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CONFÉRENCE DE LA HAYE DE DROIT INTERNATIONAL PRIVÉ

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:	United States of America-
Date of entry into force of 1993 Hague Convention in your State:	April 1, 2008
Information for follow-up purposes	
Name and title of contact person:	Trish Maskew, Chief, Adoption Division
Name of Authority / Office:	U.S. DEPARTMENT OF STATE, Bureau of Consular Affairs
Telephone number:	(202) 485-6206
E-mail address:	E-mail address: MaskewPA@state.gov

I. ADOPTABLE CHILDREN, ADOPTEES AND PROSPECTIVE ADOPTIVE PARENTS[2]

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.

1(a) Information related to the adoption of children who are in the custody of their U.S. state or county's Department of Child and Family Services is handled by local public agencies and/or private agencies under contract with their state or county. The U.S. Department of Health and Human Services also compiles statistical information in the Adoption and Foster Care Analysis and Reporting System (AFCARS) reports produced annually and available on the website of the Administration for Children and Families, Children's Bureau: http://www.acf.hhs.gov/programs/cb/research-data-technology/statistics-research/afcars.

One common and successful practice of agencies is to provide basic information about each child in U.S. state foster or other care who is eligible for adoption. Such information is usually accompanied by a photograph of the child and posted on the website of the state Department of Child and Families Services and is commonly referred to as "photolisting." Each individual U.S. state maintains its own photo listings for children within its jurisdiction and may also give national exposure to children that are waiting to be adopted through the national photolisting of AdoptUSkids, a project of the U.S. Children's Bureau, operated through a cooperative agreement with the Adoption Exchange Association. Since the national photolisting service began in 2002, more than 22,000 children from U.S. foster care photolisted on adoptUSkids.org have adoptive families. Most of these adoptions were

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[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.

domestic adoptions, but in recent years foreign families in Convention receiving countries have also adopted children from the AdoptUSKids photo listings. The photo listings are carefully controlled to protect the privacy and safety of the children listed. Prospective adoptive parents (PAPs) who wish to learn more about the child in a photo listing must have a completed home study and be approved to adopt in their state before registering with AdoptUSKids. Similar controls exist on the state-run photo listing services.

Information about children in need of permanent families can also come from independent non-governmental agencies, attorneys, and other private entities. U.S. state laws often regulate how information about children may be provided through these private channels.

1(b) On September 30, 2013, the latest date for which we have such data, 58,887 children from foster care were waiting to be adopted. In each case the courts had completed termination of parental rights. Whether a child is in state foster care or in private care, intercountry adoption is only one permanency option for children. Most of these children are adopted domestically.

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;[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.

2(a) As part of the home study process, the home study preparer must address suitability issues and requirements that have been identified by the country of origin .

However, some States of origin do not provide sufficient information about the needs of children eligible for intercountry adoption in their countries of origin. and supporting dossiers. This makes it harder to match the applications of the PAPs with the needs of the children available for adoption.

2(b) The more information that is shared with the prospective adoptive parents, the better able the accredited bodies and approved (non-accredited) persons are to help those families be ready to bring that child into their homes. Quality information about a child includes more than a medical statement that the child is in good or poor health. A lot of the medical information about a child proposed for intercountry adoption lacks specificity and a thorough assessment of a child's medical needs. Equally important is obtaining increased and improved information about the child's developmental progress and detailed information about a child's emotional needs. This information is also frequently lacking. If only sparse information about the child is available, it is difficult to tailor preparation and training for that specific child.

Adoptability

[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."

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]

3(a) We are not aware of concerns relating to determining adoptability of children for adoption in the United States. The courts of U.S. states with jurisdiction over adoptions are responsible for determining whether a child is adoptable,and, where necessary, for terminating parental rights.

From the perspective of the United States as a receiving State, adoptability decision-making in States of origin presents difficulties when inadequate procedures or insufficient resources or capabilities are available to inform adoptability decisions. For example, the origins of a child in abandonment cases is often unknown. This is particularly issue in States new to identifying the origins of the child. In order to address aspects of concern in the Convention process in States of origin such as making adoptability determinations, U.S. visa posts abroad and U.S. Citizenship and Immigration Services (USCIS), a U.S. competent authority, may need additional time to investigate cases which is likely to delays adoption.

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

Yes. The U.S. has encountered very problematic situations when a U.S. citizen completes an intra-family adoption in a Convention country, but that country lacks sufficient mechanisms to complete a Hague intra-family adoption. It can then be very difficult to complete the processing of that case in compliance with the Convention, which can result in adopted children being unable to join their family in the United States. We have seen some confusion relating to adoptability and relinquishment of parental rights in some States where it is common for children to be raised by extended family members who assume the role of parents. Such arrangements are often informal and may not be transparent to the caregiver involved. If these relatives become unable to continue to provide care, it may be difficult to determine whose rights must be terminated prior to a matching and adoption. In countries where these concerns with intra-family adoptions are common, we often have related concerns in non-relative adoptions such as insufficient information regarding the child.

A pressing concern is how some States of origin handle dual nationals adopting in their home countries, but residing in the United States. In some States of origin, dual nationals (citizens of the State of origin who are also U.S. citizens) are required to utilize the domestic adoption process, rather than the Convention adoption process. This is most common in relative adoptions. In some cases, domestic adoption processes are less rigorous than the intercountry adoption process. Children found to be adoptable for domestic adoption purposes sometimes to do not meet the definition of a Convention adoptee under U.S. law. There may also be fundamental issues regarding parental consents because a domestic adoption may be more informal. As a result, these children may not be eligible for a U.S. immigrant visa .

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

[7] See SC 2010 C&R No 1 b).
[8] *E.g.*, concerning children's physical and psychological health, identity or social situation.

needs".[9]

From the perspective of the United States as a State of origin, we are not aware of any difficulty in prospective adoptive parents obtaining full, accurate, and up-to-date records, including medical records, on adoptable children. If receiving States are aware of any such difficulties, we would welcome their input so that we could work with them to improve the situation .

From the perspective of the United States as a receiving State, as the profile of children who are eligible for intercountry adoption continues to shift to children with special needs, including older children, the need for detailed Article 16 background reports becomes more critical. The Convention itself does not set forth the degree of specificity required in the report, and the lack of capacities in the State of origin may limit the amount of social and medical information that the State of origin can provide. This lack of information can pose challenges when parents approved to adopt children with special needs are matched with a child whose needs are more significant than indicated in the article 16 background report.

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?

5(a) Although not required by U.S. regulations, it is considered a common best practice among U.S. accredited bodies and approved (non-accredited) persons to try to assist families in obtaining photo and video background information on a child during the matching process. A video showing normal interaction of the child with others is an excellent source of information for adoption professionals with expertise in advising parents about developmental issues and medical conditions. The U.S. Central Authority does approach Central Authorities in countries where the information available about children eligible for adoption is inadequate, to discuss ways to improve the information available. Improvement in this area is not easy to achieve and often requires increased capacities on the part of the State of origin and available funds for this purpose are limited. Nevertheless, communicating with Central Authorities about this issue has been an ongoing effort on our part and will continue as a bilateral effort to improve the intercountry 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.

5(b) In general, Chapter 7.5.5 of the Guide to Good Practice 1 to States of origin provides helpful guidance regarding preparing children for matching. It encourages collecting and reviewing available information about children prior to making a referral. Doing so could help identify gaps in information before a match is proposed . Collecting key information when the State of origin is deciding on a match may result in a brief delay, but may help to address the gaps in information. The resulting information could improve the PAPs'' decision to accept the referral and/or the success of the placement. Where such committees are not available, States should make efforts to provide as much information as possible on the child.

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.

In the context of the United States as a State of origin, we are no aware of the matching

[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".

difficulties described in this question.

In the context of the United States as a receiving State, when problems arise, they frequently relate to incomplete or inadequate information about the child's background, including age and medical history. When information about a child is incomplete or inaccurate, PAPs are sometimes proposed as matches to children that do not actually match the profile for which the parents have been screened In many cases, giving greater attention to the background of a child could help avoid problems of this nature and may decrease the risk of dissolution.

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.

As a receiving State:

Under the U.S. system, the accredited body or approved (non-accredited) person prepares the child for the first meeting with the adoptive parents. U.S. accreditation standards address this issue in 22 CFR 96.54(g) through (j) as follows:

(g) The agency or person thoroughly prepares the child for the transition to the Convention country, using age-appropriate services that address the child's likely feelings of separation, grief, and loss and difficulties in making any cultural, religious, racial, ethnic, or linguistic adjustment.

. . .

(i) Before the placement for adoption proceeds, the agency or person identifies the entity in the receiving country that will provide post-placement supervision and reports, if required by state law, and ensures that the child's adoption record contains the information necessary for contacting that entity.

(j) The agency or person ensures that the child's adoption record includes the order granting the adoption or legal custody for the purpose of adoption in the Convention country.

As a State of origin:

The age for the consent of the child varies by state. For an overview of the state requirements regarding the consent of the child, please see: https://www.childwelfare.gov/pubPDFs/consent.pdf.

In addition, accredited agencies and approved (non-accredited)persons must take all appropriate measures to ensure that consents have been obtained, including by: counseling the child, as appropriate in light of his or her age and maturity, and duly informing him or her of the effects of the adoption and of his or her consent to the adoption; and obtaining the child's consent, where required, given freely, in the required legal form, and expressed or evidenced in writing and not induced by payment or compensation of any kind. If the child is twelve years of age or older, or as otherwise provided by state law, the agency or person gives due consideration to the child's wishes or opinions before determining that an intercountry placement is in the child's best interests. (See 22 CFR 96.53(c)).

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.

The U.S. immigrant visa process for all Convention adoptees, which occurs as one of the final steps in the Convention process before the child enters the United States, requires an update or revision to the PAPs' home study whenever there is a significant change in the PAP's household.

A significant change in the PAP's household means:

(i) A change in residence, marital status, criminal history, financial resources; or

(ii) The addition of one or more children in the applicant's home, whether through adoption or foster care, birth, or any other means. Even if the original home study provided for the adoption of more than one adopted child, the applicant must submit an amended home study recommending adoption of an additional child, because the addition of the already adopted child(ren) to the applicant's household is a significant change in the household that should be assessed before the adoption of any additional child(ren);

(iii) The addition of other dependents or additional adult member(s) of the household to the family prior to the prospective child's immigration into the United States;

(iv) A change resulting because the applicant is seeking to adopt a handicapped or special needs child, if the home study did not already address the applicant's suitability as the adoptive parent of a child with the particular handicap or special need;

(v) A change to a different Convention country. This change requires the updated home study to address suitability under the requirements of the new Convention country;

(vi) A lapse of more than 6 months between the date the home study is completed and the date it is submitted to USCIS; or

(vii) A change to the child's proposed state of residence. The pre-adoption requirements of the new state must be complied with in the case of a child coming to the United States to be adopted.

See 8 CFR 204.311(u).

Part of the responsibility of the home study preparer is to provided these updates in a timely manner so that the State of origin can receive and consider the information in its determination of the appropriateness of the match between a particular child and the PAPs. If information becomes available after a match has been made or before an adoption has been finalized, the updated information is communicated in a timely manner with the State of origin who then can make a further informed decision about how to proceed in the case .

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?

9(a) We are not aware of any systemic problems with such reports.

(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.

9(b) We are not aware of any systemic problems with reports on PAPs provided by receiving States and have no further comment on this question.

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.

10(a) We have not encountered such difficulties as a State of origin.

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

10(b) Please see the response to 11, below.

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.

Some PAPs perceive the intercountry adoption process as being extremely difficult, bureaucratic, and time-consuming. Imposing training requirements on PAPs beyond the normal preparations they would voluntarily undertake is sometimes viewed as burdensome. Many PAPs research intercountry adoption extensively and join focus groups or other associations of adoptive parents to learn about what it means to adopt, what the pitfalls are, and how to achieve a successful intercountry adoption. These families may feel that they have already taken extraordinary steps to educate themselves and that additional comprehensive training required by a governmental authority is undesirable or unwelcome. In our experience, once the PAPs undergo the required training with its comprehensive approach to learning about potential problems with intercountry adoptions, learning about cultural background of the State of origin, and learning parenting skills which are particularly useful in the adoption setting, they are grateful for and see the value in the training.

There have been prominent media reports of parents who have adopted abroad or obtained custody abroad for the purpose of adoption in the United States who, when confronted with particular needs or difficult behaviors by their adopted children, have decided to disrupt their adoptions formally or informally and seek placement of their children with other PAPs. While we believe there is no evidence of a pattern of informal secondary placements (sometimes labelled "rehoming") in Convention cases, even one case is unacceptable and means need to be taken to avoid such cases. As part of the review of the home study requirements in light of media reports on rehoming, we are reviewing the extent of preparatory training for PAPs, both in terms of the hours of training and the content of the training. We are in the process of revising our accreditation regulations to reflect more rigorous training requirements. While the Convention focuses on the activity and actions of various participants in the process up to the point of final adoption, all agree that added attention to support for adoptive families after an adoption occurs is not only a good practice, but an essential one. Post-adoption services can be provided in a variety of ways. Our present focus is to make sure that adoptive parents know the services available to them in the event that troubles arise in the adoption, so that they can seek help and assistance before the problem escalates beyond their abilities.

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?

As noted in the response to item 11 above, preparation in the culture of the State of origin is one required element of training that all PAPs are supposed to receive prior to departing for the State of origin to finalize the adoption or a guardianship. Also, as noted above, we are in the process of evaluating the content of preparation, counseling, and training for PAPs and are analyzing in what way

[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.

cultural training may be enhanced. The requirements for providing PAPs with cultural training as well as all other elements of training and orientation are part of the accreditation regulations in the United States. Accredited bodies and approved (non-accredited) persons, in order to retain their accreditation, must demonstrate to the satisfaction of the accrediting entity that they are in substantial compliance with these requirements.

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?

13(a) Under U.S. law, a home study cannot be more than six months old at the time it is filed with the Application for a Determination of Suitability and Eligibility to Adopt Abroad. Furthermore, if any significant change occurs in the PAPs household before or after the application is approved, they are required provide an updated or amended home study. Any home study update or amendment must be completed or reviewed and approved by an accredited body.

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?)

13(b) Please see the response to 13(a) above.

C. Intercountry adoptions involving children with special needs[14]

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?

14(a) The United States does not maintain statistics on types of special needs children adopted internationally. There is a wealth of anecdotal information about special needs adoptions, and some States of origin have specially designated programs for special needs children in which U.S. PAPs participate. None of this information, however, is measured or collected in such a way as to deduce common trends in special needs adoptions.

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

14(b) At the present time, the United States does not collect data on special needs children and is unable to report the percentage of children adopted that have special needs.

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

14(c) Some States of origin have special needs programs in which more information about the child is permitted to be revealed in online information than is normally provided online about children available for adoption. The rationale is that it is more urgent to find adoptive parents for children with special needs, particularly parents that are well-prepared. By giving these parents as much information about the special needs of children waiting for adoption, a more informed match can be made. In addition, the U.S. intercountry adoption process culminates in an immigrant visa, that has its own process. While these intercountry adoption cases already take precedence over other

[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.

types of U.S. immigrant visas in terms of visa adjudication, those cases that are identified as special-needs cases recently received even more expedited treatment.

(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?

14(d) One significant challenge that we encounter in relation to intercountry adoption of children with special needs is obtaining sufficient information about those needs so that families can decide whether to accept a referral or not and can know what steps and resources are required to meet the special needs of the child once that adoption has been completed. Sometimes a special need is readily apparent and sometimes there are only hints to a special need that specialists are needed to evaluate and diagnose. Unfortunately, specialists are not available in every State of origin to make such evaluations and/or to make recommendations about the care required by children with special needs. As mentioned above, we encourage States of origin to bolster the resources they have supporting children with special needs to obtain as much information as is possible about those needs and communicate them accurately and quickly to families considering adoption of such children.

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?

15(a) We rely on the home study process to determine to what extent PAPs are suited to adopt children with special needs.

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

15(b) The primary accredited body or approved (non-accredited) person working with the parents seeking to adopt children with special needs is responsible for the preparation and training of these parents. Where appropriate, the accredited body or approved person will refer families to medical and behavioral specialists for additional training in preparation of adoption of children with special needs.

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

15(c) Accredited bodies and approved (non-accredited) persons are required to provide as part of their pre-adoption training of the family, in-person, individualized counseling and preparation to meet the needs of the particular child to be adopted and his or her special needs. This training also includes information on how to seek additional appropriate help where needed. (See 22 CFR 96.48(e)-(g)) In addition, accredited bodies enter into a service agreement with each family to whom they provide intercountry adoption services. As part of the service agreement, providers are encouraged b identify the services they are able to provide to the family post-adoption, to support the family, especially those adopting children with special needs.

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]

In the United States, the responsibility for providing adopted children with counseling services lies primarily with the adoptive parents. Parents may seek assistance to provide counseling from a variety of sources, primarily in the private sector. Some accredited bodies and approved (non-accredited) persons have created extensive networks of parents and children adopted through their auspices. These informal associations allow children and parents to explore questions about preparing for origin searches and reunions of the adoptees with members of their biological families. Accredited bodies and approved (non-accredited) persons also may contract with adoptive parents and their adopted children to provide specific post-adoption services throughout the period that the child is a minor. Governmental authorities at the U.S. state level offer educational programs for families and children at all stages of development and all ages, which are usually free of charge and focused on the needs and interests of adoptive children and their families. As children grow older, they play an ever larger role in deciding how to confront issues relating to their origins, their parentage, and their personal identity.

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.

The U.S. social work community considers the provision of post-adoption services to families who have adopted both domestically and internationally to be a best practice. Norms relating to post-adoption services are considered critical to a successful adoption. As part of the accreditation regulations, an accredited body is required to discuss with PAPs the post-adoption services it can provide. The adoption service provider and the PAPs agree in advance which services the provider will provided to the family following the adoption. The service agreement is something that can be updated at any time, and as parents draw closer to the finalization of their adoption, they are free to include additional post-adoption services. In the case of parents who obtain guardianship in order to bring a child to the United States for the purpose of final adoption, the accreditd bodie is obliged to provide post-placement services accredited bodies provide , at least until the final adoption, As with parents finalizing an adoptionng in the State of origin, families who complete their final adoption in the United States may include as part of their service plan a full range of post-adoption services to meet the needs of their newly adopted child. U.S. law implementing the Convention regulates of the activities of accredited bodies and approved (non-accredited persons) through the finalization of the adoption. The U.S. Central Authority cannot mandate that accredited bodies or approved persons provide additional services post-adoption.

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

[16] SC 2010 C&R No 29.

[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.

PAPs, inadequate post-adoption support).

U.S. law and practice distinguishes between adoptions that fail or breakup prior to final adoption versus following a final adoption. We use the term "disruption" to refer to a situation in which the placement fails when the adoption is not yet finalized. When the breakup of the placement occurs after the adoption has been finalized, we refer to the "dissolution" of the adoption. There are many causes for breakdowns in adoptions both before and after a final adoption. The most common root cause is underestimating the challenges of parenting and providing for the child's needs, including special needs. Such underestimation may be due to lack of complete information about the needs of the child that does not effectively indicate the behaviors common to the child's specific condition. As a result, the child joins its new parents who are confronted with these behaviors and feel ill-prepared to address the needs of the child because they had no advanced notice or understanding of them. Many families do adapt and learn how to cope with behavioral problems and physical disabilities that were unknown to them at the time they took custody of the child. However, others may not be able to cope or to access necessary resources. In such circumstances, problems may escalate until the family reaches a point at which resolution is no longer possible.

Such situations are exacerbated when the behavior of one child puts another family member at risk of harm. In these cases, parents usually feel they have no recourse but to remove the danger from the family, which results in a disruption or a failed adoption which requires dissolution and re-placement of the child.

However, if the adoptive families have been carefully matched in the first place to find the best environment for the child's needs, and if parents are well-prepared prior to obtaining a guardianship or adoption to address known needs of the child, there is a better chance that the families may have the skills needed or resources at hand to get the kind of help required when serious problems develop.

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

See the response to 18(a), 22 C.F.R. 96.48(b) - (c).

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

See the response to 11 and 18(a).

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 following quote from a publication available on the Child Information Gateway, a service of the U.S. Department of Health and Human Services, clarifies what we take "open adoption" to mean:

"Open adoption is a type of adoption in which birth and adoptive families have some form of initial and/or ongoing contact. Contact may begin with a meeting between an expectant mother and potential adoptive parents. Sometimes, an expectant parent may choose the adoptive family based on such a meeting or other communication. After placement, birth mothers and/or fathers and members of their extended families may interact in various ways with the adoptive parents, as well as with the adopted child or youth. Communication may happen through letters, emails, social media exchanges, telephone calls, or visits. While some families may exchange brief notes and photos, others may spend more time together and celebrate birthdays or holidays together. The type and frequency of contact will be decided by the people involved and can range from several times a month to every few years. Contact often changes as a child ages or as family members' needs and wishes change." FactSheet for Families: Openness in Adoption: Building Relationships Between Adoptive and Birth Families, January 2013, https://www.childwelfare.gov/pubPDFs/f_openadopt.pdf.

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]

U.S. federal laws do not address openness in intercountry adoption. Open adoption is largely left to practice according the wishes of the parties involved. The publication quoted in the response to question 19 points to a trend towards increasing openness in adoptions in the United States. Societal perceptions of adoption have changed over recent years. The FactSheet cited in 19, above, states:

For the past several generations, adoption was kept secret. The trend reflected common attitudes that children and birth mothers should be protected from the 'stigma of illegitimacy.' Most adopted children did not know their birth parents and often were not even told they were adopted until later in life. Some were never told. It was commonly believed that a lack of openness would make it easier for the birth parents, the adoptive parents, and the children to adapt. The sense of secrecy, however, left many children and youth, as well as their birth families, with unanswered questions and unable to resolve feelings of loss. It also left young people without access to valuable information about their genetic background and the medical histories of their birth relatives. The surrounding secrecy often created a sense of shame. Today, most adopted children and youth know that they are adopted, and many adoptive families have had some contact with birth families. A national study of adoptive families in the United States found that in approximately one-third of all adoptive families, the adoptive parents or the adopted child or youth had some contact with the birth family after the adoption. Post-adoption contact occurred more often in private domestic adoption (68 percent) as compared with adoption from foster care (39 percent) and international adoption (6 percent). A more recent study among U.S. adoption agencies reported that almost all (95 percent) of their domestic infant adoptions were open. Several factors have contributed to the increasing openness of adoption. Foremost, there is the growing awareness of the negative effects of secrecy and the benefits of openness for many adopted children and youth, birth parents, and adoptive parents (see below.) In recent years, more and more birth mothers have asked for openness and the ability to receive and share information as a condition of an adoption. Additionally, responding to large numbers of adult adopted persons and birth parents who returned to adoption agencies to seek information about each other, states have changed their adoption laws, and agencies have added programs and services that support open adoption.

Today, another factor plays a part in pushing the trend toward openness—the Internet and social media. Increasing numbers of adopted persons and birth parents are finding each other with relative speed and little emotional preparation through social networking sites, such as Facebook. As a result, some adoptive and birth parents who initially chose a closed adoption are encountering experiences in which the adoption is later opened, but not always in ways that are agreeable to all parties or developmentally appropriate for the child. Choosing openness at the time of adoption may provide greater control over and preparation for the communication process as compared with more impromptu social media contacts.

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?

See response to 20.

G. Discussion at the upcoming Special Commission meeting

Both States of origin and receiving States

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

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 provision of accurate medical and social information on the child is of paramount concern. See response to question 4. Additionally, there has been an increase in the length of time children remain in orphanages. Counselling and training must take this factor into account: training will need to focus on the specific attributes of children in orphanages. Among other things, training may need to be expanded to include more information on developmental delays, and the needs of older children, and other factors revealed through the longitudinal studies of children institutional care.

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?

In our view, developing a Guide to Good Practice on the counseling and preparation of PAPs is not needed at this time.

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]

We have not observed a pattern of difficulty relating to the agreement in Article 17(c) that both States have agreed that the adoption may proceed.

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 meetings[23] have repeatedly emphasised the importance of:

[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).

[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.

- 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.

25(a) Receipt of the Article 23 certificate or some form of notification, i.e., a certificate of conformity, issued by a competent authority following adoption in the State of origin, is an important step in the process of final approval of the immigrant visa petition and issuance of an immigrant visa. Even in guardianship cases, in which the Convention does not require issuance of a certificate of conformance, consular and immigration officers in the petition approval and visa process seek some kind of document indicating that a grant of legal custody occurred. Consular officers have flexibility to consider any credible record that shows the State of origin Central Authority agrees that the granting of custody was for the purpose of taking the child out of the country and bringing her/him to the United States for adoption in the United States by the PAPs.

(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]

25(b) Please see the response to 25(a).

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?

There is no single reason for delays in the completion of an adoption in Convention countries. However, some delays may be attributed to an attempt to exhaust efforts to place the child domestically first with immediate family, then with extended family, and finally with a non-relatives within the State of origin, even if this process requires the child to remain in institutional care for years

[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.
[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".

because no domestic adoptions are currently available. We would encourage States of origin to consider the guidance found in the Guide to Good Practice I: "National adoption or other permanent family care is generally preferable, but if there is a lack of suitable national adoptive families or carers, it is, as a general rule, not preferable to keep children waiting in institutions when the possibility exists of a suitable permanent family placement abroad." Third Bullet Point, Paragraph 51, Page 30, Chapter 2 – General Principles of the Convention -- Guide to Good Practice I, 2008, Hague Conference on Private International Law.

Closing intercountry adoption – often for many years – while the State of origin creates a new child welfare system in which intercountry adoptions plays only a small part, (or works to improve its child welfare system, for example developing options for domestic adoption), is not required by the Convention's principles. Yet some States insist that processing intercountry adoptions cannot begin until a Convention-compatible child welfare system is established and operating. Given that this may result in children unnecessarily spending protracted time in institutionalized care to their detriment, this approach is not favored. It runs contrary to the most important principle of the Convention—ensuring the child's best interests.

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?

An important feature of finding permanent homes for children in U.S. foster care is "concurrent planning" (efforts to find potential adoptive families are undertaken while pursuing other options such a reunification), which may be carried out in the best interests of the child and other parties involved, generating practical solutions to prevent unnecessary delays in implementing the subsidiarity principle.

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.

In general, our experience in addressing issues of concern with States of origin has been very positive with each side demonstrating a willingness to find solutions consistent with Convention obligations. Where perpetual difficulties arise, the primary cause is a lack of capacity for the State of origin to put in place all of the procedural safeguards required under the Convention. In most of these cases the State of origin began engaging in Convention adoptions and performing its obligations under the Convention before it had a sufficiently developed child welfare structure with trained personnel and leaders to handle the workload.

There does seem to be an inordinate number of requests for bilateral agreements, even among Convention partners, which often seem to be unnecessary within the framework of the Convention.

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?

See our response to question 28.

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[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.

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?

No. Up to this point in time, we have not produced or received general evaluation reports. Nevertheless, we have engaged in candid bilateral discussions with many Convention partners at which we have mutually provided feedback about State of origin programs and observations of ways we could improve our work together. With or without general evaluation reports, we have found ways to work cooperatively and to improve case processing in the best interests of the children involved.

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 Intercountry Adoption Act of 2000, the U.S. domestic legislation implementing the Convention, requires a U.S. state court to enter an adoption or custody order only after it has done the following: determined that an adoptive placement is in the best interests of the child; verified documentation that a child background study and a home study on the prospective adoptive parents has been completed; verified documentation that the accredited or approved adoption service provider has made reasonable efforts to place the child in the United States; verified that the Central Authority of the receiving country has determined that the child will be permitted to enter and reside permanently in the receiving country; and verified that satisfactory evidence that Articles 4 and 15 through 21 of the Convention have been met.

States of origin only

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

In order for the U.S. Central Authority to issue a Hague Adoption Certificate or Hague Custody Declaration, the U.S. state court with jurisdiction over the child must verify that reasonable efforts were made pursuant to 22 CFR 96.54 to actively recruit and make a diligent search for prospective adoptive parent(s) to adopt the child in the United States and that a timely adoptive placement in the United States was not found. U.S regulations outline how an accredited body or approved (non-accredited person) can demonstrate reasonable efforts in this regard. Except in the case of adoption by relatives or in the case in which the birth parent(s) have identified specific prospective adoptive parent(s) or in other special circumstances accepted by the U.S. state court with jurisdiction over the case, the accredited body or approved (non-accredited) person makes reasonable efforts to find a

timely adoptive placement for the child in the United States by: (1) Disseminating information on the child and his or her availability for adoption through print, media, and internet resources designed to communicate with potential prospective adoptive parent(s) in the United States; (2) Listing information about the child on a national or state adoption exchange or registry for at least sixty calendar days after the birth of the child; (3) Responding to inquiries about adoption of the child; and (4) Providing a copy of the child background study to potential U.S. prospective adoptive parent(s). The agency or person must demonstrate to the satisfaction of the U.S. state court with jurisdiction over the adoption that sufficient reasonable efforts (including no efforts, when in the best interests of the child) to find a timely and qualified adoptive placement for the child in the United States were made.

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.

In every outgoing Convention case, the accredited agency or approved person must demonstrate to the satisfaction of the state court with jurisdiction over the adoption that sufficient reasonable efforts to find a timely and qualified adoptive placement for the child in the United States were made. U.S. regulations provide that reasonable efforts to find a timely domestic placement may mean no efforts when in the best interests of the child. Specific domestic parent recruitment measures outlined in 22 CFR 96.54(a) that otherwise demonstrate "reasonable efforts" do not apply in the case of adoption by relatives or in special circumstances accepted by the state court with jurisdiction over the case. (See 96.54(a), (b)).

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?

34(a) The United States accepts the Article 16 report provided by the State of origin as confirmation that the competent authorities in that State have, as required under Article 4 of the Convention, determined that after having given due consideration to the possibility of placing the child for adoption within the Convention country, intercountry adoption is in the child's best interests.

(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?

34(b) Absent information indicating that a State of origin did not follow its own laws implementing Article 4 in a particular case, rejecting a proposed match for reasons related to the State of origin's application of subsidiarity would be unlikely, though not prohibited, by U.S. law and procedure.

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[31] in order for them to better implement the subsidiarity principle either:

[30] See, *e.g.*, Chapter 12 of GGP No 2.

[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

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

35(a) An important part of our national development assistance to States of origin is capacity building in the area of child welfare services. Such services focus on family reunification and other forms of domestic placement of children without adult care.

and / or

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

35(b) See above. Note: In general, U.S. development assistance is provided via grants to NGOs. Very few U.S. accredited bodies are large enough to have diversified programs such as development assistance programs funded by US development agencies.

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:

35(b), continued: The US development agency grant making process through which development assistance funding is awarded for capacity building in child welfare requires the grantee to separate the assistance purposes for which the grant is provided from any services related to intercountry adoption or guardianship. US development agencies do not provide grants that fund intercountry adoption programs. U.S.grants are most likely to focus on family reunification, developing a domestic adoption program, capacity building among social work professionals, and civil record documentation development and preservation. US development agencies verify the separation of the grant funding and purposes from any intercountry adoption programs of a funded organization through its oversight of the grant and audits of the organization's activities.

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?

While U.S. law does not explicitly define "habitual residence", U.S. regulations under the Immigration and Nationality Act provide the following, at 8 CFR § 204.303 Determination of habitual residence, which gives detailed guidance as to how "habitual residence" is determined:

(a) U.S. Citizens . For purposes of this subpart, a U.S. citizen who is seeking to have an alien classified as the U.S. citizen's child under section 101(b)(1)(G) of the Act is deemed to be habitually resident in the United States if the individual:

(1) Has his or her domicile in the United States, even if he or she is living temporarily abroad; or

(2) Is not domiciled in the United States but establishes by a preponderance of the evidence that:

(i) The citizen will have established a domicile in the United States on or before the date of the child's admission to the United States for permanent residence as a Convention adoptee; or

(ii) The citizen indicates on the Form I-800 that the citizen intends to bring the child to the

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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…".

United States after adopting the child abroad, and before the child's 18th birthday, at which time the child will be eligible for, and will apply for, naturalization under section 322 of the Act and 8 CFR part 322 . This option is not available if the child will be adopted in the United States.

(b) Convention adoptees . A child whose classification is sought as a Convention adoptee is, generally, deemed for purposes of this subpart C to be habitually resident in the country of the child's citizenship. If the child's actual residence is outside the country of the child's citizenship, the child will be deemed habitually resident in that other country, rather than in the country of citizenship, if the Central Authority (or another competent authority of the country in which the child has his or her actual residence) has determined that the child's status in that country is sufficiently stable for that country properly to exercise jurisdiction over the child's adoption or custody. This determination must be made by the Central Authority itself, or by another competent authority of the country of the child's habitual residence, but may not be made by a nongovernmental individual or entity authorized by delegation to perform Central Authority functions. The child will not be considered to be habitually resident in any country to which the child travels temporarily, or to which he or she travels either as a prelude to, or in conjunction with, his or her adoption and/or immigration to the United States.

Please also see the Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) Interim Policy Memorandum on Criteria for Determining Habitual Residence in the United States for Children from Hague Convention Countries, at:

http://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/Habitual-Residence-PM-Interim.pdf
and HQ DOMO 70/6.1.1-P, at:

http://www.uscis.gov/sites/default/files/USCIS/Outreach/Interim%20Guidance%20for%20Comment/Habitual-Residence-PM-Interim.pdf.

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?

The most common challenges in the context of habitual residence include: 1) children who are present in the United States but are neither U.S. citizens nor U.S. lawful permanent residents; and, to a lesser extent, 2) dual citizens residing abroad who complete a domestic adoption abroad, and the domestic adoption cannot be processed as a Convention adoption. With regard to the first challenge, please see the response to item 36, above.

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).

The U.S. Immigration and Nationality Act (INA) permits adoptions subject to the Convention by U.S. citizens who are married and single U.S. citizens over the age of 25. Additional U.S. state law requirements may vary.

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?

In situations where the United States would have previously been the receiving State, if U.S. citizen PAPs move to another Contracting State while an incoming intercountry adoption is pending, we would advise them to contact the Central Authority of that Contracting State (or competent authority of a non-Contracting State) for a written determination of their habitual residence for the

purpose of the adoption. If the third Contracting State views itself as the receiving State in the Convention adoption, the prospective adoptive parents would need to proceed according to the laws and procedures of that State to ensure that the child can enter and reside with the parents there.

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)?

U.S. citizens and non-U.S. nationals who are lawful permanent residents may file an immigrant visa petition for immigration to the United States of a child adopted outside of the intercountry adoption processes through a domestic adoption abroad, if the adoption was a full and final adoption, completed prior to the child's 16th birthday, and the parents have had legal custody of and have jointly resided with the child for two years outside of the United States. This process is only available to U.S. citizens and to non -U.S. nationals who have lawful permanent residence status in the United States. (NOTE: For U.S. citizens to whom the Convention applies, U.S. regulations at 8 CFR § 204.2(d)(2)(vii)(E) provide that the U.S. citizen PAPs will be deemed to have been habitually resident outside the United States if they satisfy the two year requirements outside).

or

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

In general, we engage with other Contracting States to understand differences in interpretations and seek practical resolution through cooperation. However, prospective adoptive parents must meet the definition of habitual residence provided under the Immigration and Nationality and comply with the relevant process to obtain immigration benefits and an Article 23 Certificate

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.

Please see the responses to 36 and 40 (a) and (b), above.

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)?

U.S. citizens habitually resident in another State who plan to adopt a child residing in the United States or a third State are subject to the laws and procedures of the State in which they are living. That State may require them to follow local adoption laws and procedures or to complete the adoption as a Convention adoption with that State as the receiving country in the adoption, in order for the child to enter that country legally. Adoptive parents' failure to comply with local adoption laws

and procedures to which their adoption may be subject could result in the adopted child's inability to enter the receiving country. We advise U.S. citizen PAPs to consult the Central Authority of the State in which they are living prior to initiating an adoption to determine which process they must follow to ensure that the State in which they are living will recognize the adoption and allow their child to enter and reside permanently with them there. Additionally, U.S. citizens habitually resident another State, who eventually want to bring a child adopted from another Convention country to the U.S., should be cognizant of U.S. laws and procedures related to Convention adoptions. Such laws and procedures may complicate or limit their ability bring that child to the U.S.

C. Use of modern technologies[32] in intercountry adoption[33]

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.[34] Where possible, please provide a hyperlink to these laws, regulations or guidelines or provide a copy, with a translation into English or French.

U.S. accreditation standards address the use of the internet in the placement of children as follows, at 22 CFR 96.39(f):

The agency or person uses the internet in the placement of individual children eligible for adoption only where:

(1) Such use is not prohibited by applicable state or Federal law or by the laws of the child's country of origin;

(2) Such use is subject to controls to avoid misuse and links to any sites that reflect practices that involve the sale, abduction, exploitation, or trafficking of children;

(3) Such use, if it includes photographs, is designed to identify children either who are currently waiting for adoption or who have already been adopted or placed for adoption (and who are clearly so identified); and

(4) Such use does not serve as a substitute for the direct provision of adoption services, including services to the child, the prospective adoptive parent(s), and/or the birth parent(s).

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).

E-mail is a principal mode of communication in the United States and would be used by governmental and private parties involved in an intercountry adoption whenever practicable.

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

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[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.

[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.

Modern technologies can create and/or improve efficiencies in the intercountry adoption process, can exponentially increase the dissemination of information about eligible children, and can quickly raise awareness about issues related to intercountry adoption and challenges that children in a specific State of origin or even a particular child may face. However, the relative anonymity of many modes of modern communication creates opportunities for malfeasance by bad actors interested in preying on vulnerable children and PAPs. These actors often frustrate and denigrate the good efforts of credible, hard-working adoption service providers. The ease of informal connection and communication can lead to circumvention of legal requirements and formal procedures related to adoption. Moreover, the increased exposure can compromise the privacy interests of children. To manage perceived risks, the U.S. Central Authority posts information related to scams and other fraudulent activity. U.S. State law governs photo-listings of children eligible 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]
The U.S. Central Authority provides fraud prevention training and information to consular officers and Department of State employees.

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]
45(b) We do not maintain information on these types of trainings.

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 <u>scanned</u> documents in intercountry adoption cases (*e.g.*, scanned and e-mailed Art. 17 *c)* agreements, Art. 23 certificates)?
The United States does use and/or accept certain scanned documents.

<u>If so</u>:

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

46(a) The United States does not accept scanned Article 23 certificates and issues only hard copy Article 23 Certificates.

As a receiving State, U.S. consular officers scan the hard copy Article 23 certificate and hard copy Article 5/17 letter into our internal Consolidated Consular Database through our Immigrant Visa Overseas software for internal processing and to meet the requirements under the IAA for properly retaining documents designated as Convention records. See 9 Foreign Affairs Manual 42.21 N14.14: "U.S. consular officers scan the signed Article 5/17 Letter into an internal system. There is no standard means of delivering Article 5/17 Letters to the Central Authorities. U.S. posts handling Convention adoptee cases will

[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.
[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.

need to contact the Central Authority in their respective countries to determine the best way to forward the Article 5 Letter to the Central Authority. ”

For other documents not generated by a State Central Authority, under U.S. immigration regulations, USCIS at any time may request submission of an original document for review. 8 C.F.R. § 103.2(b)(5). Original or photocopied documents must be submitted in accordance with the instructions on the immigrant visa petition form. 8 C.F.R. 103.2(b)(4) and pages 5 and 6 of the Instructions for Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative. At the immigrant visa interview however, petitioners must provide the original adoption or custody documentation for review by the consular officer. An original medical examination report from an approved panel physician must also be provided. With the exception of the medical examination report, original documents are returned to petitioners

As a State of origin, the U.S. state court with jurisdiction over the case will apply the applicable state law related to the required form of the Article 5/Article 17 letter.

(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)?

46(b) Please see (a), above.

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

46(c) Please see (a), above. The United States is party to the Hague Apostille Convention.

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

46(d) Documents scanned into the Consolidated Consular Database are stored securely in that system , and subject to relevant US law. As with other records retained by the Department or the Department of Homeland Security, access to these records is governed by the Freedom of Information Act and the Privacy Act. The Freedom of Information Act (5 U.S.C. 552 et seq.) generally provides for access by the public to the records maintained by Federal agencies. The Privacy Act (5 U.S.C. 552a et seq.) generally protects the records maintained by Federal agencies on individual U.S. citizens and lawful permanent residents (LPRs) from disclosure, but provides for access to such records by the individual citizen or LPR. See 9 Foreign Affairs Manual 40.3. Visa records are also confidential under INA 222(f).

If not, please explain the reasons for this:
N/A

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?

Please see the response to item 1(a) above for the response to (a)-(e), below.

If so, please explain:

[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.

(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):

Please see the response to item 1(a) above for the response to (a)-(e).

(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?):

Please see the response to item 1(a) above for the response to (a)-(e).

(c) who is permitted to access the listings:

Please see the response to item 1(a) above for the response to (a)-(e).

(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):

Please see the response to item 1(a) above for the response to (a)-(e).

(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):

Please see the response to item 1(a) above for the response to (a)-(e).

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?

U.S. competent authorities do not use social media for this purpose, but we are aware that private entities may do so.

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.

Please see response to 20, above.

D. Illicit practices[42]

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),

[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)."

regardless of whether these practices have taken place in your State or in another Contracting State.

Since the Convention entered into force with respect to the United States we have not issued a certificate of compliance with the Convention or immigrant visas in Convention cases that we had reason to believe involved the abduction, sale or trafficking of children.

In addition, in order to impose the same ethical standards of practice enjoyed in Convention case on cases in non-Convention countries of origin, the U.S. Congress passed a new law entitled the Intercountry Adoption Universal Accreditation Act of 2012, which the President signed into law in January of 2013. As a result of this law, each adoption service provider who provides core adoption services anywhere in the world, is subject to the same Convention-based standards found in U.S. accreditation regulations. Central to the norms and standards contained in U.S. accreditation regulation are the Convention standards and principles forbidding the abduction, sale or trafficking in children. These standards and ethical principles formally extend to every supervised provider in the country of origin, as well.

Reports of the possible abduction, sale or trafficking of children may come to the attention of the U.S. Central Authority in different ways. How a case is handled depends in large part on the means by which the U.S. Central Authority learns of it, as well as the facts of the particular case, e.g., where the child is located and if the child is a U.S. citizen. If the allegations come to the U.S. Central Authority in the form of a complaint filed through the U.S. Hague Complaint Registry against an accredited or approved (non-accredited) adoption service provider, the U.S. accrediting entity would open an investigation into the facts of the case in the first instance. (The U.S. accrediting entities have authority to and responsibility for investigating allegations that an accredited body or its supervised providers may have been out of compliance with the accreditation regulations.) In addition, all allegations of possible abduction, sale or trafficking in children that come to the attention of the U.S. Central Authority -- whether from a U.S. accrediting entity or from any other source -- are referred to the appropriate law enforcement authorities.

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.

Please see response to 50.

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?

In more than one instance, the United States suspended intercountry adoptions with a State of origin when illicit practices for obtaining children for adoption could not be stopped by the State of origin given its existing laws and other structures. This step is never taken lightly and is always preceded by sustained efforts to support reform. It has been encouraging to see States of origin reforming their child welfare systems and including intercountry adoption in the new systems as one of several placement options to meet the needs of children without families. As new systems, laws and regulations are fully implemented, the United States reassesses, in consultation with the relevant governments, when Convention adoption cases can resume. Some non-Convention States continue to struggle with eliminating illicit practices like child buying or obtaining children for intercountry adoption through deception. The United States has worked with such governments at all levels to identify the problems and to encourage implementation of procedural safeguards to address these concerns. Our efforts with all such countries are ongoing. Most of these countries aspire to become parties to the Convention and/or to fully implement the Convention and want to gain full control over

the adoption process so that these abuses no longer occur, and the best interests of children are promoted and protected.

E. Other international placements of children which result in adoption

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?*

Kafala guardianships are a feature of some States of origin not party to the Convention. To our knowledge, for the most part, kafala guardianships come in more than one variety. Some do not terminate parental rights, but operate to provide the child with a home and some other protections, while not giving sufficient custody rights to the guardians. Such kafala arrangements typically do not meet the basic requirements of federal immigration law and children placed in families under these arrangements would not receive an immigrant visa. Other kafala guardianships result in a termination of parental rights of birth parents before a judicial authority issues a guardianship order permitting the parents seeking the guardianship to depart the State of origin enroute to the United States for the purpose of adoption there. Each such case must meet the requirements of laws and regulations of the jurisdiction in the United States where the family will reside. It must also meet the requirements of Federal immigration law at 101(b)(1)(F) with the child qualifying as an orphan.

If so, please explain:

(a) the reasons for this:

See above.

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

Adoption of children in kafala guardianships in the United States varies somewhat by state, but is mostly a matter of routine because state requirements must be addressed during the immigrant visa process.

and

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

Full.

Respite care abroad resulting in adoption[44]

Both States of origin and receiving States

54. If your State is involved in respite care programmes[45] for children, please explain:

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[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.

(a) whether such programmes specifically aim to be a precursor to adoption for some children (*e.g.*, for children with special needs):

54(a) We are aware that private entities in the United States participate in hosting programs. However, the U.S. Central Authority has no role in the operation of these programs and has consistently maintained that such programs cannot bypass the laws and procedures that both the State of origin and the United States have in place related to intercountry adoption and the Convention, where 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:

54(b) The U.S. Central Authority has no involvement in these programs and does not track information related to these programs.

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]

54(c) Please see the response to 54(a), above. In order for a child adopted from a Convention country to be eligible for a U.S. immigrant visa on the basis of an intercountry adoption from a Convention country, the adoption must comply with U.S. law implementing the Convention.

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.

We are not aware of cases in which a domestic foster care placement is made deliberately and tactically to circumvent Convention adoption procedures. However, we have been contacted by dual citizens and citizens of other Contracting States who are living in the United States who have completed U.S. domestic adoptions of children from foster care and have experienced difficulties in obtaining citizenship for their child from their country of citizenship due to the fact that the adoption was completed under laws governing U.S. domestic adoption and not the Convention adoption process.

F. Triangular adoptions[47]

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

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[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.

[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 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.

[47] For a definition of "triangular adoption", please see GGP No 1 at Chapter 8.8.7.

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.

A U.S. accredited body or approved (non-accredited) person must be identified as the "primary provider" in every intercountry adoption case. The primary provider is responsible for ensuring the completion of the six adoption services in the case, and may elect to contract with a foreign "supervised provider" to complete an adoption service outside of the United States.

G. International surrogacy arrangements[49] and intercountry adoption[50]

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, and the outcome for the child and family.

The New Zealand Central Authority for the Hague Adoption Convention asked for an opinion of the USCA on whether an adoption in New Zealand of a child born through a surrogate mother in the United States to parents who are habitually resident in New Zealand would be subject to the Hague Adoption Convention. The parents had obtained a court order from a California State court that granted legal parentage to the intended parents. The USCA responded that the Hague Adoption Convention would not apply to that case. We are unaware of any other cases where the 1993 Convention was sought to remedy the legal status of a child born through international surrogacy.

We do believe that, while the Convention is not the appropriate tool to remedy problematic surrogacy cases, it is important for relevant competent authorities responsible for immigration matters to communicate about remedies available to intended parents who are restricted from traveling with the child born to a surrogate mother

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:

Yes.

(b) Guide to Good Practice No 1 *"The Implementation and Operation of the 1993 Intercountry Adoption Convention"*:

Yes.

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[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".

(c) Guide to Good Practice No 2 *"Accreditation and Adoption Accredited Bodies"*:
Yes.

(d) the tools[52] developed by the Experts' Group on the Financial Aspects of Intercountry Adoption:
Yes.

(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]
Yes.

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 U.S. Central Authority, U.S. competent authorities, and private entities refer to these documents as resources for understanding the concepts and principles underlying the Convention. The Department of State's website, www.adoption.state.gov, links to the Hague Permanent Bureau in several places. In some cases we provide information tools created by the Permanent Bureau directly to countries planning to become Convention partners, also assisting with their translation where appropriate. Additionally, our website and outreach efforts related to the Convention focus on providing detailed information on U.S. law implementing the Convention, to promote understanding of the benefits, practical implications and enforcement of the Convention's implementation in the United States.

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 United States strongly supports technical assistance/post convention assistance which is essential to ensure global coverage of the Hague Conference and implementation of its Conventions.

The 2002 Strategic Plan of the Hague Conference provided "In an environment where the workload is increasing, the Conference will continue to focus equally on its two core activities – the development and review of Conventions, and the provision of unique post-Conventions services (including treaty administration, monitoring and review, the provision of technical advice and assistance with training and education, the gathering and disseminating of information and promoting consistency in State practice)."

The March 2015 Council on General Affairs and Policy welcomed the Report of the Working Group on Technical Assistance and approved the Strategic Framework for post-Convention Assistance prepared by the Working Group (Paragraph 18, Conclusions and Recommendations of the Council). Section VI of the Framework provides "Adequate, consistent and predictable financial and other resources are essential for the provision of post-Convention assistance. The availability of both financial and other resources will determine whether and when a request will go forward. In particular, post-Convention assistance will only be provided where the Permanent Bureau has the capacity and resources to respond to a request taking into account the resources required by the

[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".

Hague Conference's work programme and existing or upcoming commitments."

The Council also noted the importance of technical assistance in relation to the implementation of the Intercountry Adoption Convention and the need to secure funding to continue the position of the Intercountry Adoption Technical Assistance Programme Co-ordinator (paragraph 14, Conclusions and Recommendations of the Council). The Council also welcomed the achievements of the Permanent Bureau in the areas of education, training and technical assistance in relation to the Hague Conventions (Preliminary Document 10, March 2015) (paragraph 18, Conclusions and Recommendations of the Council).

The Council also noted the progress made by the Working Group on Financial Matters and Budgetary Practices in developing revised Financial Regulations. Information Doc. No 8, March 2015, I. Introduction, paragraph 10 notes that questions concerning the future funding and provision of technical assistance by the Permanent Bureau is one of the issues that remains open and will require further consideration and discussion by the Working Group on Financial Matters and Budgetary Practices.

The United States hopes that the Working Group on Financial Matters and Budgetary Practices will consider broadly creative measures to secure regular, consistent funding for technical assistance/post-Convention assistance. This should include consideration of private Stakeholder sponsorships, contributions from more States, secondments, either virtual or at the Permanent Bureau or its Regional Offices, establishing a foundation to receive contributions, exploring "partnerships" with private companies matching specific Convention technical assistance programs and companies; donations from private individuals, internships from law schools and sabbaticals from law schools.

The United States believes that funding of positions employed by the Permanent Bureau, such as the Inter Country Adoption Technical Assistance Programme Co-ordinator, should generally be funded from the regular budget, and should not be dependent on inconsistent funding from voluntary contributions.

Technical assistance activities should be undertaken in an efficient and disciplined manner within the financial resources of the Hague Conference. United States budget policy in international organizations is based broadly on the concept of zero-nominal-growth (ZNG), or no increase in the budget level from one financial period to the next.

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