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# Discussion Paper “Simple and Open Intercountry Adoptions”

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## Keys



HCCH materials and other resources



Possible ideas to be discussed at the SC Meeting

## ABBREVIATIONS<sup>1</sup>

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

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<sup>1</sup> Mainly used in tables, charts and endnotes.

## 1. BACKGROUND

1. This Discussion Paper aims to summarise the views of certain States on the current practices, challenges and good practices of some aspects of simple and open intercountry adoptions. Based on these views, the Paper presents some ideas and questions for reflection and discussion at the Fifth Meeting of the Special Commission (SC) on the practical operation of the *Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption* (1993 Adoption Convention or, simply, Convention) scheduled from 4 to 8 July 2022.<sup>1</sup>
2. The information presented is based on the responses of 66 Contracting Parties to the Convention to a Questionnaire on the practical operation of the 1993 Adoption Convention (2020 Questionnaire No 1),<sup>2</sup> as well as on the responses provided by Contracting Parties in their respective Country Profiles.<sup>3</sup> Where relevant, other information has also been included.
3. To facilitate the discussion at the SC, this Paper also includes references to the relevant articles of the 1993 Adoption Convention, as well as HCCH materials and Conclusions and Recommendations agreed on by Contracting Parties to the Convention in SC Meetings. However, this Paper is not intended to present a comprehensive overview of simple and open adoptions, as it mainly focuses on providing a common understanding of simple and open adoptions to facilitate the discussion at the SC on certain aspects of these types of adoptions.
4. The Paper is divided into the following sections:
  - simple adoptions (section 2); and
  - open adoptions (section 3).

## 2. SIMPLE INTERCOUNTRY ADOPTIONS

### 2.1. What is a simple adoption?

#### HCCH 1993 Adoption Convention

Article 2(2): “The Convention covers only **adoptions** which **create a permanent parent-child relationship**” (emphasis added).

#### HCCH Documents

“[...] [T]he Convention covers all kinds of adoptions that bring about the creation of a permanent parent-child relationship, no matter whether the pre-existing legal relationship between the child and his or her mother and father is ended completely (full adoption) or only partially (simple or limited adoption)” (Explanatory Report, para. 94).

- Explanatory Report: paras 94, 438, 474-486.
- GGP No 1: Chapter 8.8.8.

5. Adoptions have an impact on the **legal parent-child relationships between the child and:**
  - (a) **the adoptive parent(s):** the adoption creates a new permanent parent-child relationship between the child and the adoptive parent(s);
  - (b) **the birth parent(s):** the pre-existing parent-child relationship between the child and the birth parent(s) may *or may not* be terminated.
6. All intercountry adoptions which create a new permanent parent-child relationship between the child and the adoptive parent(s) (see (a) above) are covered by the Convention. The creation of this new parent-child relationship is the key feature to determine whether an adoption is covered by the Convention.
7. As long as the intercountry adoption creates this new parent-child relationship (see (a) above), the fact that the **pre-existing relationship between the child and their birth parents** is terminated or not (see (b) above) does not have an impact on the application of the Convention. If the parent-child relationship between the child and the birth parents is:
  - terminated, the adoption is usually known as being a **full** adoption;
  - not terminated, the adoption is usually known as being a **simple** adoption.
8. In other words, according to Article 2 of the Convention, both full and simple intercountry adoptions which create a new permanent parent-child relationship are covered by the Convention.
9. The Table below highlights the main similarities and differences between simple and full intercountry adoptions (please note that the Table below has been drafted only for the purposes of this Discussion Paper, in order to facilitate a common understanding for the discussions during the Special Commission meeting).

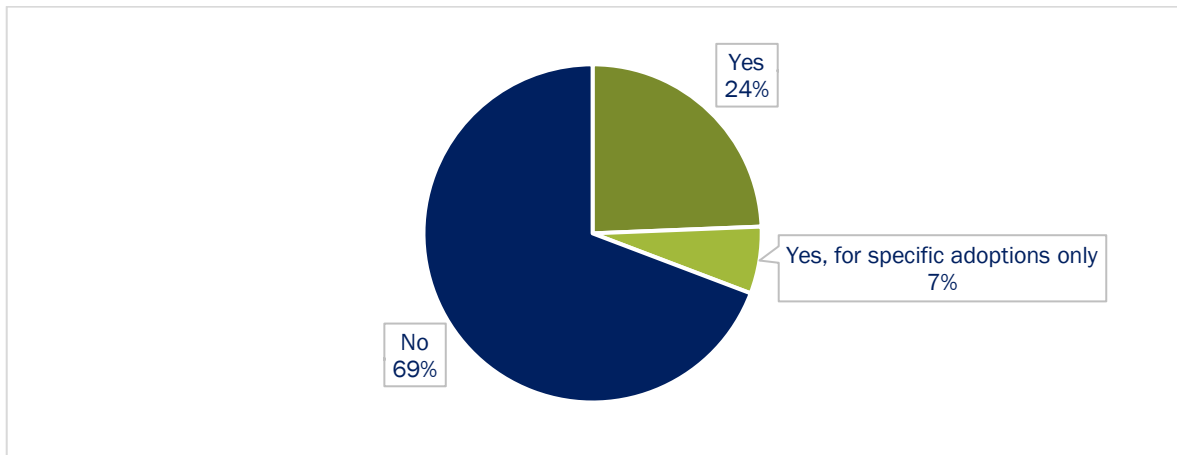
Table 1: main similarities and differences between a full adoption and a simple adoption<sup>4</sup>

	Simple adoption	Full adoption
1. Does the adoption <b>create a new permanent legal parent-child relationship</b> between the adoptee and the adoptive parents?	Yes	Yes
2. Does the adoption <b>terminate the pre-existing legal parent-child relationship</b> between the adoptee and their birth parents?	No	Yes
3. The child's legal parentage with their adoptive parents is ... the child's legal parentage with their birth parents.	... added to ...	... replacing ...
4. Who has <b>parental responsibility</b> for the adoptee?		
- the adoptive parents	Yes	Yes
- the birth parents	No	No

10. It is also important to note that simple adoption is *different* from “(legal) guardianship”: in the case of (legal) guardianship, the (legal) guardian is usually only *transferred parental responsibility* for the child, but *no legal parent-child relationship is created* between the adoptee and the (legal) guardian (while such a legal relationship *is* created in the case of a simple adoption) and the intention is that the child return to live with their parents at some point if possible (while the intention in a simple adoption is that the child lives with the adoptive parents).
11. Historically, States have permitted the following adoptions:
- only simple adoptions;
  - both simple and full adoptions;
  - only full adoptions.
12. Nowadays, most States only allow full intercountry adoptions (see section 2.2). In addition, several States where simple intercountry adoptions were possible in the past have decided to only allow full intercountry adoptions.
13. However, with the increasing awareness of the importance to know one's origin<sup>5</sup> and the research on the negative consequences of secrecy on individuals, authorities in a few States are considering whether and, if so, how they can promote the existence of simple adoptions, as a possible child protection measure, when it would be in the best interests of the child.<sup>6</sup> In addition, some groups of adoptees are also advocating that simple adoptions could suit their needs better than full adoptions.<sup>7</sup>

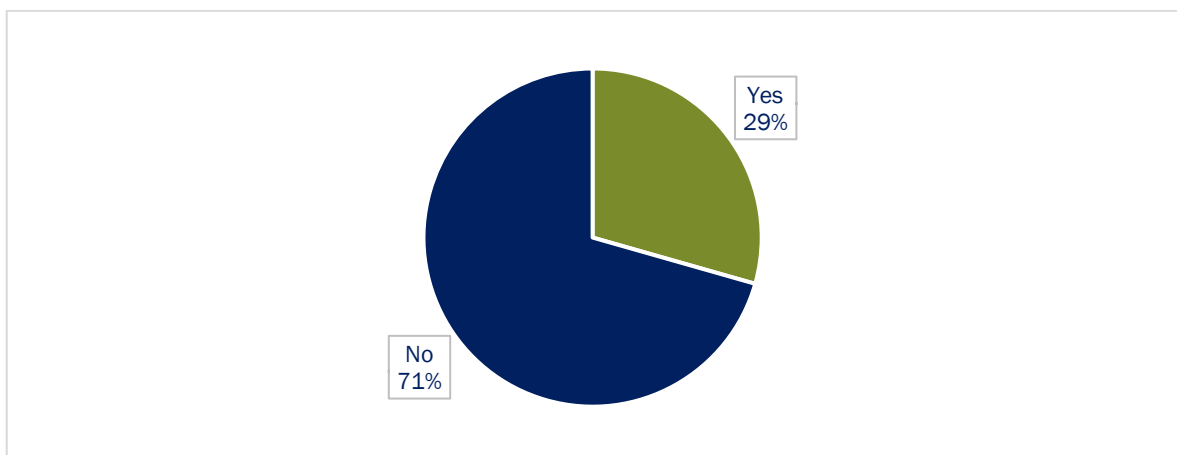
## 2.2. Simple adoptions in practice

Chart 1: Do States allow simple adoptions?<sup>8</sup>



14. While all Contracting Parties to the 1993 Adoption Convention seem to allow *full* adoption,<sup>9</sup> it would seem that approximately only one third of States allow *simple* adoption.
15. Some States permit simple adoptions but only for domestic adoptions and / or intrafamily adoptions.<sup>10</sup>
16. In practice, simple adoptions are not commonly used in intercountry adoptions.<sup>11</sup> If simple intercountry adoptions take place, it is mainly in intrafamily adoption cases.<sup>12</sup>

Chart 2: Do States which allow simple adoptions promote it?<sup>13</sup>



17. While States note that there is no particular profile of children adopted through a simple adoption,<sup>14</sup> they tend to promote simple adoptions for older children,<sup>15</sup> or children who still have a connection with their birth parents.<sup>16</sup>
18. Some challenges:
  - misunderstanding by PAPs of what is a simple adoption, what they entail and what are their effects;<sup>17</sup>
  - PAPs reluctant to simple adoption because it does not terminate the legal relationship with the birth parents;<sup>18</sup>

- use of simple adoptions to circumvent immigration rules, in particular in intrafamily adoption cases (see Discussion Paper “Intrafamily Intercountry Adoptions”, section 2.3.2.).<sup>19</sup>
19. Of the States that permit both simple *and* full adoption, some consider important to:
- inform PAPs on the effects and possible benefits of simple adoption;<sup>20</sup>
  - assess which child protection measure is more appropriate for a particular child (e.g., adoption, guardianship, delegation of parental responsibility), and if it is adoption, assess whether it should be a simple or a full adoption.<sup>21</sup>
20. Of all States (*i.e.*, whether they permit simple adoptions or not), some consider important to assess whether the best interests of the child call for recognising the simple adoption as such or to convert it into a full adoption.<sup>22</sup>

### 2.3. Conversion of simple adoptions into full adoptions

#### HCCH 1993 Adoption Convention

##### Article 27:

“(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect -

- a) if the law of the receiving State so permits; and
- b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.”

“In order to enable the receiving State to “upgrade” a simple adoption to a full adoption, Article 27 of the Convention provides the possibility of **converting** a simple adoption into a full adoption. But since the simple adoption does not lead to severing the links with the birth parents, this is **only possible under the condition that those parents**, if they have not already done so, give their **permission to the full adoption** (see Art. 27(1) b)). In the case of a conversion under Article 27, the newly created full adoption will replace the original simple adoption, and, if certified in accordance with Article 23, will be recognised in all Contracting States” (GGP No 1, para. 560, emphasis added).

21. If a receiving State which only allows for full adoptions cooperates with a State of origin which only allows for simple adoptions, the simple adoption may be converted into a full adoption. When the 1993 Adoption Convention was drafted, this was the case for several States, and thus it was felt that there was a need to include an article for converting simple adoptions into full adoptions (*i.e.*, see Art. 27).
22. Nowadays, most States of origin allow for full adoptions,<sup>23</sup> and, in many States, simple adoption is not used for intercountry adoption. Thus, the need for conversion of simple to full adoptions seems to be limited in practice.
23. While States can convert simple adoptions into full adoptions, this is not an obligation. They may also continue to give the effects of the simple adoption, even though they do not know this type of adoption within their State. This would also prevent some of the challenges associated with the conversion of simple adoptions, such as the difficulty to verify that the consent was validly obtained and that it was obtained for a *full* adoption<sup>24</sup> and not only for a simple adoption, especially when the adoption took place many years ago.



24. States may wish to consider whether it is in the best interests of the child to convert a simple adoption into a full adoption or to continue providing the effect of a simple adoption. If it is found that such a conversion is indeed in the best interests of the child, States should apply Article 27 of the Convention, including verifying that the proper consents were given.
25. In any case, in order to avoid the need to convert simple adoptions into full adoptions, some receiving States which only permit full adoptions just cooperate with States of origin that also only permit full adoptions.<sup>25</sup>

## 2.4. Could simple adoptions be a way forward for some intercountry adoptions?

26. The importance for the adopted child to be attached and integrated within the adoptive family is key for the success of an adoption. However, as the profile of current intercountry adoptees and the landscape of intercountry adoption in general have changed (e.g., older children, children with special needs, intrafamily adoptions), other elements may also be taken into consideration for some children in need of adoption. Thus, States may wish to consider if another type of adoption than full adoption could be in the best interests of some children.
27. Simple adoptions may provide the advantage of not cutting the legal ties with the birth parents. As adoptees grow older, they often have a sense of belonging to two families and / or two cultures, and they may feel the need to have two family ties<sup>26</sup> in order to prevent a rupture of the child's life story. Simple adoption makes it possible to respect this double identity of the child. As more and more adoptees who undergo intercountry adoption are older, they may already have established a relation with their birth family. Such adoptions could also be "beneficial to children's psychological wellbeing" and a "means of minimising loss for children".<sup>27</sup>
28. Another possible benefit of simple adoption is that it may accommodate a wider array of cultural attitudes and beliefs surrounding adoption, in particular when the concept of full adoption is not known in the State of origin.
29. However, simple adoptions also present their own challenges. One of the major challenges is that the child may feel confused by having two families, and that the relationship between both families may not be easy.<sup>28</sup> Post-adoption support and services are thus, as for any other adoptions, key for the success of simple adoptions.

## 2.5. In preparation for the 2022 SC Meeting



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

- a) What are the benefits and advantages of simple adoptions for adoptees?
- b) Should simple adoptions be considered as an alternative to full adoptions for some children if they are in their best interests? If so, should they be actively promoted?
- c) How do competent authorities assess the best interests of the child and determine whether a simple or full adoption is most appropriate?
- d) What criteria could help determine whether a simple adoption, rather than a full adoption, would be in the best interests of the child?
- e) What are the advantages and disadvantages of converting a simple adoption into a full adoption?
- f) If possible, should receiving States try to recognise the same type of adoption as it was originally issued by the State of origin, or should conversion take place?

### Further reading

- Western Sydney University, [\*Belonging in two families exploring permanency options for children in long-term out-of-home care in Australia\*](#), 2019.

### 3. OPEN INTERCOUNTRY ADOPTIONS

#### HCCH documents

“The SC noted that, **where not prohibited by domestic legislation, and after professional matching, contact between the adoptee and biological family in intercountry adoption may be beneficial in some cases.** In order to maximise the benefits and minimise the risks of such contact, professional support should be offered to prepare the parties, as well as to assist them during and after contact. The adopted child’s best interests should guide the nature of this contact, taking into account his or her wishes” (2015 SC, C&R 31, emphasis added).

#### 3.1. What is an open adoption?

31. For the purposes of this Discussion Paper and in order to facilitate a common understanding for the discussions during the SC Meeting, an open adoption is understood as an adoption where the adoptee (or the adoptive family more broadly) maintain some form of ongoing contact with the birth parents and / or some members of the birth family (e.g., the adoptee’s birth siblings, grandparents) **after professional matching has taken place or after the adoption decision has been issued.**<sup>29</sup> Thus, after the matching (with the exception of intrafamily adoptions, where the adoptee and the PAPs already know each other), both the adoptive families and the birth families are informed of each other’s identities.<sup>30</sup> Contact can take the form of, for example, visits, letters, calls, photos and / or cards.<sup>31</sup>
32. An open adoption may be either a full adoption or a simple adoption. The fact that an adoption is considered open (or closed) has to do with the non-confidentiality of the identities of the birth families and adoptive families. On the contrary, a closed adoption is an adoption where the identity of the birth family remains confidential. Closed adoptions can only be full adoptions.<sup>32</sup>
33. Since there is some level of contact between the adoptive families and the birth families, open adoptions are sometimes confused with private adoptions and / or independent adoptions.<sup>33</sup> A key difference between these different forms of adoptions has to do with *when* the contact is starting, as it should respect Article 29 of the Convention:

#### HCCH 1993 Adoption Convention

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

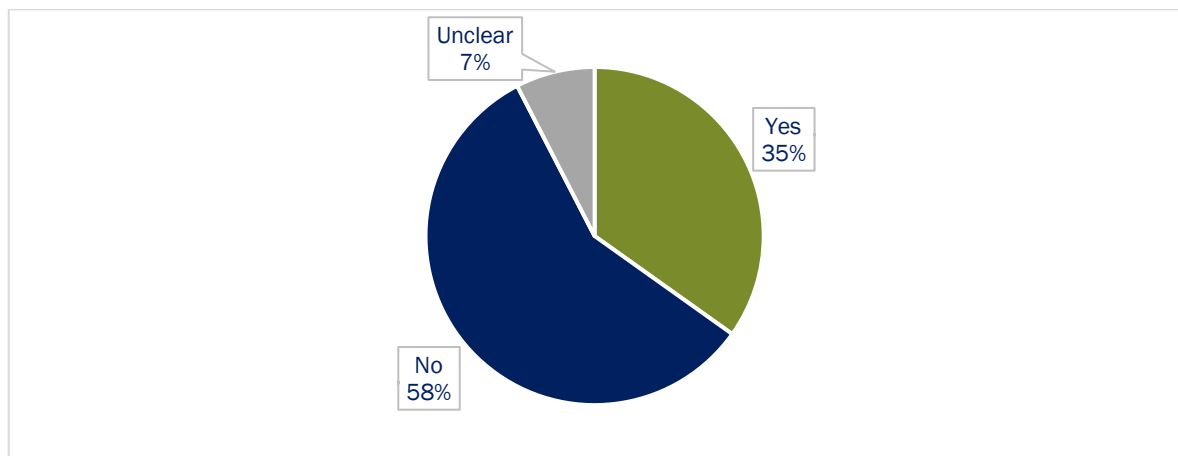
34. In general terms, private adoptions and independent adoptions are understood as follows:
  - in the case of a **private adoption**, “arrangements for adoption have been made directly between a [birth] parent in one Contracting State and prospective adopters in another Contracting State. [...] [S]uch adoptions are not compatible with the Convention.”<sup>34</sup> Such adoptions are contrary to many standards and safeguards of the Convention, in particular Art. 29, and do not respect its procedures.
  - in the case of an **independent adoption**, “the prospective adoptive parents are approved as eligible and suited to adopt by their Central Authority or accredited body. They then travel independently to a [State] of origin to find a child to adopt, without the assistance of a Central Authority or accredited body in the State of origin. Independent adoptions [...] do not satisfy the Convention’s requirements”.<sup>35</sup> Such adoptions do not respect the

procedures set forth in the Convention.

35. As opposed to private and independent adoptions, in an **open adoption** all the procedures and safeguards of the Convention are respected. Among others, matching is done by professionals and based on the needs of the child;<sup>36</sup> birth parents and the adoptive parents will have their first contact soon after the adoption is finalised, although it may happen that they meet before the adoption is finalised (in that case, it would necessarily be after the professional matching has taken place, in accordance with Art. 29) in order to best prepare the child and their families.
36. It should also be noted that not all States understand open adoptions the same way due to, for example, differences in cultural norms or a lack of cooperation between the State of origin and the receiving State.<sup>37</sup>

### 3.2. Open adoptions in practice

Chart 3: Do States allow open adoptions, or some form of ongoing contact between the adoptee and (some) member(s) of their birth family?<sup>38</sup>



37. A few States sometimes permit open adoptions on an exceptional basis, if they are considered to be in the best interests of the child.<sup>39</sup> In practice, open adoptions seem to be used mainly in intrafamily adoption cases,<sup>40</sup> and they are more common in domestic adoption cases than in intercountry adoption cases.<sup>41</sup>
38. Some States have legislation explicitly allowing and regulating open adoptions,<sup>42</sup> some have not yet regulated open adoption,<sup>43</sup> and / or others allow it informally only.<sup>44</sup> In other States, regulation may vary depending on each region within a State or whether open adoptions are domestic or intercountry.<sup>45</sup> Some State mentioned that they have developed guides or guidelines to assist professionals with open adoptions.<sup>46</sup>
39. In recent years, some States have modified their legislation to:
  - permit open adoption (*i.e.*, allowing adoptive and birth families to keep in contact);<sup>47</sup>
  - involve the States authorities when an open adoption is sought;<sup>48</sup>
  - allow for the possibility for PAPs to specify whether they agree with doing an open adoption during their suitability assessment.<sup>49</sup>
40. The importance of training professionals on open adoptions was also mentioned.<sup>50</sup> In order to deliver a specialised service, one State mentioned that it has AABs specialised in open adoptions.<sup>51</sup>

41. Most States permitting open adoptions promote them<sup>52</sup> as follows:
  - only with States that also know this type of adoption;<sup>53</sup>
  - through discussions with the PAPs and the birth parents;<sup>54</sup>
  - only for domestic adoptions, not for intercountry adoptions.<sup>55</sup>
42. Children adopted through an open adoption do not have a specific profile,<sup>56</sup> although some States note that these children tend to be:
  - young children (e.g., less than 6 months old)<sup>57</sup> or older children;<sup>58</sup>
  - children with special needs;<sup>59</sup>
  - children from a complex social background;<sup>60</sup>
  - children adopted by their relatives (*i.e.*, intrafamily adoptions).<sup>61</sup>
43. Contact between children and their birth family in the context of an open adoption does not always include the birth parents.<sup>62</sup> In some cases, it has included instead:
  - the child's grandparents (e.g., because they had contact before the adoption);<sup>63</sup>
  - the child's siblings (e.g., if one of the child's older siblings could not or did not want to be adopted<sup>64</sup>).

### 3.3. Considerations for open adoptions during the adoption procedure

44. In some States, the birth parents can request that their child be adopted only by way of an open adoption,<sup>65</sup> while in other States, it is up to the adoptive parents to decide whether they agree with the adoption being open.<sup>66</sup> In any case, open adoptions are only encouraged if it is determined that it would be in the best interests of the child.<sup>67</sup>
45. Some challenges:
  - obtaining the consent to an open adoption from the birth parents, the adoptee and the adoptive parents;<sup>68</sup>
  - there is contact between the PAPs and the child's parents before the requirements of Article 29 of the Convention have been met (unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin);<sup>69</sup>
  - authorities are not involved in any way in supporting contact between adoptive and birth families;<sup>70</sup>
  - difficulty creating a bond between the adoptive families and the birth families to maintain contact throughout the child's childhood;<sup>71</sup>
  - not encouraging the continuation of the relationships from the beginning of the adoption process.<sup>72</sup>
46. Examples of good practices:
  - properly informing PAPs about open adoptions and its benefits and challenges,<sup>73</sup> as well as the support and counselling available;<sup>74</sup>
  - encouraging contact from the socialisation period onwards,<sup>75</sup> to support and assist such contact as early as possible;
  - at the time of receiving the proposed matching, the Central Authority in the receiving State asking the other Central Authority whether there is an option for maintaining contact with the birth family.<sup>76</sup>

### 3.4. Open adoption plan

47. In some States, open adoptions require an open adoption plan (*i.e.*, a mutual agreement) between the adoptive families and the birth families.<sup>77</sup> Authorities or bodies may assist in drawing up the formal open adoption plan,<sup>78</sup> and / or the plan may need to be approved by competent authorities.<sup>79</sup>
48. In other States, open adoptions are not based on an agreement but on a decision of a judge.<sup>80</sup> Other States encourage open adoptions (or at least, some form of contact between the adoptive families and the birth families) but are not involved in any open adoption plan that the adoptive parents and the birth parents would make.<sup>81</sup>
49. With time, families may want to change the frequency of the contact, e.g., because there has been a change of circumstances, or because their expectations have changed over time.<sup>82</sup> Some authorities note that in most cases, it is the adoptive families that stop the contact, although there have been some cases where it is the birth parents who stopped responding.<sup>83</sup> In other States, the contact may have diminished and /or stopped because of the inability of the birth family to maintain contact.<sup>84</sup>
50. When this happens, authorities and bodies may assist the families with the following:
  - speaking with both families in order to try to find a solution, including modifying the terms of the open adoption plan<sup>85</sup> or requesting a new decision, provided that there would be a change of circumstances.<sup>86</sup>
  - providing families with recourse to mediation;<sup>87</sup>
  - providing support.<sup>88</sup>
51. A challenge raised is the difficulty of drafting a plan as expectations from the families may change over time.<sup>89</sup>
52. Examples of good practices:
  - taking the child's views and wishes into account, in accordance with their age and maturity, when drafting the open adoption plan;<sup>90</sup>
  - ensuring that the child is consenting, in accordance with their age and maturity, to the open adoption plan.<sup>91</sup>

### 3.5. Open adoption after the adoption is completed

53. Some challenges:
  - open intercountry adoptions are sometimes limited to updates on the adoptive family being sent by the AABs to the birth family;<sup>92</sup>
  - the frequency of the contact may diminish over time.<sup>93</sup>

### 3.6. Support in open adoptions

54. To maximise the chances for open adoptions to be successful, it is important that adoptees and their families are supported throughout their journey. As the adoptee and their families will need to navigate through the different relationships and contact, it is important that they can be supported appropriately.
55. Some challenges:
  - providing the same support as for any other adoption, and no additional support specific to open adoption is provided;<sup>94</sup>

- the authorities do not provide support to families on a regular basis,<sup>95</sup> and if such support exists, families are usually not aware of the possibility to receive support;
- support given to adoptive families does not include support for ongoing contact with the birth family.<sup>96</sup>

56. Examples of good practices:

- providing specific support for open adoptions devoted to assisting the families in navigating the relationships, in addition to the normal support available to all adoptees;<sup>97</sup>
- having authorities, practitioners, child protection services and / or bodies providing counselling, support and assistance, as well as supervising contact if needed, based on the needs of the families;<sup>98</sup>
- following up with the families after there has been contact, until this is no longer necessary.<sup>99</sup>

### 3.7. Could open adoptions be a way forward for some intercountry adoptions?

57. With the profile of current intercountry adoptees changing (e.g., children with special needs, including older children, who may have lived or have had contact for some years with their birth family, or at least remember them) and the growing awareness of negative effects of secrecy, States may wish to consider if it may be in the best interests of some children to maintain ongoing contact with their birth family, or at the very least, to ensure that identifying information is not kept confidential from them. Access to such information and maintaining ongoing contact can help the child build their identity and is also consistent with the child's right to know their origins. It may also allow for continuity in the child's life, ties to their birth and extended family (siblings, grandparents) and facilitate a sense of belonging. This should be guided by the best interests of the child, taking into account their wishes.
58. However, every situation is different and open adoption may not always be in a child's best interests. It is thus important that the level of openness be assessed on an individual basis with input from the child when possible.

### 3.8. In preparation for the 2022 SC Meeting



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

- a) What are the benefits and advantages that States see in open adoptions?
- b) Should States promote open adoptions in intercountry adoption cases, when they are in the best interests of the child?
- c) What role should competent authorities play in open intercountry adoptions?
- d) What criteria could help determine whether an open adoption would be in the best interests of the child?

#### Further reading

- ISS, *From greater openness in adoption to fully open adoptions: The current situation and views*, Comparative Study, May 2015.
- International Social Service / International Reference Center for the Rights of Children Deprived of their Family (ISS/IRC), "*Professionals share their views and experience in open adoption*", *Monthly Review*, No 229, February 2019, pp. 8-9.
- ISS/IRC, "*Finland: A recent survey on open adoption*", *Monthly Review*, No 241, May 2020, pp. 10-12.

## Endnotes

- <sup>1</sup> The information included throughout this document does not represent an exhaustive list of the views expressed by each State. Endnotes include examples of States that have or do not have a specific practice.  
**Please also note that for some of the responses, the reference to a particular State does not mean that this State has or has not this practice, but that this particular State refers to the practices of other States in its response.**
- <sup>2</sup> Prel. Doc. No 3 of February 2020, “Questionnaire on the Practical Operation of the 1993 Adoption Convention” (2020 Questionnaire No 1). The 66 Contracting Parties which responded to the Questionnaire are: Andorra, Armenia, Australia, Austria, Belarus, Belgium (Flemish region), Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China, China (Hong Kong SAR), China (Macao SAR), Colombia, Congo, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Finland, France, Germany, Greece, Guinea, Haiti, Honduras, India, Ireland, Italy, Latvia, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Monaco, Montenegro, Namibia, New Zealand, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Turkey, United States of America (USA), Uruguay, Venezuela and Viet Nam.
- <sup>3</sup> The 2020 Questionnaire No 1 included some questions which could be answered by a ‘yes’ or ‘no’ response, and then provided a space for further comments. On some occasions, the ‘yes’ or ‘no’ response was not consistent with the comment provided afterwards. In such cases, the Permanent Bureau (PB) of the HCCH had to interpret that information to the best of its knowledge. In the case of federal States, the response was separated as much as possible but if that was not possible, the response that represented most federated States was taken into account.
- <sup>4</sup> Please note that some States may have different understandings of some of the features presented below.  
In addition, in most States which allow simple adoptions, both simple and full adoptions continue to have the **same legal effects** after the adoptee attains the age of majority.  
Other possible similarities and / or differences between simple and full adoptions depending on domestic legislation (and thus can more easily vary) are as follows:
- **Inheritance:**
    - o Birth parents:
      - simple adoption: adoptees can usually inherit from their birth parents;
      - full adoption: adoptees cannot usually inherit from their birth parents.
    - o Adoptive parents: usually adoptees – both in simple and full adoptions - can inherit from the adoptive parents.
    - o Family of the adoptive parents (e.g., the grandparents):
      - simple adoption: adoptees usually *cannot* inherit by operation of law from the family of the adoptive parents (e.g., French Civil Code, Arts 364 and 368; Belgium Civil Code, Art. 353-15; Côte d’Ivoire, Law n° 64-378 of 7 October 1964, Art. 19; Congo Family Code, Arts 678 and 690).
      - full adoption: adoptees *can* also inherit by operation of law from the family of the adoptive parents.
  - **Grounds to revoke or annul** an adoption: usually it is only on serious grounds for both simple and full adoptions.
  - **Acquisition of nationality of the adoptive parents:** while States which permit simple adoptions will usually have rules on the acquisition of nationality (e.g., [France](#), [Luxembourg](#)), this may not be the case for States which do not permit simple adoption but which may have to recognise a simple adoption completed in another State (e.g., [Switzerland](#)). In the latter case, these children may not be able to acquire the nationality of the adoptive parents.
- <sup>5</sup> See Art. 8(1) of the UN Convention on the Rights of the Child: “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”.
- <sup>6</sup> 2020 Questionnaire No 1, Question 53(b): France; Western Sydney University, “[Belonging in two families exploring permanency options for children in long-term out-of-home care in Australia](#)”, 2019.
- <sup>7</sup> Western Sydney University, see *supra* note 6.
- <sup>8</sup> **Chart 1: Do States allow simple adoptions?** The responses from 78 States were taken into account. CP-RS, Question 25(b), CP-SO, Question 30(b) and 2020 Questionnaire No 1, Question 49 (responses from the Questionnaire appear in *italics*):
- **Yes:** Belgium, Benin, Burkina Faso, Burundi, Congo, Côte d’Ivoire, France, Guinea, Luxembourg, Madagascar, Malta, Mauritius, Monaco, Netherlands, Niger, Rwanda, *Senegal*, Thailand, Togo.
  - **Yes, for specific adoptions only:** Bulgaria (for intrafamily adoptions only), Cambodia (for domestic adoptions only), Haiti (for domestic adoptions only), Italy (for domestic adoptions only), Viet Nam (for domestic and intrafamily adoptions only).
  - **No:** Albania, Australia, *Belarus*, Brazil, Cabo Verde, Canada, Chile, China, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, Finland, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Ireland, Latvia, Lesotho, Lithuania, Mexico, *Montenegro*, Namibia, New Zealand, Norway, Panama, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Serbia, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Turkey, United Kingdom, USA, *Uruguay*, *Venezuela*.



- 9 CP-RS, Question 25(a), CP-SO, Question 30(a).
- 10 See *supra* note 8 under “yes, for specific adoptions only”.
- 11 2020 Questionnaire No 1, Question 50: Burkina Faso; Question 53(a): Luxembourg.
- 12 2020 Questionnaire No 1, Question 50: Belgium, France, Luxembourg, Senegal, Switzerland.
- 13 Chart 2: Do States which allow simple adoptions promote it? The responses from 17 States were taken into account. 2020 Questionnaire No 1, Question 52:
- **Yes:** Cambodia, Congo, France, Guinea, Senegal.
  - **No:** Belgium, Bulgaria, Burkina Faso, Haiti, Italy, Luxembourg, Madagascar, Malta, Mauritius, Monaco, Togo, Viet Nam.
- 14 2020 Questionnaire No 1, Question 50: Belgium, Burkina Faso, Togo.
- 15 2020 Questionnaire No 1, Question 51: Cambodia, France (for domestic adoptions).
- 16 2020 Questionnaire No 1, Question 51: Belgium.
- 17 2020 Questionnaire No 1, Question 53(a): France.
- 18 2020 Questionnaire No 1, Question 53(a): France.
- 19 2020 Questionnaire No 1, Question 53(a): France, Togo.
- 20 2020 Questionnaire No 1, Question 53(a): France.
- 21 2020 Questionnaire No 1, Question 53(b): Togo.
- 22 2020 Questionnaire No 1, Question 53(b): Switzerland.
- 23 CP-RS, Question 25(a), CP-SO, Question 30(a): Australia, Austria, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cambodia, Canada, Chile, China, Colombia, Congo, Costa Rica, Croatia, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, India, Ireland, Italy, Latvia, Lesotho, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Monaco, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Republic of Moldova, Romania, Rwanda, Serbia, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Togo, Turkey, United Kingdom, USA, Viet Nam.
- 24 2020 Questionnaire No 1, Question 52: Belgium, Germany, New Zealand, Switzerland; Question 53(a): Germany.
- 25 2020 Questionnaire No 1, Question 50: Spain; Question 52: Canada.
- 26 2020 Questionnaire No 1, Question 51: Belgium, France.
- 27 Western Sydney University, see *supra* note 6..
- 28 *Ibid.*
- 29 While there is not a universal definition of open adoptions, they seem to be understood the same way by most States that responded to the questions on this topic in the 2020 Questionnaire No 1 (including both States which permit open adoptions and States which do not).
- It has also to be noted that the understanding of open adoptions referred to in paragraph 31 is given only for the purposes of this Discussion Paper as in some States at the domestic level, open adoptions may be understood differently.
- 30 2020 Questionnaire No 1, Question 54: Andorra, Australia, China, Colombia, Denmark, Finland, Guinea, Italy, Malta, Namibia, New Zealand, Poland, Portugal, Romania, South Africa, Spain, Switzerland, Togo, USA, Uruguay.
- 31 2020 Questionnaire No 1, Question 54: Australia, Spain.
- 32 Because, by definition and as explained in section 2.1, a simple adoption necessarily involves non-confidentiality of the parties to the adoption.
- A challenge raised is that some States do not encourage the birth parents to know the adoptive parents, as adoptions in their States are confidential or because they consider that open adoption is not possible in the case of a full adoption (see, 2020 Questionnaire No 1, Question 54: Republic of Moldova; Question 56: Brazil, Ecuador, Latvia, Venezuela; Question 58: Panama).
- 33 2020 Questionnaire No 1, Question 54: Mexico; Question 55: Armenia, El Salvador.
- 34 GGP No 1, Glossary.
- 35 *Ibid.*
- 36 GGP No 1, para. 357.
- 37 2020 Questionnaire No 1, Question 60(a): Australia, Finland.
- 38 Chart 3: Do States allow open adoptions, or some form of ongoing contact between the adoptee and (some) member(s) of their birth family? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 54 (although the responses from questions 55 to 60(b) may also have been taken into account):
- **Yes:** Andorra, Australia, Belgium, Canada, Chile, Congo, Denmark, El Salvador, Finland, Germany, Guinea, Haiti, Italy, Malta, Monaco, Namibia, New Zealand, Serbia, South Africa, Spain, Switzerland, USA, Uruguay.
  - **No:** Armenia, Austria, Belarus, Brazil, Bulgaria, Burkina Faso, Cambodia, China, Colombia, Costa Rica, Croatia, Czech Republic, Ecuador, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Madagascar, Mauritius, Mexico,

Montenegro, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Senegal, Slovakia, Sweden, Togo, Turkey, Venezuela, Viet Nam.

- **Unclear:** Dominican Republic, Honduras, India, Slovenia, Sri Lanka.

- 39 2020 Questionnaire No 1, Question 54: El Salvador; Question 56: Chile.
- 40 2020 Questionnaire No 1, Question 57(a): Cambodia, Canada, El Salvador, South Africa.
- 41 2020 Questionnaire No 1, Question 57(a): Finland, Spain, Switzerland. Thus, some of the practices presented in this section may refer to domestic rather than intercountry adoptions.
- 42 2020 Questionnaire No 1, Question 54: Malta, South Africa, Spain, Switzerland.
- 43 2020 Questionnaire No 1, Question 54: Belgium, Germany, New Zealand, Serbia.
- 44 2020 Questionnaire No 1, Question 54: Belgium, Germany, New Zealand, Serbia.
- 45 2020 Questionnaire No 1, Question 54: Australia, Canada, Finland (regulated by legislation for domestic open adoptions but only through practice for intercountry open adoptions), USA.
- 46 2020 Questionnaire No 1, Question 55: Spain; Question 56: USA; Question 60(b): Malta.
- 47 2020 Questionnaire No 1, Question 55: Uruguay.
- 48 2020 Questionnaire No 1, Question 55: Spain.
- 49 2020 Questionnaire No 1, Question 55: Spain.
- 50 2020 Questionnaire No 1, Questions 56 and 60(b): Spain.
- 51 2020 Questionnaire No 1, Question 56: Canada.
- 52 2020 Questionnaire No 1, Question 54: Belgium, New Zealand, South Africa, USA; Question 56: Spain.
- 53 2020 Questionnaire No 1, Question 54: Canada, Finland.
- 54 2020 Questionnaire No 1, Question 54: Australia, Switzerland; Question 56: New Zealand.
- 55 2020 Questionnaire No 1, Question 54: Guinea, Italy; Question 56: Canada.
- 56 2020 Questionnaire No 1, Question 57(a): Belgium, Canada.
- 57 2020 Questionnaire No 1, Question 57(a): Canada, Monaco.
- 58 2020 Questionnaire No 1, Question 57(a): Australia.
- 59 2020 Questionnaire No 1, Question 57(a): Serbia.
- 60 2020 Questionnaire No 1, Question 57(a): Australia.
- 61 2020 Questionnaire No 1, Question 57(a): Cambodia, Canada, El Salvador, South Africa.
- 62 2020 Questionnaire No 1, Question 54: Spain; Question 55: Andorra; Question 57(b): New Zealand; Question 58: Chile.
- 63 2020 Questionnaire No 1, Question 55: Andorra.
- 64 2020 Questionnaire No 1, Question 57(a): New Zealand.
- 65 2020 Questionnaire No 1, Question 54: Guinea.
- 66 2020 Questionnaire No 1, Question 54: Germany.
- 67 2020 Questionnaire No 1, Question 54: Spain; Question 56: Namibia.
- 68 2020 Questionnaire No 1, Question 60(a): Belgium.
- 69 2020 Questionnaire No 1, Question 57(a): Switzerland (concerning practices taking place in other States).
- 70 2020 Questionnaire No 1, Question 56: Burkina Faso; Costa Rica.
- 71 2020 Questionnaire No 1, Question 60(a): Uruguay.
- 72 2020 Questionnaire No 1, Question 60(a): Australia.
- 73 2020 Questionnaire No 1, Question 54: Australia, Switzerland; Question 56: New Zealand; Question 60(a): Spain.
- 74 2020 Questionnaire No 1, Question 56: Finland.
- 75 2020 Questionnaire No 1, Question 56: Haiti.
- 76 2020 Questionnaire No 1, Question 56: Australia.
- 77 2020 Questionnaire No 1, Question 54: Belgium, Finland, Namibia, Switzerland; Question 56: Canada.
- 78 2020 Questionnaire No 1, Question 56: Canada, Malta; Question 58: Canada, Finland, New Zealand.
- 79 2020 Questionnaire No 1, Question 54: Switzerland.
- 80 2020 Questionnaire No 1, Question 54: Spain.
- 81 2020 Questionnaire No 1, Question 54: Uruguay; Question 56: Haiti.
- 82 2020 Questionnaire No 1, Question 60(a): Belgium.
- 83 2020 Questionnaire No 1, Question 59: Germany.
- 84 2020 Questionnaire No 1, Question 60(a): New Zealand.
- 85 2020 Questionnaire No 1, Question 59: Australia, Malta, New Zealand.

- 86 2020 Questionnaire No 1, Question 59: Finland.
- 87 2020 Questionnaire No 1, Question 59: Australia, Uruguay.
- 88 2020 Questionnaire No 1, Question 59: Belgium.
- 89 2020 Questionnaire No 1, Question 60(a): Belgium.
- 90 2020 Questionnaire No 1, Question 56: Canada.
- 91 2020 Questionnaire No 1, Question 57(b): Switzerland.
- 92 2020 Questionnaire No 1, Question 56: Canada.
- 93 2020 Questionnaire No 1, Question 60(a): New Zealand.
- 94 2020 Questionnaire No 1, Question 58: Denmark, USA.
- 95 2020 Questionnaire No 1, Question 58: Costa Rica, Serbia.
- 96 2020 Questionnaire No 1, Question 56: Italy.
- 97 2020 Questionnaire No 1, Question 58: Australia.
- 98 2020 Questionnaire No 1, Question 56: Canada, Finland, Spain; Question 58: Belgium, Chile, Germany, Malta, Monaco, Namibia, New Zealand, Spain, Switzerland, Uruguay.
- 99 2020 Questionnaire No 1, Question 58: Andorra.