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|---------------------------|---|
| <b>Title</b>              | Compilation of main extracts of HCCH documents on post-adoption matters, simple and full adoptions, and intrafamily adoptions   |
| <b>Document</b>           | Info. Doc. No 4 of June 2022  |
| <b>Author</b>             | PB  |
| <b>Agenda Item</b>        | Post-adoption matters: items 10 to 15<br>Simple and full intercountry adoptions: item 16<br>Intrafamily intercountry adoptions: item 17   |
| <b>Mandate(s)</b>         | C&R No 27 of CGAP 2020; C&D No 21 of CGAP 2022  |
| <b>Objective</b>          | To compile extracts from current HCCH documents on the topics that will be discussed at the meeting of the SC   |
| <b>Action to be Taken</b> | For Decision <input type="checkbox"/><br>For Approval <input type="checkbox"/><br>For Discussion <input type="checkbox"/><br>For Action/Completion <input type="checkbox"/><br>For Information <input checked="" type="checkbox"/>  |
| <b>Annexes</b>            | N/A   |
| <b>Related Documents</b>  | <a href="#">Prel. Doc. No 8 of May 2022</a> – Discussion Paper “Post-adoption matters”<br><a href="#">Prel. Doc. No 9 of May 2022</a> – Discussion Paper “Simple and Open Intercountry Adoption”<br><a href="#">Prel. Doc. No 10 of May 2022</a> – Discussion Paper “Intrafamily Intercountry Adoptions”<br><a href="#">Prel. Doc. No 3 of February 2020</a> - Questionnaire on the practical operation of the 1993 Adoption Convention<br><a href="#">Responses to the Questionnaire</a> |

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1. This Information Document presents the main extracts from current HCCH documents that relate to several topics that will be discussed at the meeting of the Special Commission, namely:
  - Post-adoption matters (section 1);
  - Simple and Open Intercountry Adoption (section 2);
  - Intrafamily Intercountry Adoptions (section 3).
  
2. However, please note that this document is NOT the document to be discussed at the meeting of the Special Commission for each of the topics mentioned above. The documents that will be discussed during that meeting are:
  - [Prel. Doc. No 8 of May 2022](#) – Discussion Paper “Post-adoption matters”;
  - [Prel. Doc. No 9 of May 2022](#) – Discussion Paper “Simple and Open Intercountry Adoption”;  
and
  - [Prel. Doc. No 10 of May 2022](#) – Discussion Paper “Intrafamily Intercountry Adoptions”.

## 1. POST-ADOPTION MATTERS

### 3. Relevant information:

- Related Prel. Doc.: [Prel. Doc. No 8 of May 2022](#) – Discussion Paper “Post-adoption matters”.
- Agenda items: No 10 to 15.

### 1.1 1993 Adoption Convention

LINK: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

#### *Article 9*

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to -

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

#### *Article 30*

1. The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
2. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

#### *Article 31*

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

### 1.2 Explanatory Report

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=2279>

#### *Article 9, sub-paragraph (a)*

229 Sub-paragraph *a* reproduces the text of the draft (article 10, sub-paragraph *a*), with the amendment suggested by France in Working Document No 86 to delete its last sentence which made specific reference to Article 30. The deletion was approved, because it confused two different questions: (1) the collection and exchange of information for the adoption project, referred to in sub-paragraph *a*, and (2) the access to such information by the child, once the adoption has already been granted, regulated by Article 30.

230 Sub-paragraph *a* imposes upon the Central Authority the obligation to take all appropriate measures for the collection, preservation and exchange of information regarding the child and the prospective adoptive parents, so far as is necessary to complete the adoption. However, in order not to overburden the Central Authority, it was understood that this duty should be fulfilled within the limits and under the conditions established by the law of each Contracting State.

231 Working Documents Nos 22 and 25, submitted by the United Kingdom and Australia, respectively, suggested that the collection, preservation and exchange of information should also refer to "the child's birth parent(s)" because, whenever a child is, pursuant to Article 30, entitled to accede to the information concerning his or her origins, it should be as complete as possible. In this respect, it was pointed out that, notwithstanding the importance of the

information proposed to be added, the requirement could not be complied with when the child's birth parent(s) are unknown, and that it should better be restricted to non-identifying information. The suggestion was rejected by a slight majority.

### *Article 30*

506 Article 30 regulates two different questions: (1) the collection and preservation of the information concerning the child's origin, and (2) the availability of or the access by the child to such information. Notwithstanding the substantive nature of the rules, which may make them not appropriate in a convention on international co-operation, they were included because of their importance and for the possible need of co-operation among the Contracting States, when the child tries to obtain information about his or her roots from any Contracting State where he or she is habitually resident.

507 Article 30 should be read in conjunction with Article 16, because the information referred to is mainly that required for the preparation of the report on the child that the Central Authority of the State of origin is to transmit to the Central Authority of the receiving State.

### *Article 30, paragraph 1*

508 Paragraph 1 substantially reproduces the text of the draft (article 25), with the specification suggested in Working Document No 125, submitted by Belgium, regarding the information "concerning the identity of his or her parents", and his or her "medical history", proposed by Mexico when the text was considered, reminding in this sense Article 7 of the 1984 Inter-American Convention on Adoption.

509 Article 30 refers to the Contracting States in general, including the State of origin, the receiving State and any other Contracting State; it should be read in conjunction with subparagraph c of Article 36, to determine the "competent authorities", in the case of a Contracting State having two or more systems of law with regard to adoption applicable in different territorial units.

510 Article 30 is also to be read in conjunction with Article 9, according to which "Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to: a collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;".

511 In spite of the agreement as to the importance of the preservation of the information concerning the child's origins, the practical problems for the States of origin were understood if they have to keep indefinitely all that information. Working Document No 70, submitted by Germany, unsuccessfully proposed that it shall be stored "up to the age of [25] of the child", but only as a minimum period, not as a maximum, because of the different rules in force in the various countries. Then it is up to the State preserving the information to determine not only how much information is to be preserved, but also for how long.

### *Article 30, paragraph 2*

512 The right of the child to obtain information about his or her origins was not a matter for discussion, as it was admitted by the UN Convention (Article 7). However, the unrestricted access may be, in certain cases, contrary to paragraph 2 of Article 7 of the same UN Convention, which prescribes the respect of the rights and duties of his or her parents, among other persons. The question was raised in the Special Commission from the very beginning, where several participants stressed the inconvenience of recognizing an unlimited right of information in some special situations, e.g. when an unmarried mother has consented to the

adoption of her child and years later is heavily damaged by the disclosure of her past, at a time when she may be happily married.

- 513 Therefore, Article 30 sanctions some restrictions to the right of the child to have access to the information concerning his or her origins, substantially reproducing the text of the draft (article 25). However, some amendments were approved.
- 514 The first one permits the access not only to the child, but also to "his or her representative" to facilitate such access, in particular, while the child has not attained the majority. Working Documents Nos 78 and 134, both presented by the United States of America, suggested to specify that the information "shall be released to the adoptive parents or other guardians of the child until the child's age of majority, and to the child after the age of majority". It was considered, however, that it was up to the applicable law to determine not only this question, but also the one proposed by Germany in Working Document No 70, according to which the following sentence was to be added: "Appropriate measures are to be taken to hinder access to these data by third persons."
- 515 The draft granted access to the information insofar as this was permitted by the law of the State of origin and the law of the State where it was held. In the final text, the reference to the law of the State of origin was deleted, taking into account the difficulties to apply foreign law and to ascertain its contents when the child is living far away, in particular if the adoption has been made a long time ago. Besides, the law of the State of origin cannot be considered the most appropriate to govern the availability of or access by the child to the information kept by the receiving State. These reasons and the nature of the rules that regulate access to the information collected and preserved in a State, usually considered applicable notwithstanding the foreign elements of the case, explain that Article 30 only permits such access according to the law of the State where it is preserved, the State of origin or the receiving State.
- 516 Working Documents Nos 82 and 83, submitted by Australia and the United Kingdom, respectively, unsuccessfully suggested that the access to the information held in the receiving State should be regulated by its laws, and in any case, if the child requires "further information from the State of origin, any additional information concerning the whereabouts of the birth parents may only be released by the State of origin in accordance with the law of the State of origin."
- 517 Working Document No 134, submitted by the United States of America, suggested to include the following phrase: "if such information does not reveal names or other identifying data", to take appropriate care of the question relating to identifying information, which is an extremely sensitive area. Consequently, there should be no ambiguity in the regulation, because, according to experience, once information about the place of birth, the birth hospital, the sex of the child, and so on, is known, it is extremely easy to find out the identity of the child's parents. However, some participants observed that this issue should be determined by the law of the State where the information is preserved, not forgetting that the State of origin may avoid any possible future difficulty by not giving the information, as permitted by paragraph 2 of Article 16.
- 518 No matter what the applicable law may provide, Article 30 prescribes that access to the information shall be granted "under appropriate guidance", in order to avoid, as far as possible, any prejudicial results for the child, either emotionally or for any other reason. However, for obvious reasons, this requirement shall be complied with where the information is to be obtained by the child and not by his or her representative. Besides, the information is only to be given after all appropriate measures have been taken, having regard to the age of the adoptive child and his or her other personal conditions that may require special precautions.

### Article 31

- 519 Article 31 reproduces the text of the draft (article 26) and was included because of the consensus that, if no adequate protection is granted by the Convention, less information will be given by the parties concerned, and the final result would then be prejudicial to the success of intercountry adoptions. Consequently, Article 30 acknowledges the right of the child to discover his or her origins under certain conditions but, at the same time, the Convention looks forward to preventing excesses and abuses, therefore prescribing in Article 31 that the personal data collected or transmitted during the adoption proceedings and necessary for the preparation of the reports, should only be used for those purposes.
- 520 The same reasons explain the solution approved by the 1984 Inter-American Convention on adoption, although its Article 7 goes even further when prescribing: *"where called for, the secrecy of the adoption shall be guaranteed. However, whenever possible, medical background information on the minor and on the birth parents, if it is known, shall be communicated to the legally appropriate person, without mention of their names or of other data whereby they may be identified."*
- 521 The suggestion to refer the matter to the legislation of the Contracting States did not succeed, because data protection has not the same level of development everywhere. Consequently, it was decided that the Convention should establish some minimum safeguards by prescribing that the information on the child and on the prospective adoptive parents should only be used for the purposes for which it was gathered or transmitted.
- 522 Article 31 is broad enough to protect not only the personal data collected in the State of origin or in the receiving State, but also the information transmitted by one to another for the purposes of intercountry adoption.
- 523 The data protection sanctioned by Article 31 does not, however, prevent that the information gathered or transmitted may be used in general terms, without making specific reference to the persons involved, such as, for example, in the preparation of the anonymous statistics or the exemplification of problems arising from intercountry adoptions. There should not be any reasonable doubt as to this possibility, in view of Article 9, sub-paragraph *d*.
- 524 Working Document No 70, submitted by Germany, proposed the addition of detailed rules, but the proposal was withdrawn before being considered.
- 525 Working Document No 89, submitted by Sweden, suggested the deletion of the article, arguing that no difference is made between the data held in automatic files and data held in a manual form. Consequently, some problems could arise because legislation concerning data protection is not the same all over the world and, besides, conflicts may arise between the need to prevent abuses and the principle of public access to official records. Furthermore, it should be kept in mind that the same issue is dealt with in the Council of Europe Convention for the protection of individuals with regard to automatic processing of personal data (ETS No 108). The proposal was withdrawn, however, before being considered.

## 1.3 Conclusions and Recommendations from past meetings of the SC

LINK: <https://assets.hcch.net/docs/33b9a395-d091-49b8-8f54-f2247d561abd.pdf>

### 2010 SC

28. It was recommended that receiving States and States of origin preserve adoption records in perpetuity. The record must contain the information referred to in Article 16 and, to the extent possible, any other information or personal items relating to the child or his or her birth family.

### 2015 SC

21. The SC recommended that the possibility of a child searching for his or her origins be included in the counselling and preparation of the prospective adoptive parents. When an adopted child or an adult adoptee undertakes such a search, professional support at all stages is recommended.

## 1.4 Fact Sheets

LINK: <https://assets.hcch.net/docs/971cc0c0-381b-43c0-b6c2-3e38640686f3.pdf>

### *Fact Sheet No 1 for the meeting of the Special Commission in 2015*

#### Post-adoption

See also Guide No 1, chapter 9 and Guide No 2, chapter 11.3.

#### Co-ordinating and developing more specialised monitoring services

##### What are the main concerns raised?

- Not all receiving States offer post-adoption monitoring services and, amongst those that do, few have established comprehensive monitoring starting at the time of the PAPs return to the State with the child.<sup>1</sup>
- A minority of receiving States have been able to develop specialised post-adoption monitoring services but these receive little support from public services.<sup>2</sup>
- The way in which information relating to the offer of post-adoption services is centralised and circulated to adoptive parents remains unclear.<sup>3</sup>

##### Rules and good practices already recognised

- ✓ Recalling the obligation for States to promote counselling and post-adoption services (Art. 9),<sup>4</sup> and the role of AABs in this area.<sup>5</sup>

##### Ideas for further consideration

- ⇒ Implementing the guidelines established in this area<sup>6</sup> and promoting the exchange of good practices between States.
- ⇒ Discussing the desirability, or otherwise, of setting up specialised services or adapting existing services as part of the support system provided to families after adoption.
- ⇒ Considering how post-adoption services might be coordinated and how information might be made more accessible to families with adopted children.

#### Reinforcing mutual trust with respect to the development and transmittal of reports

##### What are the main concerns raised?

- A wide variation in the requirements of States of origin with respect to the number of reports and the duration of their transmittal may raise questions as to the objective and shared interest connected with this practice.<sup>7</sup>



- The requirements concerning the contents of postadoption reports are not always defined. However, trends emerge in terms of the main topics which States consider should be included in these reports.<sup>8</sup>
- Receiving States may not have the ability to compel systematic observance of the post-adoption reporting obligations established by States of origin.<sup>9</sup>
- The sanction mechanisms put in place by certain States of origin when their requirements are not respected can appear somewhat arbitrary.<sup>10</sup>
- The reports are not often used for analysis and action.<sup>11</sup>

#### **Good practices already recognised**

- ✓ Recalling that receiving States ought to encourage compliance with the requirements of States of origin regarding post-adoption reports.<sup>12</sup> Likewise, States of origin ought to limit the period during which postadoption reports are required, thereby acknowledging mutual trust, the cornerstone of co-operation under the Convention.<sup>13</sup>
- ✓ Recalling the need to strike a balance between the supervision of ICAs and respect for the adoptive family's private life, and the importance of taking into account the child's best interests at all times.<sup>14</sup>
- ✓ Recalling that after an ICA, protection of the child is a matter for the receiving State, which ought to be trusted in its ability to discharge its duty.<sup>15</sup>

#### **Ideas for further consideration**

- ⇒ Considering whether there is a need to establish alternative methods to ensure medium and long-term follow-up of the family.

#### **Formalising and structuring measures connected with origin searches**

##### **What are the main concerns raised?**

- The duration of information preservation does not seem to be regulated in a majority of States.<sup>16</sup>
- The information, in its entirety, is not always centralised and, in addition, it is sometimes in the sole possession of private bodies.<sup>17</sup>
- Although a majority of States have laws or practices with respect to access to information, few make a distinction between the disclosure of identifying and non-identifying information.<sup>18</sup>
- A minority of States seem to provide general assistance after the disclosure of information, and such assistance is provided by private bodies in most cases.<sup>19</sup>
- Few States have developed practices or procedures in the area, and / or integrated the topic into the preparation of PAPs.<sup>20</sup>

##### **Rules and Good practices already recognised**

- ✓ Recalling the importance of preserving records and access to information<sup>21</sup>, in so far as permitted by domestic laws and regulations relating to data protection (Arts 9 and 30).<sup>22</sup>
- ✓ Reiterating the importance of counselling services for post-adoption monitoring, including in connection with origin searches (Art. 9).<sup>23</sup>
- ✓ Promoting preservation of the link between the child and the State of origin.<sup>24</sup>

##### **Ideas for further consideration**

- ⇒ Discussing the benefits and risks associated with the use of new technologies for origin searches (see Info. Doc. No 1).<sup>25</sup>
- ⇒ Evaluating the need for guidelines and identification of good practices in this area.

## 1.5 Guide to Good Practice No 1

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>

564. The Convention obligations imposed on Contracting States do not cease with the transfer of a child to the adoptive parents. The Convention requires States to undertake a range of other general functions that may be relevant to particular adoptions, such as the provision of counselling or post-adoption reports, or that may be relevant to a general review of the operation and implementation of the Convention, such as the collection of statistics. Some of these functions address the long-term needs of adopted persons and their families, and cross-border co-operation between States of origin and receiving States will be necessary when adult adoptees are searching for their origins.
565. Adoption is not a single event, but a life-long process. The need to know is not confined to young adult adoptees. In one receiving country, the oldest adoptee applying for his original birth certificate was 96; the oldest age of a birth mother searching for a child was 89.<sup>26</sup>

### 9.1. Preservation of information

566. Article 30 of the Convention imposes on Contracting States an obligation to preserve any information they have about the child and his or her origins. There is also an obligation to ensure the child has access to that information under certain conditions.
567. Article 30 regulates two different questions: (1) the collection and preservation of the information concerning the child's origins, and (2) the availability of or the access to such information by the child. These rules, while outside the norm of international conventions, were included because of their importance, particularly to adopted persons, and because of the possible need for co-operation among the Contracting States when the adopted person tries to obtain information.<sup>27</sup>
568. Article 30 should be read in conjunction with Article 16, because the information referred to is mainly that required for the preparation of the report on the child that the Central Authority of the State of origin is to transmit to the receiving State.<sup>28</sup> Therefore, as a practical matter, it may be beneficial for States to include the retention of records as a duty of the same office that prepares the report on the child.<sup>29</sup> States may also want to clearly determine, and include within their laws, the length of time that records should be kept.<sup>30</sup>
569. The demand by adult adoptees for information about their origins is significant. Those whose background information is incomplete or non-existent may never find the answers they seek. However, it is recognised that the identification of birth parents to the adult adoptee may be a sensitive issue. It should be dealt with by agreement between the parties. The wide range of views and cultures is recognised.
570. As more and more adoptees search for their biological families, and more and more biological parents seek information on the whereabouts of their adopted children it is important to have long-term policies and procedures for the preservation of information.<sup>31</sup>
571. For the conservation of and access to adoption information, it is possible that evolving technologies could be used for copying and preserving records. Consideration should be given to assisting Central Authorities to acquire the adequate technical resources for the collection and preservation of information.<sup>32</sup>

#### 9.1.1. Child's right to information

572. It is a well-accepted view that a child should have a right to obtain information about his or her origins. The child's right to know his or her parents is provided for in Article 7(1) of the Convention on the Rights of the Child. However, this right must be balanced against the right

of birth parents not to have their identity disclosed to the child who is relinquished for adoption. For example, in some countries an unmarried mother who had consented to the adoption might be later harmed by the disclosure of her past. Therefore, Article 30 does sanction some restrictions to the right of the child to have information, as access is only “in so far as is permitted by the law of that State.”<sup>33</sup> Furthermore, States of origin are permitted to withhold identifying information from the report on the child in accordance with Article 16(2).

573. There is a distinction to be made between information about the birth parents and the disclosure of their identity. Information about the birth parents can be revealed without disclosing their identity or infringing their right to privacy. Such information, for example, about the age, health and social circumstances of the birth parents, may be essential for the adoptive family to have a better understanding of any potential future problems concerning the child’s health, development and physical and psychological well-being. Information would not be made public, but only supplied to the adopted child and the adoptive parents. In many countries, the disclosure of information is based on the mutual consent of the adult adopted child and the birth parents.

#### *9.1.2. Access to records*

574. Access to records is handled in many different ways by States. Some receiving States allow unrestricted access for children who have reached the age of majority.<sup>34</sup> In some Federal States, the law relating to access to records is the law of the province, territory or state where the records are held.<sup>35</sup> Some countries of origin recognise access to information about origins as a protected constitutional right of the child.<sup>36</sup>
575. States should ensure that laws and procedures for the preservation of and access to information about an adopted child are included in their measures to implement the Convention.

#### *9.1.3. Data protection*

576. While Article 30 acknowledges the right of the child to discover his or her origins under certain circumstances, it is necessary to limit the possibility of misuse of personal data which is disclosed during the adoption process. Consequently, the Convention establishes minimum safeguards by prescribing that the information on the child and the prospective adoptive parents should only be used for the purposes for which it was gathered or transmitted.<sup>37</sup> These obligations and safeguards are also given emphasis through the requirements of Article 9 a) namely that Central Authorities shall take all appropriate measures to “collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption.”
577. Article 31 does not, however, prevent the information from being used in a general sense, without reference to specific individuals, in the compilation of statistics or as examples arising from intercountry adoptions.
578. States should ensure that their implementing measures contain safeguards to preserve the confidentiality of information about the adoptive parents and the child.<sup>38</sup>

## 1.6 Guide to Good Practice No 2

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=5504>

### 11.3. Post-adoption phase

#### 11.3.1. Post-placement and post-adoption services

538. During the preparation stage, the accredited body should have discussed with the prospective adoptive parents the possible need for post-placement or post-adoption services. One of the primary objectives of such services is to ensure that the adoptive families who encounter adjustment difficulties or other problems with their adopted child have the support they need to deal with these issues. Services may also be provided to help maintain links with and respect for the cultural identity of the adoptee. The accredited body has an important role in providing support to the adoptive families and referring them to services available in the receiving State.<sup>39</sup>
539. The accredited bodies' experience in preparing and supporting the adoptive parents through the adoption process (completing the home study, guiding the adoptive parents on the specificities of the State of origin, and accompanying the adoptive parents in the decision to accept a proposed match with a child) offers an important background to provide post-placement and post-adoption services. In contrast, authorities in charge of post-placement and post-adoption services who have not worked with the adoptive parents before the placement or adoption may lack the background on the specific family's needs and may not have familiarity with the child's State of origin to fully understand the dynamics at the post-placement or post-adoption phase.

## 1.7 Country Profile

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=5003&dtid=42>

### States of origin

| 31. Preservation of, and access to, information concerning the child's origins (Art. 30) and the adoption of the child  |  |
|---|--|
| a) Which authority is responsible for preserving information concerning the child's origins, as required by Article 30?   |  |
| b) For how long is the information concerning the child's origins preserved?  |  |
| c) Does your State permit the following persons to have access to information concerning the child's origins and / or information concerning the adoption of the child: <ul style="list-style-type: none"> <li>(i) the adoptee and / or his / her representative(s);</li> <li>(ii) the adoptive parents;</li> <li>(iii) the birth family; and / or</li> <li>(iv) any other persons?</li> </ul> If so, are there any criteria which must be met for access to be granted (e.g., age of the adopted child, consent of the birth family to the release of information concerning the child's origins, consent of the adoptive parents to the release of information concerning the adoption)?<br>See Art. 9 a) and c) and Art. 30. | (i) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No<br><br>(ii) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No<br><br>(iii) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No<br><br>(iv) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No |
| d) Where access to such information is provided, is any counselling or other guidance / support given in your State?  | <input type="checkbox"/> Yes – please specify:<br><input type="checkbox"/> No  |

|   |   |
|---|---|
| e) Once access to such information has been provided, is any <i>further</i> assistance offered to the adoptee and / or others (e.g., regarding making contact with his / her biological family, tracing extended family)? | <input type="checkbox"/> Yes – please specify:<br><input type="checkbox"/> No |
|---|---|

### Receiving States

| 26. Preservation of, and access to, information concerning the child's origins (Art. 30) and the adoption of the child  |  |
|---|--|
| a) Which authority in your State is responsible for preserving information concerning the child's origins, as required by Article 30?   |  |
| b) For how long is the information concerning the child's origins preserved?  |  |
| c) Does your State permit the following persons to have access to information concerning the child's origins and / or information concerning the adoption of the child:<br><br>(i) the adoptee and / or his / her representative(s);<br>(ii) the adoptive parent(s);<br>(iii) the birth family; and / or<br>(iv) any other person(s)?<br><br>If so, are there any criteria which must be met for access to be granted (e.g., age of the adopted child, consent of the birth family to the release of information concerning the child's origins, consent of the adoptive parents to the release of information concerning the adoption)?<br><br>See Art. 9 a) and c) and Art. 30. | (i) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No<br><br>(ii) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No<br><br>(iii) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No<br><br>(iv) <input type="checkbox"/> Yes – please explain any criteria:<br><input type="checkbox"/> No |
| d) Where access to such information is provided, is any counselling or other guidance / support given in your State?  | <input type="checkbox"/> Yes – please specify:<br><input type="checkbox"/> No  |
| e) Once access to such information has been provided, is any <i>further</i> assistance offered to the adoptee and / or others (e.g., regarding making contact with his / her biological family, tracing extended family)?   | <input type="checkbox"/> Yes – please specify:<br><input type="checkbox"/> No  |

## 1.8 Prel. Doc. No 3 of February 2020 - Questionnaire on the practical operation of the 1993 Adoption Convention (2020 Questionnaire No 1)

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6668&dtid=57>

| 1. POST-ADOPTION MATTERS                           |  |
|--|--|
| 1.1. Preservation of, and access to, information   |  |
| <u>Both States of origin and receiving States</u>  |  |
| 1.1.1. Preservation of information and use of data |  |
| 1.   | Has your State centralised, in a public facility, information concerning the child's origins and the adoption of the child?<br><input type="checkbox"/> Yes. Please specify where the information is centralised:<br><input type="checkbox"/> No. Please specify where the information is stored:  |
| 2.   | Has your State encountered situations where personal data obtained during the intercountry adoption process has been misused (see Art. 31 of the Convention)?<br><input type="checkbox"/> Yes. Please provide details of the types of situations your State encountered and the action(s) taken in response:<br><input type="checkbox"/> No. |

| <b>1.1.2. Search for origins</b>                  |   |
|---|---|
| 3.  | <p>Is there a specialised programme or section in the Central Authority which deals with the search for the origins of an adoptee?</p> <p><input type="checkbox"/> Yes. Please provide its name and explain the services provided:</p> <p><input type="checkbox"/> No. Please specify how the search for the origins is handled:</p>  |
| 4.  | <p>Has your State developed any good practices to ensure that Recommendation No 21<sup>40</sup> of the 2015 Special Commission is implemented?</p> <p><input type="checkbox"/> Yes. Please specify the good practices developed in that regard:</p> <p><input type="checkbox"/> No. Please specify any reasons:</p>   |
| 5.  | <p>If your State allows for the use of DNA testing to search for origins, please specify:</p> <p>(a) which body is in charge of the DNA testing (e.g., government, private companies, NGOs);</p> <p>(b) where the data is stored, and whether it is stored by a public or private entity;</p> <p>(c) the average cost of a DNA test in your State and whether any subsidy is available;</p> <p>(d) details of any challenges and / or good practices your State may have developed with respect to the issues identified in this question and DNA testing in general.</p> |
| 6.  | <p>What is your State's practice when the background information of an adoption is incomplete or non-existent? How does your State support adoptees in such situations?</p>   |
| 7.  | <p>What is the procedure in your State when illicit practices are discovered during a search for origins? Please provide details of any challenges and / or good practices.</p>   |
| 8.  | <p>If statistics are available in your State regarding the number of adoptees who are searching / have searched for their origins, please specify:</p> <p>(a) how many of these searches were successful (e.g., the adoptee found his birth family);</p> <p>(b) how many were not successful and what were the reasons.</p>   |
| 9.  | <p>Has your State encountered any challenges with regard to access to information due to the confidentiality of the identity of the birth parents?</p> <p><input type="checkbox"/> Yes. Please specify the challenges and how your State addressed them:</p> <p><input type="checkbox"/> No.</p>  |
| 10.   | <p>Does your State make a distinction between the disclosure of identifying versus non-identifying information?</p> <p><input type="checkbox"/> Yes. Please explain your response:</p> <p><input type="checkbox"/> No. Please explain your response:</p>  |
| 11.   | <p>What is the procedure in your State for processing requests from the <b>birth family</b> to receive information concerning the adoption of their child? Does your State have a specific programme / database to handle such requests?</p>  |
| <b>1.1.3. Guidelines and good practices</b>       |   |
| 12.   | <p>Has your State developed any guidelines (e.g., procedures, manuals) and / or good practices regarding preservation of information and search for origins?</p> <p><input type="checkbox"/> Yes. Please provide a link or attach a copy with your response:</p> <p><input type="checkbox"/> No.</p>  |
| <b>1.2. Post-adoption services</b>                |   |
| <u>Both States of origin and receiving States</u> |   |
| 13.   | <p>Has your State developed any good practices to ensure that Recommendation No 18<sup>41</sup> of the 2015 Special Commission is implemented?</p> <p><input type="checkbox"/> Yes. Please specify the good practices developed in that regard:</p> <p><input type="checkbox"/> No. Please specify any reasons:</p>   |
| 14.   | <p>If your State provides specialised post-adoption services, please specify:</p> <p>(a) the type of services provided and to whom they are provided (e.g., child and adult adoptees, birth families, adoptive families);</p> <p>(b) who provides the services (e.g., social welfare administration, school, health personnel);</p> <p>(c) whether the professionals involved in the post-adoption services are the same as those involved in the preparation of the prospective adoptive parents (PAPs);</p>   |

|  |   |
|--|---|
|  | <p>(d) how, if there are different services, these various services are coordinated;</p> <p>(e) how the post-adoption services are financed (e.g., the government funds its own services, the government funds Adoption Accredited Bodies (AAB) services, adoptees and their families pay for the services themselves, other);</p> <p>(f) the length of time this support is available.</p>   |
| 15.  | Please provide details of any good practices in your State which ensure that adoptees, adoptive families and birth families are adequately informed about, and can easily access, post-adoption services.   |
| 16.  | <p>In setting up post-adoption services in your State, were the voices of adoptees considered?</p> <p><input type="checkbox"/> Yes. Please specify in what way their voices were considered:</p> <p><input type="checkbox"/> No.</p>  |
| 17.  | <p>Has research been carried out in your State in the past five years assessing post-adoption services?</p> <p><input type="checkbox"/> Yes. Please provide a link or attach a copy with your response:</p> <p><input type="checkbox"/> No.</p>   |
| <u>Receiving States only</u>   |   |
| 18.  | Please specify any challenges your State encounters in ensuring that adequate support is in place for adoptees and the adoptive family following an intercountry adoption, including where parents have adopted a child with special needs. Please also share any good practices your State has developed to overcome such challenges.  |
| <b>1.3. Post-adoption reports</b><br><u>Receiving States only</u>                    |   |
| 19.  | <p>Does the preparation of PAPs in your State include the provision of information on post-adoption report requirements of the State where the PAPs (would like to) adopt?</p> <p><input type="checkbox"/> Yes. Please explain your response:</p> <p><input type="checkbox"/> No. Please specify when and how PAPs are otherwise informed:</p>  |
| <u>Both States of origin and receiving States</u>                                    |   |
| 20.  | <p>Has your State encountered situations where the adopted child refused or objected to the obligation to comply with the post-adoption report requirements?</p> <p><input type="checkbox"/> Yes. Please specify the types of situations and what action your State has taken to address this type of situation:</p> <p><input type="checkbox"/> No.</p>  |
| 21.  | What has been your State's recent experience regarding post-adoption reports? Please provide details of any challenges and / or good practices in this regard.  |
| <b>1.4. Adoption breakdowns</b><br><u>Both States of origin and receiving States</u> |   |
| 22.  | <p>If your State has had any experience regarding intercountry adoptions which have broken down, please specify:</p> <p>(a) what have been the main causes of the breakdowns;</p> <p>(b) how your State has addressed these situations and whether your State has any good practices to share in this regard;</p> <p>(c) what support is available for the adoptee and the adoptive family to prevent and / or respond to the breakdown of intercountry adoptions;</p> <p>(d) whether your State has developed any good practices to ensure that Recommendation No 19 of the 2015 Special Commission is implemented:</p> <p><input type="checkbox"/> Yes. Please specify any good practices developed in this regard:</p> <p><input type="checkbox"/> No. Please specify any reasons:</p> <p>(e) whether your State has experienced breakdown cases in which it was determined that it was in the child's best interests to return to the State of origin, and if so, what the situations were and how they were handled;</p> <p>(f) how many cases of breakdown in intercountry adoptions have been reported in your State between 2015 and the present date;</p> <p>(g) how many of these cases included a new placement (e.g., foster care, new adoption) for the child;</p> |

|   |  |
|---|--|
|   | <p>(h) how many cases of breakdowns were intercountry adoptions done (a) under the 1993 Adoption Convention ; and (b) outside of the Convention (i.e., prior to the entry into force of the Convention in your State or with non-State Party);</p> <p>(i) in line with Recommendation No 20 of the 2015 Special Commission, whether your State has applied the 1996 Child Protection Convention to enhance cooperation between States of origin and receiving States in cases of breakdown, and if so, please explain.</p> |
| <u>Receiving States only</u>  |  |
| 23.   | <p>Is your State's Central Authority informed and involved / consulted when an intercountry adoption breaks down?</p> <p><input type="checkbox"/> Yes. Please explain your response:</p> <p><input type="checkbox"/> No. Please specify whether the staff of the child protection services include workers specialised in adoption:</p>  |
| 24.   | <p>Do your State's authorities consult with the Central Authority of the child's State of origin:</p> <p>(a) if an adoption breaks down?</p> <p><input type="checkbox"/> Yes. Please describe the type of cooperation:</p> <p><input type="checkbox"/> No.</p> <p>(b) before determining a new placement for the child?</p> <p><input type="checkbox"/> Yes. Please describe the type of cooperation:</p> <p><input type="checkbox"/> No.</p>  |
| <u>States of origin only</u>  |  |
| 25.   | <p>Is your State's Central Authority (or other competent authority) informed or involved / consulted by the competent authorities of the child's receiving State:</p> <p>(a) if an adoption breaks down?</p> <p><input type="checkbox"/> Yes. Please describe the type of cooperation:</p> <p><input type="checkbox"/> No.</p> <p>(b) before determining a new placement for the child?</p> <p><input type="checkbox"/> Yes. Please describe the type of cooperation:</p> <p><input type="checkbox"/> No.</p>              |
| <p><b>1.5. Other post-adoption matters</b><br/><u>States of origin only</u></p> |  |
| 26.   | <p>Are adoptees, who did not retain the nationality of their State of origin, permitted to regain it at a later stage?</p> <p><input type="checkbox"/> Yes. Please specify the conditions to regain nationality:</p> <p><input type="checkbox"/> No. Please explain your response:</p>   |
| <u>Both States of origin and receiving States</u>                               |  |
| 27.   | <p>Has your State encountered situations where adoptees have sought to regain the <b>nationality</b> of their State of origin?</p> <p><input type="checkbox"/> Yes. Please specify the situations and how they were handled:</p> <p><input type="checkbox"/> No.</p>   |
| 28.   | <p>Please give the reasons, if any, why your State would or would not support the development of a Guide to Good Practice on post-adoption.</p>  |



## 2. SIMPLE INTERCOUNTRY ADOPTIONS

### 4. Relevant information:

- [Prel. Doc. No 9 of May 2022](#) – Discussion Paper “Simple and Open Intercountry Adoption”.
- Agenda item: No 16.

### 2.1 1993 Adoption Convention

LINK: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

#### *Article 26*

1. The recognition of an adoption includes recognition of
  - (a) the legal parent-child relationship between the child and his or her adoptive parents;
  - (b) parental responsibility of the adoptive parents for the child;
  - (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
2. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
3. The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

#### *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.

### 2.2 Explanatory Report

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=2279>

#### *Article 2, paragraph 2*

- 91 Notwithstanding the fact that some participants were against a definition of "adoption", the large majority was "in favour of an all-inclusive definition rather than one confined to full adoption". Therefore, it was preferred to give a wider definition of "adoption", not prescribing whether the pre-existing legal parent-child relationship between the child and his or her parents would be terminated, and as a consequence of this broader concept, Article 27 of the Convention also regulates the conversion of the adoption.
- 94 The second paragraph of Article 2 clarifies that the 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). But the Convention does not cover "adoptions" which are only adoptions in name but do not establish a permanent parent-child relationship.

*Article 26, paragraph 1, Introductory phrase*

438 Most of the participants, however, not only of the Special Commission but also of the Diplomatic Conference, were of the opinion that it would be preferable not to restrict the scope of the Convention to the type of adoptions that terminate the legal relationship between the child and his or her family of origin, and that it was desirable to include all possible kinds of intercountry adoptions. For this reason, it was necessary to consider the different types of adoptions that, roughly speaking, may be classified in three main groups, as follows: (1) the first admits only a radical kind of adoption that fully terminates the legal relationship between the child and his or her family of origin (full adoption); (2) the second class only accepts a less radical type of adoption that does not completely terminate such legal relationship (simple or limited adoption), and (3) the last group admits both kinds of adoptions, the most radical and the less radical, accepting therefore that the legal relationship between the child and his or her family of origin may or may not be terminated, all depending on the type of adoption granted in the particular case.

*Article 26, paragraph 1, sub-paragraph a*

443 According to sub-paragraph a, the recognition of the legal parent-child relationship between the child and his or her adoptive parents created by the adoption, has to be recognized in any other Contracting State, whether or not the pre-existing legal parent-child relationship between the child and his or her mother and father is preserved or terminated as a result of the adoption. This demonstrates the broad scope of the Convention which covers all classes of possible adoptions.

*Article 26, paragraph 1, sub-paragraph c*

449 Working Document No 142, submitted by the Recognition Committee, made reference to "any pre-existing legal relationship of the child with his or her mother and father", but the word "any" was changed by "a", to accept the possibility that in some cases some links between the child and his or her mother or father remain. The amendment took into consideration the comments made by Germany and Austria, reminding that in the case of an adoption within a family, there may remain some legal relationships between the child and one of his or her parents, in accordance with the law of the State where the adoption is made, even though the granting of adoption terminates the legal relationship between the child and the other parent.

451 The reference made by sub-paragraph c to "a pre-existing legal relationship between the child and his or her mother and father" is to be understood as referring to the lien de filiation and, for the sake of consistency with paragraph 2 of Article 2, it should have included the term "permanent".

452 Sub-paragraph c of Article 26 may have the effect of imposing on the receiving State a duty to recognize the termination of a pre-existing legal parent-child relationship between the child and his or her mother and father, even though such an effect would not have been produced had the adoption been granted in the recognizing State.

453 Certainly, the State of origin or the receiving State may avoid such a consequence just by not agreeing to the continuation of the adoption, as permitted by Article 17, sub-paragraph c, but it is to be kept in mind that such a possibility is not open to any other Contracting State, because the agreement of third States is not a condition required by the Convention to grant the adoption. Therefore, the third Contracting State is bound under the Convention to

recognize the termination of such a pre-existing legal parent-child relationship between the child and his or her mother and father, even though the law applicable according to its conflict rules would not admit that termination.

- 455 Revocation of the adoption is not covered by the Convention and therefore, it is not entitled to recognition by operation of law, according to Article 23, the question being dealt with by each Contracting State according to its own law. The same applies to any decision that revokes the termination of the pre-existing parent-child relationship after the adoption is granted, whether or not the adoption is maintained.
- 456 Sub-paragraph c is another evidence of the broad scope of the Convention that covers all kinds of adoptions which create a permanent legal parent-child relationship, as specified by paragraph 2 of Article 2, whether or not the former relationship with his or her mother and father remains in force.
- 457 Sub-paragraph c only regulates adoptions granted in a Contracting State, that could be the State of origin or the receiving State, and does not aim to establish rules for adoptions made in non-Contracting States. The termination of the legal parent-child relationship as a consequence of the conversion of the adoption, is not regulated by sub-paragraph c, but by Article 27.

#### *Article 26, paragraph 2*

- 464 Paragraph 2 of Article 26 only regulates the case where the termination of a pre-existing legal parent-child relationship is admitted in the State where the adoption is granted, i.e. the State of origin or the receiving State. The child shall enjoy in the receiving State where the adoption is recognized or (if no adoption is made in the State of origin) granted and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having such effect in each such Contracting State. Therefore, paragraph 2 of Article 26 cannot come into operation if the State where the adoption is made does not accept the termination of such pre-existing legal parent-child relationship and, in that case, the rights belonging to the adoptive child will be determined in accordance with Article 26, paragraph 1, sub-paragraphs a and b, and paragraph 3.
- 466 The practical importance of paragraph 2 can easily be evidenced in the case where either the receiving State (if it is there that the adoption is granted) or the recognizing State admits both adoptions that terminate the pre-existing legal parent-child relationship and adoptions that do not terminate it, because in that case the child shall enjoy the rights arising from the adoption that ends such relationship.
- 467 Notwithstanding its broad terms used, paragraph 2 should be read in conjunction with sub-paragraph c of Article 26 as referring to the termination of "a pre-existing legal relationship between the child and his or her mother and father".
- 468 The termination of the pre-existing legal parent-child relationship referred to in paragraph 2 of Article 26 does not require to be "definitive", and it also covers the exceptional cases where the revocation of the adoption is possible.
- 469 The reference to the "receiving State" in paragraph 2 aims to cover cases outside of recognition where the adoption is being made in the receiving State. Although not expressly mentioned, the same rule must be deemed to apply in the exceptional case where, after the child has moved to the receiving State, the adoption is granted — not in the receiving State but — in the State of origin.

### *Article 26, Final remarks*

473 In fact, there would be no problem in the following cases:

- (a) if the adoption granted in one Contracting State terminates the pre-existing legal relationship between the child and his or her family of origin, and the recognizing State only accepts the same kind of adoption. Then, the effects of the adoption are those determined by sub-paragraphs a, b and c of paragraph 1 and paragraph 2, so that the child shall enjoy rights equivalent to those belonging to adoptive children in the recognizing State;
- (b) if the adoption granted in one Contracting State does terminate the pre-existing legal relationship between the child and his or her family of origin, and the recognizing State admits not only that kind of adoption, but also the adoption that does not terminate such pre-existing legal relationship. The effects of the adoption are again determined by sub-paragraphs a, b and c of paragraph 1 and paragraph 2, and the child shall enjoy rights equivalent to those of a child adopted in the recognizing State with termination of the pre-existing parent-child relationship;
- (c) if the adoption granted in one Contracting State does not terminate the legal relationship between the child and his or her family of origin, and the recognizing State only accepts the same kind of adoption. Then, the effects of the adoption are those determined by sub-paragraphs a and b of paragraph 1, so that the child shall enjoy rights equivalent to those of adoptive children in the recognizing State;
- (d) if the adoption granted in one Contracting State does not terminate the pre-existing legal relationship between the child and his or her family of origin, and the recognizing Contracting State accepts not only this kind of adoption but also the adoption that terminates such legal relationship. In this case, the effects of the adoption are those determined by sub-paragraphs a and b of paragraph 1, so that the child shall enjoy in the recognizing State rights equivalent to those of children adopted in the less radical manner in relation to his or her family of origin. However, a conversion of the adoption may take place according to Article 27;
- (e) if the adoption granted in one Contracting State terminates the pre-existing legal relationship between the child and his or her family of origin, and the recognizing State does not admit such a consequence. Then, the effects of the adoption are those determined by sub-paragraphs a, b and c of paragraph 1 of Article 26 (paragraph 2 cannot apply), so that the child shall enjoy a special status in the recognizing State;
- (f) if the adoption granted in one Contracting State does not terminate the pre-existing legal relationship between the child and his or her family of origin, and the recognizing State only admits the type of adoption that terminates such relationship. In that case, the effects of the adoption are those determined by sub-paragraphs a and b of paragraph 1, and paragraph 2 does not apply. However, the adoption may be converted into a "full" adoption according to Article 27.
- (g) in all of the above cases, the recognizing State may apply a more favourable rule or regime to the child under Article 26, paragraph 3.

### *Article 27, paragraph 1*

475 Working Document No 142 established three conditions for the conversion: (a) that the law of the receiving State permits it; (b) that the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of an adoption having the effect of terminating a pre-existing legal parent-child relationship, and (c) that such an adoption is in

the best interests of the child. This last requirement was deleted, because it was considered a repetition of the idea already laid down in the fourth paragraph of the Preamble.

- 476 Article 27 only regulates the most frequent situation, i.e. where the adoption granted in the State of origin is to be converted in the receiving State. Consequently, not all cases are solved by the Convention and the possible conversion of the adoption in any other Contracting State, even in the State of origin, is to be decided according to the conflict rules of the Contracting State where the conversion takes place and does not benefit from the Convention's rules, in particular from Article 23.
- 477 The possibility of conversion permitted by Article 27 is subject to the condition that the adoption was granted in the State of origin. Therefore, it has a more restricted scope than sub-paragraph c, paragraph 1 of Article 26, that refers to the Contracting State where the adoption is granted, i.e. the State of origin or the receiving State. Therefore, the Convention does not cover the case where the adoption is granted in the receiving State, the pre-existing legal parent-child relationship is maintained and subsequently, the adoption is converted into an adoption that does terminate such relationship, for example, because in the receiving State both kinds of adoptions are permitted by law. Then, the conversion so decreed would not benefit from the rules of the Convention, in particular from Article 23.
- 478 Article 27 is only to be applied where the adoption does not bring about the termination of the pre-existing legal relationship between the child and his or her mother and father, because if such termination is an effect of the adoption in the State where it was made, it has to be recognized according to Article 26, sub-paragraph c.
- 479 Even though paragraph 1 refers to "the effect of terminating a pre-existing legal parent-child relationship", this sentence should be read in conjunction with sub-paragraph c of Article 26, meaning "the effect of terminating a pre-existing permanent legal relationship between the child and his or her mother and father".

#### *Article 27, paragraph 1, sub-paragraph a*

- 480 According to sub-paragraph a, the receiving State shall apply its own law to decide whether or not the conversion is possible. Therefore, it cannot take place if the law of the receiving State does not accept that the adoption may be converted or where the law of the receiving State does not accept that the adoption may bring about the termination of a pre-existing permanent legal relationship between the child and his or her mother and father.
- 481 During the discussion, it was suggested to replace "the law of the receiving State" by "the law of the State of the habitual residence of the child", and to permit the conversion in any other Contracting State if possible and according to the law of the receiving State. However, both proposals did not succeed.

#### *Article 27, paragraph 1, sub-paragraph b*

- 482 The idea behind sub-paragraph b is easily understandable and seeks to prevent that the adoption terminates, because of the conversion, the pre-existing legal parent-child relationship, notwithstanding the fact that the necessary consents, required by Article 4, sub-paragraphs c and d, had been given for an adoption that does not have that effect.
- 483 As a practical matter, it is to be observed that the functioning of Article 27 will not present any problem when the required consents had been given to cover the possibility of the conversion of the adoption, but, if that is not the case, difficulties may be faced to obtain the consents required by sub-paragraph c of Article 4 once the child has been moved and is habitually resident in the receiving State with his or her adoptive parents.

### *Article 27, paragraph 2*

- 484 [...] the certification required by the second sentence of paragraph 1 of Article 23 is not needed, because such condition is not necessary for the conversion.
- 486 The conversion made in accordance with paragraph 2 of Article 27 shall be recognized in all Contracting States, the State of origin included, even though the adoption which was granted there did not bring about the termination of the pre-existing legal parent-child relationship.

## **2.3 Guide to Good Practice No 1**

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>

### *Glossary*

**Simple adoption:** a simple adoption is one in which the parent-child relationship which existed before the adoption is not terminated but a new legal parent-child relationship between the child and his or her adoptive parents is established, and those adoptive parents have parental responsibility for the child.

#### *2.1.2. Non-discrimination*

56. Article 26(2) of the 1993 Hague Convention contains a more specific non-discrimination clause to the effect that where a full adoption is made under the Convention with the effect of terminating the existing parent-child relationship, the child's rights resulting from the adoption should be equivalent to those resulting from a similar adoption made under national law in the receiving State.

### *7.3. Children with special needs*

#### *7.3.1. The special needs child*

389. Special needs children could also receive priority above others for adoption. Older children could be adopted through simple or open adoptions, which would give older children a family while keeping some links with their biological family. However, only adoptions which create a permanent parent-child relationship come within the scope of the Convention (Art. 2(2)).

#### *8.8.8. Simple and full adoptions*

556. The Convention applies to simple and full adoptions. According to the Convention, a simple adoption is one in which the parent-child relationship which existed before the adoption is not terminated but a new legal parent-child relationship between the child and his or her adoptive parents is established, where the adoptive parents acquire parental responsibility for the child (see Art. 26(1) a) and b)). A full adoption is one in which the pre-existing parent-child relationship is terminated (see Art. 26(1) a) and b)).
557. Article 2(2) of the Convention states that "The Convention covers only adoptions which create a permanent parent-child relationship." Consequently, simple adoptions which establish a permanent parent-child relationship and the transfer of parental responsibility for the child to the adoptive parents are covered by the Convention, even if that adoption does not result in the termination of a pre-existing legal relationship between the child and his or her mother or father. [...]
558. Many legal systems do not provide for simple adoptions. In practice, therefore, under the Convention, those legal systems will be faced only with issues regarding the recognition of simple adoptions made in other Contracting States.

559. Under Article 26(1), a simple adoption certified under Article 23 by the State of origin must be recognised in all other Contracting States, as a minimum, with the effects that the simple adoption has under the laws of the State of origin. However, under Article 26(3), nothing prevents the recognising State from giving additional effects to the recognition (for instance, in terms of inheritance rights vis-à-vis the adoptive parents, or the right of citizenship).
560. 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.

## 2.4 Guide to Good Practice No 2

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=5504>

### *5.2.2. In the receiving State*

211. The functions of accredited bodies in receiving States may be the following: [...]

#### **Post-adoption**

[...]

- q) If the adoption from the State of origin was a simple adoption, advise the adoptive parents of the legal requirements to convert the adoption to a full adoption (if appropriate);

### *6.4. Representatives of foreign accredited bodies in the State of origin*

243. The representative in the State of origin may perform some of those functions and may also perform, among others, the following functions: [...] inform the foreign accredited body if the State of origin has only simple adoptions, and the procedures used to obtain an informed consent from birth parents if the adoption will be converted to a full adoption in the receiving State;

#### *11.2.1.2. Preparation on a specific State of origin*

518. At the appropriate stage of the procedure, the accredited body has a responsibility to continue the preparation of prospective adoptive parents and to provide them with specific information concerning the adoption procedures in the State of origin selected for the adoption. For example, is the adoption from the State of origin a simple adoption or a full adoption? [...]

#### *11.2.6. Ensuring prospective adoptive parents finalise all steps*

536. During the preparation stage, the accredited body will have informed the adoptive parents of any steps necessary following the arrival of the child in the receiving State, such as legal proceedings when the adoption decision is not granted in the State of origin, where a simple adoption is to be converted to a full adoption, or where an application for citizenship is necessary. The accredited body should follow up with the parents to ensure the steps are completed. [...]

## 2.5 Country Profile

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=5003&dtid=42>

### States of origin

| 30. Simple and full adoption  |   |
|---|---|
| <p>a) Is “full” adoption permitted in your State?<br/>See GGP No 1 at Chapter 8.8.8 and note 21 below.</p>  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br><input type="checkbox"/> In certain circumstances only – please specify:<br><input type="checkbox"/> Other (please explain):   |
| <p>b) Is “simple” adoption permitted in your State?<br/>See GGP No 1 at Chapter 8.8.8 and note 21 below.</p>  | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br><input type="checkbox"/> In certain circumstances only (e.g., for intra-family adoptions only) – please specify:<br><input type="checkbox"/> Other (please explain): |
| <p>c) If a “simple” adoption is to be undertaken in your State in an intercountry adoption case, does your State nonetheless usually seek the birth mother / family’s consent(s) to a “full” adoption where this is in the child’s best interests (i.e., so that a “conversion” of the adoption may be undertaken in the receiving State if the other conditions in Art. 27(1) are fulfilled)?<br/>See Art. 27(1) b) and Art. 4 c) and d)..</p> | <input type="checkbox"/> Yes – please specify:<br><input type="checkbox"/> No   |
| <p>d) How does your State respond to requests from receiving States to obtain the consent(s) of a child’s birth mother / family to the conversion of a “simple” adoption into a “full” adoption (in accordance with Art. 27) when the request is made many years after the original adoption?</p>   |   |

### Receiving States

| 25. Simple and full adoption   |   |
|--|---|
| <p>a) Is “full” adoption permitted in your State?<br/>See GGP No 1 at Chapter 8.8.8 and note 19 below.</p>   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br><input type="checkbox"/> In certain circumstances only – please specify:<br><input type="checkbox"/> Other (please explain):   |
| <p>b) Is “simple” adoption permitted in your State?<br/>See GGP No 1 at Chapter 8.8.8 and note 19 below.</p>   | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br><input type="checkbox"/> In certain circumstances only (e.g., for intra-family adoptions only) – please specify:<br><input type="checkbox"/> Other (please explain):   |
| <p>c) Does the law in your State permit “simple” adoptions to be converted into “full” adoptions in accordance with Article 27 of the 1993 Convention?<br/>See Art. 27(1) a).</p>  | <input type="checkbox"/> Yes – please provide details of how this is undertaken and please specify whether this is done on a regular basis when a State of origin grants a “simple” adoption or only in specific cases:<br><input type="checkbox"/> No – go to Question 26. |
| <p>d) If conversion of a “simple” adoption into a “full” adoption is sought in your State following an intercountry adoption, how does your State ensure that the consents referred to in Article 4 c) and d) of the 1993 Convention have been</p> |   |



|   |   |
|---|---|
| <p>given in the State of origin to a “full” adoption (as required by Art. 27(1) b))?</p> <p>See Art. 27(1) b) and Art. 4 c) and d).</p>   |   |
| <p>e) Following a conversion in your State, please explain which authority is responsible for issuing the Article 23 certificate in relation to the conversion decision. Please also explain the procedure which is followed.</p> | <p><input type="checkbox"/> The competent authority and the procedure is the same as stated in response to Question 23 above.</p> <p><input type="checkbox"/> Other (please specify):</p> |

## 2.6 2020 Questionnaire No 1

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6668&dtid=57>

|   |   |
|---|---|
| <p><b>5. SIMPLE AND OPEN ADOPTIONS</b></p> <p><u>Both States of origin and receiving States</u></p> <p><b>5.1. Simple adoptions</b></p> <p>A simple adoption is one in which the parent-child relationship which existed before the adoption is not terminated but a new legal parent-child relationship between the child and his or her adoptive parents is established, and these adoptive parents have parental responsibility for the child.</p> |   |
| 49.   | <p>Has your State changed its legislation, rules or practices in recent years regarding simple intercountry adoption?</p> <p><input type="checkbox"/> Yes. Please specify the changes made and the reasons for these changes:</p> <p><input type="checkbox"/> No.</p>   |
| 50.   | <p>What is the profile of children for whom a simple intercountry adoption is made, either in your State or in the State(s) with which your State cooperates?</p>   |
| 51.   | <p>If your State permits both full and simple adoption, are simple adoptions encouraged / promoted?</p> <p><input type="checkbox"/> Yes. Please explain your response:</p> <p><input type="checkbox"/> No. Please explain your response:</p>  |
| 52.   | <p>Has your State faced any problems regarding seeking the birth mother / family’s consent to convert a simple adoption into a full adoption in the State of origin (Art. 27 of the Convention)?</p> <p><input type="checkbox"/> Yes. Please specify the situations which have arisen and how your State has dealt with these situations:</p> <p><input type="checkbox"/> No.</p> |
| 53.   | <p>(a) Please specify any challenges your State encounters with simple adoptions:</p> <p>(b) Please specify any good practices of your State for simple adoptions, including those for overcoming any challenges:</p>   |

### 3. OPEN INTERCOUNTRY ADOPTIONS

5. Relevant information:

- [Prel. Doc. No 9 of May 2022](#) – Discussion Paper “Simple and Open Intercountry Adoption”.
- Agenda item: No 16.

#### 3.1 Conclusions and Recommendations from past meetings of the SC

LINK: <https://assets.hcch.net/docs/33b9a395-d091-49b8-8f54-f2247d561abd.pdf>

##### *2015 SC*

31 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.

#### 3.2 Fact Sheets

LINK: <https://assets.hcch.net/docs/971cc0c0-381b-43c0-b6c2-3e38640686f3.pdf>

##### *Fact Sheet No 1 for the meeting of the Special Commission in 2015*

###### Open adoption

The term "open adoption" has numerous meanings. It can refer to situations where there is an exchange of information or contact between the adoptive family and the family of origin. Even though in certain States adoption procedures have been and remain closed, other States already practice, or are increasingly contemplating practicing, this kind of adoption.

###### **What are the main concerns raised?**

- The requirements of Article 29 of the 1993 HC are not always observed.
- For most States, the concept of open adoption remains unfamiliar or unclear, or is even confused with other related concepts.<sup>42</sup>
- There is still very little regulation of open adoption despite the ban mentioned by certain States and the growing interest in this kind of adoption in a minority of other States.<sup>43</sup>
- There is little recording of ICAs involving open elements, and therefore this phenomenon is difficult to assess.<sup>44</sup>

###### **Rules and good practices already recognised**

- ✓ Ensuring that there is no contact between the PAPs and the child's parents or any other person who has care of the child until the requirements of Article 4(a) to (c) and Article 5(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 (Art. 29 of the 1993 HC).
- ✓ Where appropriate and permitted, the family of origin and the adoptive family might exchange information once the child has been adopted.<sup>45</sup>

###### **Ideas for further consideration**

- ⇒ States are invited to share their good practices and challenges connected with open adoptions.

- ⇒ Discussion might also take place regarding whether open adoption can be contemplated for certain profiles of children and, in particular, older children.<sup>46</sup>
- ⇒ Consideration might also be given to the support methods and counselling required for such adoptions.
- ⇒ The desirability of collecting information about completed adoption procedures involving open elements might also be evaluated.

### 3.3 Prel. Doc. No 2 of October 2014 - Questionnaire No 2 on the practical operation of the 1993 Hague Intercountry Adoption Convention (2014 Questionnaire No 2)

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6161&dtid=57>

| <b>F. OPEN ADOPTION</b><br><u>Both States of origin and receiving States</u> |   |
|--|---|
| 19.  | Does the term “open adoption” (or similar) exist in your State’s domestic legislation or rules? If so, please explain how it is defined. If not, please explain what is understood in your State by the term “open adoption” or “openness in adoption”.   |
| 20.  | Please specify what type of openness in intercountry adoption is: (a) permitted according to your State’s domestic legislation or rules; and (b) promoted in practice in your State. <sup>47</sup>  |
| 21.  | 21. If possible, please specify approximately what percentage of intercountry adoptions involving your State include some element of openness. Has this number increased in recent years and, if so, what, in your State’s view, are the reasons for this? What challenges have arisen as a result and how has your State sought to address these challenges? |

### 3.4 2020 Questionnaire No 1

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6668&dtid=57>

| <b>5. SIMPLE AND OPEN ADOPTIONS</b><br><u>Both States of origin and receiving States</u> |  |
|--|--|
| <b>5.1. Open adoptions / openness in adoption</b>  |  |
| 54.  | Does the terms “open adoption”, “openness in adoption” or similar concepts exist in your State? <sup>48</sup><br><input type="checkbox"/> Yes. Please specify: (a) how it is defined; (b) whether it is provided by law, regulation or only in practice; and (c) whether it is promoted in your State:<br><input type="checkbox"/> No. Please explain what is understood in your State by the terms “open adoption”, “openness in adoption” or similar concepts: |
| 55.  | Has your State changed its legislation, rules or practices in recent years regarding open or openness in intercountry adoption?<br><input type="checkbox"/> Yes. Please specify the changes made and the reasons for these changes:<br><input type="checkbox"/> No.  |
| 56.  | Has your State developed any good practices to ensure that Recommendation No 31 <sup>49</sup> of the 2015 Special Commission is implemented?<br><input type="checkbox"/> Yes. Please specify the good practices developed in that regard:<br><input type="checkbox"/> No. Please specify any reasons:  |
| 57.  | (a) What is the <b>profile</b> of children for whom an open intercountry adoption is made, either in your State or in the State(s) with which your State cooperates?<br>(b) Does your State have a specific approach depending on the profile of these children?<br><input type="checkbox"/> Yes. Please specify these different approaches:<br><input type="checkbox"/> No.   |
| 58.  | Does your State provide professional support or services to birth families (in the case of States of origin) or adoptive families (in the case of receiving States) and adoptees in open adoptions (e.g., support for contact agreements, supervising contact after adoption)?   |

|     |   |
|-----|---|
|     | <input type="checkbox"/> Yes. Please specify the support / services provided and any challenges and / or good practices in this regard:<br><input type="checkbox"/> No. Please explain your response:   |
| 59. | <p>Has your State encountered situations where adoptees, adoptive parents and / or birth parents wanted to change the frequency or the method of contact between them after the adoption?</p> <input type="checkbox"/> Yes. Please specify what action was taken in response:<br><input type="checkbox"/> No. |
| 60. | <p>(a) Please specify any other <b>challenges</b> your State encounters regarding open adoptions:<br/> (b) Please specify any <b>good practices</b> of your State with regard to open adoptions, including those for overcoming any challenges:</p>   |

## 4. INTRAFAMILY INTERCOUNTRY ADOPTIONS

6. Relevant information:

- [Prel. Doc. No 10 of May 2022](#) – Discussion Paper “Intrafamily Intercountry Adoptions”.
- Agenda items: No 17.

### 4.1 1993 Adoption Convention

LINK: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>

#### *Article 26*

1. The recognition of an adoption includes recognition of
  - (a) the legal parent-child relationship between the child and his or her adoptive parents;
  - (b) parental responsibility of the adoptive parents for the child;
  - (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
2. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
3. The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

#### *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.

### 4.2 Explanatory Report

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=2279>

#### *Article 2, paragraph 2*

92 Working Document No 13, presented by Germany, suggested to exclude from the scope of the Convention the cases where the prospective adoptive parents and the child (a) are directly or collaterally related up to the [fourth] degree, or (b) possess the same nationality. The exclusion of the adoptions among relatives or within a family aimed to permit the application of more flexible rules, but the application of the Convention to all kinds of adoption was sustained, because there is no guarantee that abuses of children do not occur in cases of adoptions within the same family. However, the Convention gives them a special treatment, in some respects: (a) Article 26, sub-paragraph c, admits the possibility of the termination of the pre-existing legal relationship between the child and his or her mother and father, but not with the other members of the family, and (b) Article 29 excepts the adoptions that take place within a family from the prohibition of contacts between the prospective adoptive parents and the child's parents or any other person who has care of the child.

#### *Article 4, sub-paragraph (b)*

123 Notwithstanding the express acceptance of the subsidiarity principle, there was consensus that, in certain circumstances, the best interests of the child may require that he or she be placed for adoption abroad, even though there is a family available in the State of origin, for instance, in cases of adoption among relatives, or of a child with a special handicap and he or she cannot adequately be taken care of.

#### *Article 4, sub-paragraph (c)(1)*

137 Therefore, following the suggestion in Working Document No 11, sub-paragraph c (1) expressly mentions that the counselling and information shall refer to the point as to whether or not the adoption "will result in the termination of the legal relationship between the child and his or her family of origin". In case of an adoption among relatives, it should be explained that the legal relationship will only be terminated with the child's mother and father, but not with other relatives. If the persons whose consent is necessary have in mind an adoption that maintains such permanent legal relationship, the adoption granted cannot bring about its termination, because it would violate one of the fundamental conditions for the granting of the adoption.

#### *Article 26*

439 After great efforts had been made, in a sincere spirit of compromise a minimum consensus could be reached as to certain effects arising from all the adoptions covered by the Convention. Article 26 was approved, whose aim is only to give a partial answer to the question relating to the effects of the adoption, as follows: (1) paragraph 1 establishes certain minimum effects to be brought about by all adoptions made under the Convention, irrespective of the law applicable according to the conflicts rules of the recognizing State; (2) paragraph 2 regulates the effects in the particular case where the adoption (completely) terminates a pre-existing legal relationship between the child and his or her mother and father, if such consequence is established by the law of the State where the adoption was granted, in the receiving State or any other Contracting State where the adoption is recognized; and (3) paragraph 3 safeguards the application of any provision more favourable to the child in force in the Contracting State which recognizes the adoption.

#### *Article 26, sub-paragraph c*

448 Sub-paragraph c reproduces the suggestion made by the Drafting Committee in Working Document No 180 (article 24, paragraph 1, sub-paragraph c) which took into account the discussion of Working Document No 142 (article 24(1)(c)) presented by the Recognition Committee, based on the text of the draft (article 24, second paragraph).

449 Working Document No 142, submitted by the Recognition Committee, made reference to "any pre-existing legal relationship of the child with his or her mother and father", but the word "any" was changed by "a", to accept the possibility that in some cases some links between the child and his or her mother or father remain. The amendment took into consideration the comments made by Germany and Austria, reminding that in the case of an adoption within a family, there may remain some legal relationships between the child and one of his or her parents, in accordance with the law of the State where the adoption is made, even though the granting of adoption terminates the legal relationship between the child and the other parent.

450 The amendment was approved in spite of the objection made by some participants, that the maintenance of the legal relationship between the child and his or her mother or father may give that parent a right to enter and to reside in the receiving State, a result considered against the restrictive immigration policy of the European countries nowadays. No doubt,

such a possibility is true, but the argument was not considered valid, because the receiving State is in the position not to agree to the continuation of the adoption, according to sub-paragraph c of Article 17.

- 451 The reference made by sub-paragraph c to "a pre-existing legal relationship between the child and his or her mother and father" is to be understood as referring to the *lien de filiation* and, for the sake of consistency with paragraph 2 of Article 2, it should have included the term "permanent".
- 452 Sub-paragraph c of Article 26 may have the effect of imposing on the receiving State a duty to recognize the termination of a pre-existing legal parent-child relationship between the child and his or her mother and father, even though such an effect would not have been produced had the adoption been granted in the recognizing State.
- 453 Certainly, the State of origin or the receiving State may avoid such a consequence just by not agreeing to the continuation of the adoption, as permitted by Article 17, sub-paragraph c, but it is to be kept in mind that such a possibility is not open to any other Contracting State, because the agreement of third States is not a condition required by the Convention to grant the adoption. Therefore, the third Contracting State is bound under the Convention to recognize the termination of such a pre-existing legal parent-child relationship between the child and his or her mother and father, even though the law applicable according to its conflict rules would not admit that termination.
- 454 Working Document No 193, submitted in the second reading by France, Uruguay, Belgium, Madagascar, Benin and Burkina Faso, suggested to harmonize the French version of sub-paragraph c with the English by adding the word "*définitive*" after "*rupture*", because the expression "terminate" used in the English text was to be understood as "*rupture définitive*" and not a mere "*rupture*". However, the proposal was strongly objected to because of its unsatisfactory results, as evidenced by recent experiences with France, where the effects of a revocable adoption are not recognized, even though the pre-existing legal parent-child relationship is terminated since, because of the possibility of the revocation, there is no "*rupture définitive*".
- 455 Revocation of the adoption is not covered by the Convention and therefore, it is not entitled to recognition by operation of law, according to Article 23, the question being dealt with by each Contracting State according to its own law. The same applies to any decision that revokes the termination of the pre-existing parent-child relationship after the adoption is granted, whether or not the adoption is maintained.
- 456 Sub-paragraph c is another evidence of the broad scope of the Convention that covers all kinds of adoptions which create a permanent legal parent-child relationship, as specified by paragraph 2 of Article 2, whether or not the former relationship with his or her mother and father remains in force.
- 457 Sub-paragraph c only regulates adoptions granted in a Contracting State, that could be the State of origin or the receiving State, and does not aim to establish rules for adoptions made in non-Contracting States. The termination of the legal parent-child relationship as a consequence of the conversion of the adoption, is not regulated by sub-paragraph c, but by Article 27.
- 458 The choice of the place where the adoption was made, to decide on the termination of a pre-existing legal relationship between the child and his or her mother and father, was criticized as being inconsistent with the habitual residence of the child, used elsewhere in the Convention to determine the scope of application. The difficulty disappears when it is realized that Article 26 is to be read in conjunction with Article 23, which refers to the adoption certified as having been made in accordance with the Convention, including its Article 2. The

lack of any reference in sub-paragraph c to the law of the State of origin was also pointed out, it being also suggested to take into account the kind of consent given according to Article 4, sub-paragraphs c and d, before recognizing the adoption. However, this suggestion was rejected, because it would permit the revision of the adoption granted, in contradiction with the respect due to the certification issued in accordance with Article 23.

#### *Article 29*

496 The prohibition contained in Article 29 is not absolute, because it does not forbid contacts before the child has expressed his or her consent, wishes or opinions, as required by Article 4, sub-paragraph d. Besides, contacts are permitted in case of intrafamily adoptions and also under the conditions established by the law of the State of origin. [...]

502 Article 29 also amended the text of the draft by admitting, as an exception, the cases where "the adoption takes place within a family". The idea had been suggested, in particular, by Working Documents Nos 2, 23 and 42, submitted by Colombia, France and Switzerland, respectively, to take account of life's realities, because contacts are impossible to be avoided in case of adoption among relatives, but the question remained open as to what is to be understood by "family", as observed by Sri Lanka. Its approval satisfied the wishes of other countries that favoured the possibility to exclude intrafamily adoptions from the scope of the Convention (Japan, Work. Doc. No 65; Germany, Work. Doc. No 146).

### **4.3 Conclusions and Recommendations from past meetings of the SC**

LINK: <https://assets.hcch.net/docs/33b9a395-d091-49b8-8f54-f2247d561abd.pdf>

#### *2010 SC*

- 11 The Special Commission emphasised that all intercountry adoptions falling within the scope of the Convention under Article 2(1), including in-family adoptions and adoptions by nationals of the State of origin, are subject to Convention procedures and safeguards.
- 12 Where an adoption falling within the scope of the Convention has been processed in a Contracting State as a non-Convention adoption, the Central Authorities concerned are strongly recommended to co-operate in efforts to address the situation in a manner which respects Convention procedures and safeguards, and to prevent these situations from recurring.

#### *2015 SC*

32. In relation to in-family adoption, the SC:

- a) recalled that in-family adoptions fall within the scope of the Convention;
- b) recalled the need to respect the safeguards of the Convention, in particular to counsel and prepare the prospective adoptive parents;
- c) recognised that the matching process might be adapted to the specific features of in-family adoptions;
- d) recommended that the motivations of all parties should be examined to determine whether the child is genuinely in need of adoption;
- e) recognised that it is necessary to undertake an individualised assessment of each child's situation and it should not be automatically assumed that either an in-country or in-family placement is in a child's best interests.



## 4.4 Guide to Good Practice No 1

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=4388>

### 2.1.1. Subsidiarity

52 It is noted that in-family adoptions (adoptions by a relative) come within the scope of the Convention (see Chapter 8.6.4 of this Guide). The question may arise as to where the child's best interests lie when the choice is between a permanent home in the State of origin and a permanent home abroad with a family member. Assuming that the two families in question are equally suitable to adopt the child, in most cases the child's interests may be best served by growing up with the biologically-related family abroad. This example illustrates that it is not subsidiarity itself which is the overriding principle of this Convention, but the child's best interests.

### 8.6.4. Do intercountry adoptions, which are "in-family" (sometimes called "relative" adoptions) fall within the scope of the Convention?

511 This question has been addressed to the Permanent Bureau on several occasions. In particular, the question has been raised whether the detailed report on the prospective adopters required by Article 15 is really necessary in the case of adoption by relatives. In-family adoptions do fall within the scope of the Convention and the Convention procedures and safeguards must be applied to them.

512. The general approach to "in-family" adoption taken during the negotiations on the Convention is explained by G. Parra-Aranguren in the Explanatory Report at paragraph 92:

*"Working Document No 13, presented by Germany, suggested to exclude from the scope of the Convention the cases where the prospective adoptive parents and the child (a) are directly or collaterally related up to the [fourth] degree, or (b) possess the same nationality. The exclusion of the adoptions among relatives or within a family aimed to permit the application of more flexible rules, but the application of the Convention to all kinds of adoption was sustained, because there is no guarantee that abuses of children do not occur in cases of adoptions within the same family. However, the Convention gives them a special treatment, in some respects: (a) Article 26, sub-paragraph c, admits the possibility of the termination of the pre-existing legal relationship between the child and his or her mother and father, but not with the other members of the family, and (b) Article 29 excepts the adoptions that take place within a family from the prohibition of contacts between the prospective adoptive parents and the child's parents or any other person who has care of the child."*

513. It follows from this that the requirements of Article 15 do apply to intercountry adoptions by relatives. In other words, the Central or other designated Authority of the receiving State must prepare a report, to be transmitted to the Central Authority of the State of origin of the child, containing information about the prospective adopters including their "identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care" (Art. 15(1)).

514. The precise methods by which "suitability" is determined are not specified in the Convention, and it may be that an expedited procedure for assessing suitability will be appropriate in certain cases of intercountry adoption by a relative. The guiding principles should be the best interests and the fundamental rights of the child referred to in Article 1 a). It should not be automatically presumed that an adoption by a relative is always better for a child than adoption by another family. The detailed report on the prospective adopters required by Article 15 is necessary in the case of adoption by relatives to determine whether a possible adoption is in the child's best interests.

515. When an application for an adoption by a foreign relative arises, the authorities should be well-informed about how to treat such cases. Central Authorities should, in accordance with Article 7, actively inform the proper authorities within their own country about which adoptions should be dealt with as intercountry adoptions. In some countries, it is possible that the adoption legislation permits adoption in the country of origin by a citizen living abroad as if it were a national adoption. This approach is inconsistent with the Convention obligations (Art. 2).
516. A question may arise concerning the application of the principle of subsidiarity to in-family intercountry adoptions: would that not mean that one would first have to try finding an adoptive family in the State of origin? In most cases, such a family could be found and the family abroad would not be able to adopt the child. However, the overarching principle of the Convention is the best interest principle, not the subsidiarity principle. While it is important to look for a home in the country of origin, a permanent home in another country would be preferable to a temporary home in the country of origin. It is necessary to consider all the relevant factors to decide which is the better family for the child and where is the best permanent home for that child (see also Chapter 2.1.1: Subsidiarity).
517. An adoption by a family member abroad would be preferable to a national adoption if the former was in the child's best interest. For example, if the non-relative prospective adopters in the country of origin, and the relative prospective adopters abroad, were equally well qualified to care for the child, preference might be given to the relative adopters in order to preserve the family bond. It is necessary to examine, on a case-by-case basis, if an in-family intercountry adoption is in the best interest of the child.
518. Other factors may be relevant. For example, the child may not know the relatives; the child may be the subject of guardianship orders and adoption or intercountry adoption is not necessary; some cases could be dealt with under the 1996 Child Protection Convention<sup>50</sup> and transferred abroad. The formal adoption of an older child may not be necessary and permanent care arrangements would be satisfactory; a change of country may be more difficult for an older child to adjust to; sometimes there is pressure on families in the State of origin by the family in the receiving State to allow the intercountry adoption.

#### *8.6.5. Step-child adoptions*

- 519 Step-child adoptions are a category of family adoptions but they are not straightforward cases. If one parent already has custody of the child, and the child is living with that parent and the new partner, it should be a national adoption in the country of residence. If one parent already has custody but the child is in another country, and the step-parent adoption is necessary to allow the child to come and reside in the second country, this falls within the scope of the Convention (Art. 2). Here again, the best interest of the child should guide the procedure, and agreement between the two States involved may avoid unnecessary delays. However, national laws on immigration may interfere in such a project (especially family reunification regulations).

## **4.5 Guide to Good Practice No 2**

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=5504>

### *3.5 Choice of foreign States as partners in adoption arrangements*

- 125 The obligation of co-operation between Convention States, as expressed in Article 7, will still arise even when States have no regular adoptions between them. For example, a request for assistance or information from a "non-partner" State must be responded to. Sometimes, a one-off case such as an intra-family adoption will require co-operation between States that do not have an established programme of adoption arrangements between them.

## 4.6 Country Profile

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=5003&dtid=42>

### States of origin

| 29. Procedure for the intercountry adoption of a child who is a relative of the PAPs (“intra-family intercountry adoption”)   |  |
|---|--|
| <p>a) Please explain the circumstances in which an intercountry adoption will be classified as an “intra-family intercountry adoption” in your State.</p> <p>Please include an explanation of the degree of relationship which a child must have with PAPs to be considered a “relative” of those PAPs.</p>   |  |
| <p>b) Does your State apply the procedures of the 1993 Convention to intra-family intercountry adoptions?</p> <p><i>N.B. If the child and PAPs are habitually resident in different Contracting States to the 1993 Convention, the Convention is applicable, irrespective of the fact that the child and PAPs are related: see further GGP No 1 at para. 8.6.4.</i></p>   | <p><input type="checkbox"/> Yes – <a href="#">go to Question 30</a></p> <p><input type="checkbox"/> Yes, in general, although there are some differences in the procedures for intra-family intercountry adoptions – please specify: _____ .<br/><a href="#">Go to Question 30</a></p> <p><input type="checkbox"/> No – <a href="#">go to Question 29 c)</a></p> |
| <p>c) If your State does not apply the Convention procedures to intra-family intercountry adoptions, please explain the laws / rules / procedures which are used in relation to:</p> <p>(i) The counselling and preparations which PAPs must undergo in the receiving State;</p> <p>(ii) The preparation of the child for the adoption;</p> <p>(iii) The report on the PAPs; and</p> <p>(iv) The report on the child.</p> | <p>(i)</p> <p>(ii)</p> <p>(iii)</p> <p>(iv)</p>  |

### Receiving States

| 24. Procedure for the intercountry adoption of a child who is a relative of the PAPs (“intra-family intercountry adoption”)   |  |
|---|--|
| <p>a) Please explain the circumstances in which an intercountry adoption will be classified as an “intra-family intercountry adoption” in your State.</p> <p>Please include an explanation of the degree of relationship which a child must have with PAPs to be considered a “relative” of those PAPs.</p>   |  |
| <p>b) Does your State apply the procedures of the 1993 Convention to intra-family intercountry adoptions?</p> <p><i>N.B. If the child and PAPs are habitually resident in different Contracting States to the 1993 Convention, the Convention is applicable, irrespective of the fact that the child and PAPs are related: see further GGP No 1 at para. 8.6.4.</i></p> | <p><input type="checkbox"/> Yes – <a href="#">go to Question 25</a></p> <p><input type="checkbox"/> Yes, in general, although there are some differences in the procedures for intra-family intercountry adoptions – please specify: _____ .<br/><a href="#">Go to Question 25</a></p> <p><input type="checkbox"/> No – <a href="#">go to Question 24 c)</a></p> |
| <p>c) If your State does not apply the Convention procedures to intra-family intercountry adoptions, please explain the laws / rules / procedures which are used in relation to:</p> <p>(v) The counselling and preparations which PAPs must undergo in the receiving State;</p> <p>(vi) The preparation of the child for the adoption;</p>                             | <p>(i)</p> <p>(ii)</p> <p>(iii)</p> <p>(iv)</p>  |

|  |  |
|--|--|
| (vii) The report on the PAPs; and<br>(viii) The report on the child. |  |
|--|--|

## 4.7 2014 Questionnaire No 2

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6161&dtid=57>

|  |  |
|--|--|
| <b>I.A. Adoptable children and adoptees</b><br><u>Both States of origin and receiving States</u> |  |
| 3.b)   | Has your State encountered any particular <b>difficulties</b> with <b>adoptability</b> decisions in the context of <b>intra-family</b> intercountry adoptions? If so, please explain.  |
| <b>III.A The subsidiarity principle</b><br><u>States of origin only</u>                          |  |
| 33.  | In your State, is the subsidiarity principle applied in the same manner to:<br>(i) intra-family intercountry adoptions; and<br>...<br>If not, please describe any different procedures used and explain the reasons for the different procedures.. |

## 4.8 2020 Questionnaire No 1

LINK: <https://www.hcch.net/en/publications-and-studies/details4/?pid=6668&dtid=57>

|   |  |
|---|--|
| <b>3. INTRAFAMILY ADOPTIONS</b><br><b>3.1. General questions for intrafamily adoptions (i.e., relative and stepparent adoptions)</b><br><u>Both States of origin and receiving States</u> |  |
| 33.   | In your State, which authority is in charge of intrafamily adoptions?<br><input type="checkbox"/> The Central Authority.<br><input type="checkbox"/> Another competent authority. Please specify which authority and the reasons for designating a different authority:  |
| 34.   | Has your State developed any good practices to ensure that Recommendation No 32 <sup>51</sup> of the 2015 Special Commission is implemented?<br><input type="checkbox"/> Yes. Please specify the good practices developed in that regard:<br><input type="checkbox"/> No. Please specify any reasons:  |
| 35.   | Are there specific guidelines or procedures for intrafamily adoptions in your State?<br><input type="checkbox"/> Yes. Please provide a link or attach a copy with your response:<br><input type="checkbox"/> No.   |
| 36.   | Has your State encountered any particular difficulties with adoptability decisions in the context of intrafamily adoptions?<br><input type="checkbox"/> Yes. Please specify the situations and how they were handled <sup>52</sup> :<br><input type="checkbox"/> No.   |
| 37.   | In your State, does the termination of the pre-existing legal relationship affect only the child and his or her mother and father, or does it also affect the other members of the family (see Art. 26(1)(c) of the Convention)?<br><input type="checkbox"/> It only affects the child and his or her mother and father.<br><input type="checkbox"/> It affects the child and his or her mother and father, but also the other members of the family.<br><input type="checkbox"/> Other. Please explain your response: |

|  |  |
|--|--|
| 38.  | <p>Has your State encountered cases of breakdown in intrafamily intercountry adoptions?</p> <p><input type="checkbox"/> Yes. Please provide information on (a) the number of breakdowns; (b) the causes of the breakdowns; and (c) the ways your State addresses(ed) them:</p> <p><input type="checkbox"/> No.</p>   |
| 39.  | <p>In the context of intrafamily intercountry adoptions, does your State cooperate with States with which it normally does not cooperate?</p> <p><input type="checkbox"/> Yes. Please specify any challenges your State encounters and share any good practices your State may have developed in this regard:</p> <p><input type="checkbox"/> No.</p>  |
| <u>States of origin only</u>   |  |
| 40.  | <p>In your State, is the subsidiarity principle applied in the same manner to intrafamily intercountry adoptions?</p> <p><input type="checkbox"/> Yes.</p> <p><input type="checkbox"/> No. Please describe any different procedures used and explain the reasons for these different procedures<sup>53</sup>:</p>  |
| 41.  | <p>Is intrafamily adoption used frequently to protect children within the extended family and / or are there other child protection measures (e.g., kinship care, foster care) that your State applies to protect children within the extended family?</p> <p><input type="checkbox"/> Intrafamily adoption is used frequently. Please explain your response:</p> <p><input type="checkbox"/> Other child protection measures are applied. Please specify:</p> <p>(a) which <b>other child protection measures</b> are applied to protect children within the extended family:</p> <p>(b) if your State is a Party to the <b>1996 Child Protection Convention</b>, whether your State applies that Convention to give effect to these other child protection measures in other Contracting States:</p> |
| <b>3.2. Stepparent adoptions</b><br><u>Both States of origin and receiving States</u>  |  |
| 42.  | <p>Does your State apply the 1993 Adoption Convention to stepparent intercountry adoptions?</p> <p><input type="checkbox"/> Yes.</p> <p><input type="checkbox"/> No. Please specify any reasons:</p>   |
| 43.  | <p>What is the profile of children who are adopted intercountry by a stepparent, either in your State or in the State with which your State cooperates?</p>  |
| 44.  | <p>(a) Please specify any challenges your State encounters with stepparent intercountry adoptions:</p> <p>(b) Please specify any good practices of your State for stepparent intercountry adoptions, including those for overcoming any challenges:</p>  |
| <b>3.3. Intrafamily adoptions and circumvention of immigration laws</b><br><u>Both States of origin and receiving States</u> |  |
| 45.  | <p>Has your State encountered situations where intrafamily adoptions were sought / used to circumvent immigration laws?</p> <p><input type="checkbox"/> Yes. Please specify what the situations were and how your State addressed these situations:</p> <p><input type="checkbox"/> No.</p>  |

## 5. Endnotes

- 1 Almost two-thirds of the receiving States report having post-adoption monitoring services. Yet only a few States report having set up an institutional monitoring system applicable to all adoptions, whether in the form of one or 18 more visits (Belgium (Flemish and French Communities), Canada (Que.)), systematic psycho-social evaluation (Netherlands) or a specific support period (Australia, Denmark, Peru). See the States' replies to questions 28 of Country Profile - RS 2014, and 16, 17 of Q2.
- 2 4 Among the receiving States reporting having post-adoption monitoring services, several stress that these are the public services of the State (Canada (Que.), Cyprus, France, Ireland, Norway, Sweden). Certain States also seem to have developed specialised services, such as the establishment of a support centre (Belgium (French Community), Canada (Sask.), Luxembourg, Netherlands), or a public counselling service (Denmark, Finland), the establishment of a paediatric examination (Belgium (French Community), Canada (Que.), France, Netherlands), or a network of health referees (Germany, New Zealand), referral to professionals specialising in adoption (Australia, Belgium (French Community), Canada (Que.), China (Hong Kong SAR)), the operation of a telephone hotline (Finland, New Zealand), provision of language assistance (Australia), or assistance by way of support groups (Belgium (French Community), China (Hong Kong SAR), Germany, New Zealand). It is important to note that certain States stress that the lack of financial resources and / or skilled human resources sometimes makes it difficult to develop post-adoption services (Andorra, Finland, Germany). See the States' replies to questions 15 (b), 28 of Country Profile - RS 2014, and 14 (c), 16, 17 of Q2.
- 3 In almost three-quarters of the States reporting having post-adoption services, those services are offered by several public and private operators, such as the Central Authority, State departments, public and private health centres, AABs, non-governmental organisations, non-profit entities, groups of adoptive parents, or schools. In such cases, the States' responses do not always allow an understanding of how the information relating to all such services is listed and provided to adoptive parents. In this respect, one State stresses that the Central Authority seeks to structure the information relating to the availability of such services. (France). Certain States also specify that postadoption services are a matter within the statutory obligations of AABs (Belgium (French Community), Finland). Finally, a few States report that the issue of post-adoption matters is handled during the initial preparation of prospective adoptive parents (Australia, Belgium (Flemish Community), China (Hong Kong SAR), Sweden). See the States' replies to questions 15, 28 of Country Profile - RS 2014, and 16 of Q2. As regards the difficulty of accessing post-adoption services, in particular for families having adopted a special needs child, see also E. Pinderhughes et al., *A changing world: shaping the best practices through understanding the new realities of intercountry adoption - Policy and Practice Perspective*, The Donaldson Adoption Institute, October 2013, pp. 37 and 38.
- 4 See Guide to Good Practice No 1, chapter 9.2.1. See also C&R of 2010 SC, Recommendation No 29.
- 5 See Guide to Good Practice No 2, chapter 11.3.1.
- 6 See reference to Guidelines on Post Adoption Services prepared by ChildONEurope, Guide to Good Practice No 1, para. 612.
- 7 Almost all States of origin have requirements with respect to the transmittal of post-adoption reports. Apart from two States (China (Hong Kong SAR), Philippines), those reports are to be transmitted after the final adoption order. However, the total number of reports expected and the duration of their transmittal vary considerably among States of origin: from 1) two to 19 reports expected, with an average number of seven reports and a median of six; and 2) one and a half to 18 years, with an average duration of seven years and a median of four. See the State's replies to question 32 (b) of Country Profile - SO 2014.
- 8 As regards the contents of the post-adoption reports, while two-thirds of the States of origin have either a standard form or guidelines, fewer than half the receiving States do.. However, common topics emerge on the part of both the States of origin and the receiving States: 1) the child's health (roughly 80%, with more marked interest among States of origin); 2) the child's physical and mental development (roughly 80%, with details of the psychological aspects for over a third of States); 3) the child's schooling (roughly 70%); 4) the family dynamic in the broad sense (roughly 60%); 5) the child's settlement in his or her new family (roughly 55%, with details of attachment for 20% of States); 6) the child's settlement in the community (roughly 40%). See the States' replies to questions 32 (a) of Country Profile - SO 2014, and 27 (a), (b) of Country Profile - RS 2014.
- 9 Half the receiving States report that the post-adoption reports are drafted and transmitted by the same body, either the Central Authority, or a social service of the State, or the AAB concerned. In the other half, practice varies but in similar proportions, whether the report is sent by the AAB concerned and then transmitted by the Central Authority, or drafted by a social service of the State then transmitted by the Central Authority or AAB concerned, or drafted by the adoptive parents and then transmitted by the AAB concerned. In addition, only a few States report that parents are, occasionally or more generally, in charge of drafting the post-adoption reports (Canada (NB, NL, Que.), France, Haiti, Lesotho, Madagascar, Netherlands, Norway, Sweden). These practices meet the expectations of the States of origin regarding the body or person in charge of drafting and forwarding the post-adoption reports. Yet the receiving States have few ways of compelling those bodies or persons to comply with the requirements of the States of origin, such as for instance the creation of a statutory obligation for AABs or the conclusion of an agreement between the AAB and adoptive parents (Belgium (Flemish and French Communities), Canada (Que.), New Zealand). See the States' replies to questions 32 (b) of Country Profile - SO 2014, and 27 (a), (c) of Country Profile - RS 2014.
- 10 While a majority of States of origin highlight communication and co-operation as a means to take action in cases where the receiving States fail to transmit the expected reports or transmit non-compliant reports, a significant proportion of States of origin report that sanctions may be contemplated if the receiving States fail to meet requirements, especially in the former case. These possible sanctions are directed mainly at any AABs responsible for those failings. See the States' replies to question 32 (c) of Country Profile - SO 2014.

11 More than half the States of origin report that the post-adoption reports are used to evaluate the adopted child's welfare, or even to identify emerging problems. Only a few States observe that those reports are used for analysis and the pursuit of remedial action or the improvement of procedures, and in particular preparation of the child and matching (Burkina Faso, Haiti, Lithuania, Madagascar, Moldova). Two States also report that these reports are used to evaluate the co-operation with their partners (Ecuador, Viet Nam). Finally, one State specifies that they are also used to generate statistics (Lithuania). See the States' replies to question 32 (d) of Country Profile - SO 2014.

12 See Guide to Good Practice No 1, para. 601. See also C&R of 2005 SC, Recommendation No 18, and C&R of 2010 SC, Recommendation No 27.

13 *Ibid.*

14 See Guide to Good Practice No 1, para. 600 and 601.

15 *Ibid.*, para. 599.

16 More than half the States of origin and fewer than half the receiving States report that the information is preserved in perpetuity or permanently. Thus, in roughly a third of States of origin and receiving States, that information is retained for a specific period, from 12 to 150 years. While other States report using the duration of the adopted child's life or the child's age as a criterion to determine the duration of preservation of the information, several also report not having any rules in this respect. See the States' replies to questions 31 (a), (b) of Country Profile - SO 2014, and 26 (a), (b) of Country Profile - RS 2014.

17 While in almost all States of origin that information is preserved by a public body, in receiving States, it is preserved either by a public body or by one public and one private body, in equal proportions, or by only a private body in 20% of cases. A few States also specify that the information is sent to the records office of the body in charge or to the national records office (Chile, Colombia, Czech Republic, Denmark, Latvia, Lithuania, New Zealand, Panama, Romania, Slovakia, Switzerland). One State adds that it keeps that information on microfilm (Canada (NB)). See the States' replies to questions 31 (a), Country Profile - SO 2014, and 26 (a), (b) of Country Profile - RS 2014.

18 Fewer than a dozen receiving States and States of origin report having a law or rules relating to access to the information retained (Canada (BC), China (Hong Kong SAR), Colombia, Denmark, Dominican Republic, Mexico, New Zealand, Norway, Sweden, United Kingdom (Scotland), United States) and two States report that regulations are pending (Belgium (Flemish and French Communities), Ireland). In general: 1) almost all States provide the adopted child with access to information subject to the same requirements: having reached a required age, or if not, being joined by the adoptive family or having obtained the family's consent. A few States also require consent from the family of origin (Slovenia, Switzerland) or a legal or administrative decree (Bulgaria, Mexico, Moldova, Philippines); 2) roughly three-quarters of the States provide the adoptive family with access to information, in some cases subject to requirements as to the child's age or the type of information disclosed. Certain States also stress that all of the information preserved has been or may be transmitted to the adoptive family at the time of matching or finalisation of the adoption process (Belgium (Flemish and French Communities), Canada (NL, PEI), Dominican Republic, Panama, Togo, United Kingdom (Scotland)); 3) a little over a third of States provide the birth family with access to the information, for receiving States, with the consent of the adopted child of adoptive family, and for States of origin, under specific circumstances connected with health or an origin search; 4) a small proportion of States permit access to the information to other parties, solely pursuant to legal proceedings. It is important to note that only a few States report making a distinction between the disclosure of information identifying and not identifying the parties concerned, or even the conditions under which identifying information may be disclosed (Belgium (French Community), Canada (NB, NS, Ont., PEI, Que.), China (Hong Kong SAR), Lithuania, New Zealand, Moldova, Romania, United States). See the States' replies to questions 31 (c) of Country Profile - SO 2014, 26 (b) of Country Profile - RS 2014, and 16 of Q2.

19 Over three-quarters of the receiving States and two-thirds of the States of origin report providing assistance in connection with origin searches. On the other hand, only one-third report providing support once the information has been disclosed. Whereas in States of origin, the bodies in charge of providing all counselling are public, in receiving States, origin searches are supported by both public and private bodies, and assistance after disclosure of the information is provided mainly by private bodies, and AABs in particular. See the States' replies to questions 31 (d), (e) of Country Profile - SO 2014, 26 (d), (e) of Country Profile - RS 2014, and 16 of Q2.

20 While most States report initiatives in this area, a few seem to have taken concrete measures, or developed programmes or procedures to counsel and support the persons concerned in connection with: 1) searches for information in relation to the steps to be taken (Belgium (Flemish Community), Canada (Province of Quebec), Colombia, Czech Republic, Denmark, Germany, Romania, Sweden); 2) disclosure of preserved information (Belgium (Flemish and French Communities), China (Hong Kong SAR), Dominican Republic, New Zealand); 3) origin searches (Chile, China (Hong Kong SAR), Luxembourg, New Zealand, Philippines, Romania); 4) procurement of the required consents (Belgium (Flemish Community), Greece, Hungary, Lithuania, Luxembourg, Philippines), and 5) the meeting (Philippines). It is also interesting to note that certain receiving States report that the issue of origins is included in the initial preparation of prospective adoptive parents. See the States' replies to questions 31 (d), (e) of Country Profile - SO 2014, 15, 26 (d), (e) of Country Profile - RS 2014, and 16 of Q2.

21 See C&R of 2010 SC, Recommendation No 28

22 See Guide to Good Practice No 1, chapters 8.8.1 and 9.1.

23 *Ibid.*, para. 586.

24 *Ibid.*, chapter 9.2.2

25 See ISS, New technologies and adoption, Information Document No 1 of April 2015 for the attention of the Special Commission of June 2015 on the practical operation of the 1993 HC

26 Reported by New Zealand at the 2005 Special Commission.

27 See Explanatory Report, *supra*, note 1, para. 506.

28 *Ibid.*, para. 507.

29 See, for example, the Philippines (Inter-Country Adoption Act of 1995 (RA 8043), Art. II, Section 4 (b)), which states that the Intercountry Adoption Board shall collect, maintain and preserve confidential information about the child and the adoptive parents; Italy, (Law 184 of 4 May 1983 as amended by Law 476 of 31 December 1998, Art. 37(2)), the Commission for Intercountry Adoption shall “keep any information they have acquired concerning the origins of the child, the identity of his / her biological parents and his / her medical history, together with that of his / her biological parents” [translation by Permanent Bureau].

30 See, for example, Bulgaria (Ordinance No 3 on the Conditions and Procedure for giving Consent for the Adoption of a Person of Bulgarian Nationality by a Foreigner, 16 September 2003, Art. 35), states that all files shall be preserved for a period of ten years as from the date on which they were set up, and then shall be submitted to the Public Records Office; United States of America (Federal Register, Vol. 68, No 178, 15 September 2003, p. 54119), the Department of State and the Department of Homeland Security have to maintain Convention records for 75 years.

31 At the 2005 Special Commission, EurAdopt-Nordic Adoption Council tabled their paper, “Origin and Personal History of Adoptees – Principles for Search, Knowledge and Reunion”. It examines the question from two perspectives: first, distinguishing between the right to know / obtain information and the right to access / reunion; second, the importance of timing for both receiving information and for reunion (Work. Doc. No 5).

32 Chile has an “origin programme” in which a receiving State can contact the Central Authority in Chile to request assistance for the adoptee to trace his / her origins in Chile. Active assistance is provided, including searching for the birth mother and, where appropriate, preparing for a meeting of the mother and child, see <www.sename.cl >.

33 See Explanatory Report, *supra*, note 1, para. 512.

34 See, for example, Belgium (Civil Code, Arts 45.1 & 2); Germany (Federal Civil Status Act *PStG*, Section 61), in Germany children from 16 years can access the records; Netherlands (Act concerning the placement of foreign children with a view to adoption, Arts 17 b to 17 f); Norway (Act of February 1986, No 8 Relating to Adoption, Chapter 2, section 12); Spain (2007 Law on Intercountry Adoption, Art. 12); United Kingdom (Adoption Act 1976, as amended by the Adoption and Children Act 2002, Art. 60).

35 See, for example, United States of America (Federal Register, Vol. 68, No 178, 15 September 2003, p. 54104, para. 96.42(c)), which establishes that “The agency or person preserves and discloses information in its custody about the adoptee’s origin, social history, and birth parents’ identity in accordance with applicable State law”.

36 See, for example, Brazil (Constitution 1988, Title II: Fundamental Rights and Guarantees, Chapter 1: Individual and Collective Rights and Duties, Art. 5 (X and XIV)) which grants as a fundamental right the inviolability of privacy, full access to information contained in the official record for the clarification of situations of personal interest.

37 See Explanatory Report, *supra*, note 1, para. 521.

38 See, for example, Bulgaria (Family Code Art. 67 a) (SG 63/2003)), which states that the Agency for Social Protection and the Ministry of Justice shall take the necessary organisation and technical measures to protect the personal data in the registers which they keep, in accordance with the requirements of the Law on Protection of Personal Data and the Law on Protection of Classified Information; Philippines (Inter-Country Adoption Act of 1995 (RA 8043), Art. II, Section 6j), which states that the Board shall take appropriate measures to ensure confidentiality of the records of the child, the natural parents and adoptive parents at all times.

39 In many receiving States, offering post-adoption services is a requirement of accreditation. See, for example, the responses of Belgium (Flemish and French Communities), Denmark and Italy to question No 58 of the 2009 Questionnaire, *ibid.*

40 [“Conclusions and Recommendations adopted by the Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Intercountry Adoption Convention \(8-12 June 2015\)”](#), C&R No 21 (hereinafter, “C&R of the 2015 SC”): “The SC recommended that the possibility of a child searching for his or her origins be included in the counselling and preparation of the prospective adoptive parents. When an adopted child or an adult adoptee undertakes such a search, professional support at all stages is recommended” [emphasis added].

41 C&R No 18 of the 2015 SC:  
“The SC recognised that post-adoption services are essential and should take into account the lifelong nature of adoption. States are encouraged to develop specialised post-adoption services, in addition to the general services already in place” [emphasis added].

42 A little over a third of the States of origin and receiving States report being familiar with the concept of open adoption. Whereas some restrict it to the mutual disclosure of personal identification data relating to the child’s family of origin and adoptive family (Lithuania, Romania), most understand this kind of adoption as involving the maintenance of communication, or even of a relationship, between the child, the family of origin in the broad sense and the adoptive family, to varying degrees. A few States also stress that open adoption is based on an arrangement between the child’s family of origin and adoptive family (Australia, Canada (Ont.), United Kingdom (Scotland), United States). It is interesting to note that some States treat the concept of open adoption as similar to other kinds of adoption, such as simple adoption, direct adoption or intra-family adoption (Armenia, France, Madagascar, Slovenia). Finally, a few States note that open adoption may occur as a result of steps taken in connection with an origin search (Belgium (French Community), Denmark, Haiti, Norway, Romania). See the States’ replies to questions 19 and 20 of Q2.

43 Three-quarters of the States of origin and receiving States report that the concept of open adoption is neither defined by law nor regulated, or even not relevant in their States. Others stress that what they understand open adoption to mean is either banned, or not recommended (Andorra, Armenia, Canada (Que.), Chile, Ireland, Lesotho, Madagascar, Moldova, Netherlands). Only a few States report having integrated the concept of open adoption into their law (Canada (Ont.), Finland), or even in their preparation of prospective adoptive parents for intercountry adoption (Canada (NL, Ont.), and few encourage the practice (Australia, Canada (Ont.), Ireland, New Zealand, Slovenia). Certain States, however, have



highlighted their growing interest for this kind of adoption (Australia, Denmark, Germany, Moldova, Spain). See the States' replies to questions 15 (a) of Country Profile - RS 2014, and 19, 20 of Q2.

44 The States of origin and receiving States as a whole are unable to provide statistics or broad trends with respect to the number of intercountry adoptions involving open elements entered into with their States. Two States, however, report having initiated research projects into the issues relating to the opening of intercountry adoptions (Denmark, United States). See the States' replies to questions 20 and 21 of Q2.

45 Guide to Good Practice No 1, para. 585.

46 See ISS Thematic fact sheet No 48.

47 *E.g.*, disclosure of identities of biological and adoptive families, post-adoption contact.

48 If applicable, you may wish to refer to your State's response to Questions 19 and 20 of the [2014 Questionnaire](#).

49 C&R No 31 of the 2015 SC:

"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, considering his or her wishes" [emphasis added].

50 Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children.

51 C&R No 32 of the 2015 SC:

"In relation to in-family adoption, the SC:

a. recalled that in-family adoptions **fall within the scope** of the Convention;

b. recalled the need to respect the **safeguards** of the Convention, in particular to **counsel** and **prepare** the prospective adoptive parents;

c. recognised that the **matching** process might be **adapted** to the specific features of infamily adoptions;

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

e. recognised that it is necessary to undertake an **individualised assessment of each child's situation** and it should **not be automatically assumed** that either an in-country or infamily placement is in a child's best interests" [emphasis added].

52 If applicable, you may wish to refer to your State's response to Question 3(b) of the [2014 Questionnaire](#).

53 If applicable, you may wish to refer to your State's response to Question 33(i) of the [2014 Questionnaire](#).