

**QUESTIONNAIRE SUR LES QUESTIONS DE DROIT INTERNATIONAL PRIVÉ RELATIVES AU
STATUT DES ENFANTS, NOTAMMENT CELLES DÉCOULANT DES CONVENTIONS DE
MATERNITÉ DE SUBSTITUTION À CARACTÈRE INTERNATIONAL**

établi par le Bureau Permanent

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**QUESTIONNAIRE ON THE PRIVATE INTERNATIONAL LAW ISSUES
SURROUNDING THE STATUS OF CHILDREN, INCLUDING ISSUES ARISING FROM
INTERNATIONAL SURROGACY ARRANGEMENTS**

drawn up by the Permanent Bureau

*Document préliminaire No 3 d'avril 2013 à l'attention
du Conseil d'avril 2014 sur les affaires générales et la politique de la Conférence*

*Preliminary Document No 3 of April 2013 for the attention
of the Council of April 2014 on General Affairs and Policy of the Conference*

**QUESTIONNAIRE SUR LES QUESTIONS DE DROIT INTERNATIONAL PRIVÉ RELATIVES
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INTRODUCTION

This Questionnaire is addressed to Members of the Hague Conference and other interested States in fulfilment of the mandate provided by the Council on General Affairs and Policy of the Conference ("the Council") in April 2012, following consideration of Preliminary Document No 10 of March 2012.¹ The Council requested that the Permanent Bureau "continue the current work under the 2011 Council mandate and further prepare and distribute a Questionnaire in order to obtain more detailed information regarding the extent and nature of the private international law issues being encountered in relation to international surrogacy arrangements, as well as in relation to legal parentage or "filiation" more broadly. The Questionnaire shall seek views on the needs to be addressed and approaches to be taken. The Permanent Bureau is invited to present its final Report to the Council in 2014".²

A detailed chronology of the background to this project is available on the website of the Hague Conference < www.hcch.net >, under "The Parentage / Surrogacy Project", then "Chronology of the Project (including relevant documentation)".

This Questionnaire has **five parts**:

- **Part I** contains questions on the internal law concerning the establishment and contestation of legal parentage in Member and interested States;
- **Part II** looks to the private international law ("PIL") and co-operation rules concerning birth registration and the establishment, recognition and contestation of legal parentage;
- **Part III** addresses the particular challenges concerning International Surrogacy Arrangements³ ("ISAs");
- **Part IV** considers the current bilateral or multilateral instruments in the field; and
- **Part V** asks for thoughts on possible future work in this area.

Please note that the Permanent Bureau has used the same terminology in this Questionnaire as that which was used in the **Glossary** annexed to Preliminary Document No 10 of March 2012. This Glossary is accessible on the webpage of the project, "The Parentage / Surrogacy Project", then "Chronology of the Project (including relevant documentation)" and then "2011 - 2013".

The Permanent Bureau invites responses to the Questionnaire (in either English or French) by no later than **1 August 2013** in order to allow the Permanent Bureau sufficient time to consider the responses and to prepare the final Report requested by Members for the Council of 2014. Answers should be sent by e-mail to < secretariat@hcch.net > with the following heading and indication in the subject field: "Questionnaire - Parentage / Surrogacy - [name of Member, State or territorial unit, where applicable]".

It is acknowledged that this is a detailed Questionnaire and that, due to the legal position in some States, it may not be possible for Members and interested States to respond to all of the questions. The Permanent Bureau is extremely grateful for any information which may be provided. It is also hoped that the detailed information in the responses to this Questionnaire may be of use to Members beyond this project: for example, where consideration is being given, now or in the future, to domestic legislation in any of the areas considered below.

¹ Prel. Doc. No 10 of March 2012, "A Preliminary Report on the issues arising from international surrogacy arrangements", drawn up by the Permanent Bureau. See also the earlier Prel. Doc. No 11 of March 2011, "Private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements", also drawn up by the Permanent Bureau.

² Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference, 17-20 April 2012, para. 21. The "2011 Council mandate" referred to therein can be found at paras 17 to 20 of the Conclusions and Recommendations of the Council on General Affairs and Policy of the Conference, 5-7 April 2011.

³ See the **Glossary** annexed to Prel. Doc. No 10 of March 2012 (see note 1) for the definition of the terms used in this paper.

Please note: the Permanent Bureau intends, except where expressly asked not to do so, to place replies to this Questionnaire on the website of the Hague Conference.

Identification

Name of State (or territorial unit, where applicable): **Switzerland**

Information for follow-up purposes

Name and title of contact person: Maryse Javaux Vena, legal counsel

Name of Authority / Office: Federal Office of Justice, International Private Law Unit

Telephone number: 0041313238864

E-mail address: kindeschutz@bj.admin.ch

QUESTIONNAIRE

Note: wherever possible, please provide a copy of, or a web-link to, any legislation, rules or case law mentioned in your response, along with a translation into English or French.

Part I: Internal law concerning the establishment and contestation of legal parentage

A. Birth registration

1. Please indicate which authorities in your State are responsible for registering the birth of a child:

The cantonal civil register authorities are responsible for registering the birth of a child. The registration is based on the notification (see below).

2. Please briefly describe the procedure for birth registration in your State, indicating whether such registration is mandatory⁴ and providing details concerning any specific rules which must be complied with (e.g., within what timeframe must a birth be registered, who can register a birth and where must the birth be registered):

The following authorities or persons are legally obligated to notify the birth of a child:
The hospital, where the child is born.

If the child is not born in a hospital, the mother, the father and every other person, that is present at the birth.

If the birth is not notified, every authority that comes to know.

Timeframe for the notification: 3 days.

3. Please explain what proof (evidence), if any, of legal *maternity* is required by the authorities in your State in order to register a putative⁵ legal mother:

Please tick all which apply:

- a) Hospital birth record (stating the name of the woman who gave birth to the child)
- b) Sworn statement by the putative legal mother stating that she gave birth to the child
- c) Signed statement by the putative legal mother stating that she gave birth to the child
- d) DNA test to prove a genetic link between the putative legal mother and child
- e) Other: please explain

4. Please explain what proof (evidence), if any, of legal *paternity* is required by the authorities in your State in order to register a putative legal father:

Please tick all which apply:

- a) Formal acknowledgement⁶ by the putative legal father

⁴ See Art. 7 of the United Nations *Convention on the Rights of the Child* ("UNCRC"), 20 November 1989, which states that, "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents."

⁵ "Putative" means "generally considered or reputed to be" and, in this document, is taken to mean the woman or man *claiming or claimed* (where it is not the individual him or herself making the assertion) to be the legal mother or father, respectively, of the child.

- b) Formal acknowledgement by the putative legal father, with the legal mother and / or the child's evidenced consent: please specify
- c) Judicial decision (court order) establishing or confirming legal paternity
- d) Sworn statement by the putative legal father stating that he is the genetic father
- e) Signed statement by the putative legal father stating that he is the genetic father
- f) Signed agreement between the legal mother and putative legal father
- g) DNA test to prove a genetic link between the putative legal father and child
- h) Other: please explain

According to swiss law the husband is deemed to be the father, when the child is born in wedlock; no further proof or acknowledgement is needed.

5. What are the legal consequences in the internal law of your State of registering persons in the State records⁷ as the parents of a child?

- a) Those persons are the legal parents of the child for all purposes, unless and until the record is contested, and all the legal consequences which flow from legal parentage in your State will automatically follow (e.g., duty to provide maintenance, inheritance rules, naming rules, etc.):
- b) Other: please explain

6. Are there any penalties for failing to comply with the rules concerning birth registration in your State: for example, misrepresenting to the authorities who are / is the legal parent(s) of the child?

If the birth is not notified: monetary penalty. Forgery of certificates: Custodial sentence not exceeding 3 years or monetary penalty.

7. Is it possible to give birth anonymously in your State?

- Yes
- No

If so, please explain any rules which apply to such an anonymous birth and state what will appear on the child's birth record and / or birth certificate:⁸

De iure it is not regulated, de facto it is possible. There are special places, where women can "deliver" a child (Babyklappe). Some minutes after the delivery of the child the hospital is alarmed. There are also cases where a child is abandoned.

The child is given a name, place, sexe and estimated birthtime are registred. The child protection authority takes the necessary measures. On the birth certificate the civil status authority leaves the box for the parents blank.

B. Establishment of legal parentage

8. Who, upon the birth of a child, is the legal mother *by operation of law* in your State (*i.e.*, with no need for the woman to take any steps to establish her legal maternity)?

⁶ In some States, this is called a "recognition" of paternity: the term "acknowledgement" is used in this document to avoid confusion with the private international law concept of "recognition". See further **Questions 11 et seq.** below.

⁷ It is acknowledged that there are different methods of recording births (and therefore legal parentage) across States, as well as different rules concerning matters such as when birth certificates will be issued, what information should be contained within the certificate and their constitutive value. Where applicable, please provide information concerning the rules in your State.

⁸ In this document, the "birth record" is taken to mean the information concerning the child's birth (including legal parentage) which is stored in the records of the relevant State authority (usually a registry). In contrast, the "birth certificate" is taken to mean the *extract* from this birth record which is usually given to the legal parent(s) to keep. In some States it may be that the information contained within the birth record is comprehensive (e.g., if the child has been adopted, the birth record will identify the birth parent(s)), whereas the birth certificate may provide only a limited part of this information. See also *ibid.*

- a) The woman who gives birth to the child
 b) The genetic mother (*i.e.*, the woman whose gamete (egg) created the child)
 c) There is no legal mother *by operation of law*: please explain
 d) Other: please explain
9. Who, upon the birth of a child, is the legal father *by operation of law* in your State (*i.e.*, with no need for the man to take any steps to establish his legal paternity)?
- a) The husband of the woman who gave birth is *presumed* to be the legal father
 b) The male partner of the woman who gave birth is *presumed* to be the legal father – please provide any conditions (*e.g.*, the couple must be cohabiting, etc.)
 c) The genetic father (*i.e.*, the man whose gamete (sperm) created the child)
 d) There is no legal father *by operation of law*: please explain
 e) Other: please explain

If legal presumptions operate in your State, please specify in what circumstances, if any, it is possible to “rebut” these presumptions:

The presumption of paternity may be challenged in court by the husband and the child (Art. 256 al. 1). The child has the right of challenge only, if the spouses cease living together while the child is still a minor (Art. 256 al. 3 CC). The husband has no right of challenge if he consented to impregnation by a third party (Art. 256 al. 3 CC). If a child was conceived in wedlock, the challenging party must show that the husband is not the father (Art. 256a al. 1 CC). If a child was conceived before the marriage was concluded or at a time when the spouses were living apart, no further grounds need be given for the challenge (Art. 256b al. 1 CC).

Time limits, Art. 256c CC: The husband must file the challenge within one year of learning of the birth and of the fact that he is not the father or that another man had sexual intercourse with the mother around the date of the conception, but in any event not later than five years after the birth.

The child's challenge must be filed at the latest within one year of attaining the age of majority.

Once these time limits have expired, a challenge of paternity is admissible provided there is good cause for the delay.

10. a) Is it possible in your State for a non-contentious (*i.e.*, unchallenged) application to be made to the relevant State authorities for a decision (sometimes called a “declaration”) establishing or confirming the legal parentage of a child?
- Yes – go to **Question 10 b**).
- No – go to **Question 11**.

b) Please explain to which State authorities such an application should be made:

- i. The authority responsible for birth registration (see **Question 1** above)
 ii. The judicial authorities (*i.e.*, the courts): please specify
 iii. Other State administrative authorities: please specify
 iv. Other: please explain

c) Please explain who may bring such an application:

- i. Only the individuals currently considered to be the legal mother and / or father and / or the child
 ii. Any person claiming to be the legal mother and / or father of a child
 iii. Any person determined by the State authorities to have sufficient interest to bring a claim: please explain how the authorities determine this question:
 iv. Any person

v. Other: please explain

d) Is there a timeframe within which such an application must be made?

- Yes, please specify:
 No
 In certain situations: please explain

11. Is it possible in your State for a putative legal father to "voluntarily acknowledge"⁹ his legal paternity (if his legal paternity has not arisen by operation of law – see **Question 9** above)?

- Yes
 No

If so, please explain (1) if there are any restrictions placed upon who may undertake such an acknowledgement (*e.g.*, it must be the genetic father, the man must be over a certain age, etc.), (2) the procedure for undertaking such an acknowledgement, and (3) whether the consent(s) of the mother and / or child are required:

"The father" may voluntarily acknowledge his child. De iure it should be the genetic father, but de facto the declaration can be given by any man. Such an acknowledgement is valid. To eliminate this parentage a challenge is necessary (Art. 260a CC). Where the father is minor or subject to a general guardianship, the acknowledgement requires the consent of the legal representative (Art. 260 al. 2 CC). The father has to declare his parentage in front of the civil status authority. The consent of the mother or the child is not required.

In particular, please state whether it is possible for an individual to acknowledge legal paternity to representatives of your State authorities in another country (*e.g.*, usually to the consulate or embassy in that State). Please explain the procedure and whether there are any conditions which must be fulfilled:

If the acknowledgement to the foreign authorities is not possible, the acknowledgement to the Swiss Embassy or Consulate is admitted. But generally the father must undertake the acknowledgement to the local authorities.

12. Is it possible in your State for a putative legal mother to "voluntarily acknowledge" her legal maternity?

- Yes
 No
 Not applicable – legal maternity always arises by operation of law (see **Question 8** above).

If so, please explain (1) if there are any restrictions placed upon who may undertake such an acknowledgement (*e.g.*, it must be the genetic mother, the woman must be over a certain age, etc.), (2) the procedure for undertaking such an acknowledgement, and (3) whether the consent(s) of any others is / are required:

In particular, please state whether it is possible for an individual to acknowledge legal maternity to representatives of your State authorities in another country (*e.g.*,

⁹ See note 6 above.

usually to the consulate or embassy in that State). Please explain the procedure and whether there are any conditions which must be fulfilled:

13. Please explain the legal consequences in your State of a "voluntary acknowledgement" of legal parentage:

- a) Once the acknowledgement is authenticated by the State authorities, the author of the acknowledgement is considered a legal parent of the child for all purposes
- b) The acknowledgement is merely a declaration by the author that he / she is a legal parent and says nothing of the State's acceptance of that issue
- c) Other: please specify

14. Is it possible for legal parentage to be established by agreement between the putative parents?

- Yes
- No

If so, please explain the procedure which must be undertaken and specify any restrictions which operate:

15. Is it possible in your State for two persons of the same-sex to be the legal parents of a child?

- Yes
- No

If so, please explain the legal mechanisms available in your State which enable this. Please tick all which apply and provide a brief explanation of the rule(s) and procedure. This may arise by:

- a) Operation of law:
- b) Order of the court or other State authorities:
- c) Adoption:
- d) Other: Recognition of a foreign decision pronouncing a same-sex adoption.

C. Establishment of legal parentage where assisted reproductive technology ("ART")¹⁰ has been used¹¹

16. Is ART permitted in your State?

- Yes, all forms of ART are permitted
- Yes, but there are certain restrictions on the services available and who may access these services: please specify

ART may be used only if a couple is unable to have children without help or if there is no other way of avoiding the risk of transmitting a serious incurable disease. Allowed are artificial insemination, in-vitro-fertilisation, the preservation of reproductive cells and the gamete transfer. Only married couples may use donated sperm cells. Forbidden are surrogacy, egg donation, the development of embryos outside the woman's body, the impermissible selection of reproductive

¹⁰ In this document, "assisted reproductive technology" ("ART") is used in a broad sense to refer to any method used to achieve conception which involves artificial or partially artificial means and which is undertaken by a medical / health clinic or institution: *e.g.*, two of the most common methods are artificial insemination and in-vitro fertilisation. Donated gametes (egg and sperm) may be used but will not always be necessary. In this document, ART does not refer to "do-it-yourself" or "DIY" methods of non-procreative conception: *i.e.*, where medical third parties are not involved in the procedure.

¹¹ Please note: surrogacy arrangements are dealt with separately in **Section D** below.

cells, germ-line modifications, cloning, chimera and hybrid formation. ART should respect the child's best interests (the future parents should be able to raise a child)

- No, all forms of ART are completely prohibited – **please go to Section D.**
 Other: please explain

17. Is there regulation of the use of ART in your State?

- Yes, legislation regulates the use of ART: please briefly explain
 The basic rules are outlined in the Federal Constitution of the Swiss Confederation (Art. 119 Federal Constitution of the Swiss Confederation). The more detailed regulation is in the Federal Act of Medically Assisted Reproduction (RMA) and the Reproductive Medicine Ordinance (RMO).
 Yes, there are rules or "codes of practice" concerning the use of ART which emanate from the medical regulatory bodies: please briefly explain
 No, there are no rules at all – **go to Question 19**
 Other: please explain

18. If ART is regulated in your State, please state whether the legislation or rules specify the following matters (please tick all which apply and provide a brief explanation, where applicable):

- a) Who may access ART services (*e.g.*, relationship status; age or health requirements; nationality / residency requirements, etc.):

Couples where a basis for a parent-child relationship exists in accordance with the Civil Code and who are likely to be able to care for and bring up the child. Only married couples may use donated sperm cells.

- b) Who may perform ART services:

A cantonal licence is required by any person who uses ART or treats reproductive cells without personally using ART. A licence for ART is only granted to physicians. They must have the necessary training and laboratory, ensure that the activities are carried out with due care and in compliance with the law and that the reproductive cells are preserved in accordance with the current state of science and practice (Art. 10 RMA). The ordinance specifies that any person who uses assisted reproductive techniques requires the Swiss obstetrics and gynaecology specialist title with the gynaecological endocrinology and reproductive medicine specialty or an equivalent recognised foreign specialist title. The cantonal licence to practise independently is also required (Art. 2 RMO). Any person who receives reproductive cells or impregnated ova for preservation or arranges the supply of donated sperm cells without personally using assisted reproductive techniques requires a Swiss or a recognised foreign medical specialist title. The cantonal licence to practise independently is also required (Art. 3 RMO).

- c) The regulation of medical or other institutions which perform ART services (*e.g.*, the licensing of clinics or hospitals):

The laboratory must be managed by a physician or a director with an appropriate university education in veterinary medicine, dentistry, pharmacy, chemistry, physics, biochemistry, biology or microbiology (Art. 4 RMO).

- d) Which ART services may be performed:

Allowed are artificial insemination, in-vitro-fertilisation, preservation of reproductive cells and the gamete transfer. Only married couples may use donated sperm cells.

- e) Whether egg donation is permitted and, if so, under which conditions: No.

- f) Whether sperm donation is permitted and, if so, under which conditions:

Only married couples may use donated sperm cells. Before donating sperm, the donor must be informed in writing about the legal situation, and in particular the right of the child to obtain information on the donor's records (Art. 18 para. 2 RMA). Sperm cells from one donor may be used to produce a maximum of

eight children. When an assisted reproductive technique is used, the relationship between the persons from whom the reproductive cells are obtained must not constitute an impediment to marriage in accordance with Art. 95 of the CC. When donated sperm cells are selected, only the donor's blood group and similarity in physical appearance to the man with whom filiation is to be established shall be taken into account (Art. 22 RMA).

g) The costs of ART (including the amount paid to any gamete donors):
No payment shall be made for sperm donation as such (Art. 21 RMA). ART is not covered by the obligatory basic health insurance.

h) The anonymity of gamete donors: na

i) The right of the child to know his / her genetic or birth origins:

Immediately after the birth of the child, the physician who carried out the reproductive procedure must transmit the data specified in Article 24 to the Federal Civil Status Office. Once the child has reached 18 years of age, he or she may request information from the Federal Office about the donor's physical appearance and personal data (Art. 24 para. 2 lets. a and d).

j) The legal parentage of any child born as a result of ART (see also **Questions 19 to 22** below)

k) Other: please explain

Before an assisted reproductive technique is used, the physician must carefully inform the couple about the various causes of infertility; the medical procedure, including the prospects of success and the risks involved; the risk of a multiple pregnancy; possible psychological and physical stresses; and the legal and financial aspects. In the counselling session, appropriate reference should also be made to alternative ways of living and other family-building options. There must be an appropriate period for reflection, generally lasting four weeks, between the counselling session and treatment. It must be pointed out that the couple may also seek independent advice. Psychological support must be offered before, during and after treatment (Art. 6 RMA).

19. Please explain the consequences of ART for legal *maternity* arising *by operation of law*:

a) The woman giving birth to the child will always be considered the legal mother of the child, irrespective of any ART which has led to the birth

b) Other: please specify

Please explain whether the above position results from legislation, rules, case law or other source(s) of law:

Art. 252 Civil Code: The parent-child relationship is formed between child and mother on the birth of the child.

20. Please explain the consequences of ART for legal *paternity* arising *by operation of law*:

Please tick all boxes which apply:

a) The husband of the woman giving birth following ART is the legal father of the child born: please state whether it is necessary for him to have formally consented to the treatment:

ART may be used only with the written consent of the couple concerned (Art. 7 RMA).

b) The male partner of the woman giving birth following ART is the legal father of the child born: please state whether it is necessary for him to have formally consented to the treatment:

The unmarried partner has to acknowledge the child.

c) The genetic father will always be the legal father:

d) Other: please explain

Please explain whether the above position results from legislation, rules, case law or other source(s) of law: Civil Code/RMA.

21. Please explain whether gamete donors are, in any situations, considered the legal parent(s) of a child born as a result of ART:

A paternity action is permissible if the donor knowingly donated sperm to a person who was not licensed to use assisted reproductive techniques or to preserve and supply donated sperm cells.

22. If your State permits same-sex couples to access ART services, please specify the consequences concerning legal parentage for any child born to a same-sex couple who have used ART to conceive a child:

na

23. Is information available concerning how many ART procedures are undertaken in your State each year and how many children are born as a result?

Yes: please provide a copy of, or a link to, the information <http://www.bfs.admin.ch/bfs/portal/de/index/themen/14/02/03/key/02.html>

No

Other: please explain

D. Surrogacy arrangements

Regulation of surrogacy

24. Does your State permit surrogacy arrangements?

a) Yes, *all* forms of surrogacy arrangements are permitted:
 i. As a result of express legislation or rules: please specify
 ii. By default, because surrogacy is unregulated in internal law.

Go to **Question 26**.

b) No, any form of surrogacy is expressly prohibited by law: please specify, including any sanctions for breach of this prohibition: Art. 119 of the Swiss Constitution states that "the donation of embryos and all forms of surrogate motherhood are unlawful". Any person who uses an assisted reproductive technique in a surrogate mother shall be liable to a term of imprisonment or to a fine. The same penalty shall apply to any person who acts as an intermediary for surrogate motherhood (Art. 31 RMA). Persons residing in Switzerland don't get medical service here and therefore go abroad.

Go to **Question 26**.

c) It depends upon the nature of surrogacy arrangement (e.g., commercial surrogacy arrangements are prohibited): please specify

d) Other: please specify

Please provide any clarification, where necessary:

25. If your State has legislation or rules permitting certain or all forms of surrogacy arrangements:

a) Are the parties to the surrogacy arrangement required to obtain State approval of the arrangement *prior* to conception?

- Yes, pre-approval by the relevant State authorities is required. Please explain the procedure:
- No, pre-approval is not required – the rules only regulate legal parentage following the birth of the child. Please explain the procedure:
- Other: please specify

b) Please state whether the following aspects of the surrogacy arrangement are regulated in the rules / legislation:

Please tick all which apply:

- i. Who may be intending parents¹² to an arrangement, including:
- a. Nationality, domicile or residency requirements:¹³
please specify
- b. Marital or other relationship status:
- c. Age requirements:
- d. Health requirements:
- e. Psycho-social requirements:
- f. Other:
- ii. Who may be a surrogate mother, including:
- a. Nationality, domicile or residency requirements:¹⁴
please specify:
- b. Marital or other relationship status:
- c. Age requirements:
- d. Health requirements:
- e. Psycho-social requirements:
- f. The surrogate mother must already have her own children:
- g. Other:
- iii. Which types of surrogacy arrangements are permitted, *e.g.*, traditional and / or gestational,¹⁵ etc.: please specify
- iv. Which medical institutions or clinics may facilitate a surrogacy arrangement (where medical intervention is necessary for the type of surrogacy arrangement being undertaken) and the level of financial remuneration which may be paid for these services: please specify
- v. Which other bodies or persons may facilitate a surrogacy arrangement (*e.g.*, by acting as an intermediary and undertaking tasks such as advertising for surrogate mothers, “matching” surrogate mothers with intending parents, organising certain aspects of the arrangements for the intending parents, etc.) and whether such bodies or persons may receive financial compensation for their services: please specify
- vi. Whether financial remuneration can be paid to the surrogate mother:
- a. No financial remuneration at all is permitted

¹² Please note that, for simplicity, this document always refers to intending parents in the plural form. However, it is understood that, in some States and in certain circumstances, single persons may enter into a surrogacy arrangement. Please specify this, where relevant, in any response.

¹³ See **Parts II** and **III** below for questions concerning the private international law rules regarding legal parentage and international surrogacy arrangements, respectively.

¹⁴ See **Parts II** and **III** below for questions on the private international law rules concerning legal parentage and international surrogacy arrangements, respectively.

¹⁵ See the **Glossary** for the definition of the terms used in this paper.

- b. Only reasonable expenses may be paid: in which case please state whether the legislation or rules define what are such "reasonable expenses":
 - c. Compensation beyond reasonable expenses is permitted: please specify what exactly is permitted:
- vii. Whether the surrogacy arrangement is contractually enforceable: please specify
- viii. Who may make decisions concerning the pregnancy (e.g., whether an abortion should be undertaken in certain situations, what medical treatment should be undertaken if problems arise, etc.): please specify
- ix. The legal parentage of the child following his / her birth (see further **Questions 26 to 30** below):
- x. Other: please specify
- c) Please explain any legal consequences, both criminal (e.g., penal sanctions) and civil (e.g., for the legal parentage of the child), if the requirements set down in the legislation or rules are not complied with:
- d) Please provide any additional information you think necessary concerning the nature of the regulation of surrogacy in your State:

Surrogacy and legal parentage

26. Upon the birth of a child following a surrogacy arrangement, who is / are the legal parent(s) *by operation of law* (i.e., without any further steps being taken by any individuals) according to the internal law of your State?

Please explain, including whether this results from legislation, case law or other source(s) of law:

Any surrogacy arrangement or contract is void (unlawful and immoral, Art. 20 CO). The woman giving birth to the child (Art. 252 CC) is the mother, her husband the father (Art 255 CC). If she is not married, there is no father by operation of law.

27. Where necessary, are there any legal mechanisms in your State to enable intending parents to establish their legal parentage?

Please tick all which apply:

- a) Yes, prior to the birth the intending parents can seek a court order declaring that they will be the parents of the child born to a surrogacy arrangement (a "pre-birth order").

Please specify any legal requirements to obtain such an order (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- b) Yes, *following* the birth the intending parents can seek a court order transferring legal parentage to them (in some States, known as a "parental order" or "parentage order").

Please specify any legal requirements to obtain such a transfer of legal parentage (including any nationality / domicile / residency requirements) and state whether this position arises from legislation, case law or other source(s) of law:

- c) No

d) Other: please specify

Surrogacy is forbidden in Switzerland. The only possibility, at least in theory, is the adoption. It requires the consent of the child's mother and father. The consent to adoption may not be given until at least six weeks after the birth of the child. The adoption is submitted to the "normal" adoption rules: An application for adoption may not be upheld until all material circumstances have been thoroughly investigated, where necessary in consultation with the relevant specialists.

In particular, the investigation must look into the character and health of the adoptive parents, their mutual relationship, their suitability as parents, their financial situation, motives and family circumstances and the history of the child care relationship.

Where the adoptive parents have issue of their own, the latter's attitude to the adoption must be taken into account. The adoption is pronounced by the competent cantonal authority at the adoptive parents' domicile.

e) Such mechanisms are unnecessary – the surrogacy contract is sufficient to establish the legal parentage of the intending parents.

f) Such mechanisms are unnecessary – the intending parents will be the legal parents upon the birth of the child by operation of law: see the response to **Question 26** above.

28. Where a surrogacy arrangement has been undertaken in your State, will the fact of the surrogacy arrangement be visible on the child's birth record and / or certificate?

Yes: please describe exactly what will be on the record and / or certificate

No: please explain

No surrogacy in Switzerland. Hypothetical procedure: The birth record contains the woman who gave birth to the child and the legal father. The adoptive child acquires the legal status of a child of the adoptive parents. Therefore the adoptive parents are the legal parents after the adoption. The record still contains the biological parents but not visible.

29. Is information available concerning how many surrogacy arrangements take place in your State each year and how many children are born as a result?

Yes: please provide a copy of, or a link to, the information

No

Other: please explain Surrogacy is forbidden under penalty. No SA in Switzerland known.

30. Are you aware of any illegal practices in your State concerning surrogacy arrangements?

Yes – please state the practices of which you are aware and, if possible, how frequently they are occurring:

No

Other: please explain

E. Contestation of legal parentage

31. Which authority(ies) in your State may determine a dispute concerning legal parentage?

a) The authority responsible for birth registration (see **Question 1** above)

b) The judicial authorities (*i.e.*, the courts): please specify

The court is competent for the action to determine paternity (261 CC), as for the challenge of the presumption of paternity (Art. 256 CC) and the acknowledgement (260a).

- c) Other State administrative authorities: please specify
 d) Other: please explain

32. Who may bring an action to challenge legal parentage?

- a) Only the individuals currently considered to be the legal mother and / or father and / or the child
 b) Any person claiming to be the legal mother and / or father of a child
 c) Any person determined by the State authorities to have sufficient interest to bring a claim: please explain how the authorities determine this question
 d) Any person
 e) Other: please explain To challenge the presumption of paternity: the husband himself and the child (Art. 256 CC). Acknowledgement may be challenged by any interested party (Art. 260a CC).

33. Is there a timeframe within which legal parentage must be challenged (*i.e.*, after which time, any challenge to legal parentage is effectively barred)?

Yes, please specify:

Presumption of paternity: The husband must file the challenge within one year of learning of the birth and of the fact that he is not the father or that another man had sexual intercourse with the mother around the date of the conception, but in any event not later than five years after the birth.

The child's challenge must be filed at the latest within one year of attaining the age of majority.

Once these time limits have expired, a challenge of paternity is admissible provided there is good cause for the delay (Art. 256c CC).

Acknowledgement: The challenge must be filed within one year of the date on which the claimant learned of the recognition and the fact that the recognising person is not the father, or that another man had sexual intercourse with the mother around the time of the conception, or on which he or she learned of his or her error or on which the threat ceased, but in any event within five years of the recognition.

In all cases, the child may file the challenge at any time prior to the elapse of one year after attaining the age of majority.

Once these time limits have expired, a challenge of recognition is admissible provided there is good cause for the delay.

- No
 In certain situations: please explain

34. On what grounds may legal *maternity* be challenged before the authorities in your State?

- a) Only on the basis that the "mother" did not, in fact, give birth to the child
 b) Only on the basis that the "mother" is not, in fact, the genetic mother of the child (*i.e.*, the woman from whom the gamete (egg) came)
 c) Other: please explain

35. On what grounds may legal *paternity* be challenged before the authorities in your State?

- a) Only on the basis that the "father" is not, in fact, the genetic father of the child (*i.e.*, the man from whom the gamete (sperm) came)
 b) Other: please explain

36. What are the legal consequences of a successful challenge concerning legal parentage?
- The decision of the State authorities concerning legal parentage is binding *erga omnes* (*i.e.*, on all persons, for all purposes)
 - The decision of the State authorities will only be binding for limited, specific purposes: please explain
 - It depends upon the context in which the challenge has been made (*e.g.*, if in the context of a maintenance claim, it will be binding only as concerns the payment of maintenance): please explain
 - Other: please explain
37. What happens to a child's birth record and / or birth certificate when legal parentage is successfully challenged?
- The birth record and / or certificate is revised and the old record and / or certificate will be permanently deleted
 - The birth record and / or certificate is amended but the original record and / or certificate is retained
 - Other: please explain

F. The acquisition of nationality by children

38. How may a child acquire the nationality of your State?

Please tick all which apply:

- By birth within the territory of the State
- By "descent", where one or both of his / her *legal* parents is / are a national of the State: please explain which law, in this context, will apply to the question of who is / are the child's *legal* parents for the purposes of determining nationality:
The Civil Code applies to legal parentage, the Federal Act on the Acquisition and Loss of Swiss Citizenship (SCA) on how the nationality is acquired.
- By "descent", where one or both of his / her *genetic* parents is / are a national of the State: please explain how the genetic link must be evidenced:
- If the child would otherwise be "stateless" (*i.e.*, without the nationality of any other State):¹⁶ please specify Art. 30 of the SCA: the child can apply for a "facilitated nationality acquisition"
- Other: please specify

G. Legal developments

39. Please state whether the law in your State concerning the matters covered in **Part I** above (*i.e.*, birth registration, establishment and contestation of legal parentage, ART, surrogacy and nationality concerning children) has changed in the past five years, or whether any initiatives are underway (*e.g.*, in government, before parliament or before the courts) to change the law in future:

No changes in the last five years.

Under way are (outcome not yet known):

- the joint adoption for same-sex couples (change of the Civil Code);

¹⁶ As to which, see note 4 above, citing Art. 7 of the UNCRC.

- a change of the RMA concerning pre-implantation genetic diagnosis (PGD). The federal council has completed the preliminary work on the new regulation and passed the draft legislation to the parliament. The central purpose of PGD is to ensure that the future child will not suffer from a serious hereditary condition carried by the parents;
- the parliament discusses the permission of egg donation (parliamentary initiative). For background information and the history of legislation see <http://www.bag.admin.ch/themen/medizin/03878/03880/index.html?lang=en>

40. Please provide any other information you consider relevant concerning cases (reported, or otherwise) or other developments which have occurred in your State in relation to the Questions appearing in **Part I** above.

The Swiss national advisory commission on biomedical ethics announced to publish a report concerning the prohibited ART practices (Surrogacy, egg donation, embryo donation). Main issues are the interest of the child, reproductive freedom to have a child and limits to this freedom, the state's duty/function concerning ART in a pluralistic society and the risks of ART/reproductive tourism.

The Parliament has mandated the government with a report on international surrogacy cases and the recognition in Switzerland of parent-child relationships resulting of such arrangements.

Also, Parliament has given a general mandate to present a report on the "modernisation" of family law in Switzerland, part of which is the question of establishment of filiation.

Part II: Private international law ("PIL") and co-operation rules concerning birth registration and the establishment, recognition and contestation of legal parentage

A. PIL and co-operation rules concerning birth registration

41. Please explain when the relevant authorities in your State will assume (international) jurisdiction to register the birth of a child:

- a) Only when the child is born on the territory of the State
- b) When at least one of the putative *legal* parents is a national of the State, regardless of the place of birth of the child
- c) When at least one of the putative *genetic* parents is a national of the State, regardless of the place of birth of the child
- d) When the child is considered a national of the State,¹⁷ regardless of the place of birth of the child
- e) Other, please specify:

All births on the territory of Switzerland are registered, regardless of the nationality of the parent(s). The birth of Swiss nationals abroad (child of one or two Swiss nationals) will be registered abroad, and the foreign birth certificate will then be recognised and registered in Switzerland and the birth also registered in the Swiss registry.

42. When registering a child's birth, which law will the relevant authorities apply to the question of who is / are the legal parent(s) of the child *by operation of law*?¹⁸

- a) The *lex fori* (*i.e.*, the internal law of your State) is always applied by the relevant authorities

¹⁷ As to which, see **Question 38** above.

¹⁸ Please note that the applicable law rules identified in your response to this Question may be the same as the rules you identify in **Question 45** below.

- b) If the situation has foreign elements (*e.g.*, the putative parent(s) or child are foreign nationals, or the child was born overseas, etc.), foreign law may, or must, be applied to this question. Please specify the applicable law rules:
- c) Other: please specify Art. 68 PIL which states that the establishment, declaration and denial of a parent-child relationship (filiation) are governed by the law of the state of the child's habitual residence. However, if neither parents is domiciled in the state of the child's habitual residence and if the parents and the child are nationals of the same state, the law of such state applies.
43. Have your State authorities ever encountered difficulties resulting from a child's birth being registered in two (or more) States (*e.g.*, the child is registered in your State as the State of birth, and in the State of the parents' nationality and the registers conflict)?
- Yes: please explain the circumstances of the case(s) and the difficulties which arose:
- No
44. Are there any bilateral or multilateral¹⁹ agreements in force between your State and any other State such that:
- a. When a child's birth is registered which involves foreign elements (*e.g.*, one or more foreign national parents), this information is communicated to the authorities in the other relevant State?
- Yes: please specify Agreement with Austria, Germany and Italy. The birth registration in Switzerland of a Austrian, German or Italian citizen is notified to his embassy. Austrian, German and Italian authorities notify births of Swiss citizens to the Swiss embassy.
- There are no formal agreements but this may happen in practice: please explain
- No
- b. When there are changes to a child's legal parentage *subsequent to* birth registration as a result of steps taken in your State (*e.g.*, due to a subsequent voluntary acknowledgement of paternity in your State, or a contestation of legal parentage, etc.), this information is communicated to the relevant authorities in the State of the child's birth (where this is not your State)?
- Yes: please specify
- There are no formal agreements but this may happen in practice: please explain
- No

B. PIL rules concerning the establishment of legal parentage

By operation of law or agreement

45. Does your State have rules specifying which law is applicable to the establishment of legal parentage by operation of law?²⁰
- Yes: please specify art. 68 PIL, see question 42 above

¹⁹ *E.g.*, the *Conventions on the international exchange of information relating to civil status* of 4 September 1958 and of 12 September 1997 or the *Convention on the recognition and updating of civil status booklet*, 5 September 1990, all adopted under the aegis of the International Commission on Civil Status (< www.ciecl.org >).

²⁰ Please note that the applicable law rules identified in your response to this Question may be the same as the rules you identified in **Question 42** above.

- No: the *lex fori* (i.e., the internal law of the State) will always be applied where a question of legal parentage arises

46. Does your State have rules specifying which law is applicable to the establishment of legal parentage by agreement?

- Yes: please specify
 No: the *lex fori* (i.e., the internal law of the State) will always be applied where a question of legal parentage arises
 Not applicable: it is not possible to establish legal parentage by agreement

By voluntary acknowledgement

47. Please explain in which circumstances your State authorities will consider they have (international) jurisdiction to accept a voluntary acknowledgement of legal parentage by a putative parent:

Please tick all which apply:

- a) When the child is (habitually) resident in your State: please specify the authorities of the birth place or the habitual residence of the child
b) When the child is a national of your State
c) When the individual acknowledging the child is (habitually) resident in your State: please specify domicile of the (putative) father
d) When the individual acknowledging the child is a national of your State
e) Other: please specify art. 71 PIL:

1 The Swiss authorities at the child's place of birth or habitual residence, as well as those of the domicile or the place of origin of the mother or father, have jurisdiction to receive the acknowledgment of a child.

2 When such acknowledgment takes place in a judicial proceeding, in which the parent-child relationship is legally relevant, the judge before whom the action is pending may also receive the acknowledgment.

3 The courts having jurisdiction to entertain an action for a declaration or denial of a parent-child relationship also have jurisdiction to rule on objections to an acknowledgment (Art. 66 and 67).

Note: the "place of origin" is a concept that is specific to Switzerland. A Swiss citizen's "place of origin" is where his ancestors come from. It is part of the relevant data concerning a person's civil status. For more information (in french) see <http://www.schweizerpass.admin.ch/content/pass/fr/home/ausweise/allgemeines/heimatort.html> .

Please specify whether these criteria (i.e., the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled:

- i. At the time of the child's birth
ii. At the time of the acknowledgement, or
iii. At another time: please specify

48. Which law will be applied to determine: a) the formal validity of the acknowledgement; and b) the substantive validity of the acknowledgement, i.e., whether it validly establishes legal parentage?

Please tick all which apply:

- a) For the formal validity of the acknowledgement:
i. The *lex fori* (i.e., the internal law of your State)
ii. The law of the State of the child's nationality
iii. The law of the State of the (habitual) residence of the child: please specify
iv. The law of the State of the putative parent's nationality

- v. The law of the State of the putative parent's (habitual) residence: please specify
 - vi. Other: please specify
- b) For the substantive validity of the acknowledgement:
- i. The *lex fori* (i.e., the internal law of your State)
 - ii. The law of the State of the child's nationality
 - iii. The law of the State of the (habitual) residence of the child: please specify
 - iv. The law of the State of the putative parent's nationality
 - v. The law of the State of the putative parent's (habitual) residence: please specify
 - vi. Other: please specify the law of the State of the (other, non-putative) parent's nationality or habitual residence

Please state whether, in relation to a) and / or b), one or more of these laws will be applied (possibly in a "cascade"), with a view to favouring the establishment of legal parentage: all the laws in b) are alternative possibilities in line with the principle "favor recognitionis".

Please specify, in relation to a) and b), whether these criteria (i.e., the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled: (1) at the time of the child's birth; (2) at the time of the acknowledgement; or (3) at another time (in which case, please specify):

- a) 2 at the time of the acknowledgment
- b) 2 at the time of the acknowledgement

C. PIL rules concerning the recognition of legal parentage established abroad

Birth certificates

49. Please explain when, if ever, a birth certificate drawn up in another State will be recognised in your State *as validly establishing the legal parentage of those persons recorded within it* (i.e., the recognition of the content of the certificate).²¹

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign birth certificate will be recognised;
- b) the procedure which must be undertaken for recognition;
- c) any conditions for recognition (e.g., the birth certificate must be authenticated by way of legalisation or apostille²²); and
- d) any grounds of *non*-recognition.

According to art. 32 PIL (Entry in the register of civil status):

1 A foreign decision or deed pertaining to civil status shall be recorded in the register of civil status pursuant to a decision of the cantonal supervising authority in matters of civil status.

2 The permission to record shall be granted provided that the requirements set forth in Articles 25 to 27 are fulfilled.

3 The persons concerned shall first be heard if it is not established that the rights of the parties have been sufficiently respected during the proceedings in the foreign state where the decision was rendered.

- a) the cantonal supervising authority in matters of civil status are responsible

²¹ It is understood that, from time to time, this issue may arise in the course of other proceedings (e.g., proceedings concerning succession or maintenance).

²² See, in this regard, the *Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents*, available on the Hague Conference website at < www.hcch.net > under "Apostille Section".

- b) a request must be sent to said cantonal supervising authority with all documents necessary
- c) this will depend if Switzerland has an agreement with the State that issued the birth certificate
- d) grounds of non-recognition are the same general ones as for all other recognitions of foreign decisions in Swiss PIL. According to 25 PIL, a foreign decision shall be recognized in Switzerland if a) the foreign authorities had jurisdiction b) the decision is no longer subject to any ordinary appeal or if it's a final decision and c) there is no ground for denial according to article 27 PIL. According to 70 PIL, indirect competence for decisions concerning the declaration or denial of parentage is given in the state of the child's habitual residence or in the child's national state or in the state of domicile or the national state of the mother or of the father.

According to 70 PIL, the following foreign authorities have jurisdiction to establish filiation: the State of the child's habitual residence; the State of nationality of the child; the State of domicile or nationality of the mother or father.

Grounds for denial according to 27 PIL:

- 1 Recognition of a foreign decision must be denied in Switzerland if such decision is manifestly incompatible with Swiss public policy.
- 2 Recognition of a decision must also be denied if a party establishes:
 - a. that it did not receive proper notice under either the law of its domicile or that of its habitual residence, unless such party proceeded on the merits without reservation;
 - b. that the decision was rendered in violation of fundamental principles pertaining to the Swiss conception of procedural law, including the fact that the said party did not have an opportunity to present its defense;
 - c. that a dispute between the same parties and with respect to the same subject matter is the subject of a pending proceeding in Switzerland or has already been decided there, or that such dispute has previously been decided in a third state, provided that the latter decision fulfils the prerequisites for its recognition.
- 3 Furthermore, a foreign decision may not be reviewed on the merits.

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign birth certificate, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

Voluntary acknowledgements

50. Please explain when, if ever, a voluntary acknowledgement undertaken in another State will be recognised in your State *as validly establishing the legal parentage of the author of the acknowledgement* (i.e., the recognition of the content of the acknowledgement).²³

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign acknowledgement will be recognised;
- b) the procedure which must be undertaken for recognition;
- c) any conditions for recognition; and
- d) any grounds of *non*-recognition.

The answer is the same than to question 49, except for the jurisdiction, where article 73 and not 70 PIL is applicable.

According to 73 PIL, the following foreign authorities have jurisdiction to establish filiation based on the voluntary acknowledgement of the father: the State of the

²³ It is understood that, from time to time, this issue may arise in the course of other proceedings (e.g., proceedings concerning succession or maintenance).

child's habitual residence; the State of nationality of the child; the State of domicile or nationality of the mother or father (same as Art. 70 PIL).

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign acknowledgment of parentage, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

Decisions of judicial authorities

51. Please explain when a decision of the relevant judicial authority of another State establishing a child's legal parentage (*i.e.*, a court judgment or order) will be recognised in your State as validly establishing legal parentage.²⁴

Please explain in your answer:

- a) which authorities are responsible for determining whether the foreign decision will be recognised;
- b) the procedure which must be undertaken for recognition;
- c) any conditions for recognition; and
- d) any grounds of *non*-recognition.

same answer as for question 49 and 50

If public policy ("*ordre public*") is a ground for the non-recognition of a foreign decision, please explain, with reference to case law where applicable, the interpretation of this concept in your State in this context:

52. Please specify the *effects* of the recognition of the legal parentage established abroad (see **Questions 49** to **51** above) and which law(s) govern(s) these effects:

The effect is that the established parentage will be recorded in the Swiss register of civil status

D. PIL rules concerning the contestation of legal parentage

53. Please explain when the relevant State authorities (which you identified in **Question 31** above) have (international) jurisdiction to determine a dispute concerning a child's legal parentage:

- a) When the child whose parentage is disputed is (habitually) resident in your State: please specify
- b) When the child whose parentage is disputed is a national of your State
- c) When a putative parent disputing legal parentage is (habitually) resident in your State: please specify domicile, not habitual residence
- d) When a putative parent disputing legal parentage is a national of your State
- e) Other: please specify According to Article 66, the Swiss courts at the child's habitual residence or at either parent's domicile have jurisdiction to entertain an action for a declaration establishing or denying a parent-child relationship. According to Article 67, when the parents are not domiciled in Switzerland and the child does not have his habitual residence there, the courts at the Swiss place of origin (see note at question 47) of either parent have jurisdiction to entertain an action for a declaration establishing or denying a parent-child relationship, provided such action cannot be brought at either parent's

²⁴ *Ibid.*

domicile nor at the child's habitual residence, or provided that one cannot reasonably be required to bring such action there.

Please specify whether these criteria (*i.e.*, the (habitual) residence / nationality of the individual(s) – depending upon the boxes ticked above) have to be fulfilled:

- i. At the time of the child's birth
- ii. At the time the relevant State authorities are seized with the dispute, or
- iii. At another time: please specify

54. In the context of a contestation of legal parentage, which law will the authorities apply to the question of who is / are the legal parent(s) of a child?

Please tick all which apply:

- a) The *lex fori* (*i.e.*, the internal law of your State)
- b) The law of the State of the child's nationality
- c) The law of the State of the (habitual) residence of the child:
please specify
- d) The law of the State of the putative parent's nationality
- e) The law of the State of the putative parent's (habitual) residence:
please specify
- f) Other: please specify According to Article 68, the establishment, declaration and denial of a parent-child relationship (filiation) are governed by the law of the state of the child's habitual residence. However, if neither parents is domiciled in the state of the child's habitual residence and if the parents and the child are nationals of the same state, the law of such state applies.

Please state whether one or more of these laws will be applied (possibly in a "cascade"), with a view to favouring the establishment of legal parentage: Please note that according to article 69 PIL, the date of birth shall be used as the reference date to determine the applicable law. However, in case of a judicial declaration or denial of a parent-child relationship, the date of the action shall be used as the reference date if the child's overriding interest so requires.

E. "Cross-border reproductive care"²⁵ and the consequences for legal parentage

55. If persons resident in your State access ART services in another State, are there any specific PIL rules concerning the establishment of the legal parentage of the child born as a result (*e.g.*, the law of the State in which the ART service was obtained will apply to the question of the child's legal parentage)?

- Yes: please explain
- No
- Other: please explain

56. Are you aware of any cases, other than international surrogacy cases (see **Part III** below), where difficulties concerning the establishment or recognition of a child's legal parentage have arisen as a result of individuals resident in your State accessing ART services in another country, or individuals resident abroad accessing ART services in your State?

- Yes: please provide details
- No

²⁵ In this paper, "cross-border reproductive care" is taken to mean when person(s) who wish to access ART services cross a border to do so, for whatever reason (often it is linked with the restrictive rules in their "home" jurisdiction, lower costs or better success rates abroad).

F. Legal developments and practical challenges

57. Please state whether the law in your State concerning the matters covered in **Part II** above (*i.e.*, the PIL and co-operation rules concerning birth registration and the establishment, recognition and contestation of legal parentage) has changed in the past five years, or whether any initiatives are underway (*e.g.*, in government, before Parliament or before the courts) to change the law in future:

The Parliament has mandated the government with a report on international surrogacy cases and the recognition in Switzerland of parent-child relationships resulting of such arrangements. Also, Parliament has given a general mandate to present a report on the "modernisation" of family law in Switzerland, part of which is the question of establishment of filiation.

58. Other than cases involving international surrogacy arrangements (as to which see **Part III** below), are there any other cases of which you are aware where difficulties have arisen in your State in relation to establishing, contesting, or recognising a child's legal parentage as a result of the cross-border movement of the child and / or his / her putative parents?

(Some possible examples can be found at Part IV (b) of Prel. Doc. No 11 of March 2011.)

Please provide as much detail as possible concerning the situation which arose and the difficulties encountered: No, as usually the legal parentage can be recognised even though it would not be a legal option in Switzerland; for example, homosexual couples who are in a "registered partnership" under Swiss law can't adopt. If they live abroad and adopt according to the rules of their State of habitual residence, this adoption will usually be recognized in Switzerland.

<p>Part III: The particular challenges concerning International Surrogacy Arrangements²⁶ ("ISAs")</p>
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This Part asks for information regarding the experience of State authorities with ISAs. It is divided into two sections:²⁷

- **Section A** asks a number of questions concerning "**Incoming cases**" of ISA: *i.e.*, those cases in which your State was the State of residence of the intending parents, and the State to which it was sought to bring child(ren), born to a surrogate abroad, to live.
- **Section B** continues with questions concerning "**Outgoing cases**" of ISA: *i.e.*, those cases where your State was the State in which the surrogate mother gave birth and from which the child(ren) needed to leave to travel to the State of residence of the intending parents in order to live with them in that State.

A. Incoming cases²⁸

²⁶ See the **Glossary** for the definition of the terms used in this paper.

²⁷ Please note: it is understood that, in relation to both "Incoming" and "Outgoing" cases, there may be more than two States involved in a particular case: *e.g.*, the surrogate may be resident in a different State to the State in which she travelled (or, in some cases, was trafficked) to give birth; in other cases, a gamete donor may be resident in a third State etc. Please explain any such elements in your responses to the questions in this part.

- This Section is inapplicable – there have been no “Incoming cases” of ISA in this State. Go to Section B.**

Basic empirical data

59. Do you have any information concerning:

- a) The number of **Incoming cases** of ISA which have required the assistance of your State authorities in recent years?

- Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

- No information is available

- b) How many children have been born to surrogate mothers in another State as a result of ISAs involving intending parents resident in your State?

- Yes – please provide any figures available:

Pre-2009

2009

2010

2011 3

2012 5

2013 2 (so far)

- No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Incoming cases of ISA involving your State²⁹ and, further, please provide a general comment concerning the prevalence of Incoming cases of ISAs and whether such cases have increased in the past five years: It concerns mostly cases of same-sex couples or people who "admitted" the surrogacy. It is assumed that most of the cases remain unreported and therefore the data collected do not conform with the facts. It is also possible that the cantons regulated ISA-cases without reporting them (for example the recognition of a foreign adoption, initially basing on a SA).

Ultimately the data is not reliable. It has to be assumed that there is a high number of unreported cases. If a young couple enters Switzerland with a child born abroad, there is no investigation save in the presence of clear ground to suspect (Birth certificate without a woman or a woman who has obviously exceeded reproductive age). A journal reported that physicians in Ukraine indicated that they treated some 80 couples from Switzerland so far.

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Incoming cases of ISAs involving your State and / or whether this has increased in the past five years:

60. Please list all the States in which intending parents resident in your State have engaged a surrogate mother (*i.e.*, entered into an ISA), insofar as you are aware:

²⁸ *I.e.*, those cases where your State was the State of residence of the intending parent(s), and the State to which it was sought to bring the child(ren), born to a surrogate abroad, to live.

²⁹ Since it is recognised that there may be many cases which do not come to the attention of the State authorities.

USA, India, Russia, Georgia, Ukraine.

The procedure for Incoming cases of ISA

61. Please explain the procedure, including any immigration and legal processes, which intending parents resident in your State need to undertake (before leaving your State, before returning to your State or upon return to your State, as applicable) in order to:

a) Enter your State with a child born abroad as a result of an ISA:
 Surrogacy arrangements (commercial and altruistic) are not recognised in Switzerland. Therefore, persons arranging an international surrogacy will face the problem of establishing their parentage with the child: even though the foreign birth certificate indicates the Swiss residing persons as parents (with no mention of the surrogate mother, as is often the case), the Swiss authorities (often the Consulate abroad) might refuse to accept this document (and therefore refuse to transcribe the data into the Swiss civil status registry) on public policy grounds. As a result the child doesn't acquire the Swiss nationality. This means that the parentage will not be established and the child can't enter Switzerland. In practice, the man is in most of the cases the genetic father and can therefore recognize the child as his, in order to establish parentage and gain parental authority. The child, now Swiss citizen by "descent", can enter Switzerland.

If the child is born in a country where it acquires nationality by birth (USA for example) the intending parents can bring the child to Switzerland with the foreign passport.

b) Reside permanently in your State with the child:
 Regardless of legal parentage children born abroad as a result of ISA stay in the care of their intending parents. Child protection authority takes appropriate measures only if the child's well-being is threatened. There are couples living in Switzerland where legal parentage is only established to the genetic father.

c) Have their legal parentage recognised (or established) under the law of your State (*if* this is possible):
 Married couples can proceed to an adoption. After one year, the woman (wife) can adopt her "child-in-law". Joint-adoption is denied to unmarried and same-sex couples. As a result only married couples can establish filiation to both intending parents.

Please include an estimate of the time it may take to complete each stage of this process:

- a) -
- b) -
- c) -

If the answer to this question varies depending upon the factors set out below, please provide a brief explanation, including the impact the particular factor has on the procedure which must be undertaken and any timeframes.

Please tick all which apply:

- i. The country in which the child was born: please explain

USA: *ius soli*, intending parents can travel immediately to Switzerland. Other countries: If intending parents are under suspicion of ISA, the child doesn't get travel documents.

- ii. The particular document(s) produced by the intending parents to establish their legal parentage (*e.g.*, a birth certificate, voluntary acknowledgement, court decision, etc.): please explain

Valid acknowledgement (DNA-test to exclude trafficking of children) or adoption decision lead to recognition of legal parentage. It is different from case to case how long it takes to undergo these procedures. Eventually a couple had to live for 4 months in India, until the paperwork was done.

- iii. Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain
- iv. The nationality of the intending parents: please explain
- v. Any other factor: please explain

62. Have your State authorities engaged in cross-border administrative or judicial co-operation with the authorities in any other State in order to resolve an ISA case?

- Yes – please specify:
- a) Which authorities in each State were involved:
- b) The nature of the co-operation:
- c) Whether the co-operation resulted from legislation, guidelines or practice:
- d) The result:
- No

63. In your experience, which documents are generally produced to your State authorities to substantiate the claim of the intending parents to an ISA to legal parentage?

Please tick all which apply:

- a) A birth certificate from the State of birth, including the name(s) of the intending parents: please state from which countries these birth certificates originate and any other details necessary:
USA, India, Georgia, Ukraine. Not recognized.
- b) An amended birth certificate from the State of birth, including the name(s) of the intending parents: please state from which countries these amended certificates originate and any other details necessary:
- c) A pre-birth court order from the State of birth: please state from which countries these orders originate and any other detail necessary:
USA. Not recognized. Pre-birth consent of the mother violates the *ordre public*.
- d) A post-birth court order from the State of birth (*i.e.*, transfer of parentage): please state from which countries these orders originate and any other details necessary:
USA, confirming the consent of the woman who gave birth and her husband to release the child under intending parents custody; and confirming genetic parentage of genetic father and establishing legal parentage of intending parents.
- e) An adoption order from the State of birth: please state from which countries these orders originate and any other details necessary, including whether use of the 1993 Convention³⁰ was attempted by either State³¹: USA, genetic father acknowledged the child, the same-sex partner went for a joint-adoption.
- f) Other: please specify

³⁰ Full title: the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, "1993 Convention"). For further information, please see < www.hcch.net >, under "Intercountry Adoption Section".

³¹ See the Conclusions and Recommendations of the Special Commission meeting on the practical operation of the 1993 Convention (17-25 June 2010), which concluded that use of the 1993 Convention in cases of international surrogacy arrangements was "inappropriate", paras 25-26.

If possible, please state (using the relevant letter) which of the above documents your authorities are presented with most frequently in these cases:
 a, but the "system" seems to be learning. There are more post-birth court orders that establish paternity respecting (at least formally) the rights of all parties involved. It seems that intermediaries even offer surrogacy followed by a joint-adoption to facilitate recognition.

64. In general, what is the outcome of these cases in your State for the child:

Please tick all which apply and provide as much detail as possible:

- a) The child is able to travel to your State and reside there with the intending parents *and* the intending parents are recognised as the legal parents of the child.

Please explain how this is achieved:

Married couples only: The intending father is the genetic father of the child. He acknowledges the child in the foreign country. This legal paternity is recognized in Switzerland and the child acquires swiss citizenship and is allowed to enter Switzerland. In Switzerland the wife of the intending father can proceed to a joint adoption.

- b) The child is able to travel to your State and reside there with the intending parents *but* one or both of the intending parents is not able to be recognised as the child's legal parents: please explain

The intending father is the genetic father of the child. He acknowledges the child in the foreign country. This legal paternity is recognized in Switzerland and the child acquires swiss citizenship and is allowed to enter Switzerland. In Switzerland the joint adoption is not possible for non-married partners and same-sex couples.

- c) The child is not able to travel to your State and has to remain in the State of his / her birth: please explain why and what has happened to the children in such cases

There is no such case known.

- d) Other: please explain

It has to be assumed that most cases remain unreported and are therfor treated as "normal" births in a foreign country.

If possible, please state which of the four outcomes above occurs most frequently in your State:

Most frequently the couple travels to Switzerland without having any authority suspecting an ISA.

The challenges encountered

65. In general, which of your State authorities are involved in assisting those who encounter difficulties as a result of Incoming cases of ISA?

Please tick all which apply and provide information concerning their particular role:

- a) The embassies / consulates in the State of the child's birth
 b) The immigration authorities
 c) The judicial authorities (*i.e.*, the courts): please specify which

The cantonal courts in case of legal action.

- d) The Ministry of Justice (or equivalent)
 e) The Ministry of Foreign Affairs (or equivalent)
 f) The Ministry of Health (or equivalent)
 g) The Ministry of Social Affairs (or equivalent)
 h) Other: please explain

The cantonal supervisory civil register authority. Competent to recognize foreign documents/decisions.

66. Please explain any legal problems your State has encountered in relation to Incoming cases of ISA.

Please tick all boxes which apply and provide explanations, including the other country(ies) involved in the ISA. Where reported cases are referred to please provide the full text of the judgment, including a translation into English or French where possible.

Problems relating to:

- a) The child being able to leave his / her State of birth:
- b) The child being able to enter your State:
- c) The child being able to reside in your State:
- d) The child's nationality:
- e) The child's legal parentage:
- f) The behaviour of any party(ies) which is criminal according to international legal standards or according to the domestic rules of the countries involved (e.g., trafficking, sale of children, exploitation of women, etc.):
- g) The treatment of the surrogate mother in any State (e.g., whether her consent was free and informed, concerning the financial payments made to her, the medical care provided, etc.): please specify
- h) The breakdown of the ISA: e.g., due to either of the parties reneging on the agreement, for example, due to the child's disability or ill health, the wish of the surrogate mother to keep the child, the relationship breakdown of the intending parents or the clinic using the wrong gametes or another reason, etc.: please explain
- i) Other: please explain

Please provide any further information you consider relevant concerning the above problems:

A) The surrogacy market is unregulated. The global market is structured by economic inequalities. Social inequality and power difference are institutionalized. As far as swiss authorities know surrogate mothers risk exploitation and social exclusion. In addition a pregnancy is a risk or a potential risk for health. By breaking the genetic tie woman from ethnic minorities can now bear children for women from "higher classes". They risk to have no other choice than to sell der fertility to conditions dictated by others.

B) The fertility market (surrogacy, egg donation) currently encourages the commercialisation of reproduction. For exemple intending parents have the possibility to choose a high quality egg donation in the country X and go for a surrogate in the cheap-labor country Y with a favourable legislation.

C) Sexe-selection and abolition of not wanted life is a matter of great concern.

D) Often intending parents decide for an anonymous egg donation. This choice destroys the childs possibility to know his genetic mother. This is a violation of the childs fundamental rights.

67. Using the categories set out below, please provide any available information concerning the costs intending parents resident in your State have paid for an ISA. If, in your experience, costs have varied significantly depending upon the country in which the surrogate mother resided or gave birth, please specify per country.

Please tick all which apply and provide any known figures and a description of to whom the money was paid and for what service:

- a) Medical costs:
- b) Legal costs:
- c) Fees or other costs paid to an intermediary: e.g., a surrogacy agency:
- d) Expenses and / or other costs paid to the surrogate mother:
- e) Other: please explain

No data available. Estimated costs vary from country to country.

Areas of concern

68. Do any of the following areas give your State authorities cause for concern in these cases?

In each case, where possible, please specify your particular concerns in the field provided:

- a) The uncertainty of the legal status of children born to ISAs, in particular in terms of their legal parentage:
- b) The nationality of children born to ISAs:
- c) The right of children born to ISAs to know their (genetic and birth) origins:
- d) The surrogate mother's free and informed consent to the surrogacy arrangement:
- e) The psychological impact of an ISA on the surrogate mother: And the physical and social impact! And the risk of social exclusion (India f.e.).
- f) The medical or other care provided to the surrogate mother:
- g) The financial aspects of ISAs:
- h) The competency and / or conduct of the intermediaries involved (lawyers, agencies, etc.):
- i) The (mis)-information provided to intending parents or surrogate mothers:
- j) The eligibility and / or suitability of the intending parents to care for the child (e.g., in terms of age, criminal records, psycho-social suitability, etc.):
- k) Contractual matters: e.g., issues surrounding the enforceability of the surrogacy agreement or the capacity of any of the parties to enter into the agreement:
- l) Other: The psychological impact of an ISA on the development of the child (Genetic mother, biological mother, intending/legal mother).

Please state (using the letters above) which of the concerns you have identified above are the most troubling: Every aspect of commercialised surrogacy is troubling. Surrogate mother, egg cells and child are part of a contract. Surrogate mother and child are therefore objects, not legal subjects. Without regulation everybody can "buy" a child. Once the child is in the custody of the intending parents it is very difficult to undo or heal potential rights violations.

Exploitation of surrogate mothers.

The child's descent is split (genetic mother/biological mother).

Legal developments

69. Does your State have any legislation, rules or guidance which has been specifically enacted or drawn up for intending parents resident in your State engaging in ISAs?

- Yes: please explain Explanatory leaflet informing intending parents about the situation in Switzerland and difficulties concerning the recognition of ISA (problems entering Switzerland or establishing parent-child relation: <http://www.eda.admin.ch/etc/medialib/downloads/edactr/esp.Par.0166.File.tmp/Merkblatt%20LeihmutterchaftD.pdf>)

They are online (Federal Department of Foreign Affairs) or at the embassies.

- No

If your State is contemplating any such legislation, rules or guidance in future, please provide further information:

Currently the competent authorities do not recognize ISA on public reason grounds. This case-law may change or develop, even if the legislation does not change.

70. Please provide any other information you consider relevant concerning your State's experience of Incoming cases of ISA:

B. Outgoing cases³²

This Section is inapplicable – there have been no “Outgoing cases” of ISA in this State. Go to Part IV.

Basic empirical data

71. Do you have any information concerning:

a) The number of **Outgoing cases** of ISA which have required the assistance of your State authorities in recent years?

- Yes – please provide any figures available:
 Pre-2009
 2009
 2010
 2011
 2012
 2013 (so far)

No information is available

b) How many children have been born to surrogate mothers in your State as a result of ISAs involving intending parents resident in another State?

- Yes – please provide any figures available:
 Pre-2009
 2009
 2010
 2011
 2012
 2013 (so far)

No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Outgoing cases of ISA involving your State³³ and, further, please provide a general comment concerning the prevalence of Outgoing cases of ISAs and whether such cases have increased in the past five years:

If you have not provided figures above, are you able to provide any comment concerning the prevalence of Outgoing Cases of ISAs involving your State and / or whether this has increased in the past five years?

72. Please list any States in which intending parents, engaging a surrogate mother in your State by way of ISA, have been resident:

The procedure for Outgoing cases of ISA

³² *I.e.*, those cases where your State is the State in which the surrogate mother gives birth and from which the child has to leave to travel to the place of residence of his / her intending parents.

³³ Since it is recognised that there may be many cases which do not come to the attention of the State authorities.

73. In general, which of your State authorities are involved in assisting those who undertake an ISA with a surrogate mother in your State?

Please tick all which apply and provide information concerning their particular role:

- a) The immigration authorities: please specify
- b) The judicial authorities (*i.e.*, the courts): please specify which
- c) The Ministry of Justice (or equivalent)
- d) The Ministry of Foreign Affairs (or equivalent)
- e) The Ministry of Health (or equivalent)
- f) The Ministry of Social Affairs (or equivalent)
- g) Other: please explain

74. Do foreign-resident intending parents require a visa or any other immigration document(s), or do they have to meet any other conditions, to *enter* your State to be able to undertake the necessary meetings and medical procedures to enter into an ISA in your State?

Please tick all which apply:

- Yes, they have to meet the following conditions – please specify:
- Yes, they have to obtain a visa or other immigration document(s) – please specify what type of document is required, the conditions for obtaining it and the procedure:
- No
- It depends upon the State of residence or nationality of the intending parents: please specify

75. Is the law of the State of the habitual residence of the intending parents taken into account in any way when considering whether intending parents are permitted to undertake an ISA in your State (*e.g.*, where this law forbids surrogacy arrangements).³⁴

- Yes – please explain how this law is taken into account:
- No
- It depends upon the State of residence or nationality of the intending parents: please explain

76. How do foreign-resident intending parents, who are party to an ISA, obtain legal parentage for a child born to a surrogacy arrangement in your State?

*Your response to this question will likely depend upon your answer to **Questions 26 to 27** above.*

Please tick all which apply:

- a) They will be the legal parents by operation of law and therefore their names will be placed immediately on the child's birth certificate: please explain
- b) They can obtain an amended birth certificate: please explain
- c) They can obtain a *pre*-birth court order confirming their legal parentage: please explain any conditions for obtaining such an order
- d) They can obtain a *post*-birth court order (*i.e.*, a transfer of parentage): please explain any conditions for obtaining such an order

³⁴ *E.g.*, see clause 34(19) of the *Indian Assisted Reproductive Technologies (Regulation) Bill 2010* still pending, explained in Prel. Doc. No 10 of March 2012 (note 1) at para. 45. In addition, the recent Indian visa requirements now impose on foreign nationals visiting India to undertake a surrogacy arrangement, a condition to similar effect: *i.e.*, that the intending parents must have a letter from the embassy of their State of residence indicating that the State recognises surrogacy and that the child born will be permitted to enter this State. See also the Ukrainian Draft Law No 0989 (former No 8282) on the restrictions pertaining to the use of assisted reproductive technology (rejected by the Parliament of Ukraine on 21 March 2013). This bill also envisaged, in particular, restrictions on the use of surrogacy arrangements for nationals of those States where surrogacy is prohibited by law.

- e) They can adopt the child: please explain, including whether use of the 1993 Convention has been attempted in this regard³⁵
- f) Other: please specify

Please explain the procedure for any of the options ticked above and any specific requirements which apply to *foreign*-resident intending parents:

Please further specify whether the surrogate mother's consent, and her husband or partner's consent where applicable, is required for any of these procedures and the consequences if this consent is not forthcoming at the relevant time:

77. Please explain the procedure, including any immigration and legal processes, which foreign-resident intending parents need to undertake in order to *leave* your State with a child born to a surrogacy arrangement:

Please state the time it may take to complete this process:

If the answer to this question varies depending upon the factors set out below, please provide a brief explanation, including the impact the particular factor has on the procedure which must be undertaken and any timeframes.

Please tick all which apply:

- a) The country in which the intending parents live: please explain
- b) The particular document(s) produced by the intending parents to establish legal parentage (*e.g.*, a birth certificate, voluntary acknowledgement, court decision, etc.): please explain
- c) Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain
- d) The nationality of the intending parents: please explain
- e) Any other factor: please explain

78. Have your State authorities engaged in cross-border administrative or judicial co-operation with authorities in any other State in order to resolve an ISA case?

- Yes – please specify:
- a) Which authorities in each State were involved:
- b) The nature of the co-operation:
- c) Whether the co-operation resulted from legislation, guidelines or practice:
- d) The result:

No

79. In general, what is the outcome of these cases in your State for the child?

Please tick all which apply:

- a) The child is able to leave your State, travel to the State of residence of the intending parents, reside there with the intending parents *and* the intending parents are recognised as the legal parent(s) of the child.
Please explain how this is achieved:
- b) The child is able to leave your State, travel to the State of residence of the intending parents, reside there with the intending parents *but* one or both of the intending parents are not able to be recognised as the child's legal parents: please explain

³⁵ See note 31 above concerning the 2010 Special Commission meeting on the practical operation of the 1993 Convention which concluded that use of the 1993 Convention in cases of international surrogacy arrangements was "inappropriate".

- c) The child is able to leave your State but is not able to travel to the State of residence of the intending parents and has to remain in your State: please explain what has happened to the children in such cases
- d) The child is not able to leave your State: please explain why and what has happened to the children in such cases
- e) Other: please explain

If possible, please state which of the five outcomes above occurs most frequently in your State:

The challenges encountered

80. Please explain any legal problems your State has encountered in relation to Outgoing cases of ISA.

Please tick all boxes which apply and provide explanations, including the other country(ies) involved. Where reported cases are referred to please provide the full text of the judgment, including a translation into English or French where possible.

Problems relating to:

- a) The child being able to leave your State:
- b) The child being able to enter the State in which his / her intending parents are resident:
- c) The child being able to reside in the State in which his / her intending parents are resident:
- d) The child's nationality:
- e) The child's legal parentage:
- f) The behaviour of any party(ies) which is criminal according to international legal standards or according to the domestic rules of the countries involved (e.g., trafficking, sale of children, exploitation of women, etc.):
- g) The treatment of the surrogate mother in any State (e.g., whether her consent was free and informed, concerning the financial payments made to her, the medical care provided, etc.): please specify
- h) The breakdown of the ISA: e.g., due to either of the parties reneging on the agreement, for example, due to the child's disability or ill health, the wish of the surrogate mother to keep the child, the relationship breakdown of the intending parents or the clinic using the wrong gametes or another reason, etc.: please explain
- i) Other: please explain

Please provide any further information you consider relevant concerning these legal problems:

81. Using the categories set out below, please provide any information you have concerning the costs intending parents resident abroad have paid for an ISA in your State. If, in your experience, costs have varied significantly depending upon the country in which the intending parents resided, please specify per country.

Please tick all which apply and provide any known figures and a description of to whom the money was paid and for what service:

- a) Medical costs:
- b) Legal costs:
- c) Fees or other costs paid to an intermediary: e.g., a surrogacy agency:
- d) Expenses and / or other costs paid to the surrogate mother:
- e) Other: please explain

Areas of concern

82. Do any of the following areas give your State authorities cause for concern in these cases?

In each case, where possible, please specify your concerns in the field provided:

- a) The uncertainty of the legal status of children born to ISAs, in particular in terms of their legal parentage:
- b) The nationality of children born to ISAs:
- c) The right of children born to ISAs to know their (genetic and birth) origins:
- d) The surrogate mother's free and informed consent to the surrogacy arrangement:
- e) The psychological impact of an ISA on the surrogate mother:
- f) The medical or other care provided to the surrogate mother:
- g) The financial aspects of ISAs:
- h) The competency and / or conduct of the intermediaries involved (lawyers, agencies, etc.):
- i) The (mis)-information provided to intending parents or surrogate mothers:
- j) The eligibility and / or suitability of the intending parents to care for the child (*e.g.*, in terms of age, criminal records, psycho-social suitability, etc.):
- k) Contractual matters: *e.g.*, issues surrounding the enforceability of the surrogacy agreement or the capacity of any of the parties to enter into the agreement:
- l) Other:

Please state (using the letters above) which of the concerns you have identified above are the most troubling:

Legal developments

83. Does your State have any legislation, rules or guidance which has been specifically enacted or drawn up for intending parents or surrogate mothers engaging in ISAs in your State?

- Yes: please explain
- No

If your State is contemplating any such legislation, rules or guidance in future, please provide further information:

84. Please provide any other information you consider relevant concerning your State's experience of Outgoing cases of ISA:

Part IV: Current bilateral or multilateral instruments in the field

85. Please list any bilateral, regional or multilateral instruments which currently, or may in future, bind your State concerning:

- a) Any matters related to the establishment, recognition or contestation of the legal parentage of children;
- b) Any matters specifically related to surrogacy arrangements;

Non

Please provide any detail you consider necessary:

Part V: Thoughts on possible future work

86. What, if any, are the **needs** you consider ought to be addressed by any possible future global work in this area?

Please specify:

87. Please provide your thoughts concerning the **approach** that should be taken in relation to any possible future regulation of any of the matters mentioned in this Questionnaire.

In this response, you may wish to consider and comment upon the thoughts set out in Section VIII of Preliminary Document No 11 of March 2011 and Section IV of Preliminary Document No 10 of March 2012.

*You may also wish to comment upon the **nature** of any possible future regulation: e.g., whether a binding instrument should be considered or whether approaches such as a model law, non-binding principles or guidance, etc. would meet the needs you identified in **Question 86** above.*

88. If the Hague Conference were to develop a global instrument on the private international law issues surrounding the status of children (in particular, the cross-border recognition of legal parentage), which of the following general features *may* be desirable to include in such an instrument?

Please tick all which apply (and please note that these features are not mutually exclusive and necessarily overlap):

The child's legal status

- a) Harmonisation of the private international law rules relating to the establishment, recognition and contestation of legal parentage: please comment
- b) Recognition *by operation of law* of child(ren)'s legal parentage established in one State Party, in compliance with the instrument's rules, in all other States Parties: please comment

Safeguards

- c) The establishment of safeguards (minimum standards) to ensure that any procedures for the establishment, recognition and contestation of legal parentage take place with respect for the fundamental rights and welfare of all parties involved, in particular the child(ren) concerned: please comment

Co-operation

- d) The establishment of a system for co-ordination, communication and co-operation between States in relation to the establishment, recognition and contestation of legal parentage. Such a system may include a clear division of

responsibilities between States, as well as the establishment of defined channels for communication between the relevant authorities.

Please comment, including in relation to whether you see a need for the establishment of “central authorities” within such a system:

Other

e) Other: please specify

89. If the Hague Conference were to develop a global instrument specifically on international surrogacy arrangements,³⁶ which of the following general features *may* be desirable to include in such an instrument?

Please tick all which apply (and please note that these features are not mutually exclusive and necessarily overlap):

The child’s legal status

- a) Harmonisation of the private international law rules relating to the establishment, recognition and contestation of legal parentage, limited to legal parentage arising following a surrogacy arrangement: please comment
- b) Recognition *by operation of law* of child(ren)’s legal parentage established in one State Party following a surrogacy arrangement, in compliance with the instrument’s rules, in all other States Parties: please comment
- c) Provisions concerning the child(ren)’s nationality: please comment

Safeguards

- d) The establishment of safeguards (minimum standards) to ensure that such arrangements take place with respect for the fundamental rights and welfare of all parties involved, *i.e.*, the child(ren) to be born, the surrogate mother and intending parents: please comment, including in relation to which elements you consider there ought to be such minimum standards (*e.g.*, the surrogate mother’s free and informed consent, the child’s right to know his / her origins, etc.)
- e) Safeguards (minimum standards) specifically in relation to the intermediaries involved in such arrangements (*e.g.*, surrogacy agencies, lawyers, etc.). These standards may be combined with a system of licensing and supervision to ensure compliance: please comment
- f) Safeguards (minimum standards) specifically in relation to medical institutions undertaking the procedures connected with international surrogacy arrangements: please comment .

Co-operation

- g) The establishment of a system for co-ordination, communication and co-operation between States in relation to such arrangements. This may include a clear division of responsibilities between States, for example, such that: (a) the competent authorities of the State of the habitual residence of the intending parents would be responsible for determining that the intending parents are eligible to enter into the arrangement, and that any child born as a result will be permitted to enter and reside in their State;³⁷ and (b) the competent authorities of the State in which the surrogate mother habitually resides would be responsible for determining that the surrogate mother is

³⁶ See **Part III** of the Questionnaire above.

³⁷ Following the trend in some States in which international surrogacy arrangements are regularly entered into to take into account the legal position in the State of the habitual residence of the intending parent(s) before permitting the surrogacy arrangement to proceed: see note 34 above.

eligible and suitable to enter into the arrangement and that the child will be entitled to leave this State following his / her birth. The co-operation system could also include the creation of defined procedures which must be complied with by the parties to such arrangements.

Please comment, including in relation to whether you see a need for the establishment of "central authorities" within such a system:

Other

- h) Provisions concerning the financial aspects of international surrogacy arrangements: please comment
 i) Other: please specify

90. What priority would you give working towards a future instrument on the private international law issues concerning the status of children (in particular, the cross-border recognition of legal parentage) generally?

- a) High priority / urgent
 b) Medium priority – desirable but not urgent
 c) Low priority – possibly desirable but other projects should take priority
 d) No priority – no further work should be done in this field
 e) Other: please specify

91. What priority would you give working towards a future instrument specifically on the challenges occurring as a result of international surrogacy arrangements?

- a) High priority / urgent
 b) Medium priority – desirable but not urgent
 c) Low priority – possibly desirable but other projects should take priority
 d) No priority – no further work should be done in this field
 f) Other: please specify

92. Please provide any other comment(s) you may have concerning the possible future global regulation of matters contained within this Questionnaire: Given the current mandate from parliament to present a report on this topic and the general "modernization" of family law in Switzerland, we are not at present in a position to give a definite and detailed answer to Part V of the questionnaire. However, Switzerland supports further work of the Hague Conference on this topic and feels that such work is necessary in order for the Member States to take an informed decision. Generally, the topics mentioned (safeguards, child's legal status, cooperation) seem of central importance.

Thank you for your time: this information will greatly assist the work of the Permanent Bureau.