<sup>37</sup>  
None.

and / or

- (b) PAPs, biological families and adoptable children (or adoptees, if the information is provided subsequent to the adoption)<sup>38</sup> – *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?<sup>39</sup>

The use of modern technologies in the adoption process is a matter that is discussed in the education and preparation of PAPs so they understand about the appropriate use of modern technology in order to protect children.

A New Zealand accredited body uses an electronic education programme developed in America that PAPs access prior to the assessment process.

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)?  
- Please insert text here -

If so:

- (a) Please specify which documents are sent or accepted in scanned format:

New Zealand accepts scanned versions of Article 17(c) agreements and Article 23 certificates. Home study dossier documents can be e-mailed to the State of origin for translation and returned to New Zealand to become a formal dossier that is notarised, authenticated and legalised. Home study dossiers for some countries are provided electronically to the Central Authority, while the original dossier is sent to the accredited body facilitating the adoption.

- (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)?

Scanned documents are not accepted instead of originals. The original documents or certified copies of the original documents must be provided by post.

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

Legalisation or apostillisation of documents is dependent on the requirements of the other Central Authority.

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

The NZCA is located within a Government Department and has a high level of electronic security. Accredited bodies in New Zealand are audited for their data security and confidentiality protective measures. Hard copies of documents held within the NZCA are not available for public access.

<sup>37</sup> *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.

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

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

<sup>40</sup> See the *Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents* (the "Apostille Convention", concluded 5 October 1961).

If not, please explain the reasons for this:  
 - Please insert text here -

***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”<sup>41</sup> of adoptable children?

See answers below.

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):

Generally the photo-listings New Zealand receives are for children designated as having special needs.

(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?):

New Zealand does not create online “photo-listings”.

(c) who is permitted to access the listings:

Only competent bodies can have access to these photo-listings and they are not available to PAPs directly.

(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):

See above 47 (c)

(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):

States of origin expecting that an overseas Central Authority will match children from photo-lists creates a tension. This is because, having created an article 15 certificate of suitability for the PAPs, the Central Authority then first chooses the match, and then approves its own match under article 17 if the State of origin agrees to all the decisions made by the Receiving State.

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

No.

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

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<sup>41</sup> 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.

have been overcome.

Not that we are aware of.

#### **D. Illicit practices<sup>42</sup>**

##### ***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 NZCA does not have direct evidence of illicit practices. However, the NZCA has had involvement in cases where concerns existed regarding religious groups in a State of origin contacting New Zealanders in order to facilitate private domestic adoptions of children without the PAPs suitability being assessed.

A further concern relates to birth mothers and their babies coming to New Zealand where the baby remains when the birth mothers visa expires, her consent to a subsequent adoption of her baby has been obtained independent of any counselling as required under the Convention, and later a domestic adoption application is made in the New Zealand Family Court. In these instances, there is nothing known of the birth father or if he has any awareness of an adoption in New Zealand.

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.

New Zealand and another country have worked together to apply Convention processes to cases where New Zealanders have located babies privately in that country, obtained consents directly without any reference to Article 4, kept the child in their care and subsequently applied for an adoption.

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?

New Zealand has in the past had to restrict its intercountry adoption programme because of concerns about a State of origin. The NZCA worked together with its accredited placement agencies to mitigate the concerns and raised the concerns with the State of origin.

#### **E. Other international placements of children which result in adoption**

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<sup>42</sup> 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?<sup>43</sup>

*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?*

Yes.

If so, please explain:

- (a) the reasons for this:

In order to secure immigration status/citizenship for the child.

- (b) the procedure, including any involvement of the State of origin:

The normal processes that govern domestic adoptions applies, the applicants are assessed and information is obtained about the child and the kafala decision making.

and

- (c) whether this would be a "simple" or a "full" adoption:

A New Zealand adoption is always a "full adoption".

### ***Respite care abroad resulting in adoption***<sup>44</sup>

#### Both States of origin and receiving States

54. If your State is involved in respite care programmes<sup>45</sup> 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):

New Zealand does not engage in in respite care programmes internationally.

- (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:

- Please insert text here -

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

<sup>43</sup> **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](http://www.hcch.net) >.**

<sup>44</sup> See GGP No 1 at paras 561 to 563.

<sup>45</sup> *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.

Art. 2):<sup>46</sup>

- Please insert text here -

### ***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.*

The NZCA has been engaged by States of origins to assist with resolution for children who have been offered a foster care arrangement or orphanage volunteering by New Zealanders temporarily in the State that then becomes a wish to adopt.

### **F. Triangular adoptions<sup>47</sup>**

#### Both States of origin and receiving States

56. Does your State allow PAPs 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,<sup>48</sup> the procedure used and any challenges encountered. Please also share any good practices your State has developed in relation to such cases.

This practice would not be facilitated by the NZCA or its accredited bodies.

### **G. International surrogacy arrangements<sup>49</sup> and intercountry adoption<sup>50</sup>**

#### Both States of origin and receiving States

57. Following the recommendations of the 2010 Special Commission meeting,<sup>51</sup> 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, and the outcome for the child and family.

The NZCA applied the Convention processes in a case of international surrogacy. A relative's egg was provided to the commissioning parents and the commissioning father's sperm created the embryo that a surrogate mother carried for the parents overseas. Under New Zealand law, children

<sup>46</sup> *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 PAPs 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.

<sup>47</sup> For a definition of "triangular adoption", please see GGP No 1 at Chapter 8.8.7.

<sup>48</sup> See the good practices recommended at para. 555 of GGP No 1.

<sup>49</sup> 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).)

<sup>50</sup> 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.

<sup>51</sup> 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".

born through international surrogacy overseas are considered to be the legal child of the surrogate and her partner (if she has one), and an adoption is required for the commissioning parents to form a legal relationship with the child. DNA evidence of a genetic relationship is considered to allow the child to gain entry into New Zealand through a Ministerial decision, so that they can then be adopted in the New Zealand Family Court.

In this instance, the DNA evidence did not show a genetic link between the commissioning father, the egg donor, or the surrogate. The commissioning parents did not learn about what happened to the genetic material they had submitted. However, they had formed a strong attachment to the baby since its birth and wished to retain care of the child.

Initially, an adoption application was lodged in the New Zealand Family Court. However, because there was no legal or genetic relationship with the child who had never left his contracting State of origin, the Convention was invoked, so that the Central Authority in the State of origin could investigate and confirm the child's circumstances. The Central Authority in the State of origin worked with the New Zealand Central Authority and the adoption was finalised. The child became a New Zealand citizen and a legal relationship was formed with the adoptive applicants. It was a very lengthy process and extremely stressful for the family.

#### **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:  
These are used less than other Hague documentation.
  - (b) Guide to Good Practice No 1 *"The Implementation and Operation of the 1993 Intercountry Adoption Convention"*:  
The Guide to Good Practice No 1 *"The Implementation and Operation of the 1993 Intercountry Adoption Convention"* is frequently referred to and agencies and individuals are directed to it in addition to the Hague Conference website.
  - (c) Guide to Good Practice No 2 *"Accreditation and Adoption Accredited Bodies"*:  
The Guide to Good Practice No 2 *"Accreditation and Adoption Accredited Bodies"* is frequently referred to and agencies and individuals are directed to it
  - (d) the tools<sup>52</sup> developed by the Experts' Group on the Financial Aspects of Intercountry Adoption:  
The Financial Aspects of Intercountry Adoption by the Experts' Group is frequently referred to and agencies and individuals are directed to it
  - (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"*:<sup>53</sup>  
The NZCA supports and is encouraged by the *"Discussion Paper on Co-operation Between Central Authorities to develop a common approach to preventing and addressing illicit practices in intercountry adoption cases"*.

Please explain how these tools are currently promoted in your State and how they

<sup>52</sup> 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.

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

could, in your State's view, be more effectively promoted at the regional and / or international level:

The NZCA, organisations, individuals and accredited bodies often consult the Hague website and the Practice Guides to Good Practice.

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?

The allocation of funding for Government agencies is determined within respective Ministries in New Zealand.

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

- Please insert text here -