

**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):

Information for follow-up purposes

Name and title of contact person:

Name of Authority / Office: Ministry of Social Policy and Youth

Telephone number:

E-mail address:

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 competent authorities for registering the birth of a child are registry offices.

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 registration of the birth of a child born in the Republic of Croatia is mandatory. The birth of a child is to be reported within 15 days from the birth date to the designated registrar according to the place of birth. If a child is born in a medical institution, the institution is obliged to report it to the registrar. If a child is born outside of a medical institution, the child's father i.e. the person in whose apartment the child was born, or the mother, once capable, or the midwife, or the doctor assisting in the birth is obliged to report on the birth to the registrar. If those persons do not exist or are not able to report on birth, the person who found out about the birth is obliged to do so. Once a registrar receives a report on birth, they are obliged to proceed upon the report and make an entry in the birth register.

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:

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.

- a) Formal acknowledgement⁶ by the putative legal father
- 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

a) If a child is born during marriage or within 300 days from the termination of marriage, the husband of the mother is considered to be the father.

b) If a child is born in a cohabitation, partnership, the father of the child may recognise paternity with the mother's consent. c) in cases where paternity is contested or must be established in a judicial procedure.

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?

Sanctions are envisaged for the failure to register the birth of a child within the legally stipulated deadline and the failure to determine the child's name.

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

B. Establishment of legal parentage

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.*

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)?
- 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:

Presumed paternity may be contested in a judicial procedure if the husband of the mother is not the child's father.

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:

Paternity may be acknowledged by a person considering himself the child's father. The legally stipulated minimum age for paternity acknowledgement is 16, provided that the person understands the meaning of paternity acknowledgement. The acknowledgement requires the consent of the child's mother. The child's consent is required only when paternity of a child older than 14 is acknowledged.

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:

Paternity may be acknowledged before a registrar, social welfare centre or court. If paternity is acknowledged abroad, the person acknowledging it may give the statement before the officers of the diplomatic and consular bodies of the Republic of Croatia abroad or before a competent authority in the country where paternity is acknowledged. The conditions and procedure of paternity acknowledgement abroad are equal to those in Croatia.

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:

If maternity cannot be determined according to Articles 53 and 54 of Family Act (see the answer under the 8. a), it will be determined by the acknowledgement of the parents or by court decision. Maternity and paternity can be acknowledged in a record before a registrar, a welfare centre or a court. These bodies are bound without delay to supply a copy of the record to the registrar competent to enter the child in the register of births.

Maternity and paternity may also be acknowledged in a will [testament].

Maternity and paternity can be acknowledged by a minor who is sixteen years old if the person is capable of understanding the significance of the declaration of acknowledgement.

⁹ See note 6 above.

Maternity and [or] paternity can be acknowledged by a person partially declared to be legally incompetent if the person is deemed capable of understanding the significance unless in the decision pronouncing the person to be partially legally incompetent it has been determined that the person may not make a legal personal status declarations.

Acknowledgement of maternity and paternity is irrevocable.

Maternity and paternity may not be acknowledged after the child's death, unless the child has progeny.

Acknowledgement of maternity will be entered into the register of births if the welfare centre competent according to the place of the child's birth has given its prior consent.

If the child is at least fourteen years old and capable of understanding the significance of acknowledgement, the child's consent is also necessary for the acknowledgement of maternity. A child will give its consent before the welfare centre competent according to his registered residence or temporary abroad.

When it draws up or receives a record or will acknowledging maternity as stipulated in Article 56 of Family Act, the registrar competent for the entry of the child into the register of births will at once ask the welfare centre to give its consent or agreement as stipulated in the Family Act within a period of thirty days.

After obtaining the consent or agreement prescribed by the Family Act, the registrar will enter the acknowledgement of maternity into the register of births.

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.*, 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:

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 ?""""""""
 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 law on medically assisted fertilization ("National Gazette" 86/2012) regulates this issues.

- 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.): heterosexual couples or single females with the medical history of infertility, females must be under 43
 b) Who may perform ART services: only authorised health care institutions
 c) The regulation of medical or other institutions which perform ART services (e.g., the licensing of clinics or hospitals): authorisation by dedicated inspection service
 d) Which ART services may be performed: heterologous and homologous procedures: IUI, IVF, ICSI
 e) Whether egg donation is permitted and, if so, under which conditions: egg donation is permitted for adults, meeting the specified health standards and who consented to the procedure

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.

- f) Whether sperm donation is permitted and, if so, under which conditions: sperm donation is permitted for adults, meeting the specified health standards who consented to the procedure
- g) The costs of ART (including the amount paid to any gamete donors): costs of ART varies depending of procedure and clinics. Donation of gametes is strictly voluntarily and unpaid
- h) The anonymity of gamete donors: child born after the ART has a legal possibility to be informed on biological parent's (donor) data including identity
- i) The right of the child to know his / her genetic or birth origins: see h)
- j) The legal parentage of any child born as a result of ART (see also **Questions 19 to 22** below)
- k) Other: please explain

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 It is not permitted to establish or dispute in a judicial procedure the maternity or paternity of a child conceived in a procedure of fertilisation with medical assistance and the consent of a donor.

In the Article 85 and 86 of the Family Act is regulated:

Article 85

It is not permitted to establish or dispute in a judicial procedure the maternity or paternity of a child conceived in a procedure of fertilisation with medical assistance and the consent of a donor.

Article 86

- (1) Exceptionally, the mother's husband may dispute the paternity of the child born during the marriage or during three hundred days from the termination of the marriage if the child is conceived with medical assistance with the semen of another person without the husband's written consent.
- (2) A woman who has given birth to a child who has been conceived with the egg cell of another woman has the right to dispute the maternity if the fertilisation with medical assistance occurred without her written consent.
- (3) A woman with whose egg cell a child was conceived without her written consent has the right to dispute the maternity of a woman who gave birth to the child if she seeks at the same time to have her maternity established.
- (4) A suit for the sake of disputing maternity or paternity can be submitted within a period of six months from the day of the discovery that the conception occurred in the manner defined in Paragraphs 1, 2 and 3 of this Article, and at the latest up to the time the child has had its seventh birthday.
- (5) If the persons as defined in Paragraph 1, 2 and 3 of this Article found out before the birth of the child that fertilization has been made in one of the ways mentioned in this article they can file suit in a period of six months from the day of the birth of the child.

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

As above.

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: See under the 19.
- 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:
- 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: Family Act regulates it.

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

When gamete donor is the husband or the legal partner of the woman giving birth following art.

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:

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
- No
- Other: please explain National Register for ART, containing, among other, data on the number of ART procedures and children born from it, is in the establishin proces

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:
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 No, Croatian Family Act proscribes that the child's mother is the woman who gave the birth to the child. This article excludes the legal possibility to institute the surrogacy.

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

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.

- 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
 - 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:

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
- 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

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

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
Municipal Courts are competent bodies in first instance and County Courts are competent bodies for appeal procedure.
- 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 In the Family Act is regulated as follows :

3. Maternity and paternity disputes

Article 75

- (1) A child may dispute the maternity or paternity of the person entered into the register of births as his parent.
- (2) A child may file claim as defined in Paragraph 1 of this Article under the age of twenty-five.
- (3) If the child is a minor or when the parents exercise parental care over him after he has attained majority, a claim on his behalf shall submit a special guardian appointed by the Center of Social Welfare for this procedure
- (4) On behalf of a person who has been legally incapable or is partially deprived of legal capacity with the court determination that she/he can not take legal action relating to her / his personal status legal issues the complaint as defined in Paragraph 1 of this article may submit guardian with prior approval of the Social Welfare Centre.

Article 76

- (1) A woman who has been entered into the register of births as the child's mother may dispute this maternity.
- (2) A complaint as defined in Paragraph 1 of this Article may be submitted in a period of six months from the discovery of the fact that rules out her maternity, and at the latest by the time the child has had its seventh birthday.

Article 77

- (1) A woman who considers herself a child's mother can dispute the maternity of the woman who is entered into the register of births as the mother, if at the same time seeking the establishment of her maternity.
- (2) A complaint as defined in Paragraph 1 of this Article may be submitted in a period of six months from the discovery that she is the mother of this child, and at the latest by the time the child has had its seventh birthday.
- (3) In a procedure as defined in Paragraph 1 of this Article the court will, before the hearing and making a decision on the suit disputing maternity, determine, at the cost of the plaintiff, the production of medical forensic evidence in accord with the capacities of contemporary medical science for the sake of determining the maternity of the plaintiff.
- (4) If medical expertise proves that the plaintiff is not the mother of the child concerned, the court will refuse the claim completely.
- (5) The Court will continue hearing and decide on the file for a challenge and determination of maternity when medical expertise shows that the plaintiff is the mother of the child for whom she previously contested maternity other women.
- (6) The court will make a decision on both requests in a single judgement.

Article 78

A final decision, which denied maternity, at the same time implies a disputed paternity of the mother's husband or a man whose paternity is established by a declaration of acknowledgment.

Article 79

- (1) The mother's husband may dispute the paternity of a child born while the marriage lasts or during three hundred days from the cessation of the marriage if he considers he is not the father. If the husband has been declared totally legal incompetent or if through a decision concerning a declaration of partial legal incompetence he has been determined to be unfit to undertake actions concerning personal status, a suit for the contention of paternity can be filed by his guardian in conjunction with the prior approval of the welfare centre.
- (2) A suit as defined in Paragraph 1 of this Article may be filed in a period of six months from the discovery of a fact that casts doubt upon the truthfulness of the paternity entered, but at the latest by the time the child has had its seventh birthday.

Article 80

Persons with legal interests can carry on the procedure of the contention of maternity or paternity in a period of six months from the death of the mother or the father that has filed the suit or in a period of one month from the day a probate ruling becomes legally effective.

Article 81

- (1) A mother may dispute the paternity of a child born during the duration of a marriage or during three hundred days from the cessation of the marriage. If the mother has been declared totally legal incompetent or if through a decision concerning a declaration of partial legal incompetence she has been determined to be unfit to undertake actions concerning personal status, a file for the sake of the contention of paternity can be filed by her guardian in conjunction with the prior approval of the welfare centre.
- (2) A suit as defined in Paragraph 1 of this Article can be filed within six months of the birth of the child.

Article 82

- (1) A man that has acknowledged paternity and later discovers a fact that rules out the possibility of his paternity can dispute his paternity in a suit within six months of the discovery of this fact, but at the latest by the time the child has had its seventh birthday.
- (2) A man who has been coerced into acknowledging the paternity of a child that he claims not to derive from him can dispute his paternity in a suit within six months of the acknowledgement, and at the latest by the time the child has had its seventh birthday.

Article 83

- (1) A man who considers himself the father of a child can dispute in a suit the paternity of a person who has acknowledged the child his own, if at the same time he seeks to have his own paternity established.
- (2) A suit can be filed within one year of the day of the entry of the acknowledgement of paternity into the register of births.
- (3) In the procedure as defined in Paragraph 1 of this Article the court will, before it starts to deliberate and determine on the application concerning the contention of the paternity determine, at the cost of the plaintiff, the production of medical forensic evidence in line with the capacities of contemporary medical science for the sake of establishing the paternity of the plaintiff.

- (4) If from the medical forensic evidence it derives that the plaintiff is not the father of the child whose paternity he is disputing, the court will issue a ruling denying the suit in its entirety.
- (5) The court will continue to deliberate and make a decision on applications for the contestation and establishment of paternity if from the medical evidence it follows that the plaintiff is the father of the child whose paternity he has disputed.
- (6) The court will make a decision concerning both applications in a single judgement.

Article 84

- (1) If maternity or paternity has been determined by a court decision, no contestation is permitted.
- (2) Contestation of maternity or paternity is not permitted after the death of the child.

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: See the answer under the 32.
- 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 See under 32.

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?

- a) The decision of the State authorities concerning legal parentage is binding *erga omnes* (*i.e.*, on all persons, for all purposes)
- b) The decision of the State authorities will only be binding for limited, specific purposes: please explain
- c) 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
- d) Other: please explain

37. What happens to a child's birth record and / or birth certificate when legal parentage is successfully challenged?

- a) The birth record and / or certificate is revised and the old record and / or certificate will be permanently deleted
- b) The birth record and / or certificate is amended but the original record and / or certificate is retained
- c) 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:

- a) By birth within the territory of the State
- b) 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: By descent, the Croatian citizenship is granted to a child of foreign citizenship or a stateless child which is, according to the provisions of a special law, adopted by Croatian nationals. Such child is considered a Croatian citizen from the moment of birth (Article 4 Paragraph 2 Law on Croatian Citizenship).
- c) 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: By descent, a child is granted Croatian citizenship if both of his/her parents are, at the time of his/her birth, Croatian citizens; whose one of the parents is, at the time of his/her birth, a Croatian citizen and a child was born in the Republic of Croatia and whose one of the parents is, at the time of his/her birth, a Croatian citizen and the other is stateless or of unknown citizenship and the child was born abroad (Article 4 Paragraph 1 Law on Croatian Citizenship)
- d) If the child would otherwise be "stateless" (*i.e.*, without the nationality of any other State):¹⁶ please specify Croatian citizenship is obtained by a child who was born or found on the Croatian territory, if both parents are unknown or of unknown citizenship or stateless (Article 7 Law on Croatian Citizenship).
- e) Other: please specify Croatian citizenship is originally obtained by a child born abroad, whose one of the parents is, at the time of his birth, Croatian citizen, or if under 18 years of age reported to be registered as a Croatian citizen with the competent Croatian authorities abroad or in the Republic of Croatia or settled in the Republic of Croatia. A child born abroad, whose one of the parents at the time of his birth is a Croatian citizen, and does not meet any of the previously mentioned conditions, shall acquire Croatian citizenship if stateless (Article 5 Law on Croatian Citizenship).

By naturalization Croatian citizenship is granted to a minor child if both parents acquire citizenship by naturalization; or if, by naturalization, only one parent obtains citizenship, a child lives in the Republic of Croatia and has a residence permit; or if, by naturalization, only one parent acquires citizenship, the other is a stateless or of unknown citizenship and the child lives abroad. (Article 13 Law on Croatian Citizenship).

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:

Concerning the ART matters in July 2012 in the Republic of Croatia is adopted the Law on medically assisted insemination.

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

This Act complies with EU directives – Directive 2004/23/EZ from 31. March 2004. on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (SL, L 102, 7.4.2004.);

– Directive 2006/17/EZ from 8. February 2006. of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards

certain technical requirements for the donation, procurement and testing of human tissues and cells (SL, L 38, 9.2.2006.);

– Directive of the C 2006/86/EZ from 24. October 2006. implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain

technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells (SL, L 294, 25.10.2006.)

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.

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:

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
- 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

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

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.

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
 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
 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:

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.

Please tick all which apply:

- a) When the child is (habitually) resident in your State: please specify
- 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
- d) When the individual acknowledging the child is a national of your State
- e) Other: please specify

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

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:

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) The nationality conditions has to be fulfilled at the time of the child's birth
- b)

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.

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.

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.

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".

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).

²⁴ *Ibid.*

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:

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
- d) When a putative parent disputing legal parentage is a national of your State
- e) Other: please specify

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 seised 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

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:

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

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).

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

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:

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:

Part III: The particular challenges concerning International Surrogacy Arrangements²⁶ ("ISAs")

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

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.

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

- 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

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 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:

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:

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.

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:

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:
 - b) Reside permanently in your State with the child:
 - c) Have their legal parentage recognised (or established) under the law of your State (*if* this is possible):

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
- 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
- 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:
- 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:
- 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:
- 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:
- f) Other: please specify

If possible, please state (using the relevant letter) which of the above documents your authorities are presented with most frequently in these cases:

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:

- 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
- 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
- d) Other: please explain

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

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
- 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)

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.

h) Other: please explain

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:

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

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:
- 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

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
- No

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

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?

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.

- 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

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

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

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
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

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.

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".

- 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
- 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;

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

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

- 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 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

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.

- 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:

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