

Title	Nationality and Intercountry Adoption
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Objective	To summarise some of the findings of the Questionnaire on the practical operation of the 1993 Adoption Convention
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action/Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
Annexes	N/A
Related Documents	Prel. Doc. No 3 of February 2020 - Questionnaire on the practical operation of the 1993 Adoption Convention Responses to the Questionnaire

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1. Background

1. This Information Document aims to summarise the practices of some Contracting Parties regarding nationality and intercountry adoption.¹ The information presented is based on the responses to Question 30 of the Country Profile of States of origin and to responses received from 66 Contracting Parties to a Questionnaire on the practical operation of the 1993 Adoption Convention (2020 Questionnaire No 1).² This Document aims at providing a general overview of the situation regarding this topic. However, due to the limited time available for discussions at the Special Commission Meeting (SC), the content of this Information Document is, in principle, not intended to be discussed during the SC.
2. The 1993 Adoption Convention does not govern the effect that an intercountry adoption carried out under the Convention has on a child's nationality, in particular in what circumstances the adoption leads to the acquisition of a new nationality for the child or the loss of an existing nationality.³ As such, each Contracting Party's domestic law is applicable to the question of nationality.
3. In order to assist States, Chapter 8.4.5. of the [Guide to Good Practices No 1](#) (GGP No 1) provides information on the adoptee's nationality, and the Special Commission has also made some recommendations as to the child's nationality. However, these materials make reference mainly to the child's acquisition of the nationality of the adoptive parents (and / or the receiving State).

HCCH documents

"Discussion in the Special Commission revealed a clear trend in favour of according automatically to the adopted child the nationality of the receiving State" (2000 SC, C&R No 20).

"The Special Commission recommends that the child be accorded automatically the nationality of one of the adoptive parents or of the receiving State, without the need to rely on any action of the adoptive parents. Where this is not possible, the receiving States are encouraged to provide the necessary assistance to ensure the child obtains such citizenship. The policy of Contracting States regarding the nationality of the child should be guided by the overriding importance of avoiding a situation in which an adopted child is stateless" (2005 SC, C&R No 17).

"The Special Commission reaffirmed Recommendation No 17 of the Meeting of the Special Commission of September 2005.

Central Authorities should cooperate in the completion of any formalities necessary for the acquisition by the child of the nationality, where appropriate, either of the receiving State or of an adoptive parent.

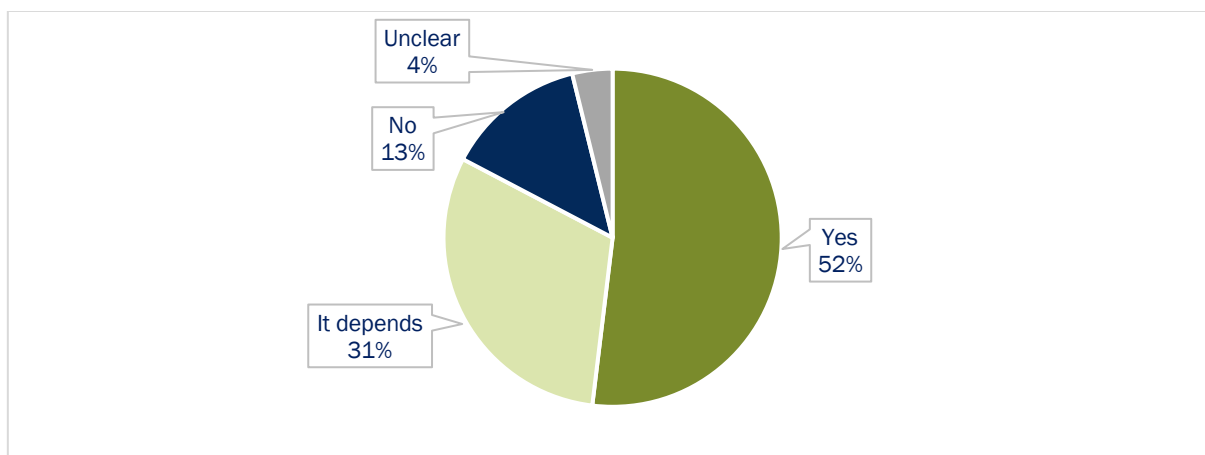
The question of whether nationality will be granted to the child may, where appropriate, be a relevant factor when a State of origin is considering co-operation with a particular receiving State" (2010 SC, C&R No 19-21).

- GGP No 1: chapter 8.4.5.

4. In cases where adoptees have lost their nationality of the State of origin, some adoptees (especially adult adoptees) would like to have the possibility to regain it. This may happen, for example, when they search for their origins and want to reconnect to their State of origin.

2. Practices of States of origin regarding *retaining* nationality

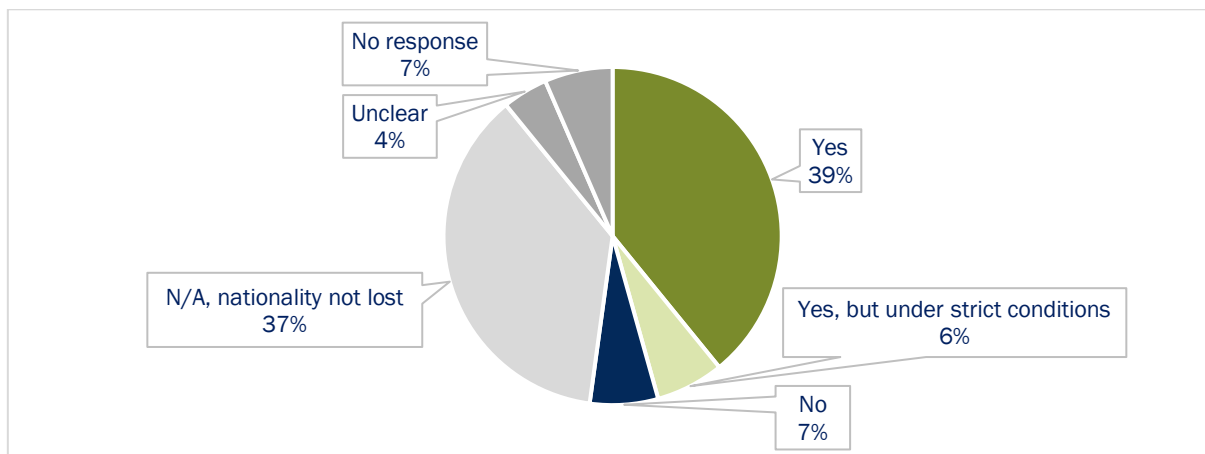
Chart 1: Can children who are nationals of the State of origin and adopted intercountry retain their nationality?⁴



5. Only in a few States of origin, adoptees are not able to retain their nationality after the adoption.⁵ This may be because the State may not allow for dual nationality and / or it may consider that by being adopted, the child should lose their nationality from the State of origin to gain the nationality of the receiving State (or the State of nationality of the prospective adoptive parent).
6. On the contrary, in many States, adoptees are able to retain their nationality of the State of origin after the adoption.⁶
7. In some of these States, the ability to retain the nationality may vary depending on, for example:
 - whether the receiving State (or the State of nationality of the prospective adoptive parent) does not allow dual nationality; in such cases, the adoptee will lose the nationality of the State of origin to gain that of the receiving State (or the State of nationality of the prospective adoptive parent);⁷
 - whether the adoptive parents can decide if they want the child to retain the nationality of the State of origin.⁸
8. In some States, even if adoptees can retain their nationality of the State of origin, they may still lose it if, for example:
 - once adults, they renounce their nationality of the State of origin:
 - ⇒ if they wish to do so;⁹
 - ⇒ if the State of origin does not allow dual nationality once the adoptee reaches adulthood, and thus the adoptee chooses to keep the nationality of the receiving State;¹⁰
 - the adoptee performs certain specified acts voluntarily and with the intention to relinquish their nationality;¹¹
 - in the case of male adoptees, they do not enlist in the military when they attain the age of majority.¹²
9. Some States noted that in the event that adoptees lose or renounce their nationality, they may still have the possibility to regain it.¹³

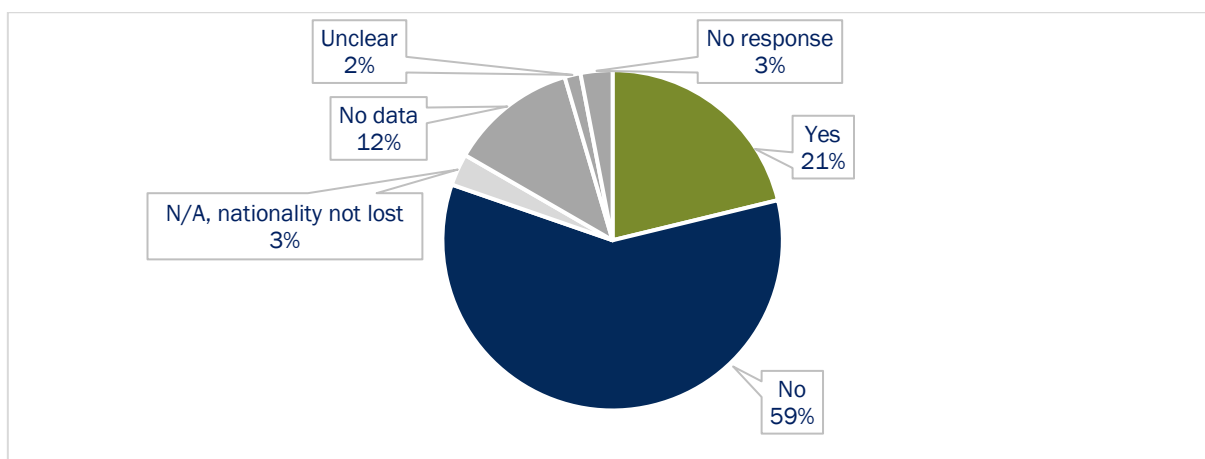
3. Practices of States of origin regarding *regaining* nationality

Chart 2: Can adoptees regain the nationality of their State of origin if they lost it?¹⁴



10. While quite a few States of origin note that adoptees can ask to regain their nationality from their State, it would seem that adoptees do not benefit from special rules and can only regain their nationality by following the procedure that any other person would have to follow.¹⁵ For example, in many cases, this will require that the adoptee live in the State of origin at the time of their request.¹⁶
11. In addition, some conditions for regaining nationality may apply to adoptees specifically, for example:
 - only adult adoptees can make a request;¹⁷
 - adoptees need to be less than 25 years of age to make a request;¹⁸ and / or
 - adoptees need to obtain an amended birth certificate before they can submit a request.¹⁹
12. In some States, adoptees can only regain the nationality of the State of origin if they first renounce their nationality of the receiving State.²⁰

Chart 3: Are States aware of situations where adoptees asked to regain the nationality of their State of origin?²¹



13. While some Central Authorities are not aware of such situations since their authority would not be competent,²² others are aware of some situations but indicate that they are not involved in the process.²³ Only one province in one State noted that they assist adoptees by communicating with the State of origin to verify the applicable law and the process to follow.²⁴

Endnotes

- 1 Nationality refers to the legal status of an individual belonging to a sovereign State with the legal rights and protection of the sovereign State's government. In some States this legal status is referred to as 'citizenship'. References to 'nationality' should therefore be understood as including 'citizenship'.
- 2 Prel. Doc. No 3 of February 2020, "Questionnaire on the Practical Operation of the 1993 Adoption Convention" (2020 Questionnaire No 1). The 66 Contracting Parties which responded to the 2020 Questionnaire No 1 are: Andorra, Armenia, Australia, Austria, Belarus, Belgium (Flemish region), Brazil, Bulgaria, Burkina Faso, Cambodia, Canada, Chile, China (People's Republic of), 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.
- Please note that some of the responses in the Questionnaire do not seem to always coincide with the responses from the Country Profile.
- 3 HCCH, Guide to Good Practice No 1, para. 491.
- 4 Chart 1: Can children who are nationals of the State of origin and adopted intercountry retain their nationality? The responses from 51 States of origin were taken into account. Country Profile SO (CP-SO), Question 30:
- **Yes:** Albania, Brazil, Bulgaria, Burundi, Cabo Verde, Chile, Costa Rica, Czech Republic, Dominican Republic, Ecuador, El Salvador, Estonia, Guatemala, Haiti, Honduras, Lithuania, Madagascar, Mauritius, Mexico, Panama, Peru, Philippines, Portugal, Republic of Moldova, Serbia, USA, Viet Nam.
 - **Depends** (on whether the law of the receiving State allows dual nationality or not): Benin, Burkina Faso, Congo, Côte d'Ivoire, Ghana, Latvia, Lesotho, Romania, Rwanda.
 - **Depends** (on whether the PAPs request that the child lose the nationality of the State of origin): Cambodia, Colombia, Croatia, Romania.
 - **Depends** (when they turn 20 years old, the adoptee can choose whether they want to keep the nationality of the State of origin or the nationality of the receiving State): Thailand.
 - **No:** China, Guinea, India, Republic of Korea, Slovenia, Sri Lanka, Togo.
 - **Unclear:** Namibia, Niger.
- 5 See *supra* note 4, responses under "no".
- 6 See *supra* note 4, responses under "yes" and "depends".
- 7 See *supra* note 4, responses under "Depends (on whether the law of the receiving State allows dual nationality or not)".
- 8 See *supra* note 4, responses under "Depends (on whether the PAPs request that the child lose the nationality of the State of origin)".
- 9 2020 Questionnaire No 1, Question 26: Belarus, Panama, Peru.
- 10 See *supra* note 4, responses under "Depends (when they turn 20 years old, the adoptee can choose whether they want to keep the nationality of the State of origin or the nationality of the receiving State)".
- 11 2020 Questionnaire No 1, Question 26: USA.
- 12 2020 Questionnaire No 1, Question 26: Brazil. Although it would seem that in cases where male adoptees have difficulties retaining their nationality because of the military enlistment, the authorities can assist (see 2020 Questionnaire No 1, Question 27: Brazil).
- 13 2020 Questionnaire No 1, Question 26: Colombia, Peru, USA.
- 14 Chart 2: Can adoptees regain the nationality of their State of origin if they lost it? The responses from 46 States of origin were taken into account. 2020 Questionnaire No 1, Question 26:
- **Yes:** Armenia, Cambodia, China, Congo, El Salvador, Guinea, Haiti, India, Latvia, Philippines, Poland, Portugal, Republic of Moldova, Romania, Serbia, Slovakia, Sri Lanka, Turkey.
 - **Yes, but under strict conditions:** Burkina Faso, Madagascar, Viet Nam.
 - **No:** Bulgaria, Montenegro, Togo.
 - **N/A, nationality not lost:** Belarus, Brazil, Chile, Colombia, Costa Rica, Czech Republic, Dominican Republic, Ecuador, Honduras, Lithuania, Mauritius, Mexico, Panama, Peru, Senegal, USA, Venezuela.
 - **Unclear:** Namibia, South Africa.
 - **No response:** Croatia, Slovenia, Uruguay.
- 15 2020 Questionnaire No 1, Question 26: Poland, Republic of Moldova, Romania, Slovakia, Sri Lanka.
- 16 2020 Questionnaire No 1, Question 26: Burkina Faso, Madagascar.
- 17 2020 Questionnaire No 1, Question 26: Armenia, Philippines, Serbia.
- 18 2020 Questionnaire No 1, Question 26: Latvia.
- 19 2020 Questionnaire No 1, Question 26: Philippines.
- 20 2020 Questionnaire No 1, Question 27: USA (about the practices of other States).
- 21 Chart 3: Are States aware of situations where adoptees asked to regain the nationality of their State of origin? The responses from 66 States were taken into account. 2020 Questionnaire No 1, Question 27:

- **Yes:** Andorra, Belgium, Brazil, Canada, Colombia, Denmark, India, Ireland, Madagascar, New Zealand, Philippines, Sweden, Switzerland, USA.
- **No:** Australia, Austria, Bulgaria, Burkina Faso, Cambodia, Congo, Costa Rica, Czech Republic, Dominican Republic, Ecuador, El Salvador, France, Greece, Guinea, Haiti, Honduras, Italy, Lithuania, Malta, Mauritius, Mexico, Monaco, Montenegro, Namibia, Norway, Peru, Portugal, Republic of Moldova, Romania, Senegal, Slovakia, Slovenia, Spain, Sri Lanka, Togo, Turkey, Uruguay, Venezuela, Viet Nam.
- **N/A, nationality not lost:** Chile, Panama.
- **No data:** Armenia, Finland, Germany, Latvia, Luxembourg, Poland, Serbia, South Africa.
- **Unclear:** Unclear.
- **No response:** China, Croatia.

²² See *supra* note 21 responses under “no data”.

²³ 2020 Questionnaire No 1, Question 27: Canada (except QC), Denmark, Switzerland.

²⁴ 2020 Questionnaire No 1, Question 27: Canada (QC).