

**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*

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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.<sup>1</sup> 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".<sup>2</sup>

A detailed chronology of the background to this project is available on the website of the Hague Conference < [www.hcch.net](http://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 Arrangements<sup>3</sup> ("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](mailto: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.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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): **Sweden**

**Information for follow-up purposes**

Name and title of contact person: Legal Adviser Linnéa Brossner

Name of Authority / Office: Ministry of Justice, Division for Family Law and the Law of Contracts, Torts and Personal Property

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## 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 Swedish Tax Agency

2. Please briefly describe the procedure for birth registration in your State, indicating whether such registration is mandatory<sup>4</sup> 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 Swedish Tax Agency registers all births on Swedish territory as well as births given abroad by mothers who are registered in the Swedish population register. The Swedish hospital where the child is born is obliged to report the birth to the Tax Agency as soon as possible. The midwife will report the birth to the Swedish Tax Agency using a computer and therefore new born children can normally be registered within minutes. If a child is born abroad by a mother registered in the Swedish population register or not born in a hospital, the legal parents are obliged to report the birth to the Swedish Tax Agency within a month.

Birth registration and registration in the Swedish population register is in most cases the same thing, but there are exceptions. The population register is the basic register of the population of Sweden and contains information about who live in the country and where they live. Name, identity and family relationships are also registered in the population register. If either the birth mother or her husband is registered in the Swedish population register the child will automatically be registered in the population register at birth. If not, the birth of the child and the birth mother will be noted and the registration in the population register may take place at a later stage or not at all. People who move to Sweden will be registered in the population register if they have a right to residence and are supposed to live in Sweden for a year or more. People who move from Sweden will be unregistered if they are supposed to live abroad for a year or more.

3. Please explain what proof (evidence), if any, of legal *maternity* is required by the authorities in your State in order to register a putative<sup>5</sup> 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

<sup>4</sup> 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."

<sup>5</sup> "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.

- 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

If the child is not born in a hospital the parents are obliged to report the birth to the Swedish Tax Agency.

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

Please tick all which apply:

- a)  Formal acknowledgement<sup>6</sup> 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

If the parents are not married, paternity is usually established through acknowledgement (please, see question 11 for the procedure of acknowledgement).

- 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

If the parents are married, the mother's husband is presumed to be the child's father and is therefore registered as the child's father in the the Swedish population register without any further evidence.

5. What are the legal consequences in the internal law of your State of registering persons in the State records<sup>7</sup> 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?

The Swedish Tax Agency may issue an injunction to obtain a report of a child's birth. Refusing to comply may lead to a default fine.

A person who, by giving incorrect notice to the authorities or by failing to give notice, appropriates for himself or another a false family status or deprives another of his rightful family status, shall be sentenced for tampering with family status to a fine or imprisonment for at most two years (Chapter 7 Section 3 Penal Code).

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

Yes

<sup>6</sup> 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.

<sup>7</sup> 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.

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:<sup>8</sup>

**B. Establishment of legal parentage**

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

- 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

In Swedish law, there is only one provision that regulates who is the legal mother of a child. The provision governs cases of egg donation in case of in-vitro fertilisation, ie. when the woman who gives birth to the child is not the genetic mother of the child. The provision clarifies that it is the woman who gives birth to the child who is considered as the child's legal mother (Chapter 1 Section 7 Children and Parents Code). In other cases, legal maternity is determined by a non codified legal presumption according to which the woman who gives birth to the child is considered as the legal mother of the child.

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:

On application of the husband or the child, the court shall declare that the husband is not the father of the child if 1) it is established that the mother had sexual intercourse with a man other than her husband during the period in which the child could have been conceived and, having regard to all the circumstances, it is possible that the child was fathered by the other man, 2) in view of the genetic characteristics of the child or other special circumstances, it can be considered certain that the husband is not the child's father, or 3) the child was conceived prior to the marriage or while the spouses were living apart and it is not probable that the spouses had sexual intercourse with one another during the period in which the child could have been conceived (Chapter 1 Section 2 Children and Parents Code).

If the mother was artificially inseminated or if the mother's egg was fertilized outside her body with the consent of her husband and, having regard to all the circumstances, it is probable that the child was consieved as a result of the insemination or fertalization referred to, for the purposes of 1-3 above the husband

<sup>8</sup> 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*.

shall be regarded as the father of the child (Chapter 1 Section 6 and 8 Children and Parents Code).

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 0 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

The application should be made to the district court. Where a social welfare committee has a duty to ensure that paternity is determined, proceedings shall be commenced in the court in the committee's area. In cases other than those previously referred to, proceedings shall be commenced in the court in which the man would defend civil cases in general, or, if the proceedings are being brought against more than one man, in which one of them would defend such cases (Chapter 3 Section 7 Children and Parents Code).

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

The child or the social welfare committee (Chapter 3 Section 5 Children and Parents Code)

- 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"<sup>9</sup> 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:

1) There are not any restrictions.

2) An acknowledgement of paternity shall be made in writing and be witnessed by two persons. The acknowledgement shall be accepted in writing by the social welfare

<sup>9</sup> See note 6 above.



committee and by the mother or a custodian specially appointed for the child. If the child has attained full age or no one has the custody of the child, the acknowledgement shall instead be accepted by the child himself or herself. The social welfare committee may accept an acknowledgement only if it can be assumed that the man is the father of the child. Paternity may be acknowledged even before the child is born (Chapter 1 Section 4 Children and Parents Code).

3) Please, see answer above.

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:

No.

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

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

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

In particular, please state whether it is possible for an individual to acknowledge legal maternity to representatives of your State authorities in another country (*e.g.*, 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:  
If artificial insemination has been performed or if the mother's egg has been fertilized outside her body under the Genetic Integrity Act (2006:351) with the consent of her spouse, registered partner or cohabitee and, having regard to all the circumstances, it is probable that the child was conceived as a result of the insemination or fertilization referred to, the woman who gave her consent shall be regarded as the parent of the child. The parentage is established by judgement or acknowledgement (Chapter 1 Section 9).  
c)  Adoption: Married persons of same-sex may adopt a child under the same conditions as married persons of different sexes.  
d)  Other: By acknowledgement (please, see answer above, same procedure as for two persons of different sexes).

**C. Establishment of legal parentage where assisted reproductive technology ("ART")<sup>10</sup> has been used<sup>11</sup>**

16. Is ART permitted in your State?

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

ART may only be carried out if the intended parents are

1. married, cohabitees or registered partners, and
2. if the egg or the sperm or both comes from the intended parents (Chapter 6 Section 1, Chapter 7 Sections 1 and 3 Genetic Integrity Act [2006:351]).

Further to chapter 6 and 7 Genetic Integrity Act:

For ART with a gamete from a third person the doctor shall review whether, considering the medical, psychological and social circumstances of the spouses, registered partners or cohabitees, it is appropriate for ART to take place. The ART may only be carried out if it can be assumed that the prospective child will grow up under good conditions. If ART is refused, the spouses, registered partners or cohabitees may request that the National Board of Health and Welfare review the matter.

Without the permission of the National Board of Health and Welfare, insemination with sperm from a man to whom the woman is not married or with whom the woman does not cohabit may not be carried out other than at publicly financed hospitals. Such insemination shall be carried out under the supervision of a doctor specialising in gynaecology and obstetrics. The same applies to fertilisation of an egg from a woman into whose body the egg is to be introduced, using sperm from the woman's husband or cohabitee. What has been stated also applies to the introduction of the egg into the woman's body.

<sup>10</sup> 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.

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

If the egg is not from the woman or if the sperm is not from the woman's husband or cohabitee, fertilisation and introduction of the egg may only take place at hospitals which have set up units for training doctors under an agreement between the universities conducting medical training programmes and the county councils concerned.

- 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 Genetic Integrity Act (2006:351)  
 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.): Please, see answer above under question 16.  
 b)  Who may perform ART services: Please, see answer above under question 16.  
 c)  The regulation of medical or other institutions which perform ART services (*e.g.*, the licensing of clinics or hospitals): Please, see answer above under question 16.  
 d)  Which ART services may be performed: Please, see answer above under question 16.  
 e)  Whether egg donation is permitted and, if so, under which conditions: Please, see answer above under question 16.  
 f)  Whether sperm donation is permitted and, if so, under which conditions: Please, see answer above under question 16.  
 g)  The costs of ART (including the amount paid to any gamete donors): The costs, the number of fertilization attempts and compensation for costs related to egg/sperm donation varies between the different regional councils.  
 h)  The anonymity of gamete donors: Data concerning the donor shall be recorded in a special journal. This shall be retained for at least 70 years. The data is classified information according to chapter 25 section 1 of the Public Access to Information and Secrecy Act (2009:400).  
 i)  The right of the child to know his / her genetic or birth origins: A person conceived through ART using a gamete from a third person has the right to access the data on the donor recorded in the hospital's special journal, if he or she has reached sufficient maturity. If a person has reason to assume that he or she was conceived through such fertilisation, the social welfare committee is obliged, on request, to help this person find out if there are any data recorded in a special journal.  
 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

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

The above position results from both legislation and a non codified legal presumption (please, see answer above under question 8).

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: If the husband does not formally consent to the treatment the presumption of paternity may be rebutted.
- 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:

The above position results from legislation (Children and Parents Code).

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

Paternity can not be determined by the judgement of a court for a man who is a sperm donor under The Genetic Integrity Act (2006:351) (Chapter 1 Section 5 Children and Parents Code). A sperm donor can however acknowledge the paternity of a child (please, see answer under question 11 for the procedure of acknowledgement).

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:

If artificial insemination has been performed or if the mother's egg has been fertilized outside her body under The Genetic Integrity Act (2006:351) with the consent of her spouse, registered partner or cohabitee and, having regard to all the circumstances, it is probable that the child was conceived as a result of the insemination or fertilization referred to, the woman who gave her consent shall be regarded as the parent of the child. The parentage is established by judgement or acknowledgement (Chapter 1 Section 9, also please see answer under question 15b and d).

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

In year 2010, there were 14 541 IVF-treatments, which led to the birth of 3 882 babies. There are no statistics available after year 2010.

## D. Surrogacy arrangements

### **Regulation of surrogacy**

24. Does your State permit surrogacy arrangements?

- a)  Yes, *all* forms of surrogacy arrangements are permitted:
- i.  As a result of express legislation or rules: please specify
  - ii.  By default, because surrogacy is unregulated in internal law.  
Go to **Question 26**.
- b)  No, any form of surrogacy is expressly prohibited by law: please specify, including any sanctions for breach of this prohibition:  
ART may only be carried out if the intended parents are
1. married, cohabitantes or registered partners, and
  2. if the egg or the sperm or both comes from the intended parents (Chapter 6 Section 1, Chapter 7 Section 1 and 3 Genetic Integrity Act [2006:351]). A person who carries out insemination habitually or for profit in contravention of the provisions of the act or under the circumstances stated provides sperm for such insemination shall be sentenced to a fine or imprisonment for up to six months (Chapter 8 Section 4). A person who violates Chapter 7 Section 3, habitually or for profit, shall be sentenced to a fine or imprisonment for up to six months. Chapter 7 Section 3 states that "(a) fertilised egg may be introduced into a woman's body only if the woman is married or cohabiting and the spouse or cohabitee gives written consent to this. If the egg is not the woman's own, the egg shall have been fertilised using the husband's or cohabitee's sperm".
- Go to **Question 26**.
- c)  It depends upon the nature of surrogacy arrangement (*e.g.*, commercial surrogacy arrangements are prohibited): please specify
- d)  Other: please specify

Please provide any clarification, where necessary:

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

- a) Are the parties to the surrogacy arrangement required to obtain State approval of the arrangement *prior* to conception?
- Yes, pre-approval by the relevant State authorities is required. Please explain the procedure:
  - No, pre-approval is not required – the rules only regulate legal parentage following the birth of the child. Please explain the procedure:
  - Other: please specify
- b) Please state whether the following aspects of the surrogacy arrangement are regulated in the rules / legislation:

Please tick all which apply:

- i.  Who may be intending parents<sup>12</sup> to an arrangement, including:
- a.  Nationality, domicile or residency requirements:<sup>13</sup>  
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:<sup>14</sup>  
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,<sup>15</sup> etc.: please specify
- iv.  Which medical institutions or clinics may facilitate a surrogacy arrangement (where medical intervention is necessary for the type of surrogacy arrangement being undertaken) and the level of financial remuneration which may be paid for these services: please specify
- v.  Which other bodies or persons may facilitate a surrogacy arrangement (*e.g.*, by acting as an intermediary and undertaking tasks such as advertising for surrogate mothers, “matching” surrogate mothers with intending parents, organising certain aspects of the arrangements for the intending parents, etc.) and whether such bodies or persons may receive financial compensation for their services: please specify
- vi.  Whether financial remuneration can be paid to the surrogate mother:
- a.  No financial remuneration at all is permitted
  - 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

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<sup>12</sup> 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.

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

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

<sup>15</sup> See the **Glossary** for the definition of the terms used in this paper.

- 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:

There are not any specific provisions for establishing maternity, paternity or parentage when a child is born following a surrogacy arrangement. Thus the woman who gives birth to the child is the legal mother and the husband of the woman who gives birth is presumed to be the legal father. This position results from legislation (Children and Parents Code).

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

The birth mother will be registered as the mother of the child. The child will have to be adopted by the intended mother for her to be registered as the child's legal mother. The intended mother will then be registered as the child's adoptive mother.

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

Proceedings may be commenced in the court in the place in which the child habitually resides or, if the child has died, in the court with jurisdiction to consider any dispute concerning inheritance of the child's estate (Chapter 3 Section 3 Children and Parents Code).

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

When paternity has been established by operation of law and the man who is regarded as the father of the child wishes to obtain a declaration that he is not the child's father he can commence proceedings for such a declaration. If the man has died and if he neither lived with the child on a permanent basis nor acknowledged after the birth of the child that the child was his, the wife of the deceased and any person who, together with or immediately after the child, is entitled to inherit from the man shall be entitled to commence proceedings for a declarations that the man is not the father of the child. If, in addition to his wife, the man leaves secondary successors, each of them shall be entitled to



commence proceedings. The child can also commence proceedings (Chapter 3 Sections 1-2 Children and Parents Code).

If it is found that a man making an acknowledgement of paternity is not the child's father, the court shall (on application) declare the acknowledgement to be without effect with respect to him (Chapter 1 Section 4 Children and Parents Code). The law does not regulate who may commence such proceedings. According to case law the legal father, the child and in some cases the legal father's heirs has the right to commence proceedings.

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:  
 No  
 In certain situations: please explain

When the paternity has been established by operation of law there shall be no right for the legal father's heirs to commence proceedings if, at the time of the man's death, more than one year has elapsed since proceedings were commenced against him on the grounds that he was the father of the child and he was served with notice of those proceedings, or if more than one year has elapsed since a claim was made against the man's personal representative or representatives on the same grounds (Chapter 3 Section 1 Children and Parents Code).

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

Legal maternity is in most cases determined by a non codified legal presumption according to which the woman who gives birth to the child is considered as the legal mother of the child. Thus there is no provision in Swedish law on what grounds legal maternity can be challenged. However according to case law a child has been allowed to commence proceedings to obtain that a particular woman is not his or her mother when immigration authorities had registered a particular woman as the mother of the child when in fact she was not the biological mother (see NJA 2007 p. 684 and Chapter 13 Section 2 Code of Judicial Procedure).

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

On the basis that the legal father is not, in fact, the genetic father of the child. However if the mother was artificially inseminated or if the mother's egg were fertilized outside her body with the consent of her husband or cohabitee and, having regard to all the circumstances, it is probable that the child was conceived as a result of the insemination or fertilization referred to the husband or cohabitee shall be regarded as the father of the child even if he, in fact, is not the genetic father of the child. In these cases the husband or cohabitee can only challenge legal paternity on the grounds that he has not given his consent to insemination or fertilization and/or it is not probable that the child was conceived as a result of the insemination or fertilization. (Chapter 1 Section 6 and 8 Children and Parents Code).

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

The Swedish Tax Agency amends the record in the Swedish population register but the original record is saved and can be seen. The changes are done electronically.

#### **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:

A child acquires Swedish citizenship by birth if

1. the mother is a Swedish citizen,
2. the father is a Swedish citizen and the child is born in Sweden,
3. the father is a Swedish citizen and is married to the child's mother,
4. the father is deceased but at the time of his death was a Swedish citizen and the child is born in Sweden, or
5. the father is deceased but at the time of his death was a Swedish citizen and married to the child's mother.

Legal parentage is regulated in the Children and Parents Code

- 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:
- d)  If the child would otherwise be "stateless" (*i.e.*, without the nationality of any other State):<sup>16</sup> please specify

Any foundling discovered in Sweden shall be considered to be a Swedish citizen until any indication to the contrary is discovered. A child that was born in Sweden and has been stateless since birth acquires Swedish citizenship on notification by the custodian or custodians of the child if the child holds a permanent residence permit and is domiciled in Sweden. Notification must be made before the child reaches the age of five. A child that does not hold Swedish citizenship acquires Swedish citizenship on notification by the custodian or custodians of the child if the child 1. holds a permanent Swedish residence permit, and 2. has been domiciled in Sweden for three years if the child is stateless.

- e)  Other: please specify

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

A child under twelve years of age who is adopted by a Swedish citizen becomes a Swedish citizen on adoption if 1. the child is adopted in Sweden, Denmark, Finland, Iceland or Norway, or 2. the child is adopted by virtue of a foreign adoption decision which has been approved or is otherwise valid in Sweden under the Act on International Legal Procedures relating to Adoption (1971:796) or which is valid under the Act concerning Sweden's Accession to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1997:191). When a Swedish man marries a woman who is an alien, any child of theirs that was born before their marriage and has not acquired Swedish citizenship under Section 1 (i.e. by descent automatically at birth) becomes a Swedish citizen if the child is unmarried and under eighteen years of age. A child that was born abroad and has not acquired Swedish citizenship under Sections 1 (acquisition by descent automatically at birth) or 4 (marriage of parents), but whose father has held Swedish citizenship since the birth of the child, acquires Swedish citizenship on notification by the father of the desire to that effect before the child reaches the age of eighteen. The provisions concerning a father also apply to a parent under Chapter 1 Section 9 of the Children and Parents Code. The child's custodian must consent to the acquisition of Swedish citizenship. A child that does not hold Swedish citizenship acquires Swedish citizenship on notification by the custodian or custodians of the child if the child 1. holds a permanent Swedish residence permit, and 2. has been domiciled in Sweden for five years. In a decision concerning naturalisation it shall also be decided whether the applicant's unmarried children under the age of eighteen shall acquire Swedish citizenship.

#### UPDATE

Changes to the Swedish Citizenship Act entered into force 1 April 2015. The rules regarding automatic acquisition of citizenship at birth changed so that a child always acquires Swedish citizenship at birth if one of the child's parents is a Swedish citizen.

Children and young people's opportunities to obtain Swedish citizenship through a simplified notification procedure are facilitated through shorter requirements for domicile in Sweden. The required residence period for children is shortened from 5 years to 3 years, and for stateless children from 3 years to 2 years. A permanent residence permit is still required.

The time-periods for notification of citizenship for stateless children and young persons have been extended. Stateless children born in Sweden can now submit their notification before turning 18 years old, instead of the previous age limit at 5 years old. Young persons above 18 years, but under 21 years (previously 20 years) with a permanent residence permit and residence since 13 years of age (15 years of age for stateless) can also notify the state of their intent to become Swedish citizen.

For more information, see <http://www.migrationsverket.se/English/Private-individuals/Becoming-a-Swedish-citizen/Citizenship-for-children.html>.

## **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:

As of 1 July 2013 a person who changes sex does no longer have to be sterilized. Thereby a person who changes sex can be a biological parent.

The government decided in June 2013 to appoint an inquiry to consider ways to expand the possibilities for involuntary childless people to become parents. The assignment will include proposing a regulation entailing single people access to assisted fertilisation in the same extent as for married couples and cohabitees and to consider whether surrogacy should be allowed in Sweden, with the starting point that it in that case should be altruistic. The assignment will also include to consider whether egg donation within a marriage or cohabitation should be allowed and whether the woman in a same-sex marriage or cohabitation who has not given birth to the child should be acknowledged as parent of the child when the assisted fertilisation has occurred abroad or privately. The part of the assignment relating to single persons access to assisted fertilisation should be reported no later than 14 May 2014. The remaining parts of the assignment should be reported no later than 24 June 2015.

The Swedish Citizenship Inquiry submitted proposals for certain amendments to the Act on Swedish Citizenship in April 2013. The proposals include, *inter alia*, draft provisions on automatic acquisition of citizenship, under certain conditions, by children born in Sweden (*jus soli*). The proposals, including a summary in English, are available at: <http://www.regeringen.se/sb/d/16979/a/215710>.

From 1 January 2014, children born outside of Sweden by mothers registered in the Swedish population register will not become part of this register at birth. The child will instead be registered in the Swedish population register when residing in Sweden.

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,<sup>17</sup> regardless of the place of birth of the child
- e)  Other, please specify:

<sup>17</sup> As to which, see **Question 38** above.

The Swedish Tax Agency registers all births of children born on Swedish territory and all births of children born abroad by mothers registered in the Swedish population register, regardless of nationality. As explained under question 2, birth registration and registration in the Swedish population register is in most cases the same thing, but there are exceptions. If either the birth mother or her husband is registered in the Swedish population register the child will automatically be registered in the population register at birth. If not, the birth of the child and the birth mother will be noted and the registration in the population register may take place at a later stage (for example after paternity is established and the father is registered in Sweden) or not at all. If the new born child is not registered in the Swedish population register the Swedish Tax Agency will not register family relationships. As explained under question 2 only persons residing in Sweden are to be registered in the population register. As a consequence, the Swedish Tax Agency will only register family relationships at birth for children residing in Sweden. According to Section 2 International Paternity Act (1985:367) Swedish law is to be applied when a child at birth domiciled in Sweden.

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*?<sup>18</sup>

- 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

The Swedish Tax Agency will only register family relationships at birth for children residing in Sweden. According to Section 2 International Paternity Act (1985:367) Swedish law is to be applied when a child at birth domiciled in Sweden.

43. Have your State authorities ever encountered difficulties resulting from a child's birth being registered in two (or more) States (e.g., the child is registered in your State as the State of birth, and in the State of the parents' nationality and the registers conflict)?

- Yes: please explain the circumstances of the case(s) and the difficulties which arose:

Children have been registered in the Swedish population register with certain personal information and at the same time in another State with other personal information, another name for example.

- No

44. Are there any bilateral or multilateral<sup>19</sup> 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:

<sup>18</sup> 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.

<sup>19</sup> 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.ciec1.org](http://www.ciec1.org) >).

please explain

There are no formal agreements but this may occur in practice. When the child has another nationality, the Swedish Tax Agency will, as the name of the child is registered, notify the embassy of the State in question. The parents themselves can also communicate this information to the embassy using a personal registration certificate issued by the Swedish Tax Agency.

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

There are no formal agreements but this may occur in practice. The Swedish Tax Agency does not automatically communicate this information to the relevant authorities in the State of the child's birth. The parents can however themselves communicate this information using a personal registration certificate issued by the Swedish Tax Agency.

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?<sup>20</sup>

Yes: please specify

A man who is or has been married to the child's mother is to be regarded as the child's father, when it follows from the law of the State where the child at birth was a resident or, if no one is to be regarded as the child's father under that law, when it follows from the law in a State where the child at birth became citizen. If the child at birth domiciled in Sweden, the question shall always be judged according to Swedish law (Section 2 International Paternity Act [1985:367]).

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

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

Yes: please specify

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

Not applicable: it is not possible to establish legal parentage by agreement

### ***By voluntary acknowledgement***

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

Please tick all which apply:

a)  When the child is (habitually) resident in your State: please specify

<sup>20</sup> 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.

- 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

If the acknowledgement was made abroad it is - even if it does not comply with Swedish law - considered formally valid if it satisfies the formal requirements of the foreign State (Section 3 International Paternity Act [1985:367]).

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

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

#### ***Birth certificates***

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

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 apostille<sup>22</sup>); and
- d) any grounds of *non*-recognition.

A birth certificate will not be recognised as validly establishing legal parentage.

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)*.<sup>23</sup>

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.

A foreign acknowledgment of paternity applies in Sweden, if it is valid under the law of the State where the child or the one who provided the acknowledgement was domiciled or in a State where any of them were citizens.

The acknowledgement shall, even if it does not follow from the first paragraph, be formally valid if it satisfies the formal requirements of the law of the State where the acknowledgment was made.

The foreign acknowledgement does not apply in Sweden

1. if it is contrary to one in Sweden valid decision in a trial that began before the acknowledgement was made,
2. if it is contrary to an earlier, in Sweden valid acknowledgement of paternity in another form than a decision of a court,
3. if it in Sweden is an ongoing trial of paternity that has begun before the acknowledgement was made,
4. if it abroad is an ongoing trial of paternity that has begun before the acknowledgement was made which is likely to lead to a decision valid in Sweden, or
5. if the acknowledgement is manifestly incorrect (Section 8 International Paternity Act [1985:367]).

<sup>21</sup> 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).

<sup>22</sup> 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](http://www.hcch.net) > under "Apostille Section".

<sup>23</sup> 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).



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:

A provision of a foreign law may not be applied and a decision of a foreign court or a foreign acknowledgement of paternity does not apply in Sweden, where it would be manifestly incompatible with the Swedish legal system to enforce the provision or to recognize the decision or acknowledgement (Section 12 International Paternity Act [1985:367]).

### **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.<sup>24</sup>

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.

A final judgement of a foreign court in which paternity has been established or terminated applies in Sweden if, with respect to a party's habitual residence or nationality or other connexion, there were reasonable grounds for the action to be tried in the foreign State.

The foreign judgement does not apply in Sweden,

1. if the defendant, in cases where he or she has not stated his or her answer, have not been informed of the action brought in sufficient time to respond to the matter or if the defendant otherwise would not have had a reasonable opportunity to present his or her case in the foreign proceedings;
2. if the decision is contrary to a Swedish judgement,
3. if the decision is contrary to one in Sweden valid foreign judgement in a trial that begun earlier than the other foreign trial,
4. if the decision is contrary to one in Sweden valid acknowledgement of paternity in another form than a decision of a court and the acknowledgement was made before the foreign trial began,
5. if it in Sweden is an ongoing trial of paternity, or
6. if it abroad is an ongoing trial of paternity that has begun earlier than the other foreign proceedings which is likely to lead to a judgement valid in Sweden (Section 7 International Paternity Act [1985:367]).

The question whether a judgement referred to in Section 7 applies in Sweden can be examined by Svea Court of Appeal, on application by a person who was a party to the foreign proceedings and whose right the issue concerns. If such an issue occurs before a Swedish authority other than a court, the authority may also, if necessary, request such review by the Court of Appeal.

Before the Court of Appeal examine the issue, the opposing party shall be given an opportunity to state his or her answer to the application, if it can be done. If the Court of Appeal's examination was requested by an authority, the same applies to everyone who has been a party to the foreign proceedings and who may be a party also in the Court of Appeal (Section 9 International Paternity Act [1985:367]).

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:

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<sup>24</sup> *Ibid.*

A provision of a foreign law may not be applied and a decision of a foreign court or a foreign acknowledgement of paternity does not apply in Sweden, where it would be manifestly incompatible with the Swedish legal system to enforce the provision or to recognize the decision or acknowledgement (Section 12 International Paternity Act [1985:367]).

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:

When the legal parentage established abroad is recognised in Sweden the parents are considered legal parents of the child for all purposes.

**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

Swedish court has jurisdiction in cases of paternity,

1. if the child is habitually resident in Sweden,
2. if an action is brought against a man who is habitually resident in Sweden or against several men who all are habitually resident here or
3. if, in other cases having regard to the child's, the mother's or the man's connexion to Sweden, there are special reasons for the case to be heard in Sweden (Section 4 International Paternity Act [1985:367]).

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

An action before a Swedish court on the establishing of paternity or on the termination of paternity established by operation of law, should be examined according to the law of the State where the child habitually resides when the case is decided in the first instance.

The question whether paternity established by operation of law shall be deemed terminated by an acknowledgement that another man is the child's father is assessed according to the same law applied for the acknowledgement (Section 5 International Paternity Act (1985:367)).

If paternity has been established by acknowledgement, an action before a Swedish court for the annulment of the acknowledgement shall be examined under the law or the laws determining the validity of the acknowledgement in this country. An annulment may always be granted according to Swedish law, if the action is based on the party making the acknowledgment is not the father of the child (Section 6 International Paternity Act (1985:367)).

Swedish law applies in case of acknowledgement and the annulment of an acknowledgement of such parentage referred to in Chapter 1 Section 9 Children and Parents Code (Section 6 International Paternity Act [1985:367]).

Please state whether one or more of these laws will be applied (possibly in a "cascade"), with a view to favouring the establishment of legal parentage: Please, see answer above.

#### **E. "Cross-border reproductive care"<sup>25</sup> and the consequences for legal parentage**

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

- Yes: please explain  
 No  
 Other: please explain

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

- Yes: please provide details

Single women may not use ART in Sweden in order to become parents. Thus single women occasionally travel abroad in order to become parents through ART. Swedish couples also occasionally turn to a clinic abroad. According to Swedish legislation, the paternity of a child shall always be determined. This is, in most cases, not possible when a single mother was inseminated or fertilized abroad, why the Social Welfare Committees investigation of paternity is closed down. Donors in some countries have the option to remain anonymous, which means that a child conceived by ART abroad has no opportunity to obtain information about its origin.

- 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

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<sup>25</sup> 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).

past five years, or whether any initiatives are underway (e.g., in government, before Parliament or before the courts) to change the law in future:

The government decided in June 2013 to appoint an inquiry to consider ways to expand the possibilities for involuntary childless people to become parents. The assignment will, inter alia, include considering whether it, in order to eliminate legal uncertainty, is a need for special rules for children in Sweden conceived by surrogacy abroad, i.g. PIL and co-operation rules concerning the establishment, recognition and contestation of legal parentage.

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 Arrangements<sup>26</sup> ("ISAs")**

*This Part asks for information regarding the experience of State authorities with ISAs. It is divided into two sections:<sup>27</sup>*

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

**A. Incoming cases<sup>28</sup>**

**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:

<sup>26</sup> See the **Glossary** for the definition of the terms used in this paper.

<sup>27</sup> 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.

<sup>28</sup> 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.

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 State<sup>29</sup> 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: According to a survey of municipalities conducted in the fall of 2012, the Social Welfare Committees dealt with approximately 100 cases of surrogacy from 2007 to 2012.

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

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

India, United States of America, Ukraine, Russia and Georgia.

### ***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:

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

- a) Enter your State with a child born abroad as a result of an ISA:  
Before entry into Sweden, the child must be holder of a visa, a residence permit or must have been granted Swedish citizenship. This procedure can only be initiated from the state where the child is born. The child can become a Swedish citizen if the father is a Swedish citizen and by a notification to the Swedish authorities for the child to become a Swedish citizen (before the child reaches the age of eighteen). The child's custodian must consent to the acquisition of Swedish citizenship. The paternity must also be properly established. If the child is a Swedish citizen it must have a valid passport.
- b) Reside permanently in your State with the child:  
The child must have permanent residence permit or become a Swedish citizen. There is no specific regulation for entry or stay concerning children whose birth is a result of an ISA.
- c) Have their legal parentage recognised (or established) under the law of your State (*if* this is possible):  
No special provisions for recognising or establishing parentage exists in these cases. Legal parentage can only be established when the provisions described in sections B-D allows it. Thus it is not certain that legal parentage can be established for the intending parents.

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

- a) not possible to estimate  
b) not possible to estimate  
c) not possible to estimate

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

If an acknowledgement or a court decision that can be recognised in Sweden as validly establishing the legal parentage can be presented the process is normally faster.

- iii.  Whether the child(ren) is / are genetically related to one or both of the intending parents: please explain

If the child is genetically related to the intending father the legal paternity may be established.

- iv.  The nationality of the intending parents: please explain  
v.  Any other factor: please explain

The process which must be undertaken is normally faster if legal parentage can be established in a manner that is valid in Sweden. Legal paternity may be established if the intended father is the child's genetic father.

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:

India - information about the mother can be missing on the birth certificate.

Such a certificate can only be of value if it is issued in a state where a properly established paternity is a requirement for issuing the certificate.

- 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:

United States of America, Russia

- 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: Please, see answer under a) above.

- 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 Convention<sup>30</sup> was attempted by either State<sup>31</sup>:

- f)  Other: please specify

Medical birth certificates from Russia with the name of the birth mother and her renouncement of parentage and custody.

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

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:

As far as we know the child is able to travel in to Sweden and reside there with the intending parents and the intended parents are recognised as the legal parents of the child. The process is however not fast and easy and the outcome is not guaranteed.

- 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:

<sup>30</sup> 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](http://www.hcch.net) >, under "Intercountry Adoption Section".

<sup>31</sup> 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.

### ***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)
- h)  Other: please explain Swedish Tax Agency when it comes to registering the child in the Swedish population register. Social Welfare Committee.

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:

The surrogate mother is regarded as the legal mother. It can be difficult to determine whether paternity has been established.

In Russia, India and the United States of America it may be difficult to get information about the birth mother.

- 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

We do not have any information about the costs for an ISA.

### **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:

The surrogate mother is regarded as the legal mother. It can be difficult to determine whether paternity has been established.

Difficulties when the birth certificates do not indicate the birth mother. The birth mother is to be registered as the legal mother of the child in the Swedish population register.

- b)  The nationality of children born to ISAs:  
The nationality of the child cannot be determined when it is uncertain who the legal parents are.
- 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:

ISA is a relatively new phenomenon and is not regulated in Swedish law. All aspects of ISA are therefore troubling. For Swedish authorities a) is however the most troubling today followed by b) and c).

### **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:

The government decided in June 2013 to appoint an inquiry to consider ways to expand the possibilities for involuntary childless people to become parents. The assignment will inter alia include considering whether it, in order to eliminate legal uncertainty, is a need for special rules for children in Sweden conceived by surrogacy abroad, i.g. PIL and co-operation rules concerning the establishment, recognition and contestation of legal parentage. It will also include considering what information is necessary for authorities and the public to gain knowledge about the meaning of the Swedish legislation

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

**B. Outgoing cases**<sup>32</sup>

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

***Basic empirical data***

71. Do you have any information concerning:

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

Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

No information is available

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

Yes – please provide any figures available:

Pre-2009

2009

2010

2011

2012

2013 (so far)

No information is available

If you have provided any figures above, please comment upon whether you consider that these figures reflect the true number of Outgoing cases of ISA involving your State<sup>33</sup> 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:

<sup>32</sup> 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.

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

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 undertake an ISA in your State (*e.g.*, where this law forbids surrogacy arrangements).<sup>34</sup>

- 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?

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<sup>34</sup> *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.

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 regard<sup>35</sup>
- f)  Other: please specify

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

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

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

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

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

Please tick all which apply:

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

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

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

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<sup>35</sup> 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".

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;

In relation to Denmark, Finland, Island och Norway the Act (1979:1001) on recognition of Nordic judgements and acknowledgements of paternity applies.

- b) Any matters specifically related to surrogacy arrangements;

No.

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:

Sweden believes that the issue whether the Hague Conference should begin work in this field is somewhat premature. In any case Sweden prefer to wait to express any position on the issue until the final report has been presented in 2014.

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.*

Sweden believes that the issue whether the Hague Conference should begin work in this field is somewhat premature. In any case Sweden prefer to wait to express any position on the issue until the final report has been presented in 2014.

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,<sup>36</sup> which of the following general features *may* be desirable to include in such an instrument?

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

### **The child's legal status**

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

### **Safeguards**

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

<sup>36</sup> See **Part III** of the Questionnaire above.



- 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;<sup>37</sup> 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

Sweden believes that the issue whether the Hague Conference should begin work in this field is somewhat premature.

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

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

Sweden believes that the issue whether the Hague Conference should begin work in this field is somewhat premature.

92. Please provide any other comment(s) you may have concerning the possible future global regulation of matters contained within this Questionnaire:

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<sup>37</sup> 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.

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