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Discussion Paper “Intrafamily Intercountry Adoptions”

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Keys



HCCH materials and other resources



Possible ideas to be discussed at the SC Meeting

ABBREVIATIONS¹

1993 Convention or Convention	Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Inter-country Adoption
2020 Questionnaire No 1	Questionnaire on the practical operation of the 1993 Adoption Convention
AABs	Adoption accredited bodies
CA	Central Authority
CP	Country Profile
C&R	Conclusions and Recommendations of a Special Commission Meeting on the practical operation of the 1993 Adoption Convention
Explanatory Report	Explanatory Report of the 1993 Adoption Convention by G. Parra-Aranguren
GGP No 1	Guide to Good Practice No 1 “The implementation and Operation of the 1993 [...] Adoption Convention”
GGP No 2	Guide to Good Practice No 2 “Accreditation and Adoption Accredited Bodies”
HCCH	Hague Conference on Private International Law
PAPs	Prospective adoptive parents
PB	Permanent Bureau of the HCCH
RS	Receiving State
SC	Special Commission Meeting on the practical operation of the 1993 Adoption Convention
SO	State of origin

¹ Mainly used in tables, charts and endnotes.

1. Background

1. This Discussion Paper aims to summarise the views of certain States on the current practices, challenges and good practices of some aspects of intrafamily intercountry adoptions. Based on these views, the Paper presents some ideas and questions for reflection and discussion at the Fifth Meeting of the Special Commission (SC) on the practical operation of the *Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption* (1993 Adoption Convention or, simply, Convention) scheduled from 4 to 8 July 2022.¹
2. The information presented is based on the responses of 66 Contracting Parties to the Convention to a Questionnaire on the practical operation of the 1993 Adoption Convention (2020 Questionnaire No 1),² as well as on the responses provided by Contracting Parties in their respective Country Profiles.³ Where relevant, other information has also been included.
3. To facilitate the discussion at the SC, this Paper also includes references to the relevant articles of the 1993 Adoption Convention, as well as HCCH materials and Conclusions and Recommendations agreed on by Contracting Parties to the Convention at SC Meetings. However, this Paper is not intended to present a comprehensive overview of intrafamily adoptions, as it mainly focuses on some issues that may need further discussion.
4. The Paper is divided into the following sections:
 - what is an intrafamily adoption (section 2);
 - preliminary questions regarding intrafamily adoptions (section 3);
 - authorities and bodies in charge of intrafamily adoptions (section 4);
 - cooperation between States of origin and receiving States (section 5);
 - specific legislation and / or guidelines for intrafamily adoptions (section 6);
 - the adoption procedure in intrafamily intercountry adoptions (section 7);
 - the legal effects of an intrafamily adoption (section 8);
 - breakdowns of intrafamily adoptions (section 9); and
 - in preparation for the 2022 SC Meeting (section 10).

2. What is an intrafamily adoption?

5. Intrafamily⁴ intercountry adoption continues to take place at present despite the sharp decrease of intercountry adoptions. Parents with relatives living abroad sometimes think it may be in the interests of the child to place them in the care of such relatives. There are a number of ways to do so, including intrafamily placements or other measures which do not affect the child's legal parentage (e.g., international kinship care – see further section 3.3 below), and intrafamily intercountry adoption which creates a new permanent parent-child relationship (i.e., which changes the legal parentage of the child).
6. Whatever measure is decided, it needs to be done respecting the established procedures and safeguards of relevant treaties (e.g., 1993 Adoption Convention, 1996 Child Protection Convention, when applicable) and laws (e.g., child protection laws, immigration laws).

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"In relation to [intrafamily] adoption, the SC: [...] b) recalled the need to respect the safeguards of the Convention" (2015 SC, C&R 32).

- Explanatory Report: paras 92, 123, 137, 496 and 502.
- GGP No 1: sections 8.6.4 and 8.6.5.

7. Generally, an intrafamily adoption refers to the adoption of a child by their relatives.⁵ The term 'relative' and / or 'family member' may be defined in relation to:
 - the degree of consanguinity or affinity between the prospective adoptive parents (PAPs) and the adoptee: second,⁶ third,⁷ fourth,⁸ fifth⁹ or sixth degree¹⁰;
 - the specific relationship between the adoptee and PAPs: e.g., the PAP is an aunt¹¹, uncle¹², a (great) grandparent¹³, cousin¹⁴ and / or sibling¹⁵ (some States specifically prohibit PAPs from being able to adopt their siblings)¹⁶ of the adoptee;
 - broader categories,¹⁷ such as the PAP being a relative of the adoptee through blood,¹⁸ a distant relative,¹⁹ or an extended relative with whom the adoptee maintains bonds of affinity.²⁰
8. The adoption of a child by their mother or father's spouse or partner is also a category of intrafamily adoption referred to as "stepchild adoption" (or "stepparent adoption").²¹ Where relevant, specific references to stepchild adoptions are made throughout this paper.

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"Stepchild adoptions are a category of [intrafamily] adoptions but they are not straightforward cases. If one parent already has custody of the child, and the child is living with that parent and the new partner, it should be a national adoption in the country of residence. **If one parent already has custody but the child is in another country, and the step-parent adoption is necessary to allow the child to come and reside in the second country, this falls within the scope of the Convention (Art. 2).** Here again, the **best interest of the child should guide the procedure [...]**. However, national laws on immigration may interfere in such a project (especially family reunification regulations)" (GGP No 1, para. 519, emphasis added).

3. Preliminary questions regarding intrafamily adoptions

3.1. The 1993 Adoption Convention is applicable to all intrafamily intercountry adoptions, including stepchild adoptions

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“[T]he application of the Convention to all kinds of adoption was sustained, because there is no guarantee that abuses of children do not occur in cases of adoptions within the same family. However, the Convention gives them a special treatment [...]” (Explanatory Report, para. 92).

“[Intrafamily] adoptions do fall within the scope of the Convention and the Convention procedures and safeguards must be applied to them” (GGP No 1, para. 511).

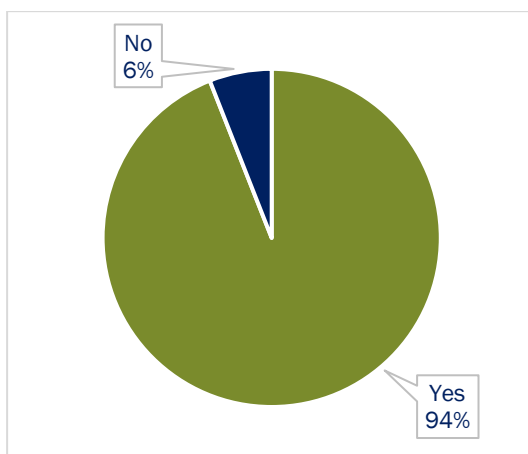
“In relation to [intrafamily] adoption, the SC: a) recalled that [intrafamily] adoptions fall within the scope of the Convention;” (2015 SC, C&R 32).

- HCCH, *Note on Habitual Residence and the Scope of the 1993 Hague Convention*, 2018, pp. 20-21.
- HCCH, draft *Toolkit on Preventing and Addressing Illicit Practices*, in particular Part II - Fact Sheet No 2 “Circumventing the application of the Convention”.

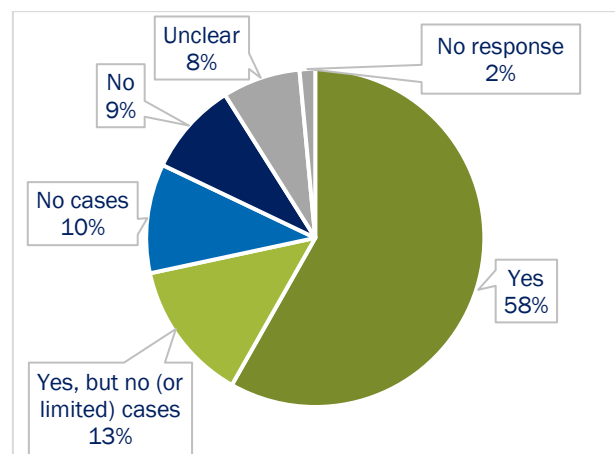
9. Intrafamily intercountry adoptions, which 1) take place when the child is habitually resident in one State and the PAPs (or the prospective adoptive stepparent) are (is) habitually resident in another State (Art. 2(1)) and 2) which create a permanent parent-child relationship (Art. 2(2)), fall within the scope of the Convention.
10. However, a few Contracting Parties to the Convention do not apply the Convention to intrafamily intercountry adoptions,²² and / or stepchild adoptions.²³ Allowing an intrafamily domestic adoption by PAPs who are nationals of the State of origin, even though the PAPs are identified as habitually resident in another Contracting State, should be considered as circumventing the application of the 1993 Adoption Convention and thus, an illicit practice, as suggested in the draft Toolkit.²⁴

Chart 1: Do States apply the 1993 Adoption Convention to...

a) ... intrafamily adoptions in general?²⁵



b) ... stepchild adoptions in particular?²⁶



11. Some challenges:

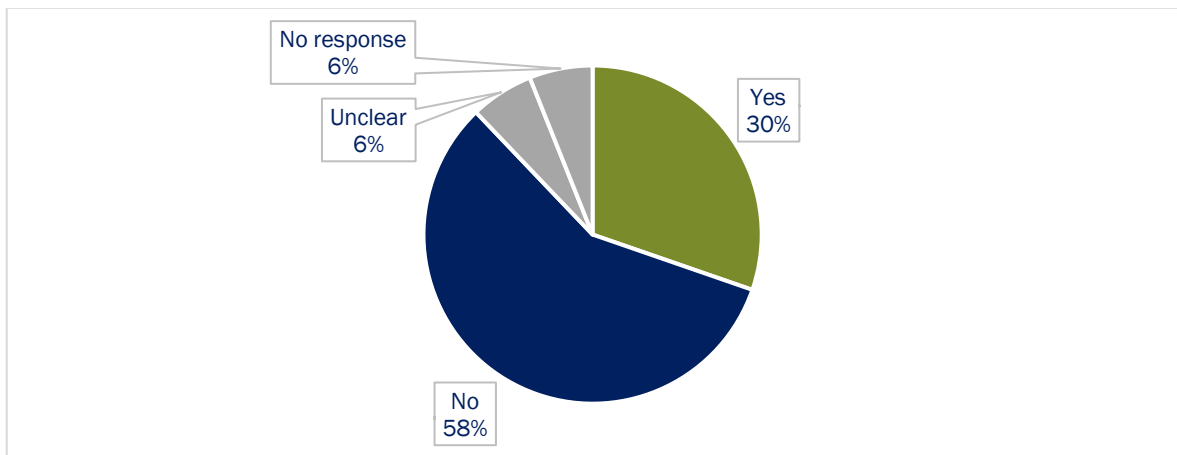
- PAPs applying for an intrafamily domestic adoption (including cases of stepchild adoptions)²⁷ to circumvent the rules of the 1993 Adoption Convention;²⁸
- PAPs not understanding why the 1993 Adoption Convention applies to stepchild intercountry adoptions.²⁹

12. Examples of good practices:

- applying the standards of the 1993 Adoption Convention for intrafamily adoptions when cooperating with States which are not Contracting Parties to this treaty;³⁰
- developing criteria to determine the habitual residence of the PAPs and ensuring that the 1993 Adoption Convention is applied each time it should be;³¹
- informing PAPs that they should first contact the Central Authority in the receiving State in the event that they had directly contacted the authorities in the State of origin.³²

3.2. Intrafamily adoptions should not be used to circumvent immigration rules

Chart 2: Have States encountered situations where intrafamily adoptions were sought / used to circumvent immigration laws?³³



13. Some States note that in many cases, the underlying purpose of an intrafamily adoption (including stepchild adoptions³⁴) is to bring the adoptee to the receiving State without a real desire to establish a filiation bond, but rather to bypass the immigration rules (e.g., for education purposes,³⁵ for better living standards and opportunities³⁶). This often includes children who are almost 18 years of age.³⁷

14. Some States note that PAPs carry out an adoption to circumvent the immigration rules in cases where the immigration rules are so strict that the PAPs have greater chances of having an adoption application approved than an immigration application. In some cases, PAPs first apply for a visa to enter the receiving State with a measure of protection (e.g., guardianship, delegation of parental authority, legal custody). It is when the visa is refused that families opt for an adoption project.³⁸

15. Some challenges:

- some PAPs do not understand the difference between an adoption application and an immigration application,³⁹ and / or believe adoption is the only way to get their relative in their State;⁴⁰
- intrafamily adoptions assessed by authorities which are not trained on child protection;⁴¹
- authorities not being able to prohibit PAPs from starting an adoption procedure, even if they have issued a negative advice before;⁴²
- difficulty proving that the adoption application is sought only for immigration purposes.⁴³

16. Examples of good practices:

- ensuring that the intercountry adoption procedure is properly followed (e.g., making sure that an adoption responds to the child's needs, that the birth parents give their free and informed consent, that the child is adoptable, that the PAPs are suitable to adopt);⁴⁴
- examining the real motivations of the birth parents and the PAPs (including in cases of stepchild adoption) and the best interests of the child, and verifying that the adoption project is not a project to circumvent an immigration procedure;⁴⁵
- not accepting intrafamily intercountry adoptions that are sought only for immigration (or economic) purposes;⁴⁶
- explaining to the PAPs the reasons for not accepting an application,⁴⁷ and if relevant, referring them to the competent authorities,⁴⁸ and / or informing PAPs to seek other types of child protection measures.⁴⁹

3.3. Is intrafamily intercountry adoption the best option for a particular child?

17. When children are in need of protection (e.g., because the birth parents are not able to care for them, or because their parental responsibility was terminated), States may provide different options to protect them within the extended family. In some States, intrafamily adoption is used frequently to protect children within the extended family,⁵⁰ while other States tend to apply other child protection measures to protect children *within* the extended family,⁵¹ such as:

- support of other family members;⁵²
- placement;⁵³
- custody order;⁵⁴
- (legal) guardianship;⁵⁵
- kinship care;⁵⁶ and
- foster care.⁵⁷

18. Some States note that when a child is in need of protection, they will often prioritise measures other than adoption if the child can remain in their State. If, however, the child can be placed in another State, they will then prioritise intrafamily adoptions over other child protection measures.⁵⁸ Nevertheless, it should be noted that other child protection measures may also benefit from another HCCH Convention, namely the 1996 Child Protection Convention.⁵⁹

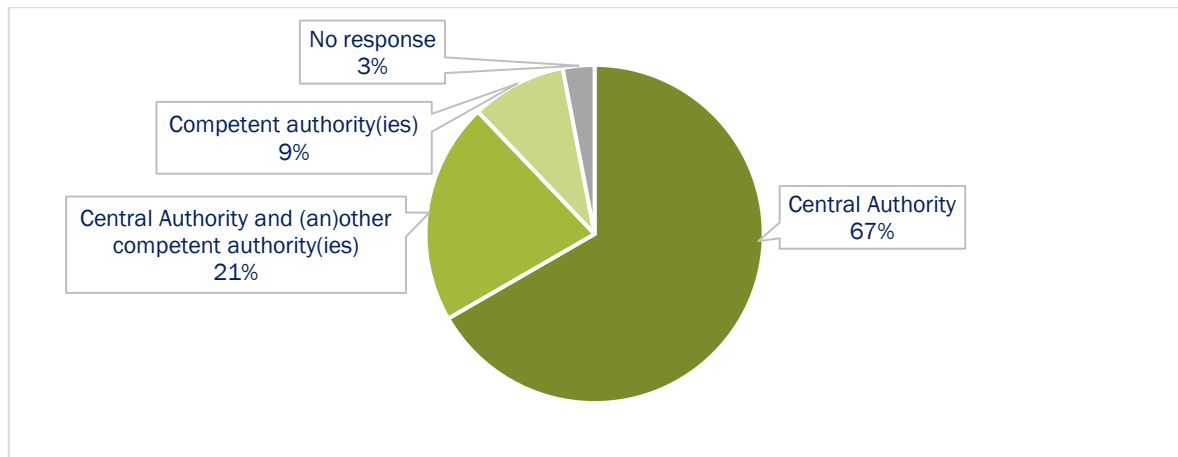
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“The Special Commission reiterated the value of the 1996 [Child Protection] Convention [...] in the context of cross-border placement of children as well as other international child protection situations” (2010 SC, C&R No 41”).

19. The 1996 Child Protection Convention facilitates the recognition of measures of protection taken abroad, including those concerning the placement of a child abroad with relatives, and can be very helpful when States make use of alternative solutions to protect the child within their extended family but outside the State of origin.⁶⁰ Some States acknowledged that they have made use of this instrument for such situations.⁶¹

4. Authorities and bodies in charge of intrafamily adoptions

Chart 3: Which authorities are in charge of intrafamily adoptions?⁶²

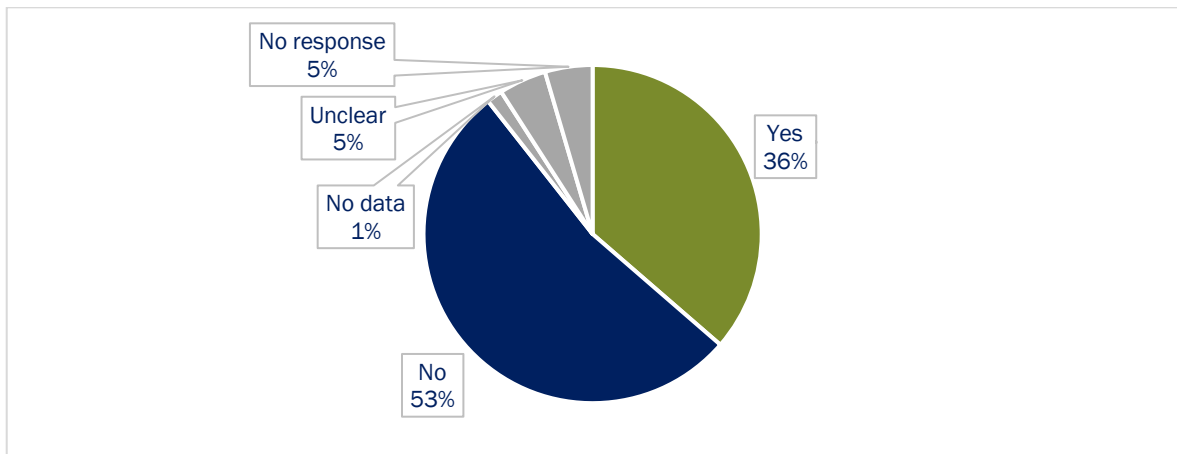


20. In most States, the Central Authority leads the intrafamily adoption procedure, sometimes in collaboration with other competent authorities and bodies as in any intercountry adoption. Competent authorities and other bodies which may be involved in the procedure of intrafamily adoptions include: courts,⁶³ child protection authorities,⁶⁴ regional competent authorities,⁶⁵ as well as AABs.⁶⁶ In a few States, the authorities in charge of intrafamily adoptions are different than the authorities in charge of non-relative intercountry adoptions.⁶⁷
21. A challenge raised is that in some cases, neither the Central Authority nor a competent authority with experience and knowledge in child protection issues are involved in the process of intrafamily adoption applications.⁶⁸

5. Cooperation between States of origin and receiving States

22. In cases of intrafamily adoptions, Contracting Parties to the Convention continue to cooperate with the States that they usually work with, but they also have to cooperate with other States that they usually do not cooperate with as shown by the chart below.

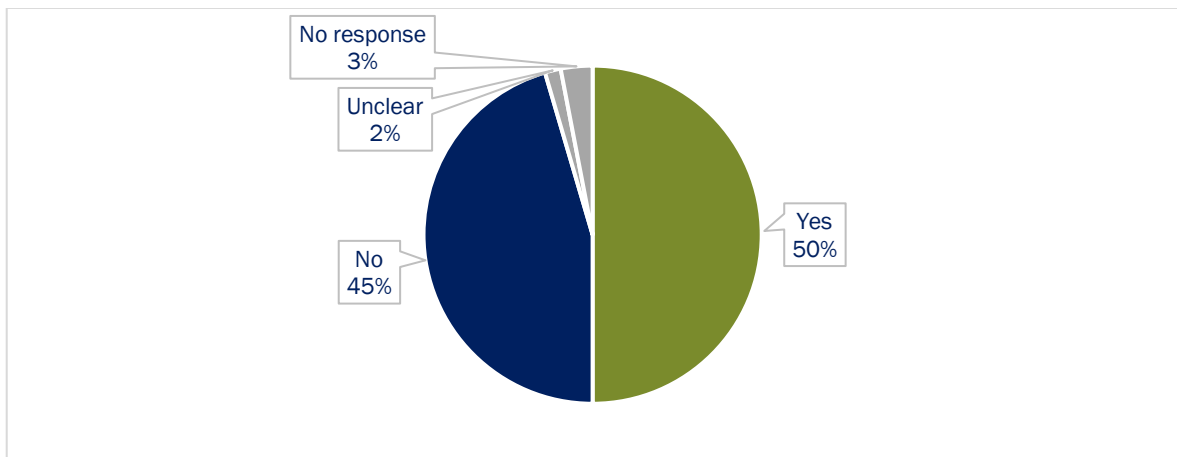
Chart 4: For intrafamily intercountry adoptions, do States cooperate with States they normally do not cooperate with?⁶⁹



23. In cases where two States cooperate while they usually do not work together, the following challenges may arise:
- in general terms, greater difficulty cooperating;⁷⁰
 - the State of origin *not* being a Party to the 1993 Adoption Convention;⁷¹
 - difficulty identifying the right authority (or contact person) with whom to cooperate (for both intrafamily adoptions in general and stepchild adoptions in particular);⁷²
 - authorities in the State of origin not always responding,⁷³ and in some cases being more responsive when contacted directly by the PAPs than when they are contacted by the Central Authority in the receiving State;⁷⁴
 - AABs not being involved;⁷⁵
 - difficulty obtaining all the relevant information;⁷⁶
 - difficulty understanding and agreeing with the adoption procedure of the other State;⁷⁷
 - less reliability of the documents and / or the adoption process.⁷⁸
24. Regarding cooperation in stepchild adoption cases (either between Contracting Parties, or with a State which is not a Contracting Party), a challenge raised was that Central Authorities may be less responsive compared to other adoption cases.⁷⁹
25. Examples of good practices:
- applying the same Convention safeguards and procedures to intercountry adoptions between two States that usually do not cooperate together (*i.e.*, which do not carry out intercountry adoptions together);⁸⁰
 - making some verifications, including determining whether it will be possible to process an intercountry adoption with the State of origin in a manner that is compliant with the 1993 Adoption Convention procedures and safeguards, before accepting the PAPs' application to adopt;⁸¹
 - raising awareness of the benefits of applying the standards and procedures of the Convention to intrafamily adoptions and the risks of not doing so.⁸²
26. In case of a stepchild adoption, as with intrafamily adoption, some authorities ensure that they can cooperate with the other State before accepting an application and that the adoption is in the best interests of the child.⁸³

6. Specific legislation and / or guidelines for intrafamily adoptions

Chart 5: Do States have specific guidelines on, or mention in the legislation of, intrafamily adoptions?⁸⁴



27. When States have specific legislation and / or guidelines on intrafamily adoptions, it allows them to take into account the specificities of intrafamily adoptions and to ensure that they are properly processed.⁸⁵ Some States indicate that they have specific references in their legislation to stepchild adoptions only.⁸⁶

7. The adoption procedure in intrafamily intercountry adoptions

28. Many States indicated that they apply the same procedures and standards of the 1993 Adoption Convention to intrafamily adoptions, as they would for any other intercountry adoption.⁸⁷ However, they usually have to make some adaptations to take into consideration the specificities of intrafamily adoptions.

7.1. Principle of subsidiarity

HCCH 1993 Adoption Convention

Article 4: “An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin – [...]

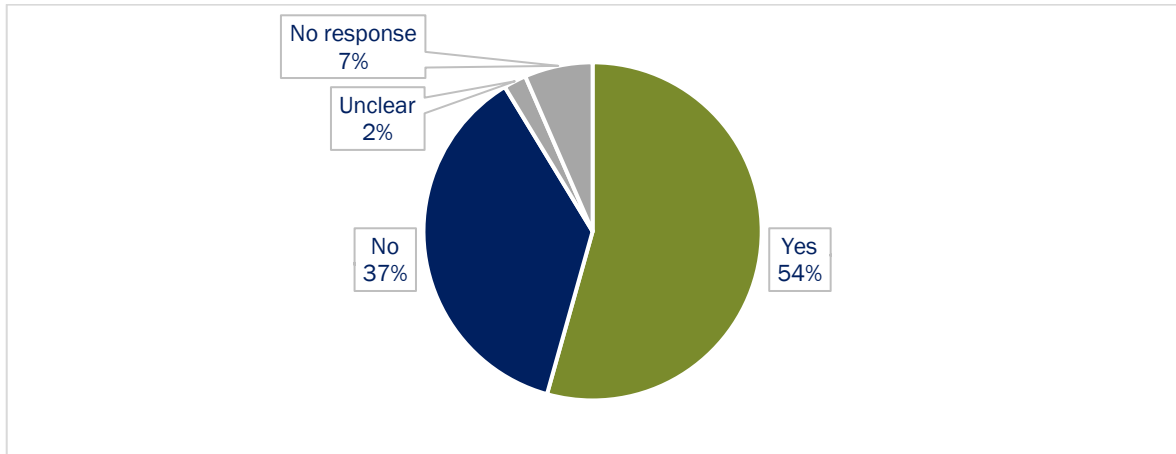
b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;”

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“The question may arise as to where the child’s best interests lie when the choice is between a permanent home in the State of origin and a permanent home abroad with a family member. Assuming that the two families in question are equally suitable to adopt the child, in most cases the child’s interests may be best served by growing up with the biologically-related family abroad. This example illustrates that it is not subsidiarity itself which is the **overriding principle of this Convention, but the child’s best interests**” (GGP No 1, para. 52, emphasis added).

29. As mentioned by the GGP, the overarching principle of the Convention is the best interests of the child. Thus, consideration for the child’s placement requires a truly child-centred approach, which may also include considering factors, such as the continuity for the child in ethnicity and / or language.

Chart 6: Is the principle of subsidiarity applied in the same manner to intrafamily intercountry adoptions?⁸⁸



30. Some States note that they continue to give due consideration to finding suitable permanent family-based solutions in the State of origin (*i.e.*, they apply the principle of subsidiarity) in intrafamily intercountry adoption, as they do for intercountry adoptions by non-relatives.⁸⁹ However, other States apply it differently as they prioritise intrafamily intercountry adoptions over intercountry adoptions by non-relatives.⁹⁰
31. Regarding stepchild adoptions, it was noted that the principle of subsidiarity should also be considered and that the child’s context should also be taken into account.⁹¹
32. Some challenges:
- not giving due consideration to the principle of subsidiarity in the case of intrafamily adoptions;⁹²
 - different reasoning by the State of origin and the receiving State as to whether the principle of subsidiarity was properly applied in intrafamily adoption cases;
 - potential confusion that can occur for the child when their grandparents become their parents or their aunt/sister becomes their mother, etc;
 - the birth mother consenting to adoption by non-relatives but not to intrafamily adoptions as she prefers that the child is not adopted within her family.
33. Examples of good practices:
- Ensuring that:
 - children are not unnecessarily removed from birth parents;⁹³
 - in line with Article 4 of the Convention, due consideration to possibilities for placement of the child within the State of origin were given prior to considering the intercountry adoption.⁹⁴

7.2. Adoptability

HCCH 1993 Adoption Convention

Article 4: “An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin –
a) have established that the child is adoptable;”

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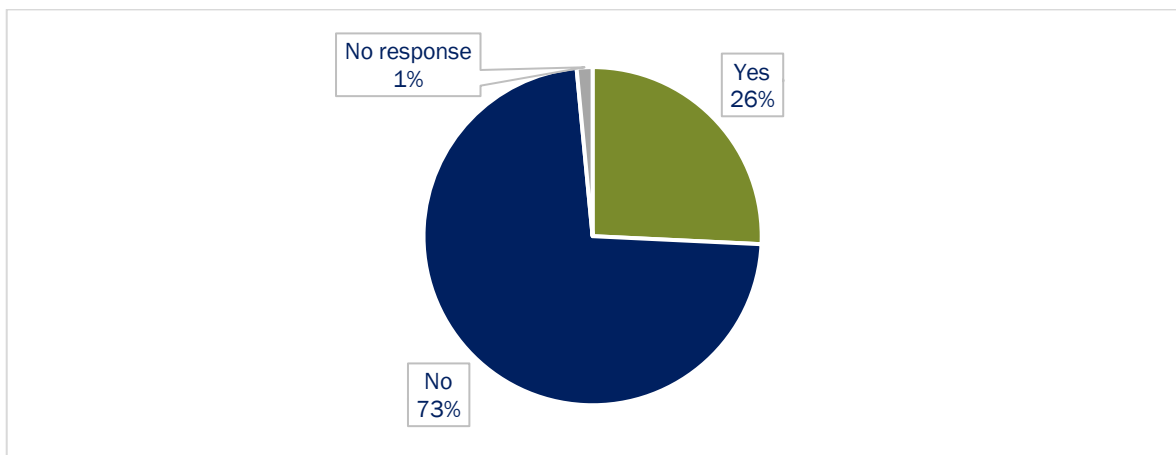
“In relation to [intrafamily] adoption, the SC: [...]

d) recommended that the **motivations** of all parties should be examined to determine whether the **child is genuinely in need of adoption**;

e) recognised that it is necessary to undertake an **individualised assessment** of each child’s situation and it should not be automatically assumed that either an in-country or [intrafamily] placement is in a child’s best interests” (2015 SC, C&R 32, emphasis added).

34. In every adoption, the child must first be declared adoptable. This is also applicable to intrafamily adoptions.
35. In the case of stepchild adoptions, the need for adoption for the child may not be straightforward, and thus the reasoning to determine the child’s adoptability may need to be adapted to the specificities of what a stepchild adoption entails: the child may not be in need of adoption since they already have a parent caring for them, however, the adoption (*i.e.*, being cared for by a second parent) may still be in their best interests and thus the competent authority may then determine the child as being adoptable.

Chart 7: Have States encountered any difficulties with adoptability decisions?⁹⁵



36. Some challenges regarding intrafamily adoptions generally:
- PAPs applying for the child’s adoption *before* the child has been declared adoptable;⁹⁶
 - authorities being less responsive, for example, in providing all the relevant information regarding the child and the family;⁹⁷
 - difficulties:⁹⁸
 - to obtain the birth parents’ free and informed consent to the adoption (including to ensure that their consent was not obtained with undue pressure),⁹⁹ and to ensure that they fully understand the legal consequences of their consent;

- to assess the child’s real needs for adoption;¹⁰⁰
- for both the State of origin and the receiving State to agree on the child’s need for adoption;¹⁰¹
- mistakenly assuming that:
 - an adoption for economic reasons only (*i.e.*, better living standards in the receiving State) is in the best interests of the child;¹⁰²
 - it is necessarily in the best interests of a child who is raised by extended family members to be adopted by them.¹⁰³

37. Some challenges regarding stepchild adoptions more specifically:

- authorities not declaring the child adoptable;¹⁰⁴
- difficulties:¹⁰⁵
 - to receive a complete file and rely on the information provided (including to assess the child’s situation and their need for adoption);¹⁰⁶
 - to verify that adoption is the most appropriate measure for the child and that the relationship is stable and reliable enough to ensure life-long commitment in the best interests of the child.);¹⁰⁷
 - to obtain the consent of the birth parent.¹⁰⁸

38. Examples of good practices:

- accepting applications of PAPs to adopt a child only after the child has been declared adoptable;¹⁰⁹
- as for any adoption, ensuring that:
 - the adoption responds to the best interests of the child;¹¹⁰
 - the birth parents,¹¹¹ as well as the child if they are of a sufficient age and maturity,¹¹² give their free and informed consent to the adoption;
 - the child is declared adoptable¹¹³ (e.g., by using an analysis grid that assists in assessing the child’s situation and their adoptability).¹¹⁴
- Stepchild adoptions:
 - ensuring that files include all the necessary information;¹¹⁵
 - ensuring that not only the child and the birth parent, but also the spouse who is already a legal parent of the child consents to the adoption; ¹¹⁶
 - as for any adoption, the authorities making certain that the child is adoptable, that the required consents are given, that the child’s views are taken into account and that the adoption responds to the best interests of the child.¹¹⁷

7.3. Adoption procedure regarding PAPs (including acceptance of their application to adopt, suitability assessment and preparation)

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“In relation to [intrafamily] adoption, the SC: [...]
b) recalled the need to respect the safeguards of the Convention, in particular to counsel and prepare the prospective adoptive parents; [...]
d) recommended that the motivations of all parties should be examined to determine whether the child is genuinely in need of adoption; [...]” (2015 SC, C&R 32, emphasis added).

39. Some parts of the adoption procedure regarding the PAPs may be adapted in intrafamily adoption cases. However, it is important to continue applying the safeguards and procedures of the Convention. For example, as in all intercountry adoptions, PAPs need to be properly assessed and declared eligible and suitable to adopt and they need to be properly counselled and prepared.
40. Some challenges:
- States of origin allowing PAPs to apply for an intrafamily domestic adoption in their State, while they should be applying in the receiving State for an intercountry adoption in accordance with the Convention;¹¹⁸
 - PAPs not needing to be declared eligible and suitable to adopt the child;¹¹⁹
 - PAPs motivation to adopt:
 - not being realistic;¹²⁰
 - being based on the belief that it is better for the child to live abroad;¹²¹
 - PAPs not understanding the risks of separating the child from their birth parents;¹²²
 - PAPs not being counselled as may be necessary (including in stepchild adoptions);¹²³
 - stepchild adoptions:
 - not properly informing the prospective adoptive stepparent, the spouse who is already a legal parent and the birth parent about the procedure to follow;¹²⁴
 - not declaring the prospective adoptive stepparent eligible and suitable to adopt the child;¹²⁵
 - encountering difficulties conducting the home study and providing training when the prospective adoptive stepparent and the spouse who is already a legal parent do not both habitually reside in the receiving State.¹²⁶
41. Examples of good practices:
- ensuring that the intrafamily adoption is processed as an intercountry adoption when the PAPs and the child are habitually resident in different States;¹²⁷
 - the Central Authority of the State of the habitual residence of the PAPs assessing the validity of the PAPs application to decide whether to accept it or not;¹²⁸
 - PAPs' suitability assessment:
 - taking into account that they are applying for an intrafamily adoption;¹²⁹
 - including a more thorough examination of their motivation to adopt,¹³⁰ to ensure, for example, that they are truly seeking to establish a permanent bond with the child and not solely to facilitate immigration;
 - providing counselling to PAPs targeted to intrafamily adoption;¹³¹
 - providing PAPs with preparation or training specific to intrafamily adoptions;¹³²
 - stepchild adoptions: ensuring that the prospective adoptive stepparents' motivations are appropriate.¹³³

7.4. Matching

HCCH 1993 Adoption Convention

Article 29: "There shall be no **contact between the prospective adoptive parents and the child's parents** or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a) to c), and Article 5, sub-paragraph a), have been met, unless the **adoption takes place within a family** or unless the contact is in compliance with the conditions established by the competent authority of the State of origin" (emphasis added).

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Article 29 included an exception for intrafamily adoptions “to take into account of life’s realities, because contacts are impossible to be avoided in case of adoptions among relatives” (Explanatory Report, para. 502).

“In relation to [intrafamily] adoption, the SC: [...] c) recognised that the **matching** process might be **adapted** to the specific features of [intrafamily] adoptions; [...]” (2015 SC, C&R 32) (emphasis added).

42. As opposed to other intercountry adoptions cases, prior contact between the PAPs and the adoptee’s parents is not prohibited in the case of intrafamily adoption (see green box above).
43. In terms of matching, this means that the matching may be carried out in a faster way,¹³⁴ as there may not be a need to look for other PAPs than those who are relatives, and thus the matching can be limited to ensuring that those relatives would be best placed to respond to the child’s needs.
44. One challenge raised was that the matching decision in some cases does not need to be approved by both Central Authorities.¹³⁵
45. An example of a good practice is when the competent authority assesses additional criteria specific to intrafamily adoption (e.g., birth parents’ motivation to relinquish their child, PAPs’ motivation to adopt¹³⁶).¹³⁷

7.5. Socialisation period

46. A challenge raised is that in some States, the socialisation period may be shortened,¹³⁸ or even not provided,¹³⁹ if the child and the PAPs already know each other. However, it is still very important to follow up and support the adoptee and the adoptive family.

8. Legal effects of an intrafamily adoption: the impact of intrafamily adoptions on the legal relationships between the child and their birth family

HCCH 1993 Adoption Convention

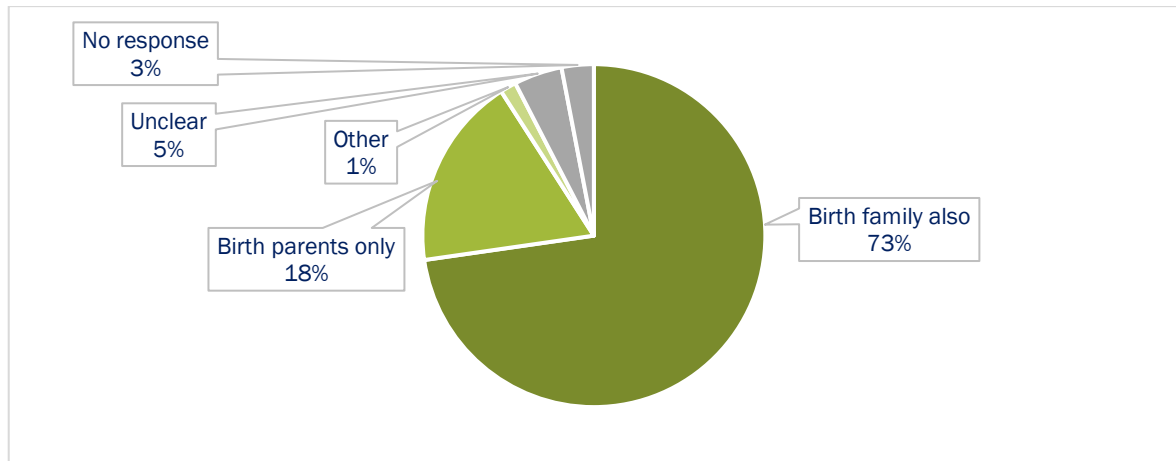
Art. 26 (1) “The recognition of an adoption includes recognition of [...] c) the **termination of a pre-existing legal relationship between the child and his or her mother and father**, if the adoption has this effect in the Contracting State where it was made” (emphasis added).

HCCH documents

“[...] In case of an adoption among relatives, it should be explained that the legal relationship will only be terminated with the child’s mother and father, but not with other relatives. If the persons whose consent is necessary have in mind an adoption that maintains such permanent legal relationship, the adoption granted cannot bring about its termination, because it would violate one of the fundamental conditions for the granting of the adoption” (Explanatory Report, para. 137, emphasis added).

47. In the case of *full* intrafamily adoption, the termination of the legal relationship between the child and the birth parents may affect either:
- the birth parents only (*i.e.*, only the legal relationship with the birth parents is terminated but the legal relationship with, for example, the child’s siblings or grandparents is not);
 - the birth parents and the other members of the birth family (*i.e.*, the legal relationship with, for example, the child’s siblings or grandparents is also terminated).

Chart 8: Does the termination of the pre-existing legal relationship affect the child with their birth parents only or with the birth family also?¹⁴⁰



48. In the case of *simple* intrafamily adoption,¹⁴¹ the relationship with the other members of the birth family is not affected since the legal relationship between the child and the birth parents is not terminated.

9. Breakdowns of intrafamily adoptions

49. As explained in the Discussion Paper “Post-Adoption Matters” (Prel. Doc. No 8), not all Central Authorities collect data or are informed when an intercountry adoption breaks down.¹⁴² However, some States are aware of breakdowns of intrafamily intercountry adoptions.¹⁴³ According to the responses of some Central Authorities to a Questionnaire done by ISS / IRC in 2019, it would seem that “both States of origin and receiving States have recorded many cases of breakdown of intrafamily adoption [...] given that these intrafamily adoptions may be carried out under conditions that increase risk factors”.¹⁴⁴
50. Some of the causes for these adoption breakdowns are similar to the causes of breakdowns of any adoption (see Discussion Paper “Post-adoption matters”).¹⁴⁵ This includes, for example, lack of preparation, lack of adjustment of the child or bond with the adoptive parents.¹⁴⁶ It also more often affect adoption of older children.¹⁴⁷
51. However, other causes may be directly attributed to the fact that the adoption was an intrafamily adoption. For example, if the PAPs are adopting for the wrong reasons, *e.g.*, for immigration purposes without the intent of establishing a permanent bond with the child (which may be more common with intrafamily adoption; see section 3.2),¹⁴⁸ they may not be fully engaged or fully understand what the adoption entails, which in turn will affect their relationship with the child. In fact, some States note that intrafamily adoptions are a risk factor for adoption breakdowns.¹⁴⁹
52. Authorities have tried to prevent and / or address such breakdowns by doing the following:
- the State adapted the PAPs’ assessment of suitability to be more specific for intrafamily adoptions;¹⁵⁰

- the State raised awareness among professionals on intrafamily adoptions;¹⁵¹
- when child protection concerns arose, the child was removed from the care of the adoptive parents and placed in foster care,¹⁵² or as a last resort, placed in a child institution¹⁵³ or returned to the State of origin (including to the birth parents).¹⁵⁴

10. In preparation for the 2022 SC Meeting



53. Having regard to the foregoing, participants are invited to consider the following ideas and matters, which may be raised at the Meeting of the SC. In addition, participants may also contact the PB in advance of the Meeting if they have comments or other ideas for discussion:

- a) Recall C&R No 32 of the 2015 SC.¹⁵⁵
- b) Recall that intrafamily adoptions fall within the scope of the 1993 Adoption Convention (see also C&R No 32(a) of the 2015 SC).
- c) Note that because stepchild adoptions are intrafamily adoptions, they also fall under the scope of the 1993 Adoption Convention.
- d) Recall that States should give due consideration to finding a suitable permanent family-based solution in the State of origin (*i.e.*, they should apply the principle of subsidiarity) in *all* intrafamily adoptions and that the best interests of the child may not always call for an intrafamily adoption.
- e) Note the need to declare the child adoptable in *all* intrafamily adoptions.
- f) How should the adoptability of the child in stepchild adoption cases be assessed?
- g) How should matching take place?
- h) Which stages of the adoption procedure may be simplified in intrafamily adoption cases while respecting the procedures and safeguards of the Convention?
- i) Encourage States to establish guidelines specific to intrafamily adoptions, including stepchild adoptions.
- j) Recall the importance of data to evaluate where the needs are and how to further prevent intrafamily adoption breakdowns.
- k) Encourage States to cooperate with other authorities (including authorities in charge of immigration) to determine whether other child protection measures may better respond to the best interests of the child and to cooperate to implement these other measures. Recall that the 1996 Child Protection Convention may be relevant in such cases.

Further reading

- M. Dambach and J. Messineo, ["Intrafamily Intercountry Adoptions: Upholding the rights of the child"](#), *ISS/IRC comparative working paper 3: Spotlight on solutions*, Geneva, Switzerland, International Social Service, 2020.

ENDNOTES

- 1 The information included throughout this document does not represent an exhaustive list of the views expressed by each State. Endnotes include examples of States that have or do not have a specific practice.
Please also note that for some of the responses, the reference to a particular State does not mean that this State has or has not this practice, but that this particular State refers to the practices of other States in its response.
- 2 Prel. Doc. No 3 of February 2020, “Questionnaire on the Practical Operation of the 1993 Adoption Convention” (2020 Questionnaire No 1). The 66 Contracting Parties which responded to the Questionnaire are: Andorra, Armenia, Australia, Austria, Belarus, Belgium (Flemish region), Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China, China (Hong Kong SAR), China (Macao SAR), Colombia, Congo, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Greece, Guinea, Haiti, Honduras, India, Ireland, Italy, Latvia, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Monaco, Montenegro, Namibia, New Zealand, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Turkey, United States of America (USA), Uruguay, Venezuela and Viet Nam.
- 3 The 2020 Questionnaire No 1 included some questions which could be answered by a ‘yes’ or ‘no’ response, and then provided a space for further comments. On some occasions, the response to yes or no was not consistent with the comment provided afterwards. In such cases, the Permanent Bureau (PB) of the HCCH had to interpret that information to the best of its knowledge. In the case of federal States, the response was separated as much as possible but if that was not possible, the response that represented most federated States was taken into account.
- 4 Intrafamily intercountry adoption may also be known as “in-family adoption”, “family adoption” or “relative adoption”.
- 5 Country Profile SO (CP-SO), Question 29(a): Burundi, Dominican Republic; Country Profile RS (CP-RS), Question 24(a): Australia.
It has to be noted that a few States consider specific relationships between the PAPs and the child (e.g., informal cohabitation where a close relationship is created) to fall under the category of intrafamily adoptions, even if there is no affinity or consanguinity bond or relationship (see, CP-RS, Question 24(a): Belgium, Denmark, Italy, Turkey. 2020 Questionnaire No 1, Question 41 : USA). However, this Discussion Paper does analyse these cases.
- 6 CP-SO, Question 29(a): Burundi, Colombia (of affinity), El Salvador (of affinity), Panama (of consanguinity).
- 7 CP-SO, Question 29(a): Bulgaria, China, Colombia (of consanguinity), Congo, Haiti, Hungary, Madagascar; CP-RS, Question 24(a): Austria, Luxembourg.
- 8 CP-SO, Question 29(a): Ecuador (of consanguinity), El Salvador (of consanguinity), Mexico (of consanguinity), Philippines (of affinity or consanguinity), Romania (of consanguinity); CP-RS, Question 24(a): Belgium.
- 9 CP-SO, Question 29(a): Ghana (of consanguinity).
- 10 CP-RS, Question 24(a): France, Italy (of consanguinity), Portugal (of consanguinity in the collateral line).
- 11 CP-SO, Question 29(a): Benin, Cambodia; India, Mauritius, Viet Nam; Question 24(a): Canada, Denmark, Finland, Ireland, New Zealand, Switzerland, UK (Scotland).
- 12 CP-SO, Question 29(a): Benin, Cambodia; India, Mauritius, Viet Nam; Question 24(a): Canada, Denmark, Finland, Ireland, New Zealand, Switzerland, UK (Scotland).
- 13 CP-SO, Question 29(a): Cambodia, India, Mauritius; Question 24(a): Canada, Denmark, Ireland, New Zealand, Switzerland, UK (Scotland).
- 14 CP-SO, Question 29(a): Benin; Question 24(a): Canada, Switzerland.
- 15 Question 24(a): Canada, Denmark, Finland, New Zealand, UK (Scotland).
- 16 CP-SO, Question 29(a): Croatia, Czech Republic, El Salvador, Lithuania, Panama, Serbia.
- 17 CP-SO, Question 29(a): Sri Lanka; CP-RS, Question 24(a): Sweden.
- 18 CP-SO, Question 29(a): Lesotho, Namibia, Togo, Turkey; CP-RS, Question 24(a): Greece, Monaco, Switzerland.
- 19 CP-SO, Question 29(a): Sri Lanka.
- 20 CP-SO, Question 29(a): Brazil, Honduras, Lesotho.
- 21 GGP No 1, para. 519. See also CP-SO, Question 29(a): Bulgaria, Cambodia, China, Colombia, Cote d’Ivoire, Hungary, Latvia, Lithuania, Turkey, Viet Nam; CP-RS, Question 24(a): Austria, Belgium, Canada (including common law partners), France.
Please note that for ease of understanding, the persons involved in a stepchild adoptions are referred to in this Discussion Paper as follows:
- the prospective adoptive stepparent;
 - the spouse who is already a legal parent (*i.e.*, the spouse of the prospective adoptive stepparent who in most of the cases, is also a birth parent of the child); and
 - the birth parent (*i.e.*, the *other* birth parent of the child).
- 22 CP-SO, Question 29(b): Guatemala, Hungary, Rwanda. CP-SO, Question 29(a): Paraguay.

- 23 2020 Questionnaire No 1, Question 35: Madagascar; Question 42: El Salvador, Philippines. For example, Philippines explains that the Central Authority is not involved in decisions between spouses, and El Salvador mentions that stepchild adoptions do not require an administrative step.
- 24 HCCH, draft *Toolkit on Preventing and Addressing Illicit Practices*, Part II - Fact Sheet No 2 “Circumventing the application of the Convention”, Prel. Doc. No 6B REV for the SC, line 3 (draft Toolkit – FS 2 “Circumventing the Convention”).
- 25 Chart 1.a: Do States apply the 1993 Adoption Convention to intrafamily adoptions in general? The responses from 67 States were taken into account. CP-RS, Question 24(b) and CP-SO, Question 29(b):
- **Yes:** Australia, Austria, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, France, Germany, Ghana, Guinea, Haiti, Honduras, India, Ireland, Italy, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Monaco, Namibia, Netherlands, New Zealand, Norway, Panama, Philippines, Portugal, Republic of Moldova, Romania, Serbia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Togo, Turkey, United Kingdom, USA, Viet Nam.
 - **No:** Guatemala, Hungary, Paraguay (CP-SO, Question 29(a)), Rwanda.
- 26 Chart 1.b: Do States apply the 1993 Adoption Convention to stepchild adoptions in particular? The responses from 67 States were taken into account. 2020 Questionnaire No 1, Question 42:
- **Yes:** Armenia, Australia, Austria, Belarus, Belgium, Bulgaria, Cambodia, Canada, China, Colombia, Congo, Croatia, Denmark, Dominican Republic, Ecuador, Finland, France, Germany, Greece, Haiti, India, Malta, Mauritius, Monaco, Namibia, Panama, Poland, Portugal, Republic of Moldova, Senegal, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Turkey, Venezuela, Viet Nam.
 - **Yes but no / limited cases:** Andorra, Brazil, Honduras, Latvia, Luxembourg, Montenegro, Norway, Peru, Slovenia,
 - **No cases:** Chile, Czech Republic, Guinea, Mexico, New Zealand, Serbia, Uruguay.
 - **No:** El Salvador, Ireland, Paraguay (CP-SO, Question 29(a)), Philippines, Romania, Slovakia.
 - **Unclear:** Burkina Faso, Costa Rica, Italy, Madagascar, USA.
 - **No response:** Lithuania.
- 27 2020 Questionnaire No 1, Question 44(a): Cambodia, Colombia.
- 28 2020 Questionnaire No 1, Question 45: Brazil, Norway, USA.
- 29 2020 Questionnaire No 1, Question 44(a): France.
- 30 2000 SC, C&R No 11; 2005 SC, C&R, No 19; and 2010 SC, C&R No 36 and 37. See also 2020 Questionnaire No 1, Question 34: Canada.
- 31 HCCH, *Note on Habitual Residence and the Scope of the 1993 Hague Convention*, 2018, pp. 52-54; draft Toolkit – FS 2 “Circumventing the Convention” (*op. cit.* note 24), line 3; 2020 Questionnaire No 1, Question 44(b): Colombia.
- 32 Draft Toolkit – FS 2 “Circumventing the Convention” (*op. cit.* note 24), lines 1 and 2; 2020 Questionnaire No 1, Question 44(b): Colombia.
- 33 Chart 2: Have States encountered situations where intrafamily adoptions were sought / used to circumvent immigration laws? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 45:
- **Yes:** Australia, Belgium, Cambodia, Canada, Colombia, Costa Rica, Czech Republic, Dominican Republic, El Salvador, France, Germany, Haiti, Luxembourg, Peru, Philippines, Spain, Sweden, Switzerland, Togo, USA.
 - **No:** Andorra, Armenia, Austria, Belarus, Burkina Faso, Chile, Congo, Croatia, Denmark, Ecuador, Finland, Greece, Guinea, Honduras, India, Ireland, Latvia, Madagascar, Malta, Mauritius, Mexico, Monaco, Montenegro, Namibia, Panama, Poland, Portugal, Republic of Moldova, Romania, Senegal, Serbia, Slovenia, South Africa, Sri Lanka, Turkey, Uruguay, Venezuela, Viet Nam.
 - **Unclear:** Brazil, New Zealand, Norway, Slovakia.
 - **No response:** Bulgaria, China, Italy, Lithuania.
- 34 2020 Questionnaire No 1, Question 43: Germany; Question 44(a): France, Togo.
- 35 2020 Questionnaire No 1, Question 45: Cambodia, Spain, Sweden.
- 36 2020 Questionnaire No 1, Question 45: Czech Republic.
- 37 2020 Questionnaire No 1, Question 36: Togo; Question 45: France, Spain, Sweden.
- 38 2020 Questionnaire No 1, Question 45: Switzerland, Togo.
- 39 2020 Questionnaire No 1, Question 45: Australia.
- 40 2020 Questionnaire No 1, Question 45: Spain.
- 41 M. Dambach and J. Messineo, *“Intrafamily Intercountry Adoptions: Upholding the rights of the child”*, ISS/IRC comparative working paper 3: *Spotlight on solutions*, Geneva, Switzerland, International Social Service, 2020, p. 34 (ISS Intrafamily Intercountry Adoptions); 2020 Questionnaire No 1, Question 33: New Zealand.
- 42 2020 Questionnaire No 1, Question 45: Belgium
- 43 2020 Questionnaire No 1, Question 45: France.
- 44 2020 Questionnaire No 1, Question 45: Canada, Colombia, El Salvador, Haiti, Luxembourg.

- 45 2020 Questionnaire No 1, Questions 34, 44(b) and 45: Togo.
- 46 2020 Questionnaire No 1, Question 34: Philippines; Question 35: Colombia; Question 45: Australia, Belgium, France, Luxembourg.
- 47 2020 Questionnaire No 1, Question 45: Australia, El Salvador.
- 48 2020 Questionnaire No 1, Question 45: Belgium.
- 49 2020 Questionnaire No 1, Question 45: Czech Republic.
- 50 2020 Questionnaire No 1, Question 41: Armenia, Dominican Republic, Ecuador, Mexico, Panama, Philippines, South Africa, Togo, USA.
- 51 2020 Questionnaire No 1, Question 41: Brazil, Bulgaria, Burkina Faso, Cambodia, Chile, Colombia, Congo, Costa Rica, Croatia, Haiti, Honduras, Latvia, Mauritius, Montenegro, Namibia, Portugal, Romania, Serbia, Slovakia, Turkey, Uruguay, Venezuela, Viet Nam.
- 52 2020 Questionnaire No 1, Question 41: Portugal.
- 53 2020 Questionnaire No 1, Question 41: Bulgaria, Burkina Faso, Colombia, Congo, Ecuador, Romania, Venezuela.
- 54 2020 Questionnaire No 1, Question 41: Sri Lanka, Uruguay.
- 55 2020 Questionnaire No 1, Question 41: Andorra, Belarus, Brazil, Croatia, El Salvador, Haiti, Latvia, Panama, Republic of Moldova, Sri Lanka.
- 56 2020 Questionnaire No 1, Question 41: Croatia, Czech Republic, Montenegro, Namibia, Serbia, Viet Nam.
- 57 2020 Questionnaire No 1, Question 41: Andorra, Chile, Costa Rica, Croatia, Czech Republic, El Salvador, Poland, Serbia, Spain, Turkey.
- 58 2020 Questionnaire No 1, Question 41: Andorra, Togo.
- 59 *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, see further: [Child Protection Section](http://www.hcch.net) under www.hcch.net.*
- 60 C&R Nos 42 & 43 of the 2017 SC on the practical operation of the 1980 Child Abduction Convention and the 1996 Child Protection Convention.
- 61 2020 Questionnaire No 1, Question 41: Croatia, Portugal, Serbia, Spain. Although it is to be noted that not all States which are party to the 1993 Adoption Convention are also party to the 1996 Child Protection Convention.
- 62 Chart 3: Which authorities are in charge of intrafamily adoptions? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 33:
- **Central Authority:** Andorra, Australia, Belarus, Belgium, Brazil, Bulgaria, Cambodia, Canada, Chile, China, Colombia, Congo, Costa Rica, Czech Republic, Dominican Republic, Ecuador, El Salvador, Greece, Guinea, Honduras, India, Ireland, Latvia, Madagascar, Malta, Mauritius, Mexico, Monaco, Namibia, Panama, Philippines, Poland, Portugal, Republic of Moldova, Romania, Senegal, South Africa, Sri Lanka, Switzerland, Togo, Turkey, Uruguay, Venezuela, Viet Nam.
 - **Central Authority and (an)other competent authority(ies):** Armenia, Burkina Faso, Croatia, Denmark, Finland, Germany, Haiti, Luxembourg, New Zealand, Norway, Slovenia, Spain, Sweden, USA.
 - **Other competent authority(ies):** Austria, Italy, Montenegro, Peru, Serbia, Slovakia.
 - **No response:** France, Lithuania.
- 63 2020 Questionnaire No 1, Question 33: Austria, Burkina Faso, Haiti, Italy, Luxembourg, Slovakia, Slovenia, Spain, Sweden, USA.
- 64 2020 Questionnaire No 1, Question 33: Croatia, Serbia.
- 65 2020 Questionnaire No 1, Question 33: Denmark, Norway.
- 66 2020 Questionnaire No 1, Question 33: Finland, Germany.
- 67 For example, in Austria, Italy, Peru and Slovakia, it seems that for non-relative intercountry adoptions the Central Authority plays an important role in the procedure, but not in intrafamily adoptions. See responses to the 2020 Questionnaire No 1, Question 33, as well as the respective CP of these States.
- 68 See *supra* note 41.
- 69 Chart 4: For intrafamily intercountry adoptions, do States cooperate with States they normally do not cooperate with? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 39:
- **Yes:** Armenia, Belarus, Belgium, Canada, Croatia, Czech Republic, Denmark, Finland, France, Germany, Guinea, Honduras, Luxembourg, Malta, New Zealand, Norway, Philippines, Poland, Portugal, South Africa, Sri Lanka, Switzerland, USA, Viet Nam.
 - **No:** Andorra, Australia, Austria, Brazil, Burkina Faso, Cambodia, Chile, China, Colombia, Congo, Costa Rica, Dominican Republic, Ecuador, El Salvador, Greece, Haiti, India, Ireland, Italy, Latvia, Madagascar, Mauritius, Mexico, Monaco, Montenegro, Panama, Republic of Moldova, Romania, Senegal, Serbia, Slovakia, Spain, Togo, Turkey, Uruguay.
 - **No data:** Sweden.
 - **Unclear:** Namibia, Peru, Venezuela.

- 70 ▪ **No response:** Bulgaria, Lithuania, Slovenia.
- 71 2020 Questionnaire No 1, Question 39: Germany.
- 72 2020 Questionnaire No 1, Question 39: Armenia, Germany, Switzerland.
- 73 2020 Questionnaire No 1, Question 39: Canada, Switzerland, Viet Nam; Question 44(a): Viet Nam.
- 74 2020 Questionnaire No 1, Question 39: Canada, Norway.
- 75 2020 Questionnaire No 1, Question 39: Norway.
- 76 2020 Questionnaire No 1, Question 39: Denmark.
- 77 2020 Questionnaire No 1, Question 39: Belgium, Guinea.
- 78 2020 Questionnaire No 1, Question 39: Canada, Denmark, Finland, Germany, Viet Nam.
- 79 2020 Questionnaire No 1, Question 39: Canada, Finland.
- 80 2020 Questionnaire No 1, Question 44(a): Canada.
- 81 2020 Questionnaire No 1, Question 39: Denmark, Honduras. In regards to cooperation with non Contracting Parties, the Special Commission has recommended several times that “States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States” (2000 SC, C&R 11; 2005 SC, C&R 19; SC 2010, C&R 36).
- 82 2020 Questionnaire No 1, Question 39: Canada.
- 83 2020 Questionnaire No 1, Question 39: France.
- 84 2020 Questionnaire No 1, Question 44(b): Spain, Viet Nam.
- 85 Chart 5: Do States have specific guidelines on, or mention in the legislation of, intrafamily adoptions? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 35:
 - **Yes:** Andorra, Armenia, Australia, Belarus, Belgium, Bulgaria, Burkina Faso, Cambodia, Canada, Colombia, Denmark, Dominican Republic, Ecuador, Finland, Germany, Haiti, Honduras, India, Luxembourg, Madagascar, Mauritius, Norway, Panama, Peru, Philippines, Republic of Moldova, South Africa, Spain, Sweden, Togo, USA, Uruguay, Viet Nam.
 - **No:** Austria, Brazil, Chile, China, Congo, Costa Rica, Croatia, Czech Republic, El Salvador, France, Greece, Ireland, Italy, Latvia, Malta, Mexico, Monaco, Montenegro, Namibia, Poland, Portugal, Romania, Senegal, Serbia, Slovakia, Slovenia, Sri Lanka, Switzerland, Turkey, Venezuela.
 - **Unclear:** Guinea.
 - **No response:** Lithuania, New Zealand.
- 86 2020 Questionnaire No 1, Question 35: Australia.
- 87 2020 Questionnaire No 1, Question 35: Panama, Republic of Moldova.
- 88 CP-RS, Question 24(a): Canada, Germany, Malta. 2020 Questionnaire No 1, Question 33: Luxembourg; Question 34: Andorra, Australia, Brazil, Congo, Denmark, Ecuador, El Salvador, Finland, Germany, Haiti, Latvia, Malta, New Zealand, Norway, Romania, Serbia, Slovenia, Spain, Switzerland, USA, Venezuela.
- 89 Chart 6: Is the principle of subsidiarity applied in the same manner to intrafamily intercountry adoptions? The responses from 46 States of origin were taken into account. 2020 Questionnaire No 1, Question 40:
 - **Yes:** Armenia, Belarus, Cambodia, Colombia, Congo, Croatia, Dominican Republic, Ecuador, El Salvador, Guinea, Latvia, Madagascar, Mauritius, Montenegro, Namibia, Panama, Republic of Moldova, Romania, Serbia, South Africa, Sri Lanka, Togo, Turkey, Venezuela, Viet Nam.
 - **No:** Brazil, Bulgaria, Burkina Faso, Chile, Costa Rica, Czech Republic, Haiti, Honduras, India, Mexico, Peru, Philippines, Poland, Portugal, Senegal, Slovakia, USA.
 - **Unclear:** Uruguay.
 - **No response:** China, Lithuania, Slovenia.
- 90 2020 Questionnaire No 1, Question 40: Armenia, Cambodia, Colombia, Congo, Croatia, Dominican Republic, Guinea, Latvia, Madagascar, Mauritius, Montenegro, Namibia, Panama, Romania, Serbia, South Africa, Sri Lanka, Togo, Turkey, Venezuela, Viet Nam.
- 91 2020 Questionnaire No 1, Question 34: El Salvador, Republic of Moldova; Question 35: Belarus; Question 40: Brazil, Chile, Costa Rica, Czech Republic, Haiti, Philippines, Poland, Portugal, Senegal, USA; Question 41: Belarus, Ecuador, USA.
- 92 2020 Questionnaire No 1, Question 43: Belgium
- 93 2020 Questionnaire No 1, Question 36: Australia, Belgium, France, Switzerland (all referring to other States’ practices).
- 94 2020 Questionnaire No 1, Question 34: Philippines.
- 95 Art. 4(b). See also CP-SO, Question 29(a): Sri Lanka. This may include for example, the case where there are multiple relative PAPS, and consideration is given first to those living in the State of origin (CP-SO, Question 29(a): Lithuania).
- 96 Chart 7: Have States encountered any particular difficulties with adoptability decision? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 36:
 - **Yes:** Australia, Belgium, Canada, Finland, France, Germany, Malta, New Zealand, Norway, Peru, Philippines, Sri Lanka, Sweden, Switzerland, Togo, USA, Viet Nam.

- **No:** Andorra, Armenia, Austria, Belarus, Brazil, Bulgaria, Burkina Faso, Cambodia, Chile, China, Colombia, Congo, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Greece, Guinea, Haiti, Honduras, India, Ireland, Italy, Latvia, Luxembourg, Madagascar, Mauritius, Mexico, Monaco, Montenegro, Namibia, Panama, Poland, Portugal, Republic of Moldova, Romania, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Turkey, Uruguay, Venezuela.

- **No response:** Lithuania.

- 96 2020 Questionnaire No 1, Question 36: Norway.
- 97 2020 Questionnaire No 1, Question 36: Australia, Canada, Finland, Norway.
- 98 While the same difficulties as those presented in this paragraph may arise in any adoption, they tend to happen more often in intrafamily adoption cases.
- 99 2020 Questionnaire No 1, Question 36: Philippines, Togo, Viet Nam.
- 100 2020 Questionnaire No 1, Question 36: France, Philippines.
- 101 2020 Questionnaire No 1, Question 36: Germany, New Zealand.
- 102 2020 Questionnaire No 1, Question 36: Belgium, Germany, Switzerland.
- 103 2020 Questionnaire No 1, Question 36: USA.
- 104 2020 Questionnaire No 1, Question 42: Romania.
- 105 While the same difficulties as those presented in this paragraph may arise in any adoption, they tend to happen more often in stepchild adoption cases.
- 106 2020 Questionnaire No 1, Question 44(a): Belgium, Finland, Spain.
- 107 2020 Questionnaire No 1, Question 44(a): France, Germany.
- 108 2020 Questionnaire No 1, Question 44(a): Viet Nam.
- 109 2020 Questionnaire No 1, Question 34: Romania.
- 110 CP-SO, Question 29(a): Dominican Republic; CP-RS, Question 24(a): New Zealand. 2020 Questionnaire No 1, Question 34: Colombia, Congo, Costa Rica, Panama, Philippines, Uruguay, Viet Nam; Question 35: Colombia, Luxembourg; Question 40: Portugal.
- 111 2020 Questionnaire No 1, Question 34: Congo, Togo; Question 35: Armenia, Colombia, Togo.
- 112 2020 Questionnaire No 1, Question 34: Panama, Togo; Question 35: Togo.
- 113 2020 Questionnaire No 1, Question 34: El Salvador, New Zealand, Panama, Togo; Question 35: Colombia, Togo.
- 114 2020 Questionnaire No 1, Question 35: Canada.
- 115 2020 Questionnaire No 1, Question 44(b): Belgium.
- 116 2020 Questionnaire No 1, Question 35: Belarus.
- 117 2020 Questionnaire No 1, Question 44(b): Togo.
- 118 CP-SO, Question 29(b): Viet Nam. 2020 Questionnaire No 1, Question 36: Belgium.
- 119 2020 Questionnaire No 1, Question 34: Belarus (only if the PAPs are the child's grandparents), Serbia.
- 120 2020 Questionnaire No 1, Question 36: Philippines.
- 121 2020 Questionnaire No 1, Question 41: Philippines.
- 122 2020 Questionnaire No 1, Question 41: New Zealand.
- 123 2020 Questionnaire No 1, Question 34: Belarus (only if the PAPs are the child's grandparents), Serbia.
- 124 2020 Questionnaire No 1, Question 44(a): Colombia (referring to other States' practices).
- 125 2020 Questionnaire No 1, Question 34: Belarus; Question 35: Madagascar.
- 126 2020 Questionnaire No 1, Question 44(a): Canada.
- 127 See *supra* notes 31 and 32.
- 128 2020 Questionnaire No 1, Question 35: Canada, Luxembourg.
- 129 2020 Questionnaire No 1, Question 40: Mexico.
- 130 2020 Questionnaire No 1, Question 34: Belarus, Canada, China (Hong Kong SAR), El Salvador, Mauritius, Mexico, Philippines, Portugal, Senegal, Viet Nam; Question 35: Colombia, New Zealand, Togo.
- 131 2020 Questionnaire No 1, Question 34: El Salvador, Finland; Question 35: Luxembourg.
- 132 CP-RS, Question 24(b): Belgium. 2020 Questionnaire No 1, Question 34: Ecuador; Question 35: Ecuador.
- 133 2020 Questionnaire No 1, Question 44(b): Togo.
- 134 2020 Questionnaire No 1, Question 34: Ecuador, Romania (however, if the child and the PAPs never had direct contact, then the normal matching procedure applies).
- 135 CP-RS, Question 24(b): Canada (NU, PEI).
- 136 2020 Questionnaire No 1, Question 35: Togo.
- 137 2015 SC C&R 32 (c) and (d).

- 138 2020 Questionnaire No 1, Question 34: Serbia.
- 139 2020 Questionnaire No 1, Question 35: Haiti, Madagascar.
- 140 Chart 8: Does the termination of the pre-existing legal relationship affect the child with their birth parents only or with the birth family also? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 37:
- **Birth family:** Andorra, Armenia, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Congo, Costa Rica, Croatia, Czech Republic, Denmark, Ecuador, El Salvador, Germany, Guinea, Haiti, Honduras, India, Italy, Latvia, Malta, Mexico, Monaco, Montenegro, New Zealand, Norway, Panama, Peru, Philippines, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Turkey, Uruguay, Venezuela, Viet Nam.
 - **Birth parents only:** Burkina Faso, Cambodia, Dominican Republic, Finland, France, Greece, Ireland, Luxembourg, Madagascar, Namibia, Senegal, Togo.
 - **Other:** Poland (by default, the termination of the legal relationship affects all members of the family. However, the PAPs may request that such a termination only affects the relationship with the birth parents).
 - **Unclear:** Belgium, Mauritius, USA.
 - **No response:** China, Lithuania.
- 141 See further, Prel. Doc. No 9: Discussion Paper “Simple and Open Intercountry Adoptions”.
- 142 See Prel. Doc. No 8: Discussion Paper “Post-adoption matters”, section 5.6 on statistics on adoption breakdowns. See also 2020 Questionnaire No 1, Question 38: Denmark, Germany, Luxembourg.
- 143 2020 Questionnaire No 1, Question 38: Belgium, Canada, France, Honduras, Mauritius, New Zealand, Philippines, Togo, USA.
- 144 ISS Intrafamily Intercountry Adoptions (*op. cit.* note 41), pp. 15-16.
- 145 See Prel. Doc. No 8 - Discussion Paper “Post-adoption matters”, section 5.2 on causes of adoption breakdowns.
- 146 2020 Questionnaire No 1, Question 38: Canada, New Zealand, Philippines, Togo.
- 147 2020 Questionnaire No 1, Question 38: Belgium, Philippines.
- 148 2020 Questionnaire No 1, Question 38: France, New Zealand, Philippines, USA.
- 149 2020 Questionnaire No 1, Question 38: France, USA.
- 150 2020 Questionnaire No 1, Question 38: France.
- 151 2020 Questionnaire No 1, Question 38: France.
- 152 2020 Questionnaire No 1, Question 38: Canada.
- 153 2020 Questionnaire No 1, Question 38: Belgium.
- 154 2020 Questionnaire No 1, Question 38: Canada, Mauritius, New Zealand.
- 155 “32. In relation to in-family adoption, the SC:
- a. recalled that in-family adoptions fall within the scope of the Convention;
 - b. recalled the need to respect the safeguards of the Convention, in particular to counsel and prepare the prospective adoptive parents;
 - c. recognised that the matching process might be adapted to the specific features of in-family adoptions;
 - d. recommended that the motivations of all parties should be examined to determine whether the child is genuinely in need of adoption;
 - e. recognised that it is necessary to undertake an individualised assessment of each child’s situation and it should not be automatically assumed that either an in-country or in-family placement is in a child’s best interests.”