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L'AGRÉMENT ET LES ORGANISMES AGRÉÉS EN MATIÈRE D'ADOPTION :

PRINCIPES GÉNÉRAUX ET GUIDE DE BONNES PRATIQUES

Guide No 2 en vertu de la *Convention de La Haye du 29 mai 1993*
sur la protection des enfants et la coopération en matière d'adoption internationale

établi par le Bureau Permanent

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ACCREDITATION AND ADOPTION ACCREDITED BODIES:

GENERAL PRINCIPLES AND GUIDE TO GOOD PRACTICE

Guide No 2 under the *Hague Convention of 29 May 1993*
on Protection of Children and Co-operation in Respect of Intercountry Adoption

drawn up by the Permanent Bureau

Document préliminaire No 2 de mai 2010 à l'intention de la
Commission spéciale de juin 2010 sur le fonctionnement pratique de la
Convention de La Haye du 29 mai 1993 sur la protection des enfants et
la coopération en matière d'adoption internationale

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Special Commission of June 2010 on the practical operation of the
Hague Convention of 29 May 1993 on Protection of Children and
Co-operation in Respect of Intercountry Adoption

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INTRODUCTION

INTRODUCTION

1. One of the great advantages of the 1993 *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* is the flexibility it gives to Contracting States in deciding how its provisions are to be implemented. Each State may adapt its own laws and procedures to implement the Convention. Ironically, it is this very flexibility which now gives rise to concerns about how the accreditation provisions are being implemented in individual countries, in particular, the lack of consistency in the quality and professionalism of accredited bodies, not only between Contracting States but also between agencies in the same State. The concerns are justified because of the reliance of States of origin on the decisions of receiving States which grant accreditation to adoption bodies and because of the range of important functions that are undertaken by those bodies in both the States of origin and in the receiving States.

2. Intercountry adoption involves continuous interaction among numerous players operating in various areas such as psychology, social work, law, management, public administration, protection of personal information, and on diverse physical and cultural territories.

3. One key element of intercountry adoption consists of recognising the role of the adoption bodies as intermediaries between the prospective adoptive parents, the various players referred to above, the various authorities of the receiving States and States of origin, and the children to be adopted.

4. This critical and sometimes complex role requires professionalism and sensitivity. It also requires a commitment to good practices by following an ethical approach to intercountry adoption. Most importantly, it requires an understanding of and commitment to the common goals or the central mission of intercountry adoption. For the Central Authorities, the competent authorities and the accredited bodies, that central mission is the protection and well-being of the children to be adopted.¹

5. Guided by that shared mission, each entity in the system of intercountry adoption should become aware that it plays, at its own level, a role in the legal, strategic and ethical governance of intercountry adoption.

6. Promotion of good practices in the field of intercountry adoption accordingly relies on:

- a single central object, namely the best interests of children affected by adoption;
- a shared understanding of the role of the Central Authority, the competent authorities and the accredited bodies;
- mutual respect among those entities and a relationship of trust;
- continuous dialogue among the players regarding the powers and functions of each and the way in which they are exercised.

7. As intercountry adoption is too often considered by prospective adoptive parents as a right to have a child, the Central Authorities, the competent authorities and the accredited bodies are faced with the ethical need continually to refocus the meaning of their statements and their actions on the real reason for the existence of intercountry adoption, which is to seek a family for a child. To improve the prospective adoptive parents' understanding of these concepts and to manage their expectations for intercountry adoption is a major function and a major challenge for all authorities and bodies concerned.

8. It is the purpose of this Guide to emphasise the good practices necessary to achieve success in our central mission referred to above.

¹ See the Preamble to the Convention.

Purpose and scope of the Accreditation Guide

9. Accreditation practice differs widely. The understanding and implementation of the Convention's obligations and terminology varies greatly. It is recognised that there is an urgent need to bring some common or shared understanding to this important aspect of intercountry adoption to achieve greater consistency in the operation of accredited bodies.

10. The purpose of this guide is therefore to have an accessible resource, expressed in plain language, which is available to Contracting States, accredited bodies and all those other actors involved in intercountry adoption. The Guide aims to:

- Emphasise that the principles and obligations of the Convention apply to all actors and participants in Hague Convention intercountry adoptions;
- Clarify the Convention obligations and standards for the establishment and operation of accredited bodies;
- Encourage acceptance of higher standards than the minimum standards of the Convention;
- Identify good practices to implement those obligations and standards;
- Propose a set of model accreditation criteria which will assist Contracting States to achieve greater consistency in the professional standards and practices of their accredited bodies.

11. It is hoped that this Guide will assist the accrediting and supervising authorities in the Contracting States to perform their obligations more comprehensively at the national level, and thereby achieve more consistency at the international level.

12. It is also hoped that the guide will assist accredited bodies (or those seeking accreditation) to obtain the best possible understanding of their legal and ethical responsibilities under the Convention. Suggestions for good practice are given to help in the performance of those responsibilities.

13. Prospective adoptive parents might also be assisted to know what could be expected of a professional, competent and experienced accredited body.

14. Nothing in this Guide may be construed as binding on particular States, Central Authorities or accredited bodies, or as modifying the provisions of the Convention. Nevertheless, all States and bodies involved in intercountry adoption are encouraged to review their own practices, and where necessary, to improve them. It is necessary to view the Convention as a flexible instrument that can evolve with the changing times, while the implementation of the Convention should be seen as a continuing, progressive or incremental process of improvement.

Mandate

15. The responses of the Questionnaire which preceded the 2005 Special Commission and which helped to frame its agenda (Prel. Doc. No 1, 2005) had identified that accreditation issues were the issues of particular concern to Contracting States. As a result, a discussion on accreditation took place on the first day of the Special Commission, based on "A Discussion Paper on Accreditation Issues".² The aims of this Discussion Paper were: to stimulate discussion on important issues concerning accreditation; to help clarify the terms of the Convention and the obligations of States in order to achieve better and more consistent practices; to stimulate debate on the usefulness of developing a Guide to Good Practice on accreditation; to stimulate debate on the possibility of developing core accreditation criteria and establishing a Working Group for this purpose.

16. A Recommendation was made at the conclusion of the meeting and this became the mandate for the second Guide to Good Practice:

² See "A Discussion Paper on Accreditation Issues", Prel. Doc. No 3 of August 2005, drawn up by Jennifer Degeling for the attention of the Special Commission of September 2005 on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions".

*The Special Commission recommends that the Permanent Bureau should continue to gather information from different Contracting States regarding accreditation with the view to the development of a future Part of the Guide to Good Practice dealing with accreditation. The experience of non-governmental organisations in this field should be taken into account. Such information should include financial matters and should also be considered in the development of a set of model accreditation criteria.*³

Sources

17. When the Permanent Bureau develops a Hague Convention Guide to Good Practice, the starting point is always the text of the Convention, supported or clarified where necessary by explanations from or reference to the Explanatory Report. The Guide does not in any way replace those texts. Instead, it tries to explain in clear language how the objects and obligations of the Convention can be achieved through following good practices which have been developed and adapted after years of experience with adoption procedures.

18. The Guide also relies on the Recommendations of Special Commissions. All those from past Special Commissions relating to accreditation will be referred to in the Guide. As they have been agreed to in international meetings of the Contracting States we consider the recommendations to be internationally agreed good practices for the implementation of the Convention.

19. Other good practices emerge from practical experience and research, as well as from the Accreditation Questionnaire responses. Bad practices also need to be noted sometimes in order to be discouraged. Wherever possible, concrete examples of good practices from different States are provided.

Acknowledgements

20. This draft Guide is a collaborative work between the Permanent Bureau, the Central Authority of Quebec (Canada) and *Adoptionscentrum*, an accredited body of Sweden. Contributions have also been made by the Central Authorities of Belgium (French Community), Colombia, Lithuania, the Netherlands, the Philippines and Sweden. The Permanent Bureau is very grateful for the generous contribution in time and expertise given by these partners. The Central Authority of Quebec has been especially generous in allocating resources for several months to draft a number of chapters.

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³ See Conclusions and Recommendations of the Second Meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (17-23 September 2005), Recommendation No 4, available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions".

CHAPTER 1

THE NEED FOR A SYSTEM OF ACCREDITATION

1.1 Background

23. After many years of experience with the implementation and operation of the Convention, it can safely be said that the standards of intercountry adoption have improved since the Convention began, and children's best interests are, in the majority of cases, better protected. However, we must not be complacent. The situation is still far from perfect and Contracting States must be constantly vigilant to ensure standards are maintained and abuses of the Convention prevented.

24. A ground-breaking initiative at the time the Convention was negotiated, and one of the Convention's most important safeguards to prevent the abduction, sale and traffic of children, is the mandatory procedure for the accreditation or licensing of adoption agencies which undertake Hague Convention intercountry adoptions, and their supervision by the Central Authorities.

25. The provisions on accreditation in the Convention were inspired by the 1989 *United Nations Convention on the Rights of the Child*⁴ (hereinafter "UNCRC") and the requirements in Article 21 a) to:

Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary.

26. This general principle refers only to "competent authorities", but this is an all-encompassing term and is intended to include properly licensed adoption agencies, as may be appropriate and permitted by the law of each State. The more detailed provisions on adoption "accredited bodies" as we now call them, have their origins in the investigative report on intercountry adoption undertaken by Hans van Loon in 1990⁵ as part of the preliminary work to establish the need for a new Convention.

27. The Van Loon Report identified the many abuses in intercountry adoptions at the time, and noted the link between these abuses and the prevalence of private and independent adoptions and the absence of supervision by public authorities as well as the absence of involvement of professional licensed agencies. Although a trend had begun in some States away from independent adoptions and towards agency adoptions because of the risks and uncertainties, there was still a preference by prospective adoptive parents "to avoid what they see as the drawbacks of an agency adoption: the costs, the time involved in having to wait on a list for an indefinite period, and the restrictions inherent in the adoption programme, such as the age of children or lack of personal control".⁶ Unfortunately, in an unregulated environment (then as now), prospective adoptive parents are more vulnerable to exploitation (as are children and birth parents), there are no guarantees that a child is eligible for adoption, and no guarantees that proper consents are given.

28. The Van Loon Report noted the increasing interest in intercountry adoption from the 1960s onwards. By 1990 the "demand for children from industrialised countries and the [...] availability of many homeless children in developing countries [...] has, in addition to regular and legal intercountry adoptions, led to practices of international child

⁴ *United Nations Convention on the Rights of the Child*, adopted by General Assembly resolution 44/25 of 20 November 1989. Available at < www.ohchr.org >.

⁵ J.H.A. van Loon, "Report on Intercountry Adoption", Prel. Doc. No 1 of April 1990, in Hague Conference on Private International Law, *Proceedings of the Seventeenth Session*, Tome II, *Adoption - co-operation*, pp. 11-119 (hereinafter "the Van Loon Report").

⁶ *Ibid.*, *supra*, note 5, para. 62.

trafficking either for purposes of adoption abroad, or under the cloak of adoption, for other – usually illegal – purposes.”⁷

29. The general features of trafficking⁸ in the context of adoption were also noted in the Van Loon Report, as well as the methods used for obtaining children, such as the sale of children (usually by very poor parents); fraud or duress (when a convincing intermediary – usually a female scouting for children) persuades a pregnant woman or young mother to give up her child with the promise of a better life – and gets her to accept money to eliminate any suspicion of kidnapping; abduction (children snatched from the street or playgrounds); facilitating a “legal” adoption by falsifying documents, bribing officials, concealing civil status (*e.g.*, “false” parents obtain an official birth certificate, “false” mother relinquishes the child for adoption).⁹

30. It was also noted that some States had taken legal measures “to restrict the freedom of agencies to act as intermediaries in intercountry adoption, among other purposes in order to prevent child trafficking. Such measures, in particular if co-ordinated on an international scale, should help considerably to reduce abuses of intercountry adoption”.¹⁰ More and more States (receiving and origin) were trying to exert supervision over intercountry adoption, not only to improve the chances of success of such adoption but also to combat abuses.¹¹ One of the measures increasingly used by States of origin was to “require that prospective adopters from abroad submit their application through agencies licensed by their governments, or at least show evidence that such agencies have found them suitable as adoptive parents”.¹²

31. In relation to receiving States, Mr Van Loon wrote in 1990: “While there is a trend in receiving countries to submit the intercountry adoption process to some sort of governmental supervision, this trend has not been manifested in all receiving countries and, moreover, their practices vary considerably both with regard to the types of control and the degree of supervision.”¹³

1.2 Accreditation as a Convention safeguard

32. The Van Loon Report recommended the development of the Convention as we know it today. To reduce the dangers of private and independent adoptions it was recommended that the new convention require prospective adoptive parents to obtain official permission to adopt, that the use of licensed agencies be made compulsory, and to make it compulsory for all those involved in intercountry adoption to pass through the Central Authorities.¹⁴

33. The Report stated:

*Whether Central Authorities would have limited or extended duties and powers, a minimum requirement for the convention to be effective and to contribute to reducing abuses would be that only agencies licensed by the State where they are established and supervised by the Central Authority be allowed to act as intermediaries [...]. The convention might define certain minimum criteria to be met in order for such agencies to be licensed as “placement” or “scrutinising” agencies, in particular concerning their non-profit character. The Central Authorities could provide information on such licensed agencies both at home and abroad and could recommend the use of such agencies.*¹⁵

⁷ See J.H.A. van Loon, *supra*, note 5, para. 78.

⁸ “Trafficking” in this context means “procurement” of children for adoption through illegal or unethical means. The definition of “trafficking” as “the sale of children for purposes of exploitation” is not intended here. The term “procurement” was proposed by Nigel Cantwell (international consultant on child protection for Unicef).

⁹ See J.H.A. van Loon, *supra*, note 5, para. 79.

¹⁰ *Ibid.*, *supra*, note 5, para. 83.

¹¹ *Ibid.*, *supra*, note 5, para. 132.

¹² *Ibid.*, *supra*, note 5, para. 136.

¹³ *Ibid.*, *supra*, note 5, para. 137.

¹⁴ *Ibid.*, *supra*, note 5, para. 178.

¹⁵ *Ibid.*, *supra*, note 5, para. 177.

34. From this conclusion, it was clear that adoption agencies would continue to play an active role in intercountry adoptions, but they would have to be properly licensed (accredited) and more closely supervised in the future. The inclusion of minimum standards for accreditation of adoption agencies would be one of the key features of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter, “the 1993 Hague Convention” or “the Convention”).

35. However, such was the concern at the time about unethical adoption practices of some adoption agencies and individuals that a number of delegates to the Convention negotiations wanted the agencies and individuals excluded from the procedure. The Explanatory Report describes the debate on this point:

242. The question as to whether the responsibilities assigned to Central Authorities by the Convention may be discharged by individuals or private organisations, is a very sensitive issue because, according to experience, most of the abuses in intercountry adoptions arise because of the intervention of such “intermediaries” in the various stages of the adoption proceedings. For this very reason, some participants to the Special Commission did not want to accept that Central Authorities may delegate their responsibilities on accredited bodies, but others insisted on leaving to each Contracting State the determination of the manner in which to perform the Convention’s duties.

243. The solution accepted by the draft (article 11) represented a compromise, permitting delegation only to public authorities and to private bodies duly accredited that comply, at least, with certain minimum requirements established by the Convention. However, as already remarked, this compromise became even more restricted when the matter was discussed in the Diplomatic Conference, because Article 8 of the Convention does not permit delegation to accredited bodies. Nevertheless, within the Convention’s limits, each Contracting State is free to decide how the duties imposed upon the Central Authority are to be performed and to permit or not the possible delegation of its functions.¹⁶

36. Now, the involvement of accredited bodies in intercountry adoption is the norm, and accreditation of adoption agencies is accepted as one of the important safeguards introduced by the 1993 Hague Convention. It is an essential step to improve the quality and safety of intercountry adoptions now and in the future. Any private agency wishing to undertake intercountry adoptions in Convention States must be licensed by and accountable to a supervising or accrediting authority (see Arts 10–12).

37. During the Convention negotiations, the question of allowing non-accredited individuals, who were involved in private and independent adoptions, to arrange adoptions under this Convention was much more controversial.¹⁷ However, a compromise had to be found and this is now seen in Article 22 of the Convention. The matter of approved (non-accredited) persons is discussed in detail in Chapter 14.

38. While the basic rules of accreditation are now clear, the practice indicates a lack of consistency in their application. The recommendations for good practice in this Guide are put forward to encourage greater co-operation and consistency between States in order to improve the application of the rules of accreditation.

¹⁶ See “Explanatory Report to the *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*”, drawn up by G. Parra-Aranguren, Hague Conference on Private International Law, *Proceedings of the Seventeenth Session*, Tome II, *Adoption - co-operation*, pp. 539-651, paras 242-243. Available also on the website of the Hague Conference at < www.hcch.net > under “Intercountry Adoption Section” and “Explanatory documents” (hereinafter, “Explanatory Report”).

¹⁷ *Ibid.*, *supra*, note 16, para. 373.

CHAPTER 2

GENERAL PRINCIPLES OF INTERCOUNTRY ADOPTION

2.1 General principles

39. The general principles of the 1993 Hague Convention apply to all entities or individuals involved in intercountry adoptions arranged under the Convention, whether they be Contracting States, Central Authorities, public authorities, accredited bodies or approved (non-accredited) persons or bodies or other intermediaries.

40. For States Party, the principles of the UNCRC are also central to intercountry adoption. This Convention sets out the fundamental rights of children, such as the right to know and be cared for by their parents (Art. 7(1)). The rights of children who are to be adopted are established in Article 21. The 1993 Hague Convention, in its Preamble, makes reference to the fact that the UNCRC principles are taken into account.

41. The principles of the 1993 Hague Convention and the UNCRC are discussed in some detail in Chapter 2 of Guide No 1: *The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice*¹⁸ (henceforth referred to as the "Guide to Good Practice No 1"). It is not intended to repeat all that information here, but a brief summary may assist to remind readers of the fundamental principles which should lie behind all actions and decisions relating to the intercountry adoption of a child.

2.1.1 Principles of the 1993 Hague Convention

42. The fundamental principles of the 1993 Hague Convention are:

- a) best interests principle: the best interests of the child is the primary consideration in all matters relating to Convention adoptions;
- b) subsidiarity principle: subsidiarity is one element to be considered when applying the best interests principle;
- c) safeguards principle: the development of safeguards is necessary to prevent abduction, sale, and traffic in children;
- d) co-operation principle: effective co-operation between authorities must be established and maintained to ensure safeguards are effective; and
- e) competent authorities principle: only competent authorities, appointed or designated in each State, should be permitted to authorise intercountry adoptions.

43. These principles are not to be considered in isolation. They are all interlinked and when applied together, they support the attainment of the objects of the 1993 Hague Convention as encapsulated in the title of the Convention: the protection of children and co-operation in intercountry adoption.

2.1.2 Brief outline of fundamental principles¹⁹

- a) *Ensuring adoptions take place in the best interests of the child and with respect for his or her fundamental rights*

44. It could be said that all of the objectives and safeguards of the Convention are directed towards the protection of the child's best interests. For example, Convention duties which support the protection of the best interests of the child include: ensuring the child is genuinely adoptable; verifying that the agreements in Article 17 are given to allow the adoption to proceed; preserving information about the child and his or her birth

¹⁸ See "The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice, Guide No. 1", Hague Conference on Private International Law, Family Law, 2008. Available on the Hague Conference website < www.hcch.net > under "Intercountry Adoption Section" and "Guides to Good Practice". The Guide was approved in principle by all States present at the 2005 Special Commission on the Practical Operation of the 1993 Hague Convention, and they were consulted again before its official publication.

¹⁹ A detailed discussion of these principles is found in Chapter 2 of Guide to Good Practice No 1, *supra*, note 18.

family; matching the child with a family which has the capacity to meet the child's needs. In addition to these general protections, the individual circumstances of each child must be taken into account.

45. Two important additional principles support the general principle that the best interests of the child is the primary consideration: the principle of subsidiarity (in Art. 4) and the principle of non-discrimination (in Art. 26). To apply the principle of non-discrimination will protect the child's best interests by guaranteeing that in the receiving State, the child has the same rights and protections as a nationally adopted child. In effect, the intercountry adopted child should have the same rights and protections as any other child who is a citizen of the receiving State. The principle of subsidiarity is elaborated in the following paragraphs.

b) Ensuring the principle of subsidiarity is considered

46. The subsidiarity principle may be explained briefly as follows: the birth family is the preferred family for a child; permanent family care is to be preferred over temporary care; national adoption or family based care is preferred over intercountry adoption. However it must be remembered that the principle of the best interests of the child in the over-riding principle.²⁰

47. To apply the principle of subsidiarity will protect the child's best interests by attempting to keep a child in his or her biological or extended family, then considering national permanent family-based solutions before turning to intercountry adoption. Institutionalisation should be the last resort.

c) Establishing safeguards to prevent abduction, sale and trafficking in children for adoption

48. The principle of establishing safeguards is directed towards the protection of families – the child, the birth family and the adoptive family – both before and during the adoption procedure. The prevention of abuses of the adoption procedures underlies many of the Convention's duties.

49. Combating abduction, sale and trafficking in children for adoption is one of the main objects of the Convention.²¹ How this is to be achieved is left largely to the law of each Contracting State. However, in several areas, the Convention is very specific about the safeguards to be implemented, *e.g.*, to ensure that proper consents to the adoption are given by the appropriate person; that the consents are given without inducement or solicitation and in full knowledge of the effect of the intercountry adoption; to prevent improper financial gain and corruption; to provide for the accreditation of adoption agencies.

d) Establishing co-operation between States and within States

50. It is evident from the Convention's title that it was always intended to be a Convention to facilitate administrative and legal co-operation in intercountry adoption. The establishment of Central Authorities, and setting up channels of communication between them at the intra-State and inter-State level, is the key to effective co-operation, and ultimately, to the success of the Convention. Co-operation to exchange information about the actual level of need for intercountry adoption in individual States should be a priority. Similarly, the exchange of information about the requirements in each States regarding Convention procedures and use of safeguards should be sought by Central Authorities and accredited bodies to ensure that the rights of all the parties are protected. Co-operation to prevent abuses and avoidance of the Convention is an obligation referred to in Articles 7, 8 and 33.

e) Ensuring authorisation of competent authorities

51. In keeping with the provisions of Article 21 of the UNCRC, that the adoption of a child should be "authorised only by competent authorities", the 1993 Hague Convention establishes duties for a range of competent authorities and places obligations on them.

²⁰ For further explanation, see Guide to Good Practice No 1 at Chapter 2.1.1, *supra*, note 18.

²¹ Art. 1.

The meaning of the term “competent authority” will vary according to the situation or the particular stage of the adoption procedure. It could therefore mean a court or tribunal, or a government body (a public authority), but it could also mean a Central Authority, or an accredited body or, in limited circumstances, an approved (non-accredited) person.²²

2.1.3 Key operating principles

52. In addition to the fundamental principles of the Convention, a number of key operating principles were developed in the Guide to Good Practice No 1 at Chapter 3. These are the principles which should be observed to achieve good practice in the practical daily operation of the Convention. These principles are:

- a) progressive implementation of the Convention as a means to achieving good practice;
- b) sufficient resources and powers for the Central Authorities to function effectively;
- c) co-operation at intra-State and inter-State level to improve the functioning of the Convention;
- d) good communication that underpins effective co-operation;
- e) expeditious procedures should be implemented but not in a way which jeopardises the essential safeguards;
- f) transparency in procedures, financial matters, and in dealing with all the parties helps maintain the integrity and credibility of the adoption procedure and the Convention;
- g) minimum standards only are set in the Convention; higher standards should be aimed for.²³

2.1.4 Conclusions and Recommendations of Special Commissions

53. Special Commission meetings are usually held at 4-yearly intervals to review the implementation and practical operation of the 1993 Hague Convention.²⁴ The Conclusions and Recommendations of these Special Commission meetings emphasise and expand on the relevance of general principles in everyday practice. The Conclusions and Recommendations which refer to Central Authorities, apply equally to accredited bodies and approved (non-accredited) persons, when they perform the functions of Central Authorities.²⁵ The Conclusions and Recommendations are non-binding declarations which should nevertheless be followed as a matter of good practice. Contracting States have a responsibility to disseminate the information from Special Commissions to the bodies and persons to which or to whom the Conclusions and Recommendations are directed.

2.2 Principles of the United Nations Convention on the Rights of the Child (UNCRC)

54. As the Preamble to the 1993 Hague Convention refers to the fact that the principles of the UNCRC are taken into account, it is useful to refer briefly to those principles.²⁶ The

²² See the definition of “competent authority” in the glossary of Guide to Good Practice No 1, *supra*, note 18.

²³ These principles are fully discussed in Chapter 3 of Guide to Good Practice No 1, *supra*, note 18.

²⁴ Three Special Commission meetings have now been held. The first was in 1994. Only, the second in 2000 and the third in 2005 reviewed the operation of the Convention.

²⁵ See “Report of the Special Commission on the Implementation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption* (17-21 October 1994)”, drawn up by the Permanent Bureau, Hague Conference on Private International Law, *Proceedings of the Eighteenth Session*, Tome I, *Miscellaneous matters*, pp. 277–315; “Report and Conclusions of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption* (28 November – 1 December 2000)”, in *Proceedings of the Nineteenth Session*, Tome I, *Miscellaneous matters*, pp. 481 *et seq.* (hereinafter, “Report of the 2000 Special Commission”) and “Report and Conclusions of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption* (17-23 September 2005)”, drawn up by the Permanent Bureau, Hague Conference on Private International Law, August 2006 (hereinafter, “Report of the 2005 Special Commission”). All reports are available on the website of the Hague Conference at < www.hcch.net > under “Inter-country Adoption Section” and “Special Commissions”.

²⁶ See also Chapter 2.1 of Guide to Good Practice No 1, *supra*, note 18.

governing principle of Article 21 is that the best interests of the child shall be the paramount consideration.²⁷ This principle is supported by certain additional principles in Article 21:

- a) that the adoption of a child is to be authorised only by competent authorities who determine that the adoption is permissible and with the necessary consents and counselling;
- b) that intercountry adoption may be considered if the child cannot in any suitable manner be cared for in the child's State of origin (the subsidiarity principle);
- c) that the child concerned by intercountry adoption should enjoy safeguards and standards equivalent to those existing in the case of national adoption (the non-discrimination principle);
- d) that improper financial gain should be prevented;
- e) that the placement of the child in another State is to be carried out by competent authorities or organs.

55. The close connection between the UNCRC and the 1993 Hague Convention is emphasised. The UNCRC establishes the broad principles to protect a child affected by intercountry adoption. The 1993 Hague Convention builds upon the broad principles of the UNCRC. States which are party to the UNCRC but not to the 1993 Hague Convention are still bound by the obligations and principles concerning intercountry adoption in Article 21 of the UNCRC. Its Articles 3, 7, 9, 11, 20 and 35 are also relevant for children deprived of parental care.

56. Furthermore, States which are party to the 1993 Hague Convention have, by agreeing to the Special Commission Recommendation, accepted to apply the principles of the 1993 Hague Convention in their intercountry adoption arrangements with non-Convention States. That Recommendation states as follows:

*Recognising that the Convention of 1993 is founded on universally accepted principles and that States Parties are "convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children", the Special Commission recommends that States Parties, as far as practicable, apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States. States Parties should also encourage such States without delay to take all necessary steps, possibly including the enactment of legislation and the creation of a Central Authority, so as to enable them to accede to or ratify the Convention.*²⁸

57. The *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (hereinafter, "Optional Protocol on the sale of children") is also relevant. Article 3(5) states that "States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments".²⁹

2.2.1 Other instruments which may provide guiding principles

58. A number of other international and regional instruments are also relevant to the welfare of children in need of a family. These instruments contain important principles

²⁷ The overriding principle of the Convention in Art. 3 states that "the best interests of the child shall be a primary consideration."

²⁸ See "Report and Conclusions of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (28 November – 1 December 2000)", available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions". The Special Commission of 2005 supported the continued application of this Recommendation, and it was affirmed in a new Recommendation No 19.

²⁹ *Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography*, adopted by General Assembly resolution A/RES/54/263 of 25 May 2000. Available at < <http://www2.ohchr.org/english/law/crc-sale.htm> >.

and rules which have inspired the UNCRC and the 1993 Hague Convention, or in the case of the Guidelines, are inspired by them. These instruments are:

- UN Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally (1986);³⁰
- The UN Guidelines for the Alternative Care of Children (2009);³¹
- The African Charter on the Rights and Welfare of the Child (1999).³²

³⁰ Adopted by General Assembly resolution 41/85 of 3 December 1986. Available at < www.un.org >.

³¹ < http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/11/L.13 >.

³² < <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm> >.

CHAPTER 3

GENERAL PRINCIPLES OF ACCREDITATION

59. The development of this Guide to Good Practice on accreditation provides an ideal opportunity to elaborate a set of principles of accreditation. These principles may be drawn from a number of sources, but especially from the Convention provisions themselves, as well as the Explanatory Report and the Conclusions and Recommendations of Special Commissions, which clarify how the provisions of the Convention should be interpreted and implemented in order to achieve the objects of the Convention. Other sources include: the Accreditation Criteria of Euradopt / Nordic Adoption Council, the reports of International Social Service and other non-governmental organisations, and information from meetings with Central Authorities and accredited bodies.

60. Some principles of accreditation are helpful as a point of reference for recommending good practices for accredited bodies. The principles encapsulate particular obligations and essential good practices. They provide in a very brief form, an outline of what an accredited body can do to achieve high standards of ethical practice.

61. The States of origin depend on receiving States to accredit professional bodies. If the principles of accreditation are followed, there may be greater consistency in the quality of accredited bodies. This could address one of the main complaints of States of origin concerning accredited bodies namely, that accreditation is not a guarantee of high quality professional conduct and expertise.

62. In order to elaborate a set of accreditation principles, it is necessary first to review the relevant Convention provisions which establish the standards for accredited bodies. These standards must be incorporated into the accreditation principles.

3.1 Standards for accredited bodies

63. The basic standards and requirements for accreditation are established in Chapter III of the Convention, in particular Articles 10, 11 and 12. When adoption bodies are accredited in accordance with the Convention, it is for the purpose of performing certain functions of Central Authorities or competent authorities in Chapters III and IV of the Convention. It is therefore important for accredited bodies to fully understand not only the nature and extent of those functions, but to understand that they are responsible for performing the treaty obligations of their State. The procedural functions from Chapter IV of the Convention are discussed in the Guide to Good Practice No 1 in Chapter 7 (The Inter-country Adoption Process under the Convention).

64. Bodies which meet the obligations set out in Articles 6 to 13 of the Convention, and also meet the accreditation criteria established by competent authorities of their State, may be accredited to perform within their State certain functions of Central Authorities under the Convention.³³

65. The Convention sets minimum standards that must be fulfilled in relation to accredited bodies. They shall:

- demonstrate competence to carry out properly the functions entrusted to them;³⁴
- only pursue non-profit objectives;³⁵
- be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoptions;³⁶

³³ See Guide to Good Practice No 1, *supra*, note 18, para. 203.

³⁴ Art. 10.

³⁵ Art. 11 a).

³⁶ Art. 11 b).

- be subject to supervision by competent authorities as to their composition, operation and financial situation;³⁷ and
- their directors, administrators and employees shall not receive remuneration which is unreasonably high in relation to services rendered.³⁸

3.2 Principles of accreditation

66. The accreditation principles are:

- Principle No 1: Principle of professionalism and ethics in adoption
- Principle No 2: Principle of non-profit objectives
- Principle No 3: Principle of preventing improper financial gain
- Principle No 4: Principle of demonstrating and evaluating competence using criteria for accreditation and authorisation
- Principle No 5: Principle of accountability of accredited bodies
- Principle No 6: Principle of using representatives with an ethical approach
- Principle No 7: Principle of adequate powers and resources for authorities.

3.2.1 Principle No 1: Principle of professionalism and ethics in adoption

67. Accredited bodies should be bound by obligations of professional competence and ethical practices in intercountry adoption.³⁹ Professional competence implies, among other things, relevant and extensive experience in the field of international adoption. The principle of professionalism and ethics is supported directly by Articles 10 and 11 *b*) and is implicitly required by the operation of Article 1 (objects), Article 4 (subsidiarity, adoptability and consents), and Article 5 (selection of adoptive parents). These principles also apply to voluntary organisations and volunteers involved in intercountry adoption.

68. Article 10 states:

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

69. Article 11 *b*) states:

An accredited body shall –

- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption;*

70. In relation to Article 11 *b*), the range of accredited body personnel bound by the Convention standards is clarified in the Explanatory Report which states:

259. Sub-paragraph b establishes some minimum personal requirements as to the composition of the accredited bodies, prescribing that they shall “be directed and staffed by persons qualified by their ethical standards”. This condition is to be fulfilled by all persons working for accredited bodies, their directors as well as other members of the staff [emphasis added].

260. The words “to work” were added to specify that directors and other members of the staff, who work themselves in the field of intercountry adoption, must be qualified by training or experience to do so. Those directors or staff members who do not themselves work in this field, need not to be qualified by training or experience, but still need to be qualified by their ethical standards.

³⁷ Art. 11 *c*).

³⁸ Art. 32(3) and Guide to Good Practice No 1, *supra*, note 18, para. 204.

³⁹ For example, the EurAdopt organisation requires its members to supplement existing rules and legislation with commonly agreed Ethical Rules. The Ethical Rules may be found at < www.euradopt.org > (hereinafter, “EurAdopt Ethical Rules”).

71. To implement this principle, the accredited body should be guided by the statements in the Preamble to the Convention and may also be guided by certain basic ethical considerations, such as:

- a) intercountry adoption is first and foremost a child protection measure and a child-centred process. It is not primarily a measure to satisfy the needs of prospective adoptive parents.⁴⁰ Accredited bodies must always work to achieve the best interests of the child;⁴¹
- b) the accredited body should have the ability to balance its primary obligation to protect the interests of a child with the demands of the clients, the prospective adoptive parents. This involves not only taking appropriate measures to ensure that the subsidiarity principle has been applied and national solutions considered in each case, but ensuring that the adoption accredited body has the capacity (the training and expertise) to make a qualitative selection of prospective adoptive parents, and that the prospective adoptive parents have received a thorough preparation for adoptive parenthood and intercountry adoption;
- c) the accredited body will need to be adaptable to the changing face of intercountry adoption. As the adoptable children are more often special needs children, the adoption accredited body has to be conscious that the number and profile of adoptable children is changing, and many healthy babies in States of origin are being adopted nationally. This means accredited bodies will need to develop expertise in the adoptions of special needs children and select prospective adoptive parents who have the special capacity to adopt older children, siblings, and children with physical, mental and emotional problems.
- d) The accredited body should also have the professional competence to support such prospective adoptive parents during the adoption procedure, and equally importantly, to support them during the integration period, to refer the family to other authorities and services for ongoing support, and to follow up on the adoption for the purpose of providing post-adoption reports;
- e) the adoption work should be carried out in such a way that competition for children and for local representatives (intermediaries) is avoided.⁴²

72. The selection by Contracting States of adoption bodies which will operate at the highest professional and ethical standards is vital for the success of the Convention. They will be expected to play an effective role in upholding the principles of the Convention and preventing illegal and improper practices in adoption.⁴³

73. In order to meet the standards of professional competence required by Article 10, it is recommended that the adoption accredited body be composed of a multidisciplinary team made up of professionals in social work, psychology and law and with an appropriate level of competence and practical experience. Where this is not possible to have such professionals on the regular staff, for example, in small accredited bodies, it is vital to have access to the professional expertise of these individuals. Access to professionals in medicine or paediatrics may be particularly important at certain stages of the procedure, especially in States of origin when accurate reports on the health and physical condition of children are vital.

74. The practical experience of the adoption accredited body has to be appropriate to the needs of intercountry adoptable children in the State of origin where the accredited body works.

The principle of professional competence and ethical practices implies the acceptance of the concept of co-responsibility (shared or joint responsibility) of receiving States and States of origin for finding solutions to the challenges and problems of intercountry

⁴⁰ Draft report "The best interest of the child and the adoption", Unicef Innocenti, 2009, p. 74.

⁴¹ Accredited bodies are bound by the objects of the Convention in Article 1, as are all actors involved in Convention adoptions.

⁴² See EurAdopt Ethical Rules, *supra*, note 39, Art. 25.

⁴³ See Guide to Good Practice No 1, *supra*, note 18, para. 195.

adoption. For example, the accredited body of the receiving State should always ensure that “the contact with whom the organisation co-operates in the child’s State of origin must be an authority, organisation or institution which is authorised to mediate in the field of intercountry adoption according to the laws of that country”⁴⁴ (see Principle No 6: Use of representatives with an ethical approach).

3.2.2 Principle No 2: Principle of non-profit objectives

75. Article 11 a) imposes on accredited bodies a direct obligation to pursue only non-profit objectives. It states:

An accredited body shall –

- a) *pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;*

76. The Explanatory Report makes it clear that each Contracting State is expected to regulate this aspect of the accredited bodies’ operations:

*The requirement imposed by sub-paragraph a) “to pursue only non-profit objectives” is formulated in general terms, but it is subject “to the conditions and within such limits as may be established by the competent authorities of the State of accreditation”. Consequently, there is a wide margin open for regulation that may and will be different in the various Contracting States, even though keeping in mind the objects to be achieved by the Convention.*⁴⁵

77. In relation to the activities of the accredited body, the non-profit objective means that the profit motive should not be part of any decision making. Nevertheless, the accredited body is entitled to:

- a) charge prospective adoptive parents reasonable fees for recovery of costs including costs of its professional services (Art. 32(2));
- b) pay its directors, professionals and employees a salary or remuneration which is not unreasonably high having regard to the nature and quality of the services provided (Art. 32(3));
- c) accumulate sufficient funds to guarantee the viability of the organisation (for overheads such as office space, equipment, salaries) at least for the duration of the period of accreditation.

78. Fees charged by other professionals for work done on behalf of the organisation or the prospective adoptive parents, should be commensurate with the work carried out and with the costs of comparable work in the State concerned.⁴⁶ “Reasonable fees” referred to in Article 32(2) refers to the fees of any person involved in the adoption process (not just accredited body staff), including lawyers, psychologists and doctors.⁴⁷

3.2.3 Principle No 3: Principle of preventing improper financial gain

79. The Contracting States and the Central Authorities have a particular responsibility to regulate the cost of intercountry adoption by taking measures to prevent improper financial gain and similar inducements (see Arts 4 c)(3), 4 d)(4), 8, 11 and 32 of the Convention). Some of these measures are referred to in Chapter 4.2.1 of the Guide to Good Practice No 1. As actors in the adoption procedure, accredited bodies also share this responsibility. The financial aspects of intercountry adoption are discussed in more detail in Chapter 9 of this Guide (The costs of intercountry adoption: transparency and accountability of accredited bodies).

80. The importance of preventing improper financial gain had been strongly emphasised during the negotiations to develop this Convention, where it was recalled that “the existing situation reveals that it is not only the intermediary bodies that are

⁴⁴ See EurAdopt Ethical Rules, *supra*, note 39, Art. 18.

⁴⁵ See Explanatory Report, *supra*, note 16, para. 256.

⁴⁶ See EurAdopt Ethical Rules, *supra*, note 39, Art. 21.

⁴⁷ See Explanatory Report, *supra*, note 16, para. 532.

attracted by improper financial gain”, but “as it has sometimes happened, lawyers, notaries, public servants, even judges and university professors, have either requested or accepted excessive amounts of money or lavish gifts from prospective adoptive parents”.⁴⁸

81. When an adoption agency seeks and is granted accreditation under the Convention, it is agreeing to act in the place of its government authority, the Central Authority or a competent authority. It therefore must accept responsibility for meeting its State’s treaty obligations. One of the most important of these is to prevent improper financial gain in intercountry adoption.

82. The prohibition on improper financial gain is clearly stated in Article 32(1). It applies to every person, body or authority involved in adoptions under this Convention – no one is exempt. It applies equally to entities in the receiving State and in the State of origin.

83. Article 32 states:

- (1) *No one shall derive improper financial or other gain from an activity related to an intercountry adoption.*
- (2) *Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.*
- (3) *The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.*

84. Article 32(1) confirms in general terms, as an independent provision, the duty imposed by Article 21 d) of the UNCRC on States Parties “to take all appropriate measures to prevent that, in intercountry adoption, the placement does not result in improper financial gain for those involved in it”. The same principle is also to be found as a condition for the validity of the adoption in Articles 4 c)(3) and 4 d)(4) of the 1993 Hague Convention.⁴⁹

85. Article 32(3) applies the same prohibition for directors, administrators and employees of bodies, whether they are accredited or not (no distinction is made), to receive remunerations that are unreasonably high in relation to the services rendered.⁵⁰

86. The determination as to when a remuneration is unreasonably high, is left to the Contracting States and for this reason, the decisions may differ from one another in similar cases.⁵¹

87. As actors in the intercountry adoption, accredited bodies have a responsibility to support and comply with any preventive measures taken by their own State or Central Authority.⁵² Article 32 does not state the consequences of its violation, but this is left to each Contracting State. One consequence could be the withdrawal of accreditation.⁵³

88. Article 32(2) and (3) place direct obligations on accredited bodies to regulate their fees, salaries and charges. Articles 8 and 32, when read together, indicate a need for Central Authorities, public authorities or competent authorities to be supervising the fees and charges of accredited bodies and this is confirmed by Article 11 c). The question of supervision of accredited bodies is discussed in detail in Chapter 8 of this Guide

89. It is implicit in Article 32 that all actors in the adoption process, whether they work for an accredited body or not, and including an approved (non-accredited) person, will take appropriate measures to refuse and prevent improper financial gain. Possible measures which could be taken by the accredited bodies include:

⁴⁸ See Explanatory Report, *supra*, note 16, para. 527.

⁴⁹ *Ibid.*, *supra*, note 16, para. 526.

⁵⁰ *Ibid.*, *supra*, note 16, para. 533.

⁵¹ *Ibid.*, *supra*, note 16, para. 534.

⁵² See Guide to Good Practice No 1, *supra*, note 18, para. 222.

⁵³ The Optional Protocol on the sale of children also states that in cases where a child is sold, there should be criminal sanctions.

- a) providing information to the competent authorities of both the States of origin and receiving States concerning trafficking in children, improper financial gain and any other abuses;⁵⁴
- b) taking responsibility for the working methods of its representatives and co-workers. Representatives and co-workers who might influence the number of children placed for adoption should not be paid on a per case basis. The salary paid to representatives and co-workers by the organisation should be reasonable, taking into consideration the cost of living of the State as well as the scope and terms of the work undertaken.⁵⁵

90. It is mistakenly believed in some States that to permit the charging of fees by accredited bodies contradicts the Convention obligation to prevent improper financial gain. The Convention is clear that improper financial gain is prohibited. This implies that “proper” financial gain is allowed. The Explanatory Report removes any doubt on this question:

*Paragraph 1 of Article 32 only prohibits “improper” gain, financial or of any other nature. Therefore, all “proper gains” are permitted and, because of that, paragraph 2 not only permits the reimbursement of the direct and indirect costs and expenses incurred, but also the payment of reasonable professional fees to persons involved in the adoption, lawyers included.*⁵⁶

91. Any debate on what is “reasonable” and “proper” should not be allowed to divert attention away from the real issue: to prevent improper financial gain and to implement effective measures to do so, in both the receiving States and in the States of origin. These questions are discussed in more detail in Chapter 9 of this Guide.

3.2.4 Principle No 4: Principle of demonstrating and evaluating competence using criteria for accreditation and authorisation

3.2.4.1 Criteria for accreditation

92. Although the term “accreditation criteria” is not used in the Convention itself, the Convention implies that criteria for accreditation will need to be developed by each Contracting State if bodies are to be “duly accredited” as in Article 9 or if accreditation is to be “granted” as in Article 10. It is implied that there must be conditions or criteria according to which the grant of accreditation is made. In developing their rules for accreditation, the Convention does not prevent Contracting States from imposing additional obligations or requirements on bodies seeking accreditation.⁵⁷ The Convention’s direct obligations together with these additional requirements may be expressed as accreditation criteria.

93. The criteria should be developed in the context of the national strategy for protection of children, in particular the criteria should facilitate the accreditation of bodies which will respond to the real needs of children. The criteria for accreditation should be explicit and should be the outcome of a general policy on intercountry adoption.⁵⁸ These criteria should be set by statute or any other similar enactment, provide clear and comprehensive instructions, and be published.⁵⁹

⁵⁴ See EurAdopt Ethical Rules, *supra*, note 39, Art. 23.

⁵⁵ *Ibid.*, *supra*, note 39, Art. 20.

⁵⁶ See Explanatory Report, *supra*, note 16, para. 528

⁵⁷ See Guide to Good Practice No 1, *supra*, note 18, para. 205.

⁵⁸ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 4c.

⁵⁹ For example, the response of Italy to the 2009 Questionnaire on Accredited Bodies in the Framework of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption*, drawn up by the Permanent Bureau, Prel. Doc. No 1 of August 2009 for the attention of the Special Commission of June 2010 on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereinafter “2009 Questionnaire”), which indicates a well-established structure with powers and resources for effective supervision of accredited bodies. The Questionnaire and the State responses are available on the website of the Hague Conference at < www.hcch.net > under “Intercountry Adoption Section” and “Special Commissions”.

94. Criteria for accreditation are also needed as the standard against which the performance of the accredited body can be measured, and when renewal of accreditation is sought by the accredited body.

95. With a concern for consistency, fairness and uniformity in obtaining and maintaining accreditation, a common set of model accreditation criteria for all States could be agreed to. To this end, a set of model criteria for accreditation is developed in this Guide and may be found in Annex 1.

3.2.4.2 Criteria for authorisation

96. It is also recommended that States develop criteria for the authorisation of accredited bodies to act in another States, as provided in Article 12. This is particularly relevant for States of origin. They may receive many requests from foreign accredited bodies for permission to work in the State of origin. States of origin should have criteria to help them determine which are the most professional and ethical bodies and which ones will contribute positively to improving the situation of their children in need of a family.⁶⁰ The criteria could also indicate a preference for experienced foreign accredited bodies with multidisciplinary personnel who will provide in depth individual support during the adoption procedure. Some criteria for authorisation may also encourage the State of origin to consider the number of foreign accredited bodies required on its territory and their profile. These matters are discussed in more detail in Chapter 4.2.4

97. The receiving State must also act responsibly and not place the entire burden of authorisation on the State of origin. By following the principle of co-operation and co-responsibility⁶¹ and by having information about the real need for accredited bodies in a State of origin, the receiving State should not grant authorisations when a State of origin has indicated that at that time, it does not need any more accredited bodies.

98. The criteria for authorisation should include a requirement that the services of the foreign accredited body in the State of origin (through its presence there or its representation by an intermediary) is necessary to meet a genuine need for adoption services for particular groups of children in the State of origin. For example, one State of origin may have too many foreign accredited bodies, while another State with a large number of adoptable children with special needs (health problems, physical or psychological disabilities) may have insufficient accredited bodies with the appropriate experience to assist in placing such children for adoption.⁶²

3.2.5 Principle No 5: Principle of accountability of accredited bodies

99. A principle of accountability of accredited bodies may be derived from the terms of the Convention, as well as from its objects and history. Recalling that the need for the Convention arose from the events of the 1970s and 1980s when intercountry adoption was poorly regulated, when private adoptions were the norm and licensed adoption agencies were rare, it is easy to see why unethical adoption practices flourished. It is also easy to see that an agreed international regulatory framework in which, among other things, adoption agencies were properly licensed, was the preferred solution.

100. Accountability of accredited bodies may include the following aspects:

- a) adequate supervision of the body by the accrediting or supervising authority;
- b) adequate supervision of the activities of a foreign accredited body or its representative in a State of origin;
- c) regular reporting to the supervising authority by the accredited body on its activities;
- d) reporting on its activities to the authorities in another State when authorised to act in that State (usually a State of origin);

⁶⁰ For examples of good practice, see the response of Lithuania to question No 23 of the 2009 Questionnaire, and the criteria at < www.ivaikinimas.lt/document_db/tfiles/107.doc >. See also the perspective of the Philippines in Chapter 13.3.6 of this Guide.

⁶¹ This principle is discussed in Chapter 12.1.2.

⁶² See A Discussion Paper on Accreditation Issues, *supra*, note 2, p. 10.

- e) transparency of the accredited body's organisation and activities, for the benefit of its clients, regulators and others.

101. Accountability of accredited bodies has mandatory and voluntary aspects. Mandatory accountability is achieved through supervision of the accredited body which is an obligation on the competent authority of the accrediting State (see Art. 11 *c*). A Contracting State must therefore indicate in its implementing legislation or procedures which authority has the responsibility to supervise the accredited body and what that supervision entails. The Convention is clear in Article 11 *c*) that the minimum standards require supervision of the accredited body's composition, operation and financial situation.

102. Voluntary accountability is achieved through transparency in its activities. Transparency inspires confidence and respect. To achieve transparency in its organisation and activities, the accredited body could provide accurate and current information which is easily accessible to the members of the public who may seek its services, to the regulating authority in its own State, and in any other State where the accredited body is active. The accredited body is accountable to its clients as well as its accrediting authority.

103. A detailed discussion of supervision is in Chapter 8 of this Guide (Procedures for accreditation, supervision and review of accredited bodies).

3.2.6 Principle No 6: Principle of using representatives with an ethical approach

104. This principle is one for which there ought to be co-operation and co-responsibility between receiving States and States of origin.

105. Receiving State, whether through their Central Authorities or accredited bodies, should ensure that when they employ or contract a representative in the State of origin to facilitate the adoption procedure, that person has the highest professional and ethical standards. The person should understand that he or she is bound by the Convention's principles and procedures, and should be aware of the laws of the State of origin, and take an ethical approach with intercountry adoptions.

106. The States of origin could have a system in place to license intercountry adoption representatives.⁶³ The licensing system should require relevant professional knowledge and experience. A knowledge of the child protection system in the State of origin is essential.⁶⁴ Also necessary is a method of regulating the remuneration of the representative. Importantly, the system should also include the supervision and reporting on such persons as to their professional standards and ethical approach. The system to license representatives should not be done in a way that permits the receiving State to avoid its responsibility. Furthermore, it must not put a burden upon the State of origin.

107. Where no professional education or training for representatives is available in the State of origin, the receiving State's accredited bodies may consider a co-operation project with the authorities of the State of origin to provide the training, or ensure it is provided. Some receiving States invite their representatives to come for professional development.⁶⁵

108. The issue of the representative is discussed in more detail in this Guide at Chapter 7.4 concerning staff of the accredited body.

⁶³ States of origin which have a system of licensing for representatives include Lithuania. See response to question No 23 of the 2009 Questionnaire.

⁶⁴ A questionnaire on the child protection system in States of origin has been developed by ISS and may be a useful tool for improving the receiving State's understanding of conditions in the State of origin, as well as for the professional development of the representative.

⁶⁵ *E.g.*, Canada, France, Italy.

3.2.7 Principle No 7: Principle of adequate powers and resources for authorities

109. The authority or authorities which are competent to grant accreditation, to supervise accredited bodies or to give authorisations, should be designated pursuant to clear legal authority and should have the legal powers and the personal and material resources necessary to carry out their responsibilities effectively.⁶⁶

110. The legal powers of these authorities should include the power to conduct any necessary enquiries and, in the case of a supervising authority, the power to withdraw, or recommend the withdrawal of, an accreditation or authorisation in accordance with law.⁶⁷

111. Effective supervision requires resources. As part of its implementation strategy, a Contracting State or a State intending to join the Convention should be aware of the need to supervise the adoption procedure and the actors involved. Consequently, there will be a clear need for the responsible authorities to have adequate resources to make the Convention work effectively.

⁶⁶ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 4a.

⁶⁷ *Ibid.*, Recommendation No 4b.

CHAPTER 4

GENERAL POLICY CONSIDERATIONS

112. In the preceding chapter, some general principles of accreditation were put forward in order to guide the procedure of accreditation, including supervision and review of accredited bodies. Those principles are based upon the rules of the Convention and are augmented by the explanations in the Explanatory Report, and statements of good practice from a range of sources.

113. This chapter examines some of the policy questions and general considerations which arise when a State plans to join the Convention or when a system of accreditation is to be established or improved. Some of those considerations include: who will grant the accreditation; how many adoption accredited bodies are needed; is it necessary to have adoptions with every Convention State.

114. The Convention lays down minimum requirements for accreditation, but the list is not comprehensive. Each Contracting State is free to regulate, prescribe or add its own requirements for accreditation provided they are not inconsistent with the Convention. In addition, certain policy questions may have to be considered.

4.1 Is it mandatory to use accredited bodies?

115. The Convention permits the Contracting States to call upon accredited bodies but does not require any State to appoint accredited bodies or use them.⁶⁸ A receiving State or State of origin may, however, require by law the use of accredited bodies, as an increasing number of States do.⁶⁹

116. The use of accredited bodies is considered as good practice as it allows the States to engage them in fighting abuse, trafficking and the failures associated with independent adoptions.⁷⁰

117. On the other hand, some States of origin have reported problems where no accredited bodies are used and an adoption is arranged between Central Authorities. For example, when the prospective adoptive parents come to the State of origin without any support from a professional body, the parents are reliant on the (usually) under-resourced Central Authority in the State of origin to give them advice and assistance. Sometimes the adoptive parents' Embassy representatives have to take on this role. Some possible solutions are: the State of origin could permit adoptions only when it has agreed on the "practical arrangements" for adoptions with certain receiving states. Such arrangements may specify that the receiving State must have an accredited body or a representative in the State of origin to support the adoptive parents during their visit. Another possible solution is found in the Chinese model, where the adoptive parents are not permitted to travel to China until the "authorisation to travel" has been given. Another model is from the Netherlands: when prospective adoptive parents wish to adopt from a State where their accredited body does not work, the parents must identify a reputable intermediary in the State of origin to assist the parents. The Dutch accredited body investigates the intermediary to confirm his or her good reputation before permitting the procedure to continue.

⁶⁸ "Report and Conclusions of the Special Commission on the practical operation of the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (17-23 September 2005)", drawn up by the Permanent Bureau, Hague Conference on Private International Law, August 2006 (hereinafter, "Report of the 2005 Special Commission"), para. 54.

⁶⁹ See the laws Brazil (Law No 12,010 of 3 August 2009, Art. 52, §1), Chile (Law 19620 of 3 August 2007, Art. 6), Quebec (Canada) (Youth Protection Act, R.S.Q. c. P-34.1, Division VII, §2), Italy (Law No 184 of 4 May 1983, Art 31(1)), Norway (Act of 28 February 1986 No 8 relating to adoption, section 16(f)), and Sweden (Intercountry Adoption Intermediation Act (number 1997:192), section 4).

⁷⁰ See International Social Service, "Accredited Adoption Bodies of Receiving States – AABs (I): The Nature And Advantages Of Their Intervention", *Fact Sheet*, No 38, July 2007 (hereinafter "ISS Fact Sheet No 38"), p. 2. For a discussion on independent adoptions, see Guide to Good Practice No 1, *supra*, note 18, para. 191 and I. Lammerant, M. Hofstetter, *Adoption: at what cost? For an ethical responsibility of receiving countries in international adoptions*, Lausanne, Terre des hommes, 2007 (hereinafter, "Adoption: at what cost?"), *supra*, pp. 11 and 29.

4.2 Obligation to inform the Permanent Bureau

118. If a State uses accredited bodies, Article 13 of the Convention provides that each Contracting State shall communicate to the Permanent Bureau of the Hague Conference on Private International Law the names and addresses of the accredited bodies. The Permanent Bureau should also be informed of changes affecting accredited bodies, including in particular withdrawal or suspension of an accreditation, or the grant of authorisation.⁷¹ When approved (non-accredited) persons are appointed to perform Convention functions in accordance with Article 22(2), their contact details must be provided to the Permanent Bureau in accordance with Article 22(3).

4.3 Choosing the competent authority to issue accreditation

119. The Convention provides for the use of bodies duly accredited to intervene in the adoption procedure, but it is silent as to the authority that is to issue or withdraw the accreditation. The Explanatory Report does provide enlightenment, specifying that it is not necessarily the Central Authority's role: "since accreditation is not a specific task of the Central Authority, it was included neither in Article 7 nor in Articles 8 or 9".⁷²

120. In its Report, the Special Commission of 2000 made a recommendation regarding designation of the competent authority or authorities that may grant accreditation. "The authority or authorities competent to grant accreditation, to supervise accredited bodies or to give authorisations should be designated pursuant to clear legal authority and should have the legal powers and the personal and material resources necessary to carry out their responsibilities effectively."⁷³ In other words, the State should make an official public designation of the authorities competent to grant accreditation, to supervise accredited bodies or to give authorisations, preferably in its implementing legislation.⁷⁴ In many States, a single authority (usually the Central Authority) performs all of these functions, but of course, more than one authority may be involved.⁷⁵

121. It is important to point out that there should be no competition and accordingly no conflict of interest between the accredited body and the competent authority issuing accreditation.⁷⁶ A conflict of interest may arise if, as occurs in some States, the accrediting or supervising authority is also involved in arranging adoptions, *i.e.*, doing the same work as the accredited body.

122. The authority competent to issue accreditation will normally be the same as is authorised to deny it, extend it, suspend it and withdraw it. It ought to be provided with the legislative, administrative and financial tools required to enable it to perform the duties entrusted to it. See Accreditation Principle No 7 at Chapter 3.2.7.

123. Article 36 of the Convention provides additional rules relating to the competent authorities in a situation where a State has two or more systems of law applicable in different territorial units with respect to adoption.⁷⁷ For such States, a reference in the Convention to a Central Authority, competent authority or accredited body in that State also refers to such authorities or bodies in a territorial unit of that State.

4.4 Control of the number of accredited bodies

124. As a general rule, the number of bodies which have been accredited or are seeking accreditation should always be kept under review by the accrediting State. The fall in the number of intercountry adoptions in recent years should cause receiving States to consider not only their own needs, but the needs of States of origin. Intercountry adoption has greatly evolved owing to cumulative factors, such as the establishment of

⁷¹ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 2f and 2g. See also A Discussion Paper on Accreditation Issues, *supra*, note 2, p. 7 (Section 4.1) and p. 19 (Section 9 a)).

⁷² See Explanatory Report, *supra*, note 16, para. 245.

⁷³ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 4a.

⁷⁴ See Report of the 2005 Special Commission, *supra*, note 68, para. 55: the receiving States shared the same practice, *i.e.*, that "the accredited body was appointed by a competent authority according to published criteria and supervised by the Central or other government Authority".

⁷⁵ See, for example, the response of the United States of America to question No 18 of the 2009 Questionnaire.

⁷⁶ See A Discussion Paper on Accreditation Issues, *supra*, note 2, p. 7.

⁷⁷ See Explanatory Report, *supra*, note 16, para. 246.

systems for protection of the rights of the child and the development of national adoption in certain States of origin. Accordingly, the number of babies in good health requiring intercountry adoption is diminishing, and the profile of children in need of intercountry adoption has evolved. It is important, therefore, to obtain information regarding the State of origin's actual needs for intercountry adoption as well as its legal requirements, to work within those parameters and when necessary, to limit the number of bodies accredited and authorised to work in the selected State of origin.⁷⁸

4.4.1 In the receiving State

125. Receiving States should, to the extent possible, limit the number of bodies accredited on their territory. Some means to achieve this objective are mentioned at Chapter 5.2.6.

126. Receiving States will need to ensure that their number of accredited bodies and the number of accredited bodies which they authorise to work with particular States of origin are reasonable and realistic having regard to the number of adoptions possible in the States of origin.

127. States should, as far as possible, eliminate any obstacles for the operation of the Convention by taking all appropriate measures.⁷⁹ The question of control of the number of registrations of prospective adoptive parents is mentioned in Chapters 6.2.2, 12.1.2 and 12.3.1.

4.4.2 In the State of origin

128. Information in questionnaire responses and from the Hague Conference website indicates that in some States the number of accredited bodies appears to be disproportionate to the numbers of adoptable children.⁸⁰ In effect, the numbers of accredited bodies appear to be linked to the numbers of prospective adoptive parents with consequential pressure on States of origin to "supply" children.⁸¹

129. As mentioned in Chapter 3 under Principle No 4, one of the criteria for accreditation or for authorisation of an accredited body is the demonstrated need for the services of that body in the State of origin. The number of accredited bodies needed should be linked to the number and profile of children in need of a family through intercountry adoption. Further considerations about limiting the number of foreign accredited bodies in State of origin are at Chapter 5.2.5.

130. States of origin will need to be more proactive when receiving States are unable to exercise control on their numbers of accredited bodies. The State of origin must make a very public statement that it does not need any more accredited bodies.

4.5 Choice of foreign States for co-operation in adoption

131. States of origin are not obliged to work with every receiving State in the Convention. Smaller States of origin may consider it a good practice to co-operate with only a small number of receiving States and it may be considered in the best interests of adoptable children for a State of origin to do so. States of origin with few resources may find that their Central Authorities cannot cope with the pressures from a large number of receiving States and their accredited bodies. Factors such as a history of good relations and ethical adoptions with particular States are reasons to choose certain adoption partner States.⁸² In addition, the number of bodies from other receiving States that are already accredited for the State of origin and the satisfactory nature of their work (or not) will indicate if co-operation with more receiving States and their accredited bodies is needed.

⁷⁸ See Report of the 2005 Special Commission, *supra*, note 68, para. 65.

⁷⁹ Art. 7.

⁸⁰ See responses to questions Nos 7 and 9 of the 2009 Questionnaire.

⁸¹ See A Discussion Paper on Accreditation Issues, *supra*, note 2, p. 9.

⁸² See Guide to Good Practice No 1, *supra*, note 18, Chapter 8.2.2.

132. Likewise, receiving States are not obliged to work with every State of origin in the Convention.⁸³ Receiving States should aim to establish co-operation with States of origin which have a real need for intercountry adoption.⁸⁴ The States of origin where adoption procedures are clear and transparent, those offering sufficient safeguards regarding child protection, and those that support principles that are consistent with the Convention are the preferred partners of some receiving States.⁸⁵

4.6 Data protection

133. The Convention contains specific provisions relating to the preservation of adoption records and access to those records.⁸⁶ Each State should set up clear procedures to meet these obligations. For example, the centralisation of records could be established, *i.e.*, the accredited bodies could deliver to a competent authority (which could be the Central Authority) the finalised or closed⁸⁷ case files in order to preserve those files, allowing access in the future to a person seeking information regarding origins, if appropriate.

134. The accredited bodies should ensure that unauthorised access to the records does not occur and that the physical security of the records is protected against damage or loss. The competent authority should verify that protective measures are in place.

135. The designated competent authorities who supervise the accredited bodies will also need to develop practices relating to the protection of confidentiality of data concerning the applications for accreditation of the adoption bodies: those competent authorities or the official agencies connected with adoption ought to retain data concerning the accredited bodies that are or were accredited, and all the applications filed by bodies that did not obtain accreditation.

136. Documents concerning adoption cases should be retained for at least 50 years and be available to adoptees on request. In case the adoption accredited body ceases to operate, the continued preservation of its records should be properly secured. Adoption accredited bodies should retain completed adoption files or have them stored in archives as they may be sought when searching an adoptee's origins.

4.7 Subsidies granted to accredited bodies

137. Certain receiving States provide financial support to accredited bodies through subsidies.⁸⁸ Those subsidies may be granted to guarantee the viability of the accredited body, or simply to fund particular projects.⁸⁹

138. In the States which fully subsidise the accredited bodies, the policy reasons are sound: by removing the need for accredited bodies to actively seek new clients, *i.e.*, prospective adoptive parents whose fees would otherwise be needed to keep the accredited body financially viable, it avoids competition between accredited bodies for clients and avoids creating among potential adopters too much demand which might never be met. Another advantage of that support is to provide closer supervision and review, as subsidies may imply a need for more accountability to the State.

139. The fact that Central Authorities delegate functions to the accredited bodies could justify the provision of subsidies. The accredited bodies are, in effect, performing functions that must otherwise be performed by government authorities in fulfilment of the State's treaty obligations. The development of such subsidies might have a positive

⁸³ See Guide to Good Practice No 1, *supra*, note 18, Chapters 8.2.2 and 8.2.3.

⁸⁴ See Report of the 2005 Special Commission, para. 42(c). See also Chapter 11 of this Guide.

⁸⁵ See Art. 6 (a) of the Swedish Intercountry Adoption Intermediation Act (1997:192), section 6(a). See also the responses of Belgium (Flemish Community), Italy and New Zealand to question No 28 of the 2009 Questionnaire.

⁸⁶ Arts 9 and 30 of the Convention.

⁸⁷ See, for example, the responses of Luxembourg and Quebec (Canada) to question No 17 of the 2009 Questionnaire.

⁸⁸ See, for example, the responses of Belgium, France, Luxembourg, Spain, Sweden and United Kingdom to question No 47 of the 2009 Questionnaire.

⁸⁹ See, for example, the response of France to question No 15 of the 2009 Questionnaire: "the Central Authority strongly encourages AABs to improve the training of their members [...] such training is financed by the Central Authority every year in the form of a subsidy".

impact in the future if they were more widely used. The question of subsidies is also mentioned in Chapter 9.3.1 concerning the basic operating costs of accredited bodies.

140. However, a bad practice which must be avoided is to provide subsidies based on the number of children adopted. This encourages competition between accredited bodies, and undermines the good practices referred to above.

4.8 Internet advertising

141. Good practice and the use of the Internet is possible. It can be done ethically through a very restricted web page which may contain the details of adoptable children who are hard to place (usually because of their special needs). A personal password is needed to enter this type of page. If one of the partners in a State of origin asks an accredited body in a receiving State to find a family with certain qualifications for a "special needs" child, and they cannot identify such a family within the applications already in that country, they have the possibility of providing brief information about the child but without identifying him or her, on this restricted web page. Very often suitable families will be found by this procedure. It is in the best interest of that specific child, as it shortens the time he / she will have to wait for a family. Of course this must only be done when the partner in the State of origin has accepted the procedure.

142. However, bad practices have arisen in spite of attempts to regulate the restricted web page effectively. For example, the child's identity might be disclosed to non-authorised persons, or too much information might be made available about a specific child. In some cases, accredited bodies have taken information about a child from a restricted web page and placed it on the body's own public website to advertise for parents. This is clearly in breach of the terms on which the accredited body obtained the information and it could be a breach of privacy laws leading to criminal sanctions. A State of origin would be entitled to cancel the authorisation of that accredited body. Parents who have not been evaluated might contact the accredited body about that child. But no information about a specific child should be given to potential adoptive parents who have not been evaluated.

SUMMARY OF GOOD PRACTICES FOR ALL STATES

143. The use of accredited bodies is not mandatory, but the involvement of professional and ethical accredited bodies is considered good practice. If a State decides to use accredited bodies, it should designate a competent authority to grant and supervise accreditation pursuant to clear legal authority.

144. Supervising authorities should not themselves be involved in providing adoption services in competition with accredited bodies.

SUMMARY OF GOOD PRACTICES FOR RECEIVING STATES

145. Receiving States should keep under review the needs of States of origin for intercountry adoption. The number and profile of accredited bodies authorised by a receiving State to work in a particular State of origin should be reasonable and realistic having regard to the capacity of that State of origin to work with a certain number of foreign accredited bodies.

146. The need for intercountry adoptions and the robustness of adoption procedures and safeguards in a State of origin are legitimate considerations for a receiving State in establishing and defining adoption arrangements with that State of origin.

147. Subsidising the work of accredited bodies can be an appropriate measure insofar as it constrains competition amongst accredited bodies.

SUMMARY OF GOOD PRACTICES FOR STATES OF ORIGIN

148. The number of foreign accredited bodies authorised, or bodies accredited, by a State of origin should be linked to the number and profile of children in need of a family through intercountry adoptions.

149. A State of origin should keep its adoption partners in receiving States informed of the number and profile of children in need of intercountry adoption.

150. The State of origin should publicly inform all receiving States of the number of foreign accredited bodies required in the State of origin.

151. The professional and ethical standards of bodies accredited in a receiving State are legitimate considerations for a State of origin in establishing and defining adoption arrangements with that receiving State.

CHAPTER 5

THE RELATIONSHIP BETWEEN ACCREDITATION AND AUTHORISATION

152. The process of accreditation of adoption agencies is one of the important safeguards in the Convention for the protection of children. The requirement for authorisation by both States for the accredited body to operate in the State of origin is an additional safeguard.⁹⁰ While some States have very good practices,⁹¹ this double safeguard does not appear to be used to its maximum effect.

5.1 What is accreditation?

153. Accreditation is the formal process by which an adoption agency or body seeks to be licensed by a competent authority in its own State, in accordance with Articles 10 and 11, to undertake certain procedures associated with Convention adoptions. These Convention articles set only minimum standards, therefore the adoption agency, in order to become an accredited body, usually has to satisfy some additional conditions for accreditation which are imposed by the accrediting State. Once the accreditation has been granted, the accredited body will usually have to perform certain functions of the Convention in the place of, or in conjunction with, the Central Authority.

154. Both States of origin and receiving States may accredit adoption bodies. However, the majority of accredited bodies are accredited by the receiving States.

5.1.1 Why is accreditation necessary?

155. The need for a system of accreditation is explained in detail in Chapter 1 of this Guide. It has also been mentioned in the Guide to Good Practice No 1.

156. In summary, accreditation of agencies became an important safeguard in the Hague Convention to impose minimum international standards on adoption agencies for their structure, accountability, ethics and professionalism. However, the act of accreditation alone does not create the intended safeguards. Firstly, the accredited body must follow the obligations of the Convention as well as the principles outlined in the preceding chapters, that is, the principles of the Convention as well as the principles of accreditation.

157. Secondly, the accrediting authority must ensure that high standards for its accredited bodies are maintained. In practice, the accreditation procedure allows the accrediting authority in each State to develop more uniform standards for agencies based on the Convention requirements, to maintain standards by regularly reviewing the activities of agencies, and by withdrawing or cancelling the accreditation of an agency which contravenes its conditions of accreditation or fails to maintain standards.

5.2 What is authorisation?

158. Authorisation is the process envisaged in Article 12 of the Convention by which an accredited body in one Contracting State seeks permission to work in another Contracting State. The accredited body must first obtain the permission or authorisation of the competent authorities of its own State and, second, the permission or authorisation of the other State "to act" in the other State. It is in this way that "authorisation" becomes the additional safeguard referred to above – by giving the State of origin the power to grant or refuse permission for an accredited body to act in its territory.

⁹⁰ See Guide to Good Practice No 1, *supra*, note 18, para. 213.

⁹¹ In the 2009 Questionnaire, see responses of the Philippines, Lithuania and Colombia to question No 5 and of Chile and Costa Rica to question No 23.

159. Article 12 states:

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

160. The Convention makes it clear in Article 12 that authorisation is a different process from accreditation. The language of Article 12 indicates that authorisation may be a less formal process, but this is a minimum standard. Only two conditions for authorisation are made in the Convention, *i.e.*, that authorisation can only be granted after an adoption agency has been accredited, and that the agreement of both States is necessary. The requirements for authorisation are therefore something which each State can decide by itself. Some States of origin require a formal procedure for authorisation which in some cases is similar to, and may even be called, a process of accreditation.⁹² The recommendation to apply a thorough procedure for authorisation has already been made in Chapter 3.2.4 concerning the principle of demonstrating and evaluating competence using criteria for accreditation and authorisation.

161. Although the Convention language is neutral, authorisation is usually applied to the accredited body of a receiving State which hopes to perform adoption-related functions in a State of origin.

162. In this context, there are three types of authorisation that are currently being granted by receiving States: (i) a single authorisation permitting the body to work only in a given State, a region of that State, or even only with particular orphanages; (ii) a limited authorisation, permitting the body to work in a small number of specified States for which it has expertise; or (iii) an open authorisation, permitting the body to act in any State.

163. In order to respect the conditions in the State of origin and to maintain more effective supervision of the body, most receiving States will grant authorisation for one particular State of origin or a small number of specified States.⁹³ If the State of origin's territory is extensive or if the State's organisation warrants it, it might be appropriate to grant authorisation for a specific region. A single body with extensive resources could also obtain authorisation for several States if it proves its ability and knowledge in relation to those States, and if the children's situation warrants it.

164. In addition to geographical limits, consideration should be given to the development of a framework specifying all the limits of an authorisation, such as its duration, the requirements for its maintenance and its non-transferability.

165. Where a body accredited in one Contracting State is, in accordance with Article 12, authorised to act in another Contracting State, such authorisation should be communicated to the Permanent Bureau by the competent authorities of both States without delay.⁹⁴

5.2.1 Meaning of "to act" in Article 12

166. Referring to the terms of Article 12, there is a lack of clarity in the precise meaning of the word "to act", and this is evidenced by the lack of consistency in practice. The range of functions of an accredited body that are implied by the term "to act" is also not defined. In some States "to act" means the accredited body must have a physical presence (an office and staff and not just a representative) in the State of origin.

167. In most States "to act" means the accredited body is involved in any way (through a representative or through an established office) in the State of origin.

⁹² In the Philippines and El Salvador the procedure is called "accreditation" (see their respective responses to question No 1 of the 2009 Questionnaire). The accreditation criteria in the Philippines are noted in Chapter 13.3.6.0.

⁹³ See responses of Denmark, New Zealand and Sweden to question No 23 of the 2009 Questionnaire. See also I. Lammerant, M. Hofstetter, *op. cit.* (note 70), p. 43.

⁹⁴ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 2e. Recommendation No 2 of 2000 was reaffirmed by the Conclusions and Recommendations of the 2005 Special Commission, *supra*, note 3, in its Recommendation No 3. See also Guide to Good Practice No 1, *supra*, note 18, para. 212.

168. According to the Explanatory Report, the latter is the intended interpretation. It states that:

*Article 12 is formulated in general terms. Therefore, since no distinction is made, "authorisation" must be obtained from both States to act either "directly" or "indirectly".*⁹⁵

169. On this interpretation, Article 12 will also apply when an accredited body of a receiving State works directly with the Central Authority of the State of origin. The Philippines follows this model, and furthermore, it does not permit the foreign accredited body to have a representative in The Philippines.⁹⁶

5.2.2 Why is authorisation necessary?

170. Authorisation is necessary to give the State of origin some control over the number and activities of foreign accredited bodies which are or wish to be involved in intercountry adoptions from the State of origin. The Explanatory Report at paragraph 268 provides further clarification:

268. Article 12 permits the intervention of accredited bodies but, as previously remarked, their functioning in intercountry adoptions is a very sensitive issue for many countries, and for that reason, Article 12 recognises to each Contracting State freedom to permit or to refuse their activities within its territory, notwithstanding the fact that they may have been authorised to act in another. Consequently, when a body already accredited in one Contracting State wishes to act in another, it must obtain authorisation from the second, which permission may be denied if the latter State is against the intervention on its territory of private bodies in the handling of intercountry adoptions.

171. In other words, it is clear that no State of origin is under an obligation to accept any accredited bodies at all, or to accept a particular accredited body, or to accept all accredited bodies that apply for authorisation. A State of origin may prefer to let public bodies be responsible for the procedural parts of the application of the Convention.

5.2.3 Why is co-operation concerning authorisation necessary between receiving States and States of origin?

172. Dialogue and international co-operation between the authorities in the two States are needed to establish the profile and the number of accredited bodies from the receiving State that are required to respond to the real need for intercountry adoption in the State of origin.⁹⁷ A factual basis for granting, continuing or terminating the authorisation is essential. This collaborative approach is especially easy with receiving States that have the authority to voluntarily limit the number of agencies they accredit or authorise to act in specific States of origin. This information may also help both States to evaluate the profile and the number of families sought.⁹⁸

173. In some circumstances, the accredited body could, before requesting an authorisation from its own State and from the State of origin, make a prior investigation of a State of origin's needs for intercountry adoption services and the profile of its adoptable children, if any. A questionnaire developed by International Social Service could be used for this purpose. The State of origin can control the numbers of foreign accredited bodies through the process of authorisation referred to in Article 12 of the Convention.

⁹⁵ See Explanatory Report, *supra*, note 16, para. 269.

⁹⁶ The Philippines accredits local child caring agencies as "Liaison Agencies" (currently there are six). These agencies are allowed to enter into Memorandum of Agreements (pre-approved by the Central Authority) with duly authorized foreign adoption agencies to assist families when they arrive to secure their child. However, due to their appointment as an accredited "Liaison Agency" the children under their care are immediately excluded for matching with the foreign adoption agency that they have an agreement with.

⁹⁷ See Chapter 4: General Policy Considerations, at Chapter 4.4.

⁹⁸ See Guide to Good Practice No 1, *supra*, note 18, para. 214.

174. Co-operation will be necessary in order for the State of origin to obtain the information it needs from the receiving State concerning foreign accredited bodies which request authorisation. For each accredited body requesting authorisation, the State of origin may request a copy of the report and decision concerning accreditation, to know by what criteria the accreditation (and authorisation) of each body was granted.

175. If the State of origin has decided that no further authorisations will be granted, it should explain the reasons to other Contracting States, *i.e.*, when limits have to be placed on the numbers of foreign accredited bodies needed. It should also be explained if an authorisation will not be renewed by the State of origin if the services of the accredited body are no longer needed in that State. It is noted in Chapter 8.3.3 that foreign accredited bodies or their representatives should be supervised in the State of origin. The receiving State may then rely on the State of origin to provide reports on the activities of the foreign accredited bodies in the State of origin, pending renewal of their accreditation or authorisation. The receiving State and the State of origin are encouraged to take joint responsibility for the supervision of the authorised accredited body.

176. Either or both States have the power to withdraw the authorisation given to a foreign accredited body if that body does not comply with the laws of either State or with the conditions of its accreditation or authorisation. Furthermore, a receiving State will also regulate the ethical behaviour of its own accredited bodies and, if appropriate, may cancel their authorisation or approval to operate in a particular State.⁹⁹

5.2.4 Why should criteria for authorisation be used?

177. This question is canvassed in Chapter 3.2.4 concerning principles of accreditation, under Principle No 4: Principle of demonstrating and evaluating competence by using criteria for accreditation or authorisation. Chapter 8 lists the documents to support a request for authorisation.

178. When a request for authorisation is being considered in a State of origin, the State should be able to obtain all the necessary information about the accreditation procedure in the receiving State, as well as any accreditation report from the receiving State about the body in question. It seems unnecessary to ask the same questions that have already been considered when the body was accredited in the receiving State.¹⁰⁰ If there are more accredited bodies seeking authorisation than the State needs, their quality and record could be compared. If the number of experienced organisations is already high, the State can refuse to authorise new organisations.

5.2.4.1 Using criteria to establish the profile of foreign accredited bodies needed in a State of origin

179. The State of origin should investigate and evaluate properly any requests by foreign accredited bodies for authorisation. The accredited body should be able to demonstrate that it accepts and observes the principles of accreditation discussed in Chapter 3.

180. The foreign accredited body has to be conscious of the estimated number and profile of the children in need of intercountry adoption in the State of origin, and be willing and able to find families for such children.

181. The foreign accredited body should be ready to work under the conditions laid down by the State of origin and undertake not to use pressure *e.g.*, promises of development aid or other financial incentives, directly or through third parties, on the State of origin's institutions or authorities in order to improve the number and / or profile of the adoptable children that are referred to their prospective adoptive parents.

182. The foreign accredited body should be composed of or have access to professionals in social work, psychology, law and medicine or paediatrics, with an appropriate level of competence and practical experience.

⁹⁹ See responses of Italy and Sweden to question No 34 and of Denmark, Italy and Norway to question No 36 of the 2009 Questionnaire. See also Guide to Good Practice No 1, *supra*, note 18, para. 211.

¹⁰⁰ EurAdopt-Nordic Adoption Council (NAC), "Accreditation and Authorisation", Info. Doc. No 1, Part II, presented to the 2005 Special Commission (hereinafter "Accreditation and Authorisation").

183. The foreign accredited body should have the skills, training and capacity to make a qualitative selection of prospective adoptive parents. The adoption accredited body should also demonstrate that it provides a thorough preparation of prospective adoptive parents in relation to adoptive parenthood and intercountry adoption.

184. The practical experience of the accredited body has to be appropriate to the needs of intercountry adoptable children in the State of origin. For example, accredited bodies should have particular professional qualifications to support prospective adoptive parents in the adoption of special needs children.

185. If accredited bodies requesting to be authorised in a State of origin have carried out intercountry adoptions previously in other States of origin, information about the activities of that body in the other State could be sought by the State whose authorisation is being requested. If a State of origin has withdrawn or cancelled the authorisation of a foreign accredited body for breaching its conditions of authorisation, this information could be placed on the website of the State of origin. This can be justified on the basis of co-operation and exchange of information between States of origin with similar interests and concerns.

186. Central Authorities might also provide a mechanism for adoptive parents to make a complaint about the way an accredited body handled their case.

5.2.5 Limiting the number of accredited bodies authorised to act in States of origin

187. Some States of origin have a limited number of adoptable children and therefore do not need a large number of accredited bodies authorised to act in their States. Some States of origin have more children in need than they have capacity with which to assess eligibility for adoption and likewise wish to limit the number of accredited bodies authorised to act in their States according to their capacity. In addition, trends in intercountry adoption, including an increase in domestic adoptions in many States of origin, may cause the number of adoptions to fluctuate significantly over time. Thus, many States of origin and receiving States find it advisable to regularly review the number of bodies which have been accredited or are seeking accreditation and authorisation.

188. As mentioned in Chapter 3 under Principle No 4, one of the criteria for authorisation of an accredited body is the demonstrated need for the services of that body in the State of origin. Several States have already implemented the practice of linking the number of accredited bodies needed to the number and profile of children in need of a family through intercountry adoption.¹⁰¹ The good practices of the Czech Republic and Ecuador in this regard should be noted. Considering the low number of adoptable children from the Czech Republic, the Czech Central Authority usually authorises only one accredited body per country.¹⁰²

189. The State of origin may choose to stop accepting any new accredited bodies altogether.¹⁰³ They can communicate this decision through posting a notice on their own website and can separately inform the Central Authorities of receiving States, as well as the Permanent Bureau. The Permanent Bureau might be able to assist by disseminating

¹⁰¹ See, for example, the responses of Burkina Faso, Czech Republic, Colombia, Ecuador and Lithuania to question No 31 of the 2009 Questionnaire.

¹⁰² See Response to question No 31 of the 2009 Questionnaire. For Ecuador, see response to question No 31 of the 2009 Questionnaire; see also Resolución No 010-CNNA-2008 and Resolución No 26-CNNA-2008, available at the following address: < www.cnna.gov.ec > under "Autoridad Central" and "Convenios" (last consulted 22 April 2010).

¹⁰³ See the response of Estonia to question No 23 of the 2005 Questionnaire on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption: ("It has been difficult to understand for other countries that intercountry adoption number is low because of the lack of adoptable children not because of intention to keep children in institutional care. Because of that Estonia has been quite closed to new co-operation partners and it has been difficult to explain to possible receiving States"). The 2005 Questionnaire and the responses are available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions" (hereinafter "2005 Questionnaire"). See also the response of Lithuania to question No 7 of the 2009 Questionnaire, and the public statement on the website of Lithuania's Central Authority, at < <http://www.ivaikinimas.lt> > under "Adoption" and "Specification" (last consulted 22 April 2010).

the notice to all Central Authorities and National Organs. If accredited bodies disregard a notification and continue to seek authorisation, the Central Authority of the State of origin can inform their Central Authority. The Central Authority of the receiving State may find such conduct is sufficient to cancel the continued accreditation of that body or to seek corrective action. But in any case, States of origin are empowered to decide whether and when to authorise accredited bodies to act in their States.

190. Accredited bodies that claim to be working in the State of origin without authorisation, do so in violation of the Convention and possibly also in contravention of the implementing laws of both the receiving State and the State of origin, and legal sanctions could follow.

5.2.6 Limiting the number of accredited bodies in the receiving State

191. Consistent with the desire to achieve an appropriate balance as noted above, many receiving States find it advisable to limit the number of bodies they accredit according to the number of adoptions possible for those bodies to achieve in States of origin where they are active. They accomplish this through various means, including indirectly by imposing strict standards for accreditation or directly by imposing a ceiling on the number of agencies they will accredit or by tightly regulating the number of agencies they authorise to act in specific States. Receiving States can work collaboratively with States of origin to tailor any limitation to the State of origin's preferences and particular concerns. The objective is to avoid, or at least to mitigate, competition between accredited bodies for a limited number of adoptable children and the resulting pressure some States of origin may experience.

192. Limiting the number of bodies a receiving State accredits may be one way to support this objective; however, it is not the only way. The challenges associated with meeting the needs of children in States of origin are varied and complex and do not rest with a single solution. Furthermore, a receiving State may not have legal authority to limit by number the bodies it accredits. Open collaboration between Contracting States which supports States' of origin unique needs and autonomy as well as taking into account the context of implementing laws and policies of receiving States is critical to the Convention's smooth functioning.

5.2.7 The relationship between accreditation and authorisation

193. Most receiving States make a separation between the process of accreditation under Article 10 and authorisation to act in a particular State under Article 12. This may be combined with the view that authorisation by the receiving State should only be granted after consultation with the State of origin in order to ascertain whether there is a need for more accredited bodies, and for the services of that particular accredited body in that particular State. In other words, the view is taken that it is the responsibility of the receiving State, in co-operation with the State of origin, to evaluate the professional and ethical profile of the accredited body against the needs of the particular State of origin. This is also viewed as helping to relieve the State of origin of the full burden of dealing with large numbers of applications from foreign accredited bodies.

194. On the other hand, other receiving States do not separate the process of accreditation from the process of authorisation, and instead treat authorisation as flowing automatically from accreditation. This makes impossible an individualised assessment by the receiving State of the suitability of an accredited body to act in a particular State of origin; and necessarily places the principal responsibility on the State of origin. Where this is the case, the receiving State has a special responsibility to assist the State of origin in making decisions concerning authorisation, for example by providing the maximum possible information concerning the accredited body in question. This general approach is based on the premise that the State of origin has the primary right and responsibility, which should not be limited, to decide which foreign bodies should be authorised to act on its territory.

195. Regardless of which approach is taken, receiving States should respect and support determinations by States of origin regarding how many and what kind of accredited bodies States of origin authorise to act in their territories. Whether limiting through

accreditation or authorisation, done by the receiving State or the State of origin, the objective is the same: to provide the appropriate balance of accredited bodies, where needed, to meet the needs of children in States of origin.

196. A decision by a State of origin on authorisation of a foreign accredited body should not be given automatically. It should be reached after a proper evaluation of its own needs for the services of the foreign accredited body as well as an evaluation of the professional and ethical profile of the foreign accredited body.¹⁰⁴

197. The terminology of Article 12 of the Convention is sometimes not used or not used consistently, in the practical application of the Convention. In some States of origin, accreditation has to be given to foreign adoption agencies which have already been accredited in their own State (this seems to be equivalent to an authorisation). In at least one State the word "authorisation" is used in the national legislation for what is an accreditation in the words of the Convention. Although this may cause some confusion, what is most important is the substance of the procedure.¹⁰⁵

¹⁰⁴ This is the approach taken by the CNA, the Central Authority of Guatemala, in its pilot project to select a small number of foreign accredited bodies which will assist CNA to commence intercountry adoptions under carefully controlled conditions. The CNA was assisted by the Permanent Bureau under its Technical Assistance Programme. See also country responses to question No 23 of the 2009 Questionnaire, for example Brazil, Chile, Colombia, Costa Rica, Ecuador, Lithuania, Peru, and the Philippines.

¹⁰⁵ The 2009 Questionnaire, in its Introduction, asked countries to explain which terms they used and what meaning they were given.

SUMMARY OF GOOD PRACTICES FOR ACCREDITATION AND AUTHORISATION

Accreditation

198. Accreditation of agencies is an important safeguard in the Hague Convention to impose minimum international standards on adoption agencies for their structure, accountability, ethics and professionalism.

199. The Convention articles concerning accreditation are only minimum standards to be met. It is recommended that the Contracting States impose additional conditions for accreditation in order to improve the professionalism and quality of services offered by an accredited body.

200. As noted in Principle No 4: Principle of demonstrating and evaluating competence using criteria for accreditation and authorisation, the criteria for accreditation should be developed in the context of the national strategy for protection of children, in particular the criteria should facilitate the accreditation of bodies which will respond to the real needs of children. The criteria should be explicit and should be the outcome of a general policy on intercountry adoption. These criteria should be set by statute or any other similar enactment, provide clear and comprehensive instructions, and be published.

201. The accrediting authority in each State should be proactive in ensuring that high standards for its accredited bodies are maintained. This can be achieved by monitoring and regularly reviewing the activities of agencies, and by withdrawing or cancelling the accreditation of an agency which contravenes its conditions of accreditation or fails to maintain standards.

202. The act of accreditation alone does not create the intended safeguards. The accredited body must follow the principles and obligations of the Convention and should be guided by the principles of accreditation and good practices elaborated in this Guide.

203. It is recommended that Contracting States to the Convention use the terms "accreditation" and "authorisation" as they are used in the Convention in order to facilitate a common international understanding of the processes in question.¹⁰⁶

Authorisation

204. From Article 12 it is clear that authorisation ought to be considered separately from accreditation.

205. Some criteria to establish the profile of an accredited body that is needed in the State of origin are described in this chapter at 5.2.4

206. Based on obligations of co-operation, a decision on authorisation should preferably be the joint responsibility of the receiving State and the State of origin, and achieved after consultation between the two States.

207. The State of origin may seek information from the receiving State about the accredited body before making a decision on authorisation.

208. In the procedures of authorisation, an accredited body should be able to demonstrate that there is a need for its services in the State of origin.

¹⁰⁶ See EurAdopt-NAC "Accreditation and Authorisation", *supra*, note 105.

209. As a good practice, the accredited body could, before requesting an authorisation, make a prior investigation of a State of origin's needs for intercountry adoption services and the profile of its adoptable children, if any. A questionnaire developed by ISS could be used for this purpose.

210. In the authorisation procedures, the body ought to demonstrate that it has sufficient knowledge of the procedure and requirements for adoption in the State where it wishes to work, as well as the laws, government authorities and other organisations involved.

211. In the decision of authorisation, the competent authority should specify all the conditions and limits of the authorisation, such as its duration, the requirements to maintain it and its non-transferability.

212. A decision by a State of origin on authorisation of a foreign accredited body should only be made after a proper evaluation of its own needs for the services of the foreign accredited body as well as an evaluation of the professional and ethical profile of the foreign accredited body.

213. If the State of origin has decided that no further authorisations will be granted, it should explain the reasons to other Contracting States, *i.e.*, when limits have to be placed on the numbers of foreign accredited bodies needed.

Co-operation

214. To make the use of authorisation criteria more effective, co-operation is necessary between States to establish a factual basis for granting, continuing or terminating the authorisation is essential.

215. Dialogue and international co-operation between the authorities in the two States are needed to establish the profile and the number of the accredited bodies from the receiving State that are required to respond to the real need for intercountry adoption in the State of origin.

216. The receiving State and the State of origin should take joint responsibility for the supervision of the authorised accredited body.

CHAPTER 6

THE FUNCTIONS OF ACCREDITED BODIES

217. This chapter describes the Convention rules concerning the functions of accredited bodies and examines the practical functions connected with individual cases. As the Convention text presents the functions as Central Authority (or competent authority) functions with the possibility that some may be delegated to accredited bodies, it is necessary to make the distinction here between the functions that must be performed by the Central Authority and those that may be delegated to other authorities or bodies, including accredited bodies.

6.1 Functions of the Central Authority and accredited body

218. The Convention requires that each State establish the office of Central Authority to perform many of the Convention's functions. While these functions are mandatory, they need not always be performed by the Central Authority. The Convention provides some freedom for each Contracting State to choose who or which body may perform the functions. For example, if it is decided by an individual State that the Central Authority will not be involved in the actual adoption procedures, then its functions in Chapter IV of the Convention may be delegated to other public authorities or accredited bodies (Art. 22(1)).

219. It is important to note that not all functions of Central Authorities can be performed by accredited bodies. The functions in Articles 7, 8 and 33 cannot be delegated to accredited bodies, while the functions in Articles 9 and 14 to 21 may be carried out by Central Authorities, public authorities or accredited bodies.

6.1.1 Specific duties of the Central Authority

220. Articles 7 and 33 are functions that the Central Authorities are to perform themselves and which may not be delegated to accredited bodies.

221. Article 7(1) requires Central Authorities to "co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention".¹⁰⁷

222. Article 7(2) lists the action to be taken by Central Authorities with respect to the communication of information concerning adoption and to ensure the proper operation of the Convention.¹⁰⁸ Article 7(2) *b*) requires Central Authorities to eliminate as far as possible any obstacles to the Convention's effective operation. Article 7(2) *b*) should be "read in conjunction with Article 33, which puts upon the Central Authority the responsibility for ensuring that appropriate measures are taken to prevent the provisions of the Convention from not being respected or the serious risk that they may not be respected."¹⁰⁹

223. Article 33 requires the Central Authority to take appropriate action when any competent authority reports that the Convention has not been respected, or there is a serious risk of such a breach occurring. Hence, all authorities or bodies have an obligation to report to the Central Authority any actions which contravene the Convention.

224. Article 8 further provides for functions that the Central Authorities may choose to perform themselves or with the assistance of public authorities. Thus they are to take all "appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention". Public authorities are mentioned in Article 8 to make it clear that they should assist in

¹⁰⁷ See Guide to Good Practice No 1, *supra*, note 18, paras 183 and 184. Para. 184 lists points to be improved for better co-operation between States.

¹⁰⁸ *Ibid.*, Guide to Good Practice No 1, *supra*, note 18, Chapter 4.2.2.

¹⁰⁹ See Explanatory Report, *supra*, note 16, para. 212.

preventing improper financial gain, as it is unlikely that a Central Authority by itself could effectively deal with such a challenge.¹¹⁰

225. In relation to these obligations, it may be helpful if Central Authorities themselves have the power to take action against violators of the Convention, or else to refer the violations to their public prosecutor for legal action. In a State of origin, these powers might extend to taking action against a foreign accredited body or its representative, for violation of the Convention or of the State law.

226. As noted in the Guide to Good Practice No 1, even though the Central Authority may delegate the functions relating to the adoption process, in most cases it will be involved "in developing, or advising on the development of policy, procedures, standards and guidelines for the adoption process".¹¹¹ In addition, "the Central Authority will often be given an important role with regard to the accreditation, control and review of agencies or bodies operating within their own State, or authorised to operate in a State of origin".¹¹²

227. The resources available to the Central Authority vary "relative to the internal organisation of each State: especially its level of competence in decisions and control, its capacity for psychosocial work (and not just legal and administrative issues), as well as its possibilities for international contact".¹¹³ The Central Authority has a key role to play, whether or not accredited bodies help to perform some of the adoption procedures. The Central Authority must therefore be given adequate powers and resources to perform those functions: See the Guide to Good Practice No 1, Chapter 2.1.2 (Key Operating Principles). See also Accreditation Principle No 7: Principle of adequate powers and resources for authorities at Chapter 3.2.7.

6.1.2 Functions of the Central Authority that may be delegated to accredited bodies

228. In Article 9 of the Convention, there are certain obligations and responsibilities of a general nature that may be performed by a Central Authority, a public authority or an accredited body, such as the collection and preservation of information, and the promotion of post-adoption services.

229. Articles 14 to 21 of the Convention relating to the procedure for intercountry adoption refer to functions that the Central Authority may choose to perform itself or to delegate to public authorities or accredited bodies. Only Articles 15 to 21 may be delegated to approved (non-accredited) persons referred to in Article 22(2) of the Convention.¹¹⁴

230. When a Contracting State decides that some Central Authority functions will be performed by adoption agencies or bodies, they must first be officially accredited and designated. The designation of accredited bodies, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau at the time of their accreditation.¹¹⁵

231. The extent of the functions of accredited bodies should also be explained.¹¹⁶ The division of responsibilities or functions between the Central Authority and the accredited bodies should also be clarified for other Contracting States, for example, by using the Country Profile model form on the Hague Conference website.¹¹⁷

¹¹⁰ This challenge is also recognised by the inclusion of the direct obligation on Contracting States in Art. 32 to prohibit improper financial gain.

¹¹¹ See Guide to Good Practice No 1, *supra*, note 18, para. 173.

¹¹² *Ibid.*, *supra*, note 18, para. 174.

¹¹³ See I. Lammerant, M. Hofstetter, *op. cit.* (note 70), p. 46.

¹¹⁴ See Guide to Good Practice No 1, *supra*, note 18, para. 200. In this Guide, approved (non-accredited) persons are discussed in Chapter 14.

¹¹⁵ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 2d. Recommendation No 2 of 2000 was reaffirmed by the Conclusions and Recommendations of the 2005 Special Commission, *supra*, note 3, in its Recommendation No 3.

¹¹⁶ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 2f.

¹¹⁷ See Guide to Good Practice No 1, *supra*, note 18, para. 202. The model form is available at < www.hcch.net > under "Intercountry Adoption Section" and "Country profiles".

232. The Explanatory Report also makes clear that physical persons cannot be accredited:

249. Article 10 refers to "bodies" and therefore, physical persons cannot be accredited under Chapter III of the Convention. This restriction was subject to criticism, because "bodies", juridical persons or not, do not necessarily offer better guarantees than private individuals for compliance with the duties imposed by the Convention on Central Authorities.

250. Article 10 refers only to "bodies", leaving open the question whether, in order to be accredited, they must have a separate legal personality. The answer shall be given by the law of each Contracting State.

233. The Explanatory Report on the Convention clarifies some other limits regarding the delegation of Central Authorities' functions. First, the freedom to delegate the functions in Article 9 "is not unrestricted, because the delegation is solely permitted to other public authorities or accredited bodies".¹¹⁸ Hence, those duties may be assumed either directly by the Central Authority, or with the assistance of public authorities or accredited bodies, in particular as regards the preparation, support and follow-up of the adoption. Furthermore, "the delegation of responsibilities is only possible to the extent permitted and under the conditions established by the law of each Contracting State".¹¹⁹

234. The delegation of certain functions to accredited bodies will be a necessity for many States. Those States' Central Authorities frequently do not have the material, human and financial resources required to perform fully the functions of preparation, support and follow-up of prospective adoptive parents, children, and biological parents. By choosing to delegate certain functions, they may be more effective in performance of their specific functions, and thereby achieve the objects of the Convention.¹²⁰

6.2 Role and functions of the accredited bodies

235. The Convention lays down the minimum standards to be observed by accredited bodies. These are discussed in Chapter 3.1. Those standards must be followed by accredited bodies when they perform the Central Authority functions of the Convention.

236. The principal role of accredited bodies is to act as intermediaries in the adoption process: they are the concrete link between the prospective adoptive parents, the Central Authorities and other authorities in the receiving State and State of origin.¹²¹

237. In fulfilling its primary role, the accredited body must keep a focus on the central object of all the actors in an intercountry adoption: to defend the rights of the child, promote its interests and improve its living conditions. Their priority must be the child's best interests, and the accredited body should also be aware of the subsidiary and specific nature of intercountry adoption.¹²²

238. Any adoption body bears ethical, statutory and administrative responsibilities. It must comply with the statutes, regulations and policies of the receiving State and the State of origin. International Social Service has observed that accredited bodies "should be guarantors of the ethics, professionalism and multidisciplinary nature of the intercountry adoption process". However, the involvement of the accredited body is only "an effective guarantee for the rights of the child if States also ensure, in parallel, the support, training and supervision of the accredited bodies, as well as the establishment of a system of qualitative and quantitative regulations".¹²³

239. By using the term "to the extent permitted by the law of its State", Article 22(1) of the Convention aims at giving flexibility for States in order to improve application of the Convention: the scope of accredited bodies' responsibilities may be widened to the extent permitted by the law of their State, providing that the extension does not conflict with

¹¹⁸ See Explanatory Report, *supra*, note 16, para. 221.

¹¹⁹ *Ibid.*, para. 222.

¹²⁰ See ISS Fact Sheet No 38, *supra*, note 70.

¹²¹ *Ibid.*, *supra*, note 70.

¹²² See Arts 20 and 21 of the UNCRC, *supra*, note 4. See also ISS Fact Sheet No 38, *supra*, note 70.

¹²³ See ISS Fact Sheet No 38, *supra*, note 70.

the Convention. According to the child protection systems in each State, the accredited bodies will be provided with different roles and responsibilities.¹²⁴

240. Article 9 lists a number of broad responsibilities that may be delegated to accredited bodies as part of their primary role. Accredited bodies may:

- accompany the prospective adoptive parents during the process for adoption and more specifically, assist, support and advise them (Art. 9 *a*) and *b*));
- promote, or assist the Central Authority in promoting, “the development of adoption counselling and post-adoption services” (Art. 9 *c*));
- develop expertise with respect to intercountry adoption (Art. 9 *d*));
- reply to any request for information in order to respond to a particular situation (Art. 9 *e*)).

241. The particular functions associated with these general responsibilities and with the obligations in Articles 14 to 21 are listed below. More specifically, the accredited bodies may have functions in both the receiving State and the State of origin.

6.2.1 In the State of origin: the functions of local accredited bodies

242. It is important to emphasise that in the following section, many of the functions listed, being public measures of child protection, would usually be performed by a public body. However, the reality is that many States do not have the resources to provide these services, and non-government organisations or private agencies are called upon to provide them.

243. In States of origin, many child protection agencies will also provide adoption services as part of their generic social work services. Such agencies may obtain accreditation in their State for national and intercountry adoptions and it is therefore unavoidable that the same organisation will in all probability deal with the child’s entry into the system, the birth parents’ decision making (about keeping or relinquishing their child) and the matching process. Ideally, the agency will have specialist adoption social workers who are responsible for these functions.

244. Before the child’s entry into the protection system, the local accredited body may have the responsibility to initiate family preservation programmes and early intervention programmes and may undertake education and awareness programmes about prevention aimed at schools and universities.

245. The following functions are listed as potential functions of a local accredited body in the absence of a public body to perform such functions. If the functions are performed by a local accredited body, this should be done under the supervision of the public body which has statutory responsibility for these functions.

Child’s entry into system

- Legal intervention for children who appear to be in need of care as described in the relevant child care legislation.
- Legal intervention towards children who are either orphaned or abandoned.
- Therapeutic, medical and legal services towards a birth parent considering voluntary relinquishment. (The services can also include housing, skills development and other supportive services and will continue until after the adoption.)

Formal assessment phase

- Working towards family reunification.
- Possible placement in temporary alternative care pending outcome of assessment.
- Networking with other organisations concerning available resources and specific programmes (*e.g.*, family preservation programmes) for the child and family.

¹²⁴ See ISS Fact Sheet No 38, *supra*, note 70.

- If possible, restore the child into family or kinship care and continue to provide support.
- Develop alternative permanency planning if no prognosis for family reunification.
- In cases of orphaned children, the assessment process will entail investigation of other possibilities such as the availability of other family members, siblings, community support etc.
- In cases of abandonment, the assessment will entail a police investigation and tracing process.

Note: The assessment phase should preferably not take longer than six months. Then a permanency planning for the child's future should be made, which examines all the possible options to find a permanent family for the child before a final decision is made. This assessment phase is essential to consider only the best interests of the child and to implement the principle of subsidiarity.

Implementation of permanency plan

- Reunite child with family, extended family or immediate community.
- Long-term foster care placement (depending on prognosis for future reunification or if the family needs financial and or other forms of support).
- Young orphaned and abandoned children should as a matter of urgency be considered for adoption if there is no available and / or suitable family members to be traced or found.
- Establishing legal adoptability of the child and ensuring child receives quality care pending adoption.
- Finalising legal process at the relevant children's court.

Developing a national adoption programme

- Adoption education and awareness campaigns.
- Recruitment campaigns to find national adoptive parents.
- Screening and preparation (training) of adoptive parents.
- Matching and placement of children (this can also be in a networking situation between two separate organisations).
- Develop procedures for the legal finalisation of the adoption.
- Networking with other organisations in an effort to find suitable national adoptive parents as quickly as possible.
- Developing a national register for prospective adoptive parents and adoptable children where they will circulate, in an effort to find a suitable national match and placement.
- Develop procedures to undertake or assist with origin enquiries.

Intercountry adoptions

- If a local accredited body is to engage in intercountry adoption, it must obtain accreditation from the competent authority.
- Arrange working agreements in conjunction with competent authority or Central Authority and provide intercountry adoption services in accordance with the working agreement.
- Submit files of children proposed for intercountry adoption for approval from competent authority.
- Submit annual audited financial statements to Central Authority for fees received and payments made.¹²⁵
- Develop procedures to investigate the child's background and assist with origin enquiries.

6.2.2 In the receiving State

246. First it is emphasised that in performance of their functions, accredited bodies should avoid any undue pressure on States of origin, in particular pressure arising from efforts to find more adoptable children. Accredited bodies can also try to control pressure

¹²⁵ This should also be applicable to national adoptions.

from prospective adoptive parents by accepting only the number of registrations of prospective adoptive parents that is consistent with the needs of the State of origin and that provides the prospective adoptive parents with a reasonable estimated waiting period, according to the information available.¹²⁶

247. The functions may be the following:

Pre-adoption

- a) informing persons interested in adopting a child about adoption in general and the current situation of intercountry adoption in the world;
- b) informing the prospective adoptive parents of the requirements for adoption in the State of origin, the procedures to be observed, the documents required, the profile and health of the adoptable children and the services offered by the body;
- c) organising courses for the preparation of adoptive parents for an intercountry adoption;
- d) providing information, by means of a contract with the prospective adoptive parents, regarding the roles, responsibilities and functions of each party, and the costs for adoption and the services offered;¹²⁷
- e) ensuring that the prospective adoptive parents are assisted to meet the requirements of the State of origin, by preparing complete and correct case files
- f) sending the completed dossier to the State of origin concerned;
- g) establishing good collaboration relationships with all the parties involved in the receiving State in order to secure the proper performance of each adoption case;
- h) keeping the prospective adoptive parents informed of the progress of their application;

After matching

- i) forwarding details of the child to the prospective adoptive parents and ensuring that they have obtained all the information and services required for an informed decision, while also ensuring that the offer is consistent with the recommendations in the study regarding the prospective adoptive parents' parenting capacity;
- j) replying to any additional request by the authority of the receiving State in charge of supervising adoptions, and of the State of origin for each adoption case, if appropriate;
- k) obtaining the agreement under Article 17 c) from the competent authority that the adoption may proceed and sending this agreement and the prospective adoptive parents' acceptance of the match.
- l) offering any services and advice relating to the proposed adoption, including preparation for travel;

Post-adoption

- m) maintaining contact with relevant authorities to ensure the Article 23 certificate is issued;
- n) informing the authorities concerned in the receiving State of the child's arrival;

¹²⁶ See the requirements of the Netherlands at Chapter 13.5.7.

¹²⁷ See responses of Belgium (French and Flemish Communities), Canada (British Columbia, Manitoba, Ontario, Quebec), Denmark, Germany, Italy, Luxembourg, New Zealand, Norway, Spain, and Switzerland to question No 14 of the 2009 Questionnaire.

- o) ensuring that the prospective adoptive parents finalise all the steps securing a legal status for the child, including obtaining the nationality of the receiving State, and informing the State of origin, if required to do so;
- p) preparing and sending the child's follow-up reports to the State of origin;¹²⁸
- q) collaborating in requests for information about origins;¹²⁹
- r) participating in the development of good practices in matters of intercountry adoption.

6.2.3 In the State of origin: the functions of a foreign accredited body

248. The functions of foreign adoption accredited bodies may be the following:

- a) maintaining harmonious collaboration relations with the authorities concerned with the adoption and the immigration process in the State of origin and responding to any request made;
- b) keeping the authorities in the State of origin informed about the status of each case in the receiving State;
- c) assisting the authorities in the State of origin to find families for special needs children;¹³⁰
- d) directing and training the body's representative or representatives in the State of origin;
- e) avoiding any improper pressure in relation to the State of origin;
- f) evaluating, in consultation with the authorities of the State of origin, the needs of adoptable children for families.

During the adoptive parents stay in the State of origin

- g) guiding the prospective adoptive parents throughout their stay in the State of origin, offering them suitable and reliable services through competent persons under the body's responsibility (*e.g.*, guide, interpreter, driver, transport, accommodation);
- h) ensuring, in collaboration with the State of origin, that the contact between the child and the prospective adoptive parents is conducted sensitively and only takes place after the matching. The permanent physical entrustment of the child to the adoptive parents must not take place until the requirements of Article 17 are met;
- i) ensuring that the prospective adoptive parents comply with the statutory and administrative requirements connected with the child's adoption in the State of origin;
- j) assisting the prospective adoptive parents where an unforeseen problematic situation arises with the child.

The functions of the representative in the State of origin may be to perform some of the functions above, but in a more specific manner. The representative's functions are listed in the following chapter at Chapter 7.4.

¹²⁸ See responses of Belgium, Canada (British Columbia, Ontario, Manitoba and Quebec), Italy, Spain, Sweden, and United States of America to question No 58 of the 2009 Questionnaire.

¹²⁹ See responses of Denmark and Sweden to question No 58 of the 2009 Questionnaire.

¹³⁰ See response of Ecuador to question No 35 and of Lithuania to question No 57 of the 2009 Questionnaire.

SUMMARY OF GOOD PRACTICES

249. When a Contracting State decides that some Central Authority functions will be performed by adoption agencies or bodies, the agencies or bodies must first be officially accredited and designated. The designation of accredited bodies, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau at the time of their accreditation

250. When the functions of the Central Authorities are delegated to other public authorities or accredited bodies, the extent of their functions and the division of responsibilities between them should be explained. This could be done by using the Country Profile model form on the Hague Conference website.

251. When the Central Authority has a role with regard to the accreditation, authorisation, supervision and review of agencies or bodies, it should have the necessary powers and resources to perform those functions effectively.

252. When Central Authorities do not have the material, human and financial resources required to perform fully the functions of preparation, support and follow-up of prospective adoptive parents, children, and biological parents, the delegation of certain functions to accredited bodies will be a necessity. By delegating certain functions, the Central Authorities may be more effective in performance of their specific functions, and thereby achieve the objects of the Convention.

253. The primary role of accredited bodies is to act as intermediaries in the adoption process: they are the concrete link between the children, the prospective adoptive parents, the Central Authorities and other authorities in the receiving State and State of origin

254. In fulfilling its primary role, the accredited body must keep a focus on the central object of all the actors in an intercountry adoption: to defend the rights of the child, promote the child's best interests and improve the child's living conditions. The priority must be the child's best interests, and the accredited body should also be aware of the subsidiary and specific nature of intercountry adoption

255. Any adoption body bears ethical, statutory and administrative responsibilities. It must comply with the statutes, regulations and policies of the receiving State and the State of origin.

256. When accredited bodies undertake the types of functions listed in this chapter, they must have sufficient resources and professionally qualified staff to perform those functions.

CHAPTER 7

STRUCTURE AND PERSONNEL OF THE ACCREDITED BODY

257. The structure and organisation of accredited bodies can differ greatly from country to country, and even in the same country. However, some minimum rules and standards should apply to all.

258. Adoption and intercountry adoption is a public child protection measure that requires professionally qualified staff and specialised knowledge. It is in the best interests of the children that their needs should always be dealt with by professionals and persons who are trained in the field of children and adoption. The idea that adoption is a private affair of the prospective adoptive parents should be completely rejected.

7.1 Vision, mission and purpose of the adoption accredited body

259. The vision, mission, purpose and functions of the body should be clearly defined in writing in the statute or articles of incorporation of the body. As mentioned in the preceding chapter and also in the Introduction to this Guide, the primary role or purpose of the accredited body is to act as an intermediary between the prospective adoptive parents, the various authorities of the different States, and the children to be adopted. However, the philosophy of the body must be that its work is child-focused and the body is committed to respect family preservation and reunification in the State of origin of children and their birth families. Accredited bodies must therefore not create pressure¹³¹ to find children to satisfy the demands of their clients, the prospective adoptive parents.

260. The body should have its own guidelines or regulations for the management of its professional functions and its internal management.¹³²

261. Accredited bodies must support recognised principles of personal and professional ethics with respect to intercountry adoption. A code of ethics for all the accredited bodies could be developed in each State. Such a code would make clear reference to the vision, mission, purpose and functions of the accredited bodies, and provide a clear set of rules for the management of those bodies.¹³³

262. In summary, the accredited body should have the professional competence and experience to follow, know, understand, and supervise the procedure for the adoption in both the receiving State and the State of origin, using a specialist or a specialist team for each country or region, together with partner organisations or representatives where necessary. A positive and productive collaboration with the Central Authorities and other authorities is also essential.

¹³¹ Examples of pressure on States of origin are given in Chapter 12.3.1.

¹³² See responses of Canada (Quebec) and New Zealand to question No 16 of the 2009 Questionnaire. In many States, internal guidelines are considered by the competent authorities as part of the accreditation process. See, for example the responses of Belgium (French and Flemish Communities), Canada (British Columbia, Manitoba, Ontario and Quebec), Denmark, France, Germany, Iceland, Italy, Luxembourg, New Zealand, Portugal, Sweden, Switzerland and United States of America to question No 11 of the 2009 Questionnaire.

¹³³ In some States, accredited bodies are required to comply with a standard code of ethics as a condition of accreditation. For example, in the United States, are required to make an annual attestation of substantial compliance with "Standards for Convention Accreditation and Approval", set out §§ 96.29 to 96.56 of the *Accreditation of Agencies and Approval of Persons under the Intercountry Adoption Act of 2000 (IAA)*, 22 CFR Part 96. In Hong Kong, a "Code of Conduct for Accredited Bodies in respect of Intercountry Adoption" applies, see *Accreditation System in respect of Intercountry Adoption in the Hong Kong Special Administrative Region*, available at the following address: < http://www.swd.gov.hk/doc/fcw/intercountry_adoption/Accreditation%20System%20in%20respect%20of%20Intercountry%20Adoption%20in%20the%20HKSAR%203%20Sept%202008.pdf > (last consulted 23 April 2010), pp. 12-13 and Annex 4. See also responses of Belgium (French Community) and Canada (British Columbia and Quebec). Additionally, many States require adoption bodies to provide an attestation regarding adherence to ethical principles and rules of professional conduct. See, for example, the responses of Belgium (Flemish Community), Brazil, Canada (Manitoba and Ontario), Germany, El Salvador, Iceland, Italy, Luxembourg, Norway, and the Philippines to question No 11 of the 2009 Questionnaire.

7.2 Structure of the accredited body

263. The 1993 Hague Convention refers to the professional and personal qualifications of the director and staff of the accredited body.¹³⁴ However, the Convention is silent as to the size and structure of the accredited bodies, the only rule in this regard being that the body cannot be an individual person.¹³⁵ Therefore it is left to States to determine the basic structure that its accredited bodies should have.

264. All paid workers or volunteer workers in an accredited body should not have a conflict of interests in relation to the body's vision, mission and purpose, and they must have no criminal convictions.¹³⁶ For example, the prospective adoptive parents involved in an adoption process should not be part of the board of management.

265. In the case of medium and bigger bodies, it is recommended to have a board of directors with a sufficient number of members in order to develop a multi-disciplinary team, and to allow more informed and professional decision-making.¹³⁷

266. Creation of adoption bodies arising solely from a couple's adoption experience should at all times be avoided. Similarly, "the mere status of an adoptive parent or the mere fact of having attended training courses for couples, organised by authorised entities or public entities, is not considered to be sufficient experience in the field of adoptions"¹³⁸

267. The organisation of the functions carried out by the adoption accredited body would vary from State to State according to the division of tasks between the Central Authority, public authorities, competent authorities and accredited bodies.

7.3 Staff of the accredited body

268. The Convention, in Article 11 *b)* is clear about the requirements for the professional staff of an accredited body. It must "be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption."

269. The specific qualities of "integrity, professional competence, experience and accountability" referred to in Article 22(2) are directed at approved (non-accredited) persons. However, the Convention principles in general, and the standards for accredited bodies in particular, will ensure that those same qualities are expected in the personnel of accredited bodies.

270. The adoption accredited body needs competent and sufficient professional, technical and administrative staff for its operations.¹³⁹

271. The staff members who are not involved directly in intercountry adoptions will also need to meet the requirements of "ethical standards" referred to in Article 11 *b)* but may not need to meet the other requirements.¹⁴⁰ However they will still be bound by the statute and by-laws of the body and by certain other Convention rules of universal application such as confidentiality of personal information and no improper financial gain.

¹³⁴ Art. 11 *b)*.

¹³⁵ See Explanatory Report, *supra*, note 16, para. 249.

¹³⁶ See, for example Canada (British Columbia), where it is a condition of accreditation for an accredited body to conduct criminal record checks in respect of any administrator, employee or individual with whom it contracts during the term of its accreditation: *Adoption Agency Regulation 1996*, section 5(1). See also the response of Lithuania to question No 5 of the 2009 Questionnaire.

¹³⁷ In Italy, bodies are required to have a suitable organisational structure, see response to question No 9 of the 2009 Questionnaire, and Art. 39-ter of Law No 184 of 4 May 1983. See also Canada (Quebec), *Order respecting the certification of intercountry adoption bodies*, RQ c. P-34.1, r.0.02.

¹³⁸ See the criteria of the Italian Central Authority for the accreditation of adoption agencies.

¹³⁹ Some States impose requirements in relation to staff management. In British Columbia, bodies seeking accreditation must submit a business plan containing, among other things, proposed personnel management. See response to question No 11 of the 2009 Questionnaire and *Adoption Agency Regulation 1996*, section 2(3). In Italy, accredited bodies must have the "necessary staff to function adequately in the foreign countries in which they wish to operate" (Art. 39-ter of Law No. 184 of 4 May 1983). See also the Philippines, whose criteria are extracted at Annex 13B to this Guide.

¹⁴⁰ See Explanatory Report, *supra*, note 16, para. 260.

7.3.1 Professional staff

272. Accredited bodies should have, or have access to, a multidisciplinary team of professional staff, in particular psychologists, psychiatrists, social workers and lawyers.¹⁴¹

273. All of these professionals should be adequately qualified and should have the relevant training and experience to act in the field of adoption.¹⁴²

274. The functions of the accredited body are described in detail in Chapter 6.2: The role and functions of accredited bodies. The following general functions should specifically be the responsibility of the professional staff:

- to provide the necessary services to adoptive applicants to help them understand and gain knowledge of adoption as well as to judge for themselves if they are ready or not to adopt a child;
- to provide orientation on adoption either through individual interviews, group orientation or an adoption forum. This should include information on the criteria in assessing suitability for adoptive parenthood and the situation and characteristics of children available for adoption;
- assist adoptive applicants in the preparation of documents required for the report to the State of origin, including the home study and immigration formalities;
- assess adoptive applicants and members of the family for their capacity and adaptability to meet basic and / or special needs of an adoptive child;
- provide support during the waiting period from the time the family is approved until they have been matched to a child;
- prepare for the placement of the adoptive child and help adoptive parents, members of their family and the child to adjust to one another and give assistance during supervision of placements;
- provide support services to the adoptive family and child on their return to the receiving State or refer them to appropriate care, *e.g.*, medical care;
- assist in the finalisation of the adoption;
- provide or arrange provision of post-adoption counselling to both adoptive parents and adoptee for any problems arising after completion of the adoption, including follow-up activities to ensure that a smooth adjustment between the child and family is sustained.

7.3.2 Technical staff

275. The term “technical staff” is used in this context to mean those staff members who are professionally qualified in areas other than intercountry adoption, child protection and children’s rights. The technical team will perform the tasks associated with their specialist knowledge and training. Management of accounts is a high priority because of the importance placed on financial transparency of accredited bodies, and the prohibition on improper financial gain.

276. Management of case files, preservation of records and access to information are important functions, and obligations exist in the Convention concerning these functions.

7.3.3 Volunteers

277. As accredited bodies should pursue only non-profit objectives, in many cases they ask for the help of volunteers to perform their tasks. Volunteers should be expected to sign a code of ethics and a confidentiality agreement when they assist an accredited body.

¹⁴¹ Some States require accredited adoption bodies to have and maintain a multi-disciplinary staff. See, for example, the responses of Belgium (French and Flemish Communities), Canada (Quebec), Iceland, Italy, Portugal and Spain to question No 12 of the 2009 Questionnaire. Other States only require access to a multi-disciplinary staff. See, for example, the response of Canada (Ontario) to question No 12 of the 2009 Questionnaire.

¹⁴² For some States, specified qualifications are required. See, for example, the response of Denmark to question No 12 of the 2009 Questionnaire.

278. Volunteers may sometimes be professionally qualified in fields relevant to adoption and they wish to donate their time and services to the organisation.¹⁴³ Volunteers who are not professionally qualified and who may be experienced in intercountry adoption only through having adopted a child themselves, should receive training that is appropriate to their tasks. They should not perform professional tasks. The fact that some adoption accredited bodies, and in particular some small ones, only have volunteers as staff may be problematic:¹⁴⁴ can such a body provide the range of services needed to fully support and accompany the prospective adoptive parents throughout the procedure, and at the same time, have the knowledge and understanding of States of origin which is considered necessary for a professional accredited body? If a body only has staff or volunteers with no professional training and experience it should not be accredited as it does not meet the standards required by Article 11 of the Convention.

279. The functions carried out by the volunteers may vary according to their professional qualifications and experience. They may perform, among others, the following functions:

- assist the administrative staff;
- if they have personal experiences in adoption, contribute by giving information and support to other prospective adoptive parents;
- if they are professionals in the field of children and adoption and have experience in it, they may be able to assist in the multidisciplinary team.

7.4 Representatives of foreign accredited bodies in the State of origin

280. In some States of origin the accredited body will have a fully established office, while in others it will only have a representative. This will vary according to the requirements of the State of origin, the receiving State and the accredited body itself.¹⁴⁵

281. The “representative” is the person chosen by a foreign accredited body to act for that body in the State of origin. The qualifications of the representative and the range of functions to be performed will vary from body to body, and from country to country. The remuneration of the representative will therefore also vary.

282. For example, some States of origin require (by law or in procedures) that the accredited body from the receiving State has a representative or contact person in the State of origin.¹⁴⁶ In some States of origin it is required to have a legal representative with quite advanced functions.¹⁴⁷ These representatives are the official link between the Central Authority and other authorities or institutions in the State of origin and the adoption accredited body in the receiving State. They can be required to do certain functions and duties for the authorities in the State of origin. In these cases, there are special demands on the person. They are supposed to have certain skills and a reputable work history. These responsibilities require that the accredited body be very cautious and prudent before contracting a person for this purpose.

283. On the other hand, some States of origin do not permit the use of representatives.¹⁴⁸ They prefer their Central Authority to provide the prospective adoptive parents with all necessary information and assistance.

284. It is recommended that representatives in the State of origin are also professionals in child welfare and with knowledge of adoptions. Furthermore, they should be approved or licensed by the Central Authority in the State of origin. The approval or licensing of the

¹⁴³ In Italy, most adoption accredited bodies are directed by volunteers and/or use volunteer co-workers, all of whom must meet applicable training and qualification requirements. See response of Italy to question No 13 of the 2009 Questionnaire.

¹⁴⁴ See I. Lammerant, M. Hofstetter, *op. cit.* (note 70), p. 13.

¹⁴⁵ For example, the Russian Federation requires the establishment of an office in Russia. In Mexico, an office should be established, see response to question No 32(a) of the 2009 Questionnaire.

¹⁴⁶ See responses of Burkina Faso, Chile, Colombia, Ecuador, Lithuania to question No 32(b) of the 2009 Questionnaire.

¹⁴⁷ This is the case for Colombia (see Chapter 13.1.2 of this Guide) and Ecuador (see response to question No 32 of the 2009 Questionnaire).

¹⁴⁸ This is the case for the Philippines (see Chapter 13.3.8 of this Guide), Czech Republic and Latvia (see responses to question No 32 of the 2009 Questionnaire).

representative could be part of the State of origin's authorisation procedure for a foreign accredited body.

285. The functions of the accredited body are listed at Chapter 6.2. The representative in the State of origin may perform some of those functions and may also perform, among others, the following functions:

- represent the foreign accredited body in the State of origin;
- inform the foreign accredited body of the legal requirements in the State of origin and any changes that may occur;
- revise and check that all required documents are in the file of adoptive parents before handing it to the Central Authority of the State of origin;
- represent prospective adoptive parents in the State of origin;
- give practical assistance to prospective adoptive parents while in the State of origin;
- inform in a timely manner all parties to the adoption procedure (prospective adoptive parents, Central Authorities, etc) of any changes in the procedure.

7.4.1 Achieving good practices with representatives

286. The problems concerning representatives are: a lack of regulation and supervision, a lack of clarity about their functions, and the nature and amount of their remuneration.¹⁴⁹

287. As a matter of good practice, the State of origin (through the Central Authority or other public body) should have a system of rules or criteria for the approval or licensing of the representatives, guides, interpreters or others involved with the foreign accredited body.¹⁵⁰

288. If the accredited body from the receiving State is unsure of the reliability or reputation of the contracted person, the body should request its Central Authority to obtain advice from their diplomatic mission in the State of origin. Another recommendation is to consult with other human rights or children's rights representatives in the State, such as the International Social Service representative, Save the Children, or Unicef.

289. Foreign accredited bodies should be obliged to have written agreements with their representatives. The State of origin (the Central Authority and local accredited bodies) should have copies of these written agreements.¹⁵¹

290. The level and system of remuneration must be transparent and accepted by the Central Authorities, in both the State of origin and the receiving State. The appropriate level can easily be checked through communication with the Embassy of the receiving State, Unicef or ISS.

291. The foreign accredited body is responsible for the persons it contracts or hires. They should be supervised and monitored and receive continuous information and

¹⁴⁹ See, for example, Colombia, discussed at Chapter 13.1.7 of this Guide.

¹⁵⁰ See, for example, Lithuania and the Philippines. In Lithuania, the aim of the Procedure Specification for granting authorisation to foreign accredited adoption bodies is "to ensure that only competent persons, in terms of their education, work experience and ethic background necessary for work in the field of inter-country adoption, are allowed to engage in inter-country adoption in the Republic of Lithuania", available at < http://www.ivaikinimas.lt/document_db/tfiles/150.doc > (last consulted 23 April 2010). See also discussion in Lithuania's response to question No 1 of the 2009 Questionnaire. In the Philippines, the process is regulated through the accreditation of local liaison agencies (discussed further in Annex 3B to this Guide). Additionally, some receiving States seek to oversee the activities of representatives in States of origin by monitoring their contractual relations with national adoption accredited bodies as part of the accreditation process. See, for example, the responses of France and United States of America to question No 11, and the response of Norway to question No 19 of the 2009 Questionnaire. In Sweden, it is a standard condition of accreditation for accredited bodies to consult with the Central Authority before entering into a written agreement with an intermediary in a State of origin.

¹⁵¹ As mentioned in note 150, some receiving States oversee contractual arrangements between the national adoption accredited body and representatives in States of origin. An example of this practice in a State of origin is Lithuania, where the foreign accredited body is required to have an agreement with the local representative and present information about the representative to the Lithuanian Central Authority before authorisation is granted.

appropriate training.¹⁵² The training can be done both during regular visits by the foreign accredited body to the State of origin and through regular visits to the receiving State by the representative.

292. The representative should be given the opportunity to visit the receiving State to fully understand the ethics, the code of conduct and the complexity of the work that the accredited body is doing in preparing the prospective adoptive parents. The representative may be trained not only in the principles of the UNCRC and the 1993 Hague Convention; he or she should also keep the foreign accredited body updated on the adoption legislation in the State of origin and be kept updated on the adoption legislation in the receiving State.

293. The issue of the representative is also discussed in this Guide at Chapter 3.2.6 (The principle of using representatives with an ethical approach).

7.4.2 Other co-workers of the foreign accredited body in the State of origin

294. There could be also some co-workers (interpreters, guides, contact persons, etc.) working for the foreign accredited body in the State of origin. Even if they are not considered as “staff” of the foreign accredited body, it must always be very clear that the accredited body is responsible for the persons they contract or hire, as mentioned above in relation to representatives. The interpreters, guides, lawyers, drivers and other co-workers should be people of integrity and ethical standards. They could also receive appropriate training and information. Prospective adoptive parents themselves could be asked to provide a report of their experiences with such persons in the State of origin.

295. A “contact person” is sometimes used when there is no legal representative. This person gives service to the adoptive family while they are in the State of origin and could be the interpreter, but does not have any direct contact with or function in relation to the authorities in the State of origin. Even if this kind of contact person is less formal, the accredited body should carefully investigate the person’s ethical standards before contracting him or her.

296. To improve professionalism and minimise risks of improper financial gain, there should be a written agreement for employment or services between co-workers used on a regular basis and the accredited body. The agreement should clearly state the functions and the responsibilities and also the financial commitment between the parties. Where there is such an agreement, there should also be some form of accountability of all financial transactions.

7.5 Other issues related to the staff of the adoption accredited body

7.5.1 Country specialists in the accredited bodies in receiving States

297. As a matter of good practice, the accredited body will ideally have a specialist person or team devoted to particular countries or regions. This is essential for the body to provide the most professional and competent service. In order to achieve such knowledge and competence, regular visits to the State of origin would be needed. To perform the professional tasks referred to in Chapter 6, the specialist will need to have:

- sufficient knowledge of the legislation of the receiving State and the State of origin with respect to intercountry adoption;
- sufficient knowledge of the cultural, economic and socio-political reality and needs of the children in the State of origin;
- developed reliable and durable work relations with relevant organisations and authorities in both States;

¹⁵² In the Philippines, the Central Authority provides training sessions for local agencies with the aim of ensuring that they are up to date on the latest policies and requirements of intercountry adoptions. See response of the Philippines to question No 15. In Italy, the Central Authority has organised training programs for personnel in States of origin and encourages the accredited bodies to bring together those working in the same State and to set up training courses or support projects. See I. Lammerant, M. Hofstetter, *op. cit.* (note 70), pp. 38-39.

- the necessary resources to inform, educate and prepare adoptive parents of the requirements for adoption from specific countries, and in particular, the profile and health of the children who may be adopted.

298. This specialised information about the State of origin is best obtained by regular visits, at least on a yearly basis. Staff of the Central Authority and accredited bodies from the State of origin should also visit the receiving State. This is the only way to fully understand and appreciate each other's systems and countries. For many reasons, a good relationship based on mutual trust is important between the State of origin and the receiving State. After all, the child is receiving a new "home country" and the prospective adoptive parents will have a second "home country".

7.5.2 Ratio of staff

299. For better delivery of quality service to the children, the ratio of staff to the children / families or number of cases must be adequate and manageable. The number of professional staff will be proportional to the case load and work of the body. For example in the Philippines, there has to be at least one professional staff member (*e.g.*, social worker) employed full time for every 20 to 30 cases.¹⁵³

7.5.3 Training of staff

300. In order to meet the obligations of the Convention and relevant laws, the staff of the adoption accredited bodies should be professional and well trained.

301. Every staff member should be given an orientation prior to his / her assumption of duties which may include instruction in the objectives and rules of the accredited body, the adoption laws of the State, and the principles of intercountry adoption, as well as his or her job functions, duties and responsibilities. This will provide the opportunity to learn about intercountry adoption and the rights of the parties: the child, the birth parents and the adoptive parents. This will develop desirable attitudes towards his / her work in the body as well as provide necessary information on the programme and services and clientele served by the body.¹⁵⁴

302. To maintain standards of service, a continuous staff development programme could be conducted. Each staff member should be encouraged to make full use of his / her knowledge and skills and to develop special skills in working with adoptive children and families. For small accredited bodies, the Central Authority might take responsibility for providing ongoing training to accredited body staff, or for ensuring they receive such training.¹⁵⁵

7.5.4 Formal requirements (written contract of employment)

303. All staff employed by the adoption accredited body should have a written contract of employment including the job description, the salary, prohibited behaviour, and employment benefits or incentives.

7.6 Financial issues

304. As required by Article 11 of the Convention, the accredited body must be a non-profit organisation (Art. 11 *a*)) and it must not obtain or be involved in any improper financial gain (Art. 32). Its financial situation will be supervised (Art. 11 *c*)).

305. As a consequence of these conditions, the financial records of all receipts, disbursements, assets and liabilities must be maintained¹⁵⁶ and books should be audited annually by a certified public accountant.¹⁵⁷

¹⁵³ This is mandated by the *Minimum Standards for Accreditation of Foreign Adoption Agencies*, extracted at Annex 13B to this Guide.

¹⁵⁴ I. Lammerant, M. Hofstetter, *op. cit.* (note 70), pp. 44-45.

¹⁵⁵ *Ibid.*, *supra*, note 70, pp. 44-45. See also response of Belgium (French Community) to questions Nos 15 and 19 of the 2009 Questionnaire.

¹⁵⁶ Maintaining financial records is a condition of accreditation in a number of States of origin and receiving States. See, in general, the State responses to question No 34 of the 2009 Questionnaire.

306. A copy of the body's financial report should, at a minimum, be provided annually to the Central Authority and the accrediting agency.¹⁵⁸ See also Chapter 9 for a full discussion of financial issues and costs related to adoptions.

7.7 Procedures for handling individual cases

307. Each accredited body in the receiving States should sign a contract with the prospective adoptive parents.¹⁵⁹ That contract should specify the obligations and duties of each party. Ideally, the contract should extend from the beginning of the adoption procedure to the grant of nationality or citizenship of the receiving State to the adopted child, and if appropriate, until expiry of the obligation to deliver follow-up reports for the child. The Central Authority could offer a standard-form contract.

7.7.1 Case records

308. The body must maintain complete and updated case records of adoptive families and children, as well as information about birth families, to the extent possible.¹⁶⁰ Confidentiality must be observed in the handling of records and these should only be inspected by those involved in the case or with appropriate authorisation, in accordance with the national law. See also Chapter 4.4: Data protection

309. The body should retain the following supporting documents:

7.7.1.1 Adoptive family

- Duly completed application forms
- Birth certificate
- Police clearance or its equivalent
- Health certificate of household
- Pictures of applicants and family
- Certified true copy of marriage certificate, if married
- Copy of latest income tax return or affidavit of support
- "Home study" and approval to adopt.

7.7.1.2 Adoptive child

- Child study report
- Birth certificate or certificate of identification and circumstances of finding
- Court declaration of abandonment, deed of voluntary relinquishment by parents, death certificate of parents, if indicated
- Record of medical, dental, mental examination, psychological, psychiatric examination including the corresponding treatment, evaluation and basic immunisation administered.
- Placement authorisation
- All communications and correspondence concerning the application, the birth family, adoptive family and the child
- Adoption order.

¹⁵⁷ In relation to this specific requirement, see, for example, the responses of Norway to question No 34, and of Italy and Germany to question No 51 of the 2009 Questionnaire.

¹⁵⁸ This practice is adopted in most receiving States and in some States of origin (for example, Brazil). See, in general, the State responses to question No 34 of the 2009 Questionnaire.

¹⁵⁹ This practice is adopted in many receiving States. See, for example, the responses of Belgium (French and Flemish Communities), Canada (Ontario and Quebec), Germany, Luxembourg, Spain, and Switzerland to question No 14 of the 2009 Questionnaire.

¹⁶⁰ For a discussion of record keeping obligations under the Convention, see Guide to Good Practice No 1, *supra*, note 18, para. 61, and Chapter 9.1.

7.8 Procedure for complaints

310. The adoption accredited body should have a policy for dealing with complaints about staff, paid and unpaid workers, and the organisation itself.¹⁶¹ The policy and procedure to make a complaint should be explained to clients. Likewise, the competent authority should provide for a mechanism to receive and process complaints relating to the operation of accredited bodies. See Chapter 8.3.3 d): Supervising the operation of accredited bodies.¹⁶²

7.9 Procedure for handling of files in case of discontinuation of the services of the accredited body

311. The Central Authority and accredited body should develop procedures for the handling of files in case of discontinuation of the services of the accredited body, *e.g.*, through loss of accreditation, or the closure of a case (in particular, abandonment of the adoption procedure by the prospective adoptive parents), or withdrawal of authorisation by the State of origin.

312. For active cases, the files may be handed over to the Central Authority¹⁶³ or to another accredited body. For completed cases, the files may be sent to the official archives.

313. The problems associated with a discontinuation of services should not result in additional costs for adoptive parents. Where services have been paid for and not delivered, the accredited body should refund the money to the adoptive parents or provide evidence that the money has been transferred to another body that will provide the services.

314. If a receiving State cancels an accreditation or an accredited body ceases operations, the Central Authority should promptly inform the State of origin and explain the reasons. Such communications are very important to maintain a relationship of trust and confidence between the two States.

¹⁶¹ In a number of States, consideration of an adoption body's complaints handling procedures is part of the accreditation decision making process. See, for example, response of Canada (British Columbia) to question No 18 of the 2009 Questionnaire.

¹⁶² An example of this practice is the United States of America, where the Central Authority maintains a web-based complaints registry which is supported by prescribed complaints handling procedures imposed as a condition of accreditation. See response of the United States of America to question No 34 of the 2009 Questionnaire.

¹⁶³ This is the procedure in Italy.

SUMMARY OF GOOD PRACTICES

315. Adoption and intercountry adoption is a public child protection measure that requires professionally qualified staff and specialised knowledge. It is in the best interest of the children that their needs should always be dealt with by professionals and persons who are trained in the field of children and adoption.

316. The vision, mission, purpose and functions of the body should be clearly defined in writing in the statute or articles of incorporation of the body. The objective of the body must be that its work is child-focused and the body is committed to respect the rights of children and their birth families in the State of origin.

317. The accredited body should have the professional competence and experience to follow, know, understand, and supervise the procedure for the adoption in both the receiving State and the State of origin, using a specialist or a specialist team for each country or region, together with partner organisations or representatives where necessary.

318. Any person working in an accredited body should not have a conflict of interests in relation to the body's vision, mission and purpose, and they must have no criminal convictions.

319. Professional staff of accredited bodies should have, or have access to, a multidisciplinary team of professional staff, in particular with psychologists, psychiatrists, social workers, lawyers and doctors or paediatricians.

320. Representatives for a foreign accredited body should be chosen carefully, with attention to their ethical approach and knowledge of child protection when they are to act for that body in the State of origin.

321. Representatives should be approved or licensed by the Central Authority in the State of origin. The approval or licensing of the representative could be part of the State of origin's authorisation procedure for a foreign accredited body.

322. Foreign accredited bodies should be obliged to have written agreements with their representatives and co-workers. The contract should state, among other things, the level of remuneration and a copy should be given to the authorities in both States.

323. The accredited body is responsible for the persons it contracts or hires.

324. Every staff member should be given an orientation prior to his assumption of duties which may include instruction in the objectives and rules of the accredited body, the adoption laws of the State, and the principles of intercountry adoption, as well as his or her job functions, duties and responsibilities.

325. The financial records of all receipts, disbursements, assets and liabilities must be maintained and books should be audited annually by a Certified Public Accountant.

326. A copy of the body's financial report should, at a minimum, be provided annually to the Central Authority and the accrediting agency.

327. Each accredited body in the receiving States should sign a contract with prospective adoptive parents. That contract should specify the obligations and duties of each party. The Central Authority could offer a standard-form contract.

328. The accredited body should have a policy for dealing with complaints about staff, paid and unpaid workers, and the organisation itself. The competent authority should provide for a mechanism to receive and process complaints relating to the operation of accredited bodies.

329. The Central Authority and accredited body should develop procedures for the handling of files in case of discontinuation of the services of the accredited body. The problems associated with a discontinuation of services should not result in additional costs for adoptive parents. If a receiving State cancels an accreditation or an accredited body ceases operations, the Central Authority should promptly inform the State of origin and explain the reasons.

CHAPTER 8

PROCEDURES FOR ACCREDITATION, SUPERVISION AND REVIEW OF ACCREDITED BODIES

8.1 Accountability of accredited bodies

330. The importance of accreditation of adoption bodies as a Convention safeguard, and the reasons that they must be accountable to a supervising or accrediting authority are discussed in Chapter 1 (The need for a system of accreditation) and Chapter 3.2.5 (A principle of accountability).

331. The Convention recognises that each Contracting State with accredited bodies ought to have at least the same basic standards for their accreditation. Beyond the development of an accreditation procedure, a State must also establish criteria and conditions connected with the supervision of the accredited bodies and renewal of their accreditation.¹⁶⁴ The principle of using accreditation criteria is discussed in Chapter 3.2.4. The supervision and review of the accredited body's activities will be conducted and assessed using the standards, criteria and other conditions attached to the grant of accreditation. In particular, their observance of the three most important child protection principles should be taken into account: the child's best interests, the subsidiarity principle and the absence of improper gain.¹⁶⁵

8.2 Accreditation procedure

8.2.1 Application for accreditation

332. The application for accreditation may be made by a body which meets the Convention standards and the legal requirements of the accrediting State. Such bodies may be private or public, consisting mainly of professionals, volunteers, or a mixture of both, according to the legal requirements of the State concerned. A physical person may not seek or obtain accreditation.¹⁶⁶ The organisational structure of accredited bodies is discussed in Chapter 7 (Structure and personnel of the accredited body).

333. The application for accreditation should be submitted in writing in the State where the body has an established office and base of operations. In order to facilitate consideration of the application, each State could provide a standard form to initiate the application for accreditation,¹⁶⁷ and clear instructions to complete the entire procedure. In addition, each applicant body will have to provide all the information required by the competent authority.

334. The authority competent to grant accreditation should deliver its decision within a reasonable period after the date of receipt of the complete application, received in proper form. Obviously, the adoption body must not be involved in intercountry adoption under the Hague Convention before it has been granted the accreditation.

8.2.2 Documents to support the application for accreditation

335. In order to ascertain whether the accredited body meets the requirements for accreditation, the competent authority should require each body to file certain documents and information in support of its application. These would be used to evaluate the body's commitment, ethical standards and professional abilities, and would also serve to ensure

¹⁶⁴ Art. 11 c).

¹⁶⁵ See UNCRC, *supra*, note 4 and the Convention, as discussed in Guide to Good Practice No 1, *supra*, note 18, Chapter 2.

¹⁶⁶ See Explanatory Report, *supra*, note 16, paras 249-250. See also Chapter 7.2 of this Guide.

¹⁶⁷ See, for example, the responses of Quebec (Canada), Switzerland and Sweden to question No 18 of the 2009 Questionnaire.

protection of the child's best interests, and the interests of adoptive families and biological families.¹⁶⁸

336. For instance, an adoption body should provide details of:

- (i) the body's incorporation¹⁶⁹. It ought also to be recorded in a public register in the receiving State;
- (ii) the by-laws and / or regulations of the accredited body;
- (iii) the membership of the body (board, staff, volunteers) and their work profile:
 - a) an attestation of absence of criminal convictions, and a statement of absence of conflicts of interest;
 - b) the qualifications of the staff working in the receiving State and in the State of origin, and a description of the tasks for each position if appropriate;
 - c) the duties and responsibilities of volunteers, if appropriate;
 - d) an undertaking in writing by the officers and staff to comply with the principles of personal and professional ethics;
- (iv) the accredited body's knowledge and understanding of the legislations of the receiving State and State of origin with respect to adoption;
- (v) budget forecasts for a specified period. The Central Authority or competent authority could provide an accounting format;
- (vi) the list of services offered to prospective adoptive parents, and in particular training, meetings (individual and in groups), documentation, the website information and post-adoption services;
- (vii) the measures put forward to secure the confidentiality and protection of records;
- (viii) a description of the system for training of staff including representatives.

8.2.3 Documents to support a request by an accredited body for authorisation by the receiving State to act in a State of origin¹⁷⁰

337. It is clear from the Convention that the procedures of accreditation and authorisation must be considered separately as different criteria apply. A body may be eligible to be accredited in its own State but a State of origin may have no need of its services. Authorisations in accordance with Article 12 of the Convention should only be given after there has been an exchange of information between a receiving State and a State of origin to establish the needs of the latter.

338. When an accredited body of a receiving State requests the authorisation of its own State to intervene in matters of intercountry adoption in a State of origin, the documents to be supplied by the accredited body to support the request could include:

- (i) evidence that the services of the accredited body are needed in the State of origin;¹⁷¹
- (ii) the accredited body's knowledge of the State of origin,¹⁷² including in particular:

¹⁶⁸ A good practice is followed by the Dutch Central Authority in its *Operational protocol of the Central Authority in respect of granting licences for mediation in intercountry adoption or in respect of extensions to such licence* (see Chapter 13.5.5 of this Guide)

¹⁶⁹ This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire.

¹⁷⁰ Authorisation is discussed in detail in this Guide in Chapter 3 (General Principles of Accreditation), Chapter 4 (General Policy Considerations) and Chapter 5 (The Relationship between accreditation and authorisation).

¹⁷¹ In Italy, the number of agencies already authorised to operate in a particular State of origin is a prescribed accreditation criterion: Resolution No 13/2008/SG, Art. 14(1), available in English at < <http://www.commissioneadozioni.it/media/56027/resolution1308.pdf> >.

¹⁷² This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire.

- the profiles of adoptable children, including in particular their health, age, sex, and children with special needs;
 - the child-protection system in the State of origin;
 - the adoption procedure (statutory and administrative procedures);
 - the criteria and conditions for adoption;
 - evidence of procedures to investigate the child's origins;
 - the living conditions of children in the institutions;
 - information regarding contacts in the State of origin (institutions, Central Authority, competent authorities);
 - its relations with those authorities;
 - the requirements with respect to follow-up reports;
 - the waiting periods;
- (iii) the breakdown of costs for an adoption with the State of origin;¹⁷³
- (iv) agreements with orphanages or other agencies, if appropriate;¹⁷⁴
- (v) the conditions of collaboration with the representatives and co-workers in the State of origin. They should specify the qualifications, tasks and remuneration of such representatives or co-workers;¹⁷⁵
- (vi) the statutes, regulations, procedures and practical information relating to adoption in the State of origin. These documents should be filed in the official language of the State of origin and the copies should be certified. The documents should be translated into the official language of the receiving State (the accrediting State) which may grant its authorisation.

8.2.4 Duration of the accreditation

339. The Convention does not specify the duration of accreditation. However, a good practice would consist of issuing accreditation for a specific period. Most States issue accreditation for a specific period. Accreditation is usually granted for a period of two to five years.¹⁷⁶

340. It has been suggested that the period should not be less than three years in order to secure a measure of continuity and to reduce the administrative work connected with renewal of accreditation.¹⁷⁷

341. Some States have chosen to issue the initial accreditation for a term of less than three years, for the purpose of allowing better supervision and evaluation of the body's skills and the proper conduct of adoptions in the State.¹⁷⁸ For example, in Canada, some provinces issue an accreditation and authorisation for two years only when starting co-operation with new States.

342. States should avoid the practice of automatic extension of accreditation without a proper review. Automatic extension is not considered appropriate or adequate for the

¹⁷³ This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire.

¹⁷⁴ This is a requirement in some receiving States. See, for example, the responses of Belgium (French and Flemish Communities), Canada (Manitoba, Ontario and Quebec), Denmark, Italy, Norway and Sweden to question No 11 of the 2009 Questionnaire.

¹⁷⁵ This is a requirement in some receiving States. See, for example, the responses of France, Italy and Norway to question No 11 of the 2009 Questionnaire.

¹⁷⁶ See, for example, the responses of Luxembourg, Quebec (Canada), Spain, Sweden, Switzerland and the United States of America to question No 21 of the 2009 Questionnaire. An accreditation from France or Italy is granted for an indefinite period i.e. it does not have an expiry date.

¹⁷⁷ See EurAdopt-NAC "Accreditation and Authorisation", *supra*, note 100.

¹⁷⁸ See, for example, the responses of Quebec (Canada) and Sweden to question No 21 of the 2009 Questionnaire. Quebec (Canada): "Accreditation is granted for a maximum period of two years upon the initial application for accreditation..."; Sweden: "Sometimes, *e.g.*, when the application is made by a new association or concerns a new country, a shorter period of time is applied".

supervision and review of accredited bodies and for their accountability.¹⁷⁹ The same principles should apply to the duration of an authorisation.

8.2.5 Accreditation is not transferable

343. The grant of accreditation should be for a specific named body and it should mention the duration of its validity and, if appropriate, any related conditions, restrictions or prohibitions. If a body changes its name only, the accreditation document will need to be re-issued under the new name, to avoid confusion for States of origin.

344. An accreditation should not be transferable. Even if the body ceases operation, and another body is to take over the files of the first body, there can be no transfer of accreditation. If the legal identity of the accredited body changes, as might occur for example if two bodies merged into one, a new entity will need to seek a new accreditation.

8.2.6 Denial or refusal of accreditation

345. No accreditation should be granted unless the accrediting authority considers that it can be justified in the interests of children, birth families and adoptive families, and the body meets the applicable requirements. The grounds for denial or refusal of accreditation will usually be a failure to meet the accrediting State's standards or requirements of accreditation.

346. If an accreditation or its extension is denied, the body will usually be allowed the opportunity to challenge the decision.¹⁸⁰ The possibility of further appeal will depend on the laws of the State concerned.

8.3 Monitoring and supervision of accredited bodies

347. As part of its process for developing an accreditation system, each State should develop the rules allowing for the monitoring and supervision of the accredited body, and specify how these functions will be conducted and who will be responsible for them. The State should allocate the resources necessary to perform these functions.

348. Article 11 c) of the Convention specifies that the competent authority should supervise accredited bodies at least as regards their composition, operation and financial situation. Each State may meet that obligation by developing more detailed supervision criteria.

349. States are encouraged to implement certain good practices regarding supervision of bodies:¹⁸¹

- (i) enact and enforce regulations concerning accreditation, approval or supervision that are precise, transparent and enforceable;
- (ii) effectively communicate those regulations to other States and to the public to encourage transparency and accountability;
- (iii) provide adequate and appropriate resources to perform the supervisory functions;
- (iv) retain control or supervision of the parts of the adoption process that are most prone to abuse or exploitation.

350. As part of its supervisory functions, and because the accredited body is performing the Convention functions in the place of the Central Authority, the competent authority ought also, where necessary and appropriate, to provide the accredited bodies with the best possible professional support in connection with their duties. For example, the establishment of an effective partnership to provide the accredited bodies with tools, assistance and training, including training on how to apply the 1993 Hague

¹⁷⁹ See I. Lammerant, M. Hofstetter, *op. cit.* (note 70), p. 43.

¹⁸⁰ See, for example, the response of Norway to question No 18 of the 2009 Questionnaire.

¹⁸¹ See Guide to Good Practice No 1, *supra*, note 18, para. 207.

Convention.¹⁸² That partnership would be directed towards achieving the difficult balance between supervision and support.

8.3.1 Who can supervise and review accredited bodies?

351. In practice, each body should be subject to regular supervision by the competent authorities of its State.¹⁸³ Accordingly, supervision and review require the establishment of suitable tools by the competent authorities of each Contracting State.

352. In a majority of cases, the Central Authority is designated as the competent authority.¹⁸⁴ Certain States have nonetheless chosen to designate a different competent authority to perform those duties.¹⁸⁵

353. Even if the Central Authority is not designated by the State as the competent authority in charge of supervision and review of accredited bodies, it remains nonetheless concerned with the effectiveness of the procedure for accreditation as part of its general obligations to “promote co-operation among the competent authorities” of its State and “eliminate any obstacles” to the operation of the Convention.¹⁸⁶ For those purposes, the Central Authority could organise working meetings with the accredited bodies on a regular basis, make occasional visits to those entities’ corporate offices, and also plan regular meetings with the authority that issues accreditation.

354. The role of the State of origin’s institutions in the supervision of foreign accredited bodies is also important: in authorising an accredited body to operate on its territory, a State of origin should evaluate each body on a regular basis and report its observations to the receiving State. If the circumstances require and the State of origin sees fit, it may suspend or cancel its authorisation and inform the receiving State and the accredited body.¹⁸⁷

8.3.2 Changes in composition of the accredited body

355. The accredited body should be bound to report to the competent authority any change occurring during its accreditation, and in particular changes in the personnel and officers.¹⁸⁸ The competent authority could provide forms for that purpose, in order to secure uniformity in filing of the information reported.

356. The purpose of that requirement is to ascertain whether the bodies continue to be “directed and staffed by persons qualified by their ethical standards” and having suitable training or experience to act in the field of intercountry adoption, together with the ability to perform properly the assignments that might be entrusted to them.¹⁸⁹

357. Thus, if the accredited body observes a problem on its board or among its staff, it should be required to inform the competent authority of it, and how it intends to resolve the problem.

8.3.3 Supervising the operation of accredited bodies

358. Various aspects of the operation of accredited bodies can be supervised by the States, in particular, the accredited bodies’ organisational and administrative operations. It is up to each State to define the means of securing that supervision. The competent authority should ascertain that the accredited body is able to perform its duties in a professional and honest manner.

¹⁸² See, for example, the practices of Quebec (Canada) and Italy, discussed in their respective responses to question No 15 of the 2009 Questionnaire.

¹⁸³ See Explanatory Report, *supra*, note 16, paras 263-264, and Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 4.

¹⁸⁴ See the responses to question No 18 of the 2009 Questionnaire.

¹⁸⁵ This is the practice in the United States of America, see response to question No 18 of the 2009 Questionnaire.

¹⁸⁶ Art. 7

¹⁸⁷ See ISS, “Accredited Adoption Bodies of Receiving States – AABs (II): Indispensable Conditions and Supervision of their Intervention”, *Fact Sheet*, No 39, July 2007 (hereinafter “ISS Fact Sheet No 39”), p. 2.

¹⁸⁸ This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire.

¹⁸⁹ Art. 11. of the Convention

359. In the context of Article 11, the act of supervision may include, but is not limited to, one or more of the following: regular meetings between the supervising authority and the accredited body,¹⁹⁰ reporting by the accredited body on its composition, operation and financial situation,¹⁹¹ or visits to the premises of the accredited body.¹⁹² The accrediting or supervising authority can impose any other necessary or desirable requirements which the accredited body must meet.¹⁹³

360. The following methods of supervision are recommended:

a) Reports

361. An effective system of supervision requires regular reporting by the accredited body. It was recommended at the Special Commission meetings of 2000 and 2005 that:

*Accredited bodies should be required to report annually to the competent authority concerning in particular the activities for which they were accredited.*¹⁹⁴

362. The production of annual reports should be a legal requirement in each State. That report should detail the body's activities and financial accounts and be delivered every year by the same date to the competent authority for analysis. States may impose criteria as to the contents and form of the report, and provide for action in the event of late delivery of that report, or of failure to produce it.

In order to secure more comprehensive supervision, there are other kinds of reports such as mission reports (from visits to different States), training reports, incident reports, and financial audits. Reports about the accredited body could also be sought from different sources (see Chapter 12.5: Co-operation among States of origin or "horizontal co-operation").

363. All the information provided by the accredited body to the Central Authority or the supervising authority should be recorded. In addition, the supervising authority should record and summarise its analysis. This information is essential for the future evaluation of any request by the accredited body to renew its accreditation or authorisation.

364. All the observations by the supervising authority should be entered in a register or report mentioning good practices as well as poor practices and also containing proposals to improve an accredited body's operation.¹⁹⁵ In addition, reports on procedural defects having occurred in the State of origin and in the receiving State should be prepared by the Central Authority of each State, for discussions between them, as necessary and appropriate. The report may lead to recommendations for improvements or demands for change which, if not complied with, could lead to the withdrawal of the accreditation.

b) Inspection

365. Several States provide for other forms of review, including the inspection of the accredited body's offices.¹⁹⁶

366. An inspection means that an inspector will enter the premises of an accredited body and may request or demand to see any document relating to the body's operations and

¹⁹⁰ This is the practice in some receiving States and State of origin. See, for example, the responses of Belgium (French and Flemish Communities), France, Germany, and Sweden to question No 34, and the response of Burkina Faso to question No 35, of the 2009 Questionnaire.

¹⁹¹ This is the practice in some receiving States. See, for example, the responses of Canada, Denmark, New Zealand, Norway, and Sweden to question No 34 of the 2009 Questionnaire.

¹⁹² This is the practice in some receiving States. See, for example, the responses of Belgium (French Community), France, and Sweden to question No 34, and Canada (Ontario and Quebec), Luxembourg, New Zealand, and Spain to question No 37, of the 2009 Questionnaire.

¹⁹³ In the United States of America, supervision of adoption accredited bodies is conducted in large part through a centralised complaints handling process administered by the Central Authority. In its response to question No 34, Italy notes a "complex computer network making it possible to conduct systematic online monitoring of the work of the agencies and the adoption procedures".

¹⁹⁴ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 4d.

¹⁹⁵ See Decree 97/2001 relating to the accreditation and operation of the international adoption bodies of Spain (Catalonia). See also practices noted in the responses of Belgium (Flemish Community), Canada (British Columbia), France, Germany, Luxembourg, and Sweden to question No 44 of the 2009 Questionnaire.

¹⁹⁶ See *supra*, note 192.

activities. For this reason, the procedure must be regulated by the laws of the State concerned so that each party knows and understands their rights and powers. To avoid being disruptive to the accredited body, an inspection should be used on an occasional basis only.¹⁹⁷

367. Inspections may assume several forms such as inspections following receipt of a complaint or report; and supervisory inspections, which may occur with or without notice.¹⁹⁸

368. The purpose of an inspection is to ascertain that the State's legislation is observed and that there are no irregularities in the body's operation. The inspection must be conducted by an inspector designated and authorised by the competent authority. The State determines the powers conferred on him or her, but an inspector must at least have the power to examine any document connected with the body's operations and activities, and may demand copies of such documents.

369. Another form of inspection that should be demanded by the competent authority is the financial audit, as suggested in Chapter 9.7.¹⁹⁹

c) Monitoring the accredited bodies' websites

370. The Central Authority (and the supervising authority, if different) should regularly check the websites of the accredited bodies to examine the quality, accuracy and currency of their information.²⁰⁰ Details of costs should be kept up to date, as should the information about States of origin where the accredited bodies are active. See Chapter 5.2.5: Limiting the number of accredited bodies authorised to act in States of origin (para. 195) regarding false claims made by an accredited body.

d) A mechanism for complaints

371. One element for a system of supervision could be to establish a system to receive and record complaints concerning accredited bodies. Prospective adoptive parents in particular may have a bad experience with an accredited body, such as misleading information, escalating costs, a lack of support in the State of origin. Individuals or authorities in the State of origin may also use the complaints mechanism, but the authorities in the State of origin should contact the receiving State's Central Authority directly when there are problems with an accredited body.

372. If prospective adoptive parents make a complaint about an accredited body, it will need to be investigated properly. The complaint may indicate a serious systemic problem.²⁰¹

e) Other forms of supervision

373. To supplement the inspections and reports, and as is already done in certain States, monitoring may be carried out in other forms by the competent authority, for example, by means of regular meetings with the accredited bodies (as a group or individually).²⁰²

374. The receiving States should also undertake missions or visits to assess the activities of accredited bodies in the State of origin and to understand the current situation of intercountry adoption there.²⁰³

¹⁹⁷ For example, in Belgium (French Community), the Central Authority has the power to conduct an annual inspection. See response to question No 34 of the 2009 Questionnaire.

¹⁹⁸ For an example of these various forms, see the response of the United States of America to question No 34 of the 2009 Questionnaire.

¹⁹⁹ In New Zealand, in addition to the requirement for financial reports to be audited, adoption agencies are subjected to a separate audit conducted by the Central Authority. See response to the 2009 Questionnaire (particularly question No 48).

²⁰⁰ For example, New Zealand, where websites are checked as part of an annual audit conducted by the Central Authority. As website content, the Italian Central Authority promotes initiatives to ensure that the websites of adoption accredited agencies are designed to specific standards to make them homogenous. See response to question No 46 of the 2009 Questionnaire.

²⁰¹ See Chapter 11.1.4 of this Guide (Eligibility and suitability of the prospective adoptive parents).

²⁰² See *supra*, note 190.

²⁰³ See responses of Denmark and Sweden to question No 35 of the 2009 Questionnaire.

f) *Reporting to the State of origin*

375. The authorities of the State of origin should, to the extent possible with its available resources, maintain some monitoring and supervision of foreign accredited bodies.²⁰⁴ This may be achieved on a regular basis through Central Authority involvement in reviewing the dossiers of the prospective adoptive parents and through the matching process. It may also be achieved through a system of licensing the representatives of the foreign accredited bodies. When foreign accredited bodies have an office in the State of origin, supervision of the kind conducted in the receiving State is desirable.

376. As a State of origin is placing a great deal of trust in an accredited body to act in the best interests of the children of that State, a foreign accredited body that is authorised to act in the State of origin should be accountable for its activities to the authorities in that State. Ideally, the State of origin will have some criteria for authorising foreign accredited bodies to perform adoptions. One criterion should be a requirement for the accredited body to report on its activities. The State of origin should be entitled at least to receive the annual report that the accredited body submits to its own accrediting authority. As part of its co-responsibility for accredited bodies, the authorities in the State of origin should inform the Central Authorities of the receiving States of the positive and negative aspects of their accredited bodies' activities.²⁰⁵ This is essential information for the procedure of re-accreditation or to maintain accreditation, as provided for in Article 10. Receiving States should make every effort to obtain this information before granting a renewal of the accreditation or authorisation.

377. There are a number of ways to get this information. For example, the receiving State could develop a questionnaire on the activities and performance of its accredited bodies, for the State of origin to complete.²⁰⁶ The receiving State might also ask its Embassies or diplomatic representatives to provide reports from the State of origin in question. The prospective adoptive parents could also be asked by their Central Authority to complete a questionnaire upon return to their home country, or when they apply for their child's visa.

378. A survey of the adoptive parents' experiences with their accredited body, both in the receiving State and in the State of origin could be beneficial. This might be co-ordinated between the two States concerned when considering future co-operation.

8.3.4 Financial situation of accredited bodies

379. A major element in the monitoring of accredited bodies consists of reviewing their financial situation. Non-profit objectives are one of the criteria for accreditation of a body, as required by Article 11 *a)* of the Convention. This very specific criterion justifies heightened financial supervision, and Articles 8 and 32 of the Convention specify the aspects to which the supervision must relate:

- improper gains (whether financial or material);
- the collection of reasonable fees;
- reasonable compensation for members of the accredited bodies in relation to services rendered.

380. The competent authority should require an annual financial report. Various other methods should be contemplated to secure compliance with this requirement, *e.g.*, the production of the report is one condition to obtain and maintain accreditation. These issues are considered in more detail in Chapter 9 (The costs of intercountry adoption: transparency and accountability of accredited bodies).

²⁰⁴ See, for example, the responses of Brazil, Burkina Faso, Chile, and Lithuania to question No 34 of the 2009 Questionnaire.

²⁰⁵ See, for example, the practices of the Central Authorities in Denmark and France, referred to in their respective responses to question No 35 of the 2009 Questionnaire.

²⁰⁶ See A Discussion Paper on Accreditation Issues, *supra*, note 2, p. 14.

8.3.5 Restrictions may be imposed on accredited bodies

381. In order to protect the child's best interests and meet the objects of the Convention, States may impose restrictions on accredited bodies. Some examples are:

- limit on the number of States where the accredited body may work;
- limitation of the number of registrations of prospective adoptive parents:
 - a) when accreditation is granted to a body pursuant to in-depth evaluation, one way of reducing the pressure on the States of origin is to restrict the number of registrations of prospective adoptive parents at the beginning of operations, and to increase it gradually depending on the need and quality of the adoptions;²⁰⁷
 - b) the accredited body is responsible for accepting only the number of registrations of adoptive parents that will allow for a reasonable waiting period to complete the adoptions;²⁰⁸
- a ban on advertising on the body's website about particular children;²⁰⁹
- a ban on disclosure of information relating to adoptable children;²¹⁰
- suspension of registrations owing to exceptional situations in the State of origin that do not affect the standing of the accredited body.

8.3.6 Sanctions for breach of conditions

382. Once the accreditation and authorisation have been obtained, the accredited bodies are required to comply with the statutes and regulations governing adoption both in the receiving State and in the State of origin. They are also required to comply with the principles and obligations of the 1993 Hague Convention, as well as any other relevant statute and regulation connected with the process of intercountry adoption. In addition, they must comply at all times with the conditions required for the grant of their accreditation and the restrictions that have been imposed on them, if any.

383. For the regulation of an accreditation to be effective, it is important that each State sets up a system of sanctions within its own implementing legislation. It is recommended that a progressive system of sanctions be established. For instance, if the annual report is not provided, fines could be imposed; but if the body fails to fulfil its obligations to prospective adoptive parents or commits a serious offence, its accreditation may be suspended or withdrawn.

a) *Cautions, fines or penalties*

384. Each State may take any action it considers fit for a breach of conditions, such as failure to produce a report, failure to provide updated information, refusal to make necessary changes, poor practices, or refusal of an audit. Any breach, however slight, may be sanctioned by cautions, fines or penalties. For example, in Italy, the sanction of "official reproach" is used. If an accredited body receives several official reproaches, its authorisation to work in a State of origin can be withdrawn.²¹¹ In the United States of America, if an accredited body falls out of substantial compliance with US accreditation regulations, the accrediting entity must take the appropriate "adverse action". Adverse actions include requiring an accredited body or approved (non-accredited) person to take

²⁰⁷ Quebec (Canada) restricts new accredited bodies, and existing bodies dealing with a new State, to five adoptions. Before that restriction is lifted, the first adoptions are evaluated in collaboration with the prospective adoptive parents, the body and Central Authority.

²⁰⁸ See, for example, the Code of ethics of international-adoption accredited bodies of Quebec (Canada), available at < <http://publications.msss.gouv.qc.ca/acrobat/f/documentation/2000/00-116-2.pdf> >. See also the practice of the Netherlands to limit applications discussed in Chapter 13.5.7 of this Guide.

²⁰⁹ See, for example, the responses of Belgium (Flemish Community), Brazil, Norway, and Spain to question No 42 of the 2009 Questionnaire.

²¹⁰ See, for example, the responses of Belgium (French Community), Canada (British Columbia), and Denmark to question No 42 of the 2009 Questionnaire.

²¹¹ See response of Italy to question No 39 of the 2009 Questionnaire.

a specific corrective action to bring itself into compliance, suspending or cancelling accreditation or approval; and refusing to renew accreditation or approval.²¹²

385. States of origin should have access to information about sanctions applied to an accredited body in a receiving State, as the State of origin may have to reconsider its relationship with that body. Co-operation is needed between the State of origin and the receiving State to plan how to deal with the cases that were managed by the accredited body in question if an accreditation or authorisation is to be withdrawn.

b) Withdrawal or suspension of an accreditation

386. Withdrawal of accreditation ought to be contemplated only in the event of very serious misconduct by the body. Depending on the misconduct, the accredited body may be cautioned beforehand. Withdrawal should be justified if the body does not meet the conditions required in the receiving State or the State of origin, or if warranted by the child's best interests, or for any other reason deemed essential by the competent authority.

387. If the competent authority decides to withdraw an accreditation, a strict procedure should be followed, such as notification in writing to the body of intention to withdraw the accreditation, with the possibility for the accredited body, before withdrawal occurs, to state its case against the withdrawal.²¹³ In addition, provision should be made for the opportunity to appeal against any decision connected with withdrawal or suspension of an accreditation.²¹⁴

388. In less serious cases, suspension may be contemplated, *i.e.*, temporary suspension of the accreditation and setting of a period for the body to remedy the irregularities with which it is charged.²¹⁵ On the other hand, upon expiry of the period, if the body has not responded favourably to the competent authority's demands, the accreditation should be withdrawn.

389. A new application for accreditation made by a body whose accreditation has been withdrawn or which has previously been denied accreditation, may be problematic: if accreditation were granted in these circumstances, this could damage the Central Authority's reputation, as the accredited body's name is always associated with the Central Authority through the delegation of functions. Of course, it may not be possible to refuse accreditation to a body which meets the legal standards and requirements of a particular State, but the actual need for more accredited bodies in that State could be an important factor when considering a request for accreditation or authorisation.²¹⁶

390. A State of origin is entitled to know the accredited body's history, including any sanctions applied to it, so as to make an informed decision about its possible authorisation to work in that State.

8.4 Renewal of accreditation

8.4.1 Conditions for renewal of accreditation

391. Article 10 refers to the granting and maintenance of accreditation. To maintain its accreditation, and to be eligible for re-accreditation when the current grant is due to expire, the accredited body must demonstrate its continued competence in intercountry adoption.

²¹² See the response of the United States of America to question No 39 of the 2009 Questionnaire.

²¹³ See, for example, the response of Spain to question No 39 of the 2009 Questionnaire. See also the legislation of New Zealand (*Adoption (Intercountry) Act 1997*, subsections 19(1)-(3)). A similar practice is incorporated into the authorisation process for foreign accredited bodies in the Philippines. See the Implementing Rules and Regulations on Inter-Country Adoption (RA 8043), Art. VII.

²¹⁴ See, for example, the legislation of Sweden (Intercountry Adoption Intermediation Act (number 1997:192), section 14).

²¹⁵ See, for example, the responses of Canada (Quebec) and Sweden to question No 39 of the 2009 Questionnaire. A similar practice is incorporated into the authorization process for foreign accredited bodies in the Philippines. See the Implementing Rules and Regulations on Inter-Country Adoption (RA 8043), Art. VII.

²¹⁶ See the practice of Sweden in Chapter 13.6 of this Guide.

392. It is recommended that the review or the re-accreditation of accredited bodies should be carried out periodically by the competent authority.²¹⁷

393. The application for renewal of accreditation should be forwarded to the competent authority in reasonable time before expiry of the current accreditation.

394. A special form for this purpose could be developed by the competent authority. The conditions for renewal of accreditation should be similar to those relating to the original application for accreditation.²¹⁸ The body is bound to provide any documents and information requested by the competent authority within the period required.

395. Before renewing an accreditation, the competent authority should evaluate the work and abilities demonstrated by the body during the previous accreditation. The evaluation should include a review of the body's past history such as good practice or complaints received, compliance with the administrative rules specific to each State, the relations with the Central Authority and reports of its work in the State of origin.²¹⁹

8.4.2 Conditions for renewal of an authorisation

396. When the renewal of an accreditation is being considered, this is the appropriate time to examine the need for renewal of an authorisation.

397. As a matter of good practice, the receiving State should consult the authorities of the State of origin to obtain information on the quality and professionalism of the accredited body's activities as demonstrated by the body during the previous period of authorisation. This is also the appropriate time to evaluate again the needs of the State of origin for intercountry adoption in general, and for the services of this accredited body in particular, in order to justify the extension of an authorisation.²²⁰

8.4.3 Duration of the renewal of accreditation

398. As for the first accreditation, the renewal of an accreditation should be granted for a specific duration.²²¹

399. The competent authority may decide to renew the accreditation for a briefer period if the body is deficient in certain respects *e.g.*, if the body does not meet all the conditions for renewal, or if the body has been in default during its previous accreditation, but these defaults do not justify withdrawal of the accreditation. The purpose is to enable the body to take remedial action. This approach enables the competent authority to perform closer monitoring and to re-evaluate the accredited body's position.

8.4.4 Refusal of renewal

400. Any application for renewal of accreditation may also be denied if the competent authority observes, in particular, that the initial requirements are no longer met; if the body's operations no longer comply with the principles and rules under the Convention and the legislations of the receiving State and State of origin; or if the body has already been given several opportunities to remedy its shortcomings and has failed to do so.²²²

401. In the event that the renewal of an accreditation is refused, the competent authority should have arrangements in place to manage or transfer the files, both active and completed.²²³ Depending on the reasons for not renewing the accreditation, the body may be given a reasonable period of time to enable it to complete some procedures. See

²¹⁷ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 4e.

²¹⁸ See, in general, the State responses to question No 22 of the 2009 Questionnaire

²¹⁹ See, for example, the responses of Canada (Ontario) and New Zealand to question No 36 of the 2009 Questionnaire.

²²⁰ In Colombia, the competent authority (ICBF) reviews the performance of accredited foreign adoption bodies against the evaluation criteria every two years as part of the accreditation renewal process. See, in general, the response of Colombia to the 2009 Questionnaire.

²²¹ This practice is adopted in a number of receiving States. See, for example, the responses of Belgium, Canada, Norway, Spain, and Switzerland to question No 21 of the 2009 Questionnaire.

²²² See, in general, the State responses to question No 22 of the 2009 Questionnaire.

²²³ In Italy, the Central Authority takes charge of the files.

also Chapter 7.9 (Procedure for handling of files in case of discontinuation of the services of the adoption accredited body).

SUMMARY OF GOOD PRACTICES

Accreditation

402. Each Contracting State with accredited bodies ought to apply the same standards and criteria for their accreditation to maintain consistency in their operations.

403. When seeking accreditation, the accredited body must be able to demonstrate that it meets the requirements for accreditation, that it has ethical standards and professional abilities, as well as a commitment to ensure protection of the child's best interests, and the interests of adoptive families and biological families.

404. It is recommended to issue accreditation for a specific period, preferably about three years in order to secure a measure of continuity and to reduce the administrative work connected with the renewal of accreditation.

405. States should avoid the practice of automatic extension of accreditation. Automatic extension is not considered appropriate or adequate for the supervision and review of accredited bodies and for their accountability. The same principles should apply to the extension of an authorisation.

406. The grant of accreditation should be for a specific named body and it should mention the duration of its validity and, if appropriate, any related conditions, restrictions or prohibitions. An accreditation should not be transferable. If the legal identity of the accredited body changes, the new entity will need a new accreditation.

Supervision

407. Each body should be subject to regular supervision by the competent authorities of its State. Rules will be needed to specify how this function will be conducted and who will be responsible for it. The State should allocate the resources necessary to perform these functions.

408. If the Central Authority is not designated as the supervising authority, it still remains concerned with the effectiveness of the procedure for accreditation as part of its general obligations to "promote co-operation among the competent authorities" of its State and to "eliminate any obstacles" to the operation of the Convention.

409. The competent authority ought also, where necessary and appropriate, to provide the accredited bodies with the best possible professional support in connection with their duties, including training on how to apply the 1993 Hague Convention.

410. The act of supervision may include, but is not limited to: regular meetings between the supervising authority and the accredited body, reporting by the accredited body on its composition, activities and financial situation, or visits to the premises of the accredited body (para. 290). If possible, there should be visits to assess the activities of accredited bodies in the State of origin and to understand the current situation of intercountry adoption there.

411. The Central Authority (and the supervising authority, if different) should regularly check the websites of the accredited bodies to examine the quality, accuracy and currency of their information.

412. The supervising authority should establish a system to receive and record complaints concerning accredited bodies. The investigation of complaints may uncover weaknesses in the system that must be rectified.

413. It is recommended that a progressive system of sanctions be established for breach of conditions. Mild sanctions might be imposed for less serious breaches. Severe sanctions such as withdrawal of accreditation ought to be contemplated in the event of serious misconduct by the body.

414. The State of origin has an important role in the supervision of foreign accredited bodies on its territory. This should be done to the greatest extent possible within available resources.

415. The prohibition on improper gains (whether financial or material) and the non-profit objective are serious safeguards in the Convention which justify heightened financial supervision of the accredited bodies.

Renewal of accreditation or authorisation

416. It is recommended that the review or the re-accreditation of accredited bodies should be carried out periodically by the competent authority.

417. An evaluation should include a review of the body's past history such as good practice or complaints received, compliance with the administrative rules specific to each State, the relations with the Central Authority and reports of its work in the State of origin.

418. Any application for renewal of accreditation may be denied if the accreditation requirements are no longer met. In a case where the renewal is refused, the competent authority should have arrangements in place to manage or transfer the files, both active and completed files.

419. For the renewal of an authorisation, the receiving State should consult the authorities of the State of origin about the quality and professionalism of the accredited body and about its needs for intercountry adoption, in order to justify the extension of an authorisation.

CHAPTER 9

THE COSTS OF INTERCOUNTRY ADOPTION: TRANSPARENCY AND ACCOUNTABILITY OF ACCREDITED BODIES

420. The question of money and its influence on intercountry adoption remains one of the most challenging issues of our times.

421. This chapter attempts to take a fresh look at costs of intercountry adoption and to present a possible model for the classification and calculation of these costs.²²⁴

422. This chapter builds on the recommendations made in the Guide to Good Practice No 1 in Chapter 5: Regulating the costs of intercountry adoption. In this chapter of Guide No 2 the issue of costs will be related to accredited bodies and how they can achieve transparency and accountability. The general principles of non-profit objectives and prevention of improper financial gain are discussed in Chapters 3.2.2 and 3.2.3 of this Guide.

9.1 Concerns about costs

423. Owing to the pressure applied by receiving States on States of origin²²⁵ for the allocation of children, the influence exercised by certain accredited bodies, and the growing demand for children, some accredited bodies have on occasion been able to "jump the queue" to obtain more speedy or favourable allocations of children ahead of other waiting prospective adoptive parents. Many practices result in a situation of unhealthy competition among States, and also among accredited bodies. The main parties injured by these practices are the children since they are frequently the first victims of that outbidding process. The problems of competition were noticed in 1993 when EurAdopt adopted ethical rules that serve as a guide for relations between intercountry adoption and money: Article 25 provides that "The adoption work should be carried out in such a way that competition for children or contacts should be avoided."²²⁶

424. It must be observed that there is still unease among the international community in using the word "competition" with respect to intercountry adoption. But as long as this issue is not approached candidly, everyone will be complicit in allowing such bargaining situations to continue.²²⁷

425. The States of origin have expressed particular concerns about the apparent lack of control by receiving States of the charges made by their accredited bodies. For example, States of origin have reported that some accredited bodies charge for work that is actually done for free by the Central Authority in the State of origin.²²⁸

426. One solution is for a State of origin to publish (on its website or by informing Central Authorities and accredited bodies) its actual costs (fixed or known fees and costs of the Central Authority and other public bodies) and its estimated costs for services provided by others.²²⁹ Any services that are provided free of charge should be noted. At the same time, accredited bodies should be required to publish their real fees and costs, including the costs for each State of origin.²³⁰

²²⁴ The original ideas of this chapter were written by Claudel Tchokonté, MBA, consultant for the Quebec Central Authority, graduated, HEC Montréal. Lithuania, a State of origin, has indicated its intention to change its law to follow this model.

²²⁵ Examples of pressure are given at Chapter 12.3.1.

²²⁶ EurAdopt Ethical Rules, *supra*, note 39.

²²⁷ See the response of Quebec (Canada) to question No 10(8) of the 2005 Questionnaire.

²²⁸ In one case, an accredited body charged US\$3000 for matching that was actually done by the Central Authority. Another accredited body charged US\$7000 for humanitarian aid that was never carried out. When the State of origin raised these issues with the Central Authority of the receiving State it was told that accredited bodies are independent and may charge what they like.

²²⁹ See the practice of Colombia in Chapter 13.1.7 of this Guide.

²³⁰ See, in general, the State responses to question No 49 of the 2009 Questionnaire.

427. States of origin say that they do not know what is the normal practice for charging in the receiving States, nor do they know what is reasonable. The receiving State and the State of origin should, before granting any authorisations, begin their co-operation by an exchange of information on the real costs. The information should be published as widely as possible to achieve maximum transparency.

9.2 Convention obligations

428. The Contracting State and the Central Authority have a particular responsibility to regulate the costs of intercountry adoption by taking measures to prevent improper financial gain or other gain and to deter all practices contrary to the objects of the Convention.²³¹ All other entities involved in intercountry adoption, in particular adoption accredited bodies, have a responsibility to support and comply with any such measures.

429. The Hague Convention allows for the payment of professional fees and services rendered for intercountry adoption, and it refers specifically to bodies involved in an adoption. Article 32 provides that:

(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

430. According to that Article, the costs demanded by an accredited body in an intercountry adoption should be reasonable and not unreasonably high in relation to the services rendered. Those services, and the related costs, are connected with the steps taken in the receiving State and in the State of origin of the child to be adopted.

431. This chapter suggests some good practices that would allow creation of a framework determining what is reasonable, to boost improved collaboration between States, improved collaboration among accredited bodies, and healthy competition among them and the various service providers involved in the process of intercountry adoption. These practices would thereby favour improved control over the costs of intercountry adoption in the States of origin and the receiving States. The chapter is also accompanied by annexes highlighting various kinds of costs, presenting various sensitive situations or abuses, and suggesting a price-setting methodology.

9.3 Types of costs related to adoption accredited bodies

432. In order to better understand the costs connected with intercountry adoption and paid by prospective adoptive parents, it would be useful to classify them. For instance, they could be seen from the point of view of prospective adoptive parents and from the point of view of the accredited body.

433. From the point of view of prospective adoptive parents, costs can be divided into two main categories:

434. The first category would relate to the payment of adoption services to accredited bodies and would therefore include: (1) the cost of pre-adoption steps; (2) the cost of steps taken in the State of origin, including the costs for the child's medical record; (3) the cost of the prospective adoptive parents' travel and stay in the child's State of origin; and (4) post-adoption expenses.²³² The detailed contents of each class are set out in Annex A of this chapter. Many of these services can be carried out by adoption bodies, but this varies according to each State.

²³¹ See Art. 8: "Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention."

²³² This is the division based on the one made by the Central Authority of Quebec (Canada).

435. The second category would be related to the operational funding for intercountry adoptions in the State of origin and would include mainly contributions and donations made by the prospective adoptive parents to support child protection services (and indirectly, to guarantee the principle of subsidiarity of intercountry adoption) and some humanitarian aid projects (see also the Guide to Good Practice No 1 at Chapter 6, The national child care context and national adoption).

436. From the point of view of the accredited bodies, there are costs that must be met by accredited bodies and recovered from the fees paid by prospective adoptive parents in the above-mentioned categories. These costs consist of basic operating costs of the adoption body; fees of representatives and co-workers of the adoption body in the State of origin; and other costs of services (fees of professionals and co-workers who are not employees of the adoption body) and travel costs of accredited body staff for their work in the States of origin and in the receiving State. These costs are analysed in detail below.

437. The Central Authority of the receiving State ought to be able to determine, for each accredited body, the cost price of an adoption in a given State. The object is to determine what it costs for an accredited body to carry out an intercountry adoption in a given State. Thus it is the sum of all the costs borne to complete an adoption case. Accordingly, the accredited bodies ought to set out clearly:

- a) their overhead expenses – *i.e.*, the costs borne irrespective of the number of cases to be handled, such as salaries, rent, insurance costs, and
- b) their variable costs, which are those directly connected with the number of cases, such as translation costs.

438. Awareness of that cost price would allow the competent authority to ascertain that the administration and co-ordination charges demanded by accredited bodies are reasonable for a particular State. A practical example of a costing exercise is given in Annex B of this chapter.

9.3.1 Basic operating costs of the adoption body

439. Operating costs are the operating overheads or fixed costs of the accredited body. In other words, the costs that are assumed regardless of the body's volume of activity, such as the salaries of managers, professional staff and administrative staff, rent, insurance costs, office equipment and materials. These costs could also exist in the State of origin, if the accredited body has offices there.

440. As for a traditional business, the accredited body should follow sound management practices, based on a concern for effectiveness and efficiency. Owing to its business strategy, its operating costs could differ from a competitor's; however, the costs should be reasonable.

441. The Central Authority or supervising authority is responsible for ensuring that these costs are reasonable, and could provide accredited bodies with flags or indicators to guide them in developing their financial forecasts.

442. In order to fund themselves, the bodies could have recourse to four possible sources, as shown for example in the Italian model:²³³ (1) the costs for establishment of the case file required of prospective adoptive parents; (2) the annual fees collected from members of the accredited body; (3) subsidies;²³⁴ and (4) donations to the adoption body. See also Chapter 4.7 (Subsidies granted to accredited bodies).

443. As mentioned above, the amounts demanded of prospective adoptive parents ought to allow funding of the body's operation as well as funding of a financial reserve to meet its other financial obligations, such as financing humanitarian aid projects and other contributions. It is on the basis of all these elements (operating costs, financial obligations, subsidies), therefore, that the Central Authority ensures that the amounts demanded are reasonable.

²³³ See the response of Italy to question No 47 of the 2009 Questionnaire.

²³⁴ See *supra*, note 88.

9.3.2 Remuneration of representatives and co-workers of the adoption body in the State of origin

444. The Convention's rules about improper financial gain, and the level of professional fees and remuneration for accredited body staff are discussed at Chapter 9.2. The prohibition on improper financial gain is a general principle that applies to everyone, including representatives and co-workers. Similarly, the rules concerning reasonable fees (Art. 32(2)) apply any "persons involved in the adoption" such as representatives and co-workers. Therefore it is necessary to apply general ethical standards to develop good practices as to what is meant by "reasonable".

445. One example comes from Article 20 of the EurAdopt Ethical Rules which provides that:

*The organisation is responsible for the working methods of its representatives and co-workers. Representatives and co-workers who might influence the number of children placed for adoption should not be paid on a per case basis. The salary paid to representatives and co-workers by the organisation should be reasonable, taking into consideration the cost of living of the country as well as the scope and terms of the work undertaken.*²³⁵

446. As a matter of good practice, the accredited body's representatives and co-workers in the State of origin ought ideally to be salaried employees having a monthly remuneration and fully-fledged members of the accredited body's payroll, and not compensated on a per case basis. However, if the service provided is very irregular owing to the low volume of adoptions, payment on a case-by-case basis could be contemplated if it is beyond all reasonable doubt that the representative has no possibility to influence the number of adoptions. However, it is important to have the option to change the conditions in the agreement if the work situation changes.

447. The form of compensation should be a pre-determined annual salary, determined according to the tasks to be performed, the skills required and the local employment standards in force in the State of origin for similar positions.²³⁶ It is important, therefore, for the accredited body to have, for these classes of positions, information regarding the level of salaries, welfare cover, additional compensation, and refund policies for travel expenses (hotel, transport, meals).

448. The accredited body in the receiving State may be acting responsibly in paying the representative an appropriate local-level salary, but the same representative could be working for other accredited bodies, and receiving different amounts from them. The representative may favour the body which pays the most. Co-operation between accredited bodies from the same State or different States is encouraged when selecting and contracting representatives. In the contract of employment, the representative ought to declare with which other accredited bodies he / she is working, or intends to work.

449. In order to protect the integrity of intercountry adoption and to reduce risks of corruption, the salary offered to the representative could be a little higher than a local reference salary, within reasonable limits. The States parties to the Convention should agree upon a reasonable mark-up.

450. A salary-based form of compensation could minimise or eliminate potential situations where pressure is applied for the allocation of children. This kind of compensation could also favour the correct observance of waiting lists, without concern for money from "expediting fees" or similar inducements.

451. It is recommended that the receiving State and the State of origin co-operate and exchange information to determine what is a reasonable remuneration for the

²³⁵ See EurAdopt Ethical Rules, *supra*, note 39.

²³⁶ For example, the methodology of compensation of local staff of Canadian embassies and other diplomatic missions in a given country consists, first, of a classification of positions to be filled, then of a payroll enquiry conducted by a specialist firm, which checks and collates the data relating to salaries, holidays and welfare benefits provided by public and private local employers. These local comparables then allow determination of a level of compensation by position for that country.

representative and co-workers. Observance of these standards could become one of the criteria for the accredited body to obtain and maintain its accreditation.

9.3.3 Other costs of services (fees of professionals and co-workers who are not employees of the adoption body) and travel costs

452. The cost of services will include the fees of professionals (lawyers, notaries, doctors) and other co-workers (drivers, translators, interpreters) both in the receiving States and in the States of origin. It also includes travel costs of staff or other service providers.

453. In order to avoid monopolies and to obtain competitive and reasonable prices, the accredited bodies could identify and collaborate with more than one service provider by kind of service. By means of tender offers, for instance, they would have an opportunity to compare costs and to obtain the best value for each kind of service. The terms of collaboration with those professionals would then be forwarded to the Central Authorities of the receiving State and State of origin, at the time of the application for accreditation or renewal of accreditation, or the application for authorisation, as the case may be. That tender would be advantageously conducted on a regular basis to re-evaluate the costs and the quality of the service provided.

454. The level of fees should be determined by comparison with local applications requiring a similar type and amount of work.²³⁷ Accordingly, the fees should be consistent with the personal nature of adoption and not be treated in the same way as international business transactions. Humanitarian organisations, international non-profit organisations, and national professional bodies could be sources of references that would assist in setting the acceptable levels of compensation by State.

455. Legal advisers who represent the prospective adoptive parents should not also represent the child or the accredited body in the same proceedings. The contract binding the adviser to the accredited body should state this clearly.

456. As regards medical examinations or treatment, the accredited bodies should aim at the best quality standards at reasonable costs. The level of fees should be comparable to that demanded of local patients. However, specific requirements, such as fluency in a foreign language or the need to draw up certificates in writing according to international standards, could justify higher fees.

457. If the legislation and adoption procedures of both the receiving State and the State of origin so allow, translation of documents could be carried out where it is cheaper and of good quality.

458. As with the remuneration for representatives, it is recommended that the receiving State and the State of origin co-operate and exchange information to determine what is an appropriate range of fees for different types of professional services.

9.4 Transparency of costs

459. In order to achieve transparency, the amount of the costs for each service should be fixed and notified in advance to prospective adoptive parents.²³⁸ Therefore, each accredited body should disclose details of the costs of adoption for each of the States for which it is accredited and authorised to work.²³⁹ This will be possible using the models proposed in Annex B of this chapter. This information might also help the prospective

²³⁷ See, for example, EurAdopt Ethical Rules, *supra*, note 39, Art. 21 of the: “Fees charged to the organisation by professionals should be commensurate with the work carried out.”

²³⁸ This principle is based on the Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 10 in relation to financial contributions not connected with the actual costs of an adoption when required. See, in general, the State responses to questions Nos 48 and 49 of the 2009 Questionnaire. In some States, fees are set by the accredited adoption bodies alone (for example, Finland, Germany, New Zealand, Norway, Portugal, and United States of America), or with the approval of the competent authority (for example, Belgium (Flemish Community), Canada (British Columbia), and Switzerland). In other States, fees are set by the competent authority in consultation with the accredited adoption bodies (for example, Canada (Manitoba), and Italy).

²³⁹ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 8. See also State responses to question No 50 of the 2009 Questionnaire.

adoptive parent to make an informed decision regarding their choice of an accredited body to assist them.

460. Each accredited body should also publicise the detailed offer of services rendered by professionals, both in the receiving State and in the State of origin, taking care to state the nature of the service, the professional in charge, and the cost.²⁴⁰ The advantage of this practice would be to encourage consistency among the various service providers, based on the quality of service and not on a mere financial bidding process. This would have the further benefit of enabling the Central Authority to better evaluate the accredited bodies' performance in relation to the real mission of intercountry adoption.

461. The Central Authority of each State should make public all the costs of adoption by accredited body and by State. Colombia²⁴¹ is a good example in this respect, as the Central Authority publishes on its website the detailed costs of foreign accredited bodies, regardless of origin. Copies of agreements on fees and contributions paid by the foreign accredited bodies in the State of origin should be presented to the Central Authorities in both the receiving State and the State of origin.

462. The prospective adoptive parents should be able to know in a detailed and fully transparent manner the amounts that are directly connected with the intercountry adoption, and contributions or donations that are meant for supporting child protection services and humanitarian aid programmes.

463. Achieving transparency in costs is an important goal of co-operation between States. States of origin are keen to see more public information given about costs in both States of origin and receiving States, as they fear that some accredited bodies misrepresent to prospective adoptive parents the real costs in the State of origin.²⁴² Prospective adoptive parents want more public information about costs because they want to know that they are paying reasonable costs for services provided and not inflated costs.

9.5 Payment of costs

464. Accredited bodies should also be seeking the best possible costs for the prospective adoptive parents. For that purpose, all the expenses involved in the adoption should, insofar as possible, be incurred mainly through the accredited body. The advantage of this approach is that it confers on, and concentrates some bargaining power with, the accredited body, enabling it to negotiate reasonable prices for the professional services to be provided, both in the receiving State and in the State of origin, such as the prospective adoptive parents' accommodation and travel costs, the costs of lawyers and notaries, translation fees.

465. Thus, the prospective adoptive parents should not pay anything to a third party directly.²⁴³ All costs and other expenses involved in the adoption procedure should be included in the amount that the prospective adoptive parents pay to the adoption accredited body. This includes remuneration for representatives, lawyers and interpreters in the State of origin. Everything should be paid directly by the accredited body to the State of origin and not by the prospective adoptive parents when they travel to the State of origin. If that practice were to be mandatory for all expenses incurred abroad, it should also be so in the receiving State, in compliance with the statutory and administrative requirements. Prospective adoptive parents must be informed of the risks and strongly discouraged from paying anything at all directly in the State of origin (except for accommodation and some transports). If they are asked to pay anything extra connected with the adoption procedure, they should immediately report it to the

²⁴⁰ This detail may be set out in the contract or agreement that some State required adoption accredited bodies to sign with prospective adoptive parents. See the State responses to question No 14 of the 2009 Questionnaire.

²⁴¹ See the response of Colombia to question No 49 of the 2009 Questionnaire. This practice is further discussed in Chapter 13.1.7 of this Guide.

²⁴² See, for example, the responses of Burkina Faso and Colombia to question No 55 of the 2009 Questionnaire.

²⁴³ See, for example, the trust account system used in Ontario, which is described in the response of Canada to question No 51 of the 2009 Questionnaire. A similar system is implemented in Quebec.

legal representative of their accredited body, or the Central Authority in the State of origin. They should also report it to their accredited body in the receiving State.

466. Transfers of funds between the accredited bodies and prospective adoptive parents, or between accredited bodies and domestic and foreign service providers, should always be carried out in a manner allowing them to be traced (preferably it should be made by a transaction which is recorded and accounted for).

467. Any expense connected with the adoption process should be accompanied by supporting evidence for the prospective adoptive parents. The accounting format used by the accredited body should also allow for such documents to be archived and easily accessible for auditing and other purposes.

468. All these practices would favour healthy competition for services in order to minimise the costs for prospective adoptive parents while ensuring that the services provided by the various parties involved in the process are of the best possible quality.

9.6 Reasonable costs

469. In matters of intercountry adoption, the accredited bodies may have different strategies with respect to services, *i.e.*, based on different competitive advantages. These advantages could be, for instance, a variable range of services, a more or less elaborate customer approach, enabling one accredited body to stand out from the others, resulting overall in different costs. The Central Authority should, however, retain responsibility for evaluating whether the costs demanded are reasonable. And what is reasonable is not necessarily the least costly.

470. In order to define what is reasonable, the Central Authorities of receiving States should be aware of the following costs. It is up to the accredited bodies to have that information and provide it to the Central Authority at the time of the application for accreditation or extension of accreditation:

- the cost price of an intercountry adoption in a given State of origin;
- the salaries prevailing there, both for local staff and for foreigners, including supplements based on custom (such as particular holidays and welfare benefits) or required by law;
- the fees paid to professionals for services provided in the States of origin similar to those required for a national adoption case.

471. Some States of origin declare that in their country "adoption is without cost". This could be very misleading and such States should clarify which parts of the process are without cost. As adoption work is a professional service that requires professional charges, it may be difficult to say that any country has a cost-free system.

472. It is understandable that accredited bodies charge costs in excess of the cost price, as the margin so generated will allow them to set up a financial reserve required for their financial soundness and to fund the various humanitarian aid programmes to which they may be required to contribute. The Central Authority should ensure, however, that this margin is reasonable. See Annex B for the calculation of a reasonable margin. Having regard to their legal form as non-profit entities, the profits so made should be reinvested in order to improve the provision of services or increase the involvement in non-adoption related humanitarian aid projects (see Chapter 12.4).

473. In the specific case of professional services provided in the State of origin, it would be important not to treat them in the same way as services provided in the area of international business, and to ensure that the fees are consistent with the personal nature of adoption. The accredited body ought therefore to submit to the Central Authority its information about comparable costs for similar services in a given State of origin.

474. In order to better circumscribe the costs in intercountry adoption, the Central Authority, in collaboration with the accredited bodies, should where possible set the minimum and maximum amount for each kind of cost, according to the macro-economic data in the receiving State and State of origin (in particular the gross domestic product

(GDP) per capita, average salary per class of employment).²⁴⁴ At the time of the application for accreditation or renewal, the accredited body should demonstrate that it has that information and has included it in its presentation of the costs of intercountry adoption. The main advantage of that practice would be to favour a reduction of potential situations of improper gain.

475. The total costs that are to be met by accredited bodies and that they must recover from the fees of prospective adoptive parents consist of basic operating costs of the accredited body; remuneration of representatives and co-workers of the adoption body in the State of origin; and other costs of services (fees of professionals and co-workers who are not employees of the adoption body) and travel costs of accredited body staff.

476. The Central Authority in the receiving State will need to be more proactive in obtaining information from the State of origin and accredited bodies about costs, and setting guidelines for reasonable costs and fees.²⁴⁵ Prospective adoptive parents should have easy access to the guidelines to compare with charges imposed by their accredited body.

9.7 Accountability of bodies and control of costs

477. The accredited bodies' accountability for its activities (including financial activity) will be reflected in the requirement of disclosure to the Central Authority, regarding the manner of performance of their duties, any problems arising and the action taken to deal with problems. A principle of accountability is discussed at Chapter 3.2.5, and Chapter 8.3: Monitoring and supervision of accredited bodies, discusses possible actions to be taken when an accredited body breaches the conditions of its accreditation.

478. The annual report should be the preferred means for that disclosure. It should include financial statements checked by an independent auditor and all the relevant information in connection with the latest year of operation, such as major changes and exceptional events.²⁴⁶

479. The effective review of costs is a crucially important aspect of accountability. An effective review should involve an accounting and financial audit²⁴⁷ (the modern form of review, checking, inspection, and supervision of accounts). The Central Authority of the receiving State could, as part of its supervisory responsibilities, require regular audits of accredited bodies in order better to evaluate their real financial ability to carry out intercountry adoptions.²⁴⁸

480. On the basis of the cost-benefit analysis, the cost of the audit should not exceed its expected benefits. Accordingly, below a certain level of income for the body, the Central Authority could decide to accept the filing of unaudited financial statements. However, such statements should be carefully scrutinised.

481. Audits should be conducted by an independent expert designated by the Central Authority. That independence would secure objectivity and neutrality in the conduct of

²⁴⁴ In Manitoba (Canada) and Italy, the competent authorities impose a cap on the amount and type of fees that an adoption accredited body may charge. See responses to question No 48 of the 2009 Questionnaire. In Manitoba, these caps are set out in Schedule A to Adoption Regulation 19/99.

²⁴⁵ In Italy, costs incurred in the State of origin (including procedural costs and operating costs) are set by the competent authority. Alternatively, in Belgium (French Community), these costs are, where possible, fixed by common agreement with the relevant authorities in the State of origin and/or local partners before adoption arrangements with that State are finalised. See the respective responses to question No 48 of the 2009 Questionnaire.

²⁴⁶ As stated in Chapter 7 in this Guide, a copy of the body's financial report should be provided annually. See *supra*, note 158. As for the requirement to submit financial reports to independent auditors, see examples at *supra*, note 157.

²⁴⁷ This is an examination of the accredited body's financial statements, designed to check their accuracy, regularity, compliance and capacity to provide a fair reflection of the body. This examination is performed by an independent professional known as an "auditor".

²⁴⁸ For an example of the practice of carrying out audit by the Central Authorities, see the responses of New Zealand to question No 11, of Germany to question No 34, and of Denmark, Luxembourg, and United States to question No 51 of the 2009 Questionnaire. In other States, it is the responsibility of adoption accredited bodies to arrange for audits to be conducted by certified auditors (see examples at *supra*, note 157) or "independent" auditors (see, for example, the responses of Canada (British Columbia, Manitoba and Quebec) to question No 34, and of Spain to question No 51 of the 2009 Questionnaire).

such audits. Reasonable prior notice could be given to the accredited body subjected to an audit. Ideally, that audit ought to be conducted at least once during the period of the body's accreditation, and according to certain factors such as its size, its volume of operation, its income, and the number of States of origin with which it is authorised to work.

482. Thus, the Central Authority could provide an accounting format²⁴⁹ that could be observed by all the bodies. That proposal would allow the keeping of identical books, and especially uniform presentation of the financial information, which would be very useful for purposes of comparison, one year with another, one body with another, one State of origin with another.²⁵⁰

9.8 Contributions and donations²⁵¹ made through adoption bodies

483. Contributions and donations in general are examined under Chapters 5.4 and 5.5 of the Guide to Good Practice No 1. Contributions for humanitarian projects are discussed in Chapter 12.3 of this Guide. The following recommendations are emphasised:

*Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment. However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or creates a dependency on income deriving from intercountry adoption. In addition, decisions concerning the placement of children for intercountry adoption should not be influenced by levels of payment or contribution. These should have no bearing on the possibility of a child being made available, nor on the age, health or any characteristic of the child to be adopted.*²⁵²

*Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made.*²⁵³

484. In the area of intercountry adoption, certain amounts are sometimes paid by prospective adoptive parents to accredited bodies without being directly connected to a service rendered in connection with the adoption procedure. Such amounts may be divided into three categories:

- mandatory contributions demanded by the State of origin, which are either connected with the adoption or intended for child protection services and / or humanitarian aid projects;
- contributions demanded by the accredited body, which are usually intended for orphanages. However, direct payments to orphanages are not consistent with ethical adoption procedures. The payments may be in the form of maintenance charges, participation in child protection programmes or humanitarian aid projects;

²⁴⁹ An accounting format is a set of rules for valuation and the keeping of records or accounts. Book-keeping may be manual or computerised.

²⁵⁰ In Italy, adoption accredited bodies are required to draft accounts according to current legal requirements as well as the directives and circulars issued by the various authorities concerned. See response to question No 51 of the 2009 Questionnaire.

²⁵¹ As in the Guide to Good Practice No 1, *supra*, note 18 (paras 223 and 224), the term "contribution" will be used in this chapter to refer to an amount of money that is required by a State of origin when the application for adoption is made. The contribution may be a fixed amount, paid directly to the authorities of the State of origin. In this context it is usually a compulsory contribution which is intended to support the development of child protection or adoption services. The requirement is therefore also quite transparent. Contributions which meet the requirements of transparency and accountability were, in principle, approved by the 2000 Special Commission.

The term "donation" is used to mean an amount that may be offered by or sought from parents before or after the adoption takes place. It may be offered or sought privately and the amount is not known to others. It may be required in order to "facilitate" the adoption. In this sense, donations which are not transparent and not recorded, and which are intended to facilitate an adoption are improper. Donations which do not influence the adoption outcome and which are transparent, recorded and properly accounted for, are an acceptable feature of intercountry adoption.

²⁵² See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 10.

²⁵³ *Ibid.*, *supra*, note 28, Recommendation No 9.

- donations, which are voluntary contributions by the prospective adoptive parents, by way of support for child-protection programmes or humanitarian-aid projects. These are usually paid to the orphanage or institution connected to their adopted child.

485. With a view to transparency, such amounts should be clearly distinguished in the breakdown of costs, if applicable.²⁵⁴

486. In the special case of mandatory contributions demanded by a State of origin, the amount should be fixed and identical for all receiving States working in that State of origin, and should be an integral part of the cost of an intercountry adoption where the contribution is connected with the adoption.

487. Where a State of origin demands maintenance charges for a child in an institution, they should be set by the Central Authority of the State of origin, and not by the orphanages or nurseries themselves. That would help prevent solicitation or bribery to expedite the adoption.

488. In the specific case of contributions demanded by the accredited bodies, they should be determined in collaboration with the receiving State's Central Authority. A method for calculation of reasonable limits, including a floor and a cap, could be suggested to them.

489. In the specific case of donations, the parents ought not to be solicited during the adoption process, as donations ought not to have any influence on the allocation of children.²⁵⁵ This would avoid potential "one-upmanship" or seeking an advantage over other adopters. As a matter of good practice, they should only be paid after the adoption is completed.²⁵⁶

490. In accordance with the spirit of the recommendations mentioned at the beginning of this chapter, it would be useful for the Central Authorities in the States of origin to determine the amount of the prospective adoptive parents' financial contribution to child protection programmes. The amount could be paid directly to the accredited body with which the prospective adoptive parent is registered. The accredited body would then pay that amount to the Central Authority or competent authority of the State of origin. A strictly regulated procedure is necessary in the State of origin so that the money paid is used for child protection programmes and not lost in general revenue.

491. This practice would avoid any need for the prospective adoptive parents to travel with large sums of money, and it would secure the recommended traceability.

492. As a matter of good practice, and to foster mutual confidence between States, the State of origin which has received humanitarian aid contributions from intercountry adoptions should report on the status of programmes of child protection which are financed by intercountry adoption contributions from receiving States.

²⁵⁴ In Canada (Quebec), donations originating from prospective adoptive parents are accounted for through the trust account mechanism. See response to question No 52 of the 2009 Questionnaire.

²⁵⁵ See Report of the 2000 Special Commission, *supra*, note 28, Recommendation No 9.

²⁵⁶ For example, in France and Italy, donations are made once the adoption is complete. See the responses of Italy and France to question No 52 of the 2009 Questionnaire.

SUMMARY OF GOOD PRACTICES FOR ALL STATES

493. Transparency in costs should be a goal of all States to ensure that costs are reasonable, and that improper financial gain and profiteering are prevented or penalised.

494. Central Authorities in receiving States and States of origin should share information about the real costs and the estimated costs of conducting adoptions in their State to assist in determining whether the fees charged by accredited bodies and others are reasonable.

495. The receiving State and the State of origin should, before granting any authorisations, begin their co-operation by an exchange of information on the real costs. The information should be published as widely as possible to achieve maximum transparency.

496. It is recommended that the receiving State and the State of origin co-operate and exchange information to determine what is a reasonable remuneration for the representative and co-workers as well as for services of professionals. Observance of these standards could become one of the criteria for the accredited body to obtain and maintain its accreditation.

497. Employees of accredited bodies, including representatives and co-workers in the State of origin, should as far as possible be remunerated by a fixed salary and not on a case-by-case basis. Remuneration should be reasonable and calculated by reference to the employee's qualifications and duties as well as the need to promote the integrity of intercountry adoption personnel.

498. Professional fees, *e.g.*, medical and legal fees, should be commensurate with fees charged for professional services performed in similar fields to adoption in the State concerned.

499. Any mandatory or optional payments in relation to non-adoption related services (*e.g.*, for humanitarian aid projects) should be received from prospective adoptive parents through the accredited body and should be clearly distinguished in the breakdown of costs. Such payments should not be solicited during the adoption process to avoid influencing the offer of children.

SUMMARY OF GOOD PRACTICES FOR RECEIVING STATES

500. Central Authorities in receiving States should be proactive in obtaining information from States of origin and accredited bodies about costs. They should develop guidelines for setting reasonable costs and fees in each State of origin.

501. To achieve transparency in receiving States, accredited bodies should be required to publish their real fees and costs.

502. Central Authorities in receiving States in collaboration with the accredited bodies are encouraged to establish the cost price of an adoption from a particular State of origin by using the Calculation Table in Annex B of this chapter. The information should be publicly available.

503. Each accredited body should also publicise the detailed offer of services rendered by professionals, both in the receiving State and in the State of origin, to encourage consistency among the various service providers.

504. The prospective adoptive parents should be informed at an early stage about the services they will be offered and the costs of the services. They should know in a detailed and fully transparent manner the amounts that are directly connected with the intercountry adoption, and contributions or donations that are meant for supporting child protection services and humanitarian aid programmes.

505. Accredited bodies should as far as possible be the central point for receiving payments from prospective adoptive parents and for making payments for professional and other services rendered during the adoption process. This applies to payments for services in the State of origin as well as in the receiving State. This practice enhances the negotiating power of accredited bodies in seeking these services and provides greater security for prospective adoptive parents against solicitation and similar pressures.

506. All payments, with the possible exception of travel and accommodation costs in the State of origin, should be paid to the accredited body by the prospective adoptive parents before they travel to the State of origin.

507. Accredited bodies should follow sound financial management practices. They should be required to submit annual financial statements which are prepared according to standard accounting practices. As a general rule, financial statements should be audited.

SUMMARY OF GOOD PRACTICES FOR STATES OF ORIGIN

508. States of origin can encourage transparency in costs by publishing the real and the estimated costs of conducting adoptions in their State as a means to address excessive or fraudulent fees charged by foreign accredited bodies. The published costs should also include which services are provided free of charge in the State of origin.

509. If a State of origin imposes mandatory contributions in intercountry adoptions, the amount should be fixed and identical for all receiving States working with that State of origin.

510. States of origin which receive humanitarian aid contributions in intercountry adoptions are encouraged to report on the status of the programmes financed by such contributions.

511. When donations are permitted from prospective adoptive parents to a child care institution or orphanage, such donations should never be given before matching is done, and preferably only after an adoption is completed.

Annex 9A: Proposal for classification of costs in the field of intercountry adoption

Category 1 Expenses incurred in the receiving State

Category 2 Expenses incurred in the State of origin

Category 3 Travel costs

Category 4 Donations / Contributions to humanitarian aid projects

Category 5 Post-adoption expenses

Category 1 – Expenses incurred in the receiving State

These expenses consist of administrative costs such as membership fees, registration fees, administration and co-ordination fees, legal costs, psychosocial evaluation costs (the home study report), the costs of the various immigration procedures and certificates.

They may include:

(1) charges intended for the accredited body, such as:

- fees for membership of the body;
- fees for opening of the adoption case file;
- programme-development charges;
- administration and co-ordination costs;
- communication costs;
- cost of translation of the prospective adoptive parents' case file.

(2) charges intended for third parties, such as:

- cost of certification of the case file and legal fees;
- cost of preparation for the psychosocial evaluation;
- notary's fees;
- cost of legalisation of documents;
- immigration costs;
- costs of obtaining certificates (medical, birth, marriage, criminal record);
- costs of obtaining passports;
- costs for the psychosocial evaluation.

Category 2 – Expenses incurred in the State of origin

This category includes all the expenses incurred in the State of origin except the prospective adoptive parents' accommodation and transport costs. These are:

- administration and co-ordination costs;
- legal costs (notary, lawyer, court and motion costs);
- doctor's fees for the child's medical record;
- translation costs;
- costs of the child's maintenance;
- costs for updating of records.

Category 3 – Travel costs

These expenses are connected with the prospective adoptive parents' travel in the State of origin. These costs include:

- return air fare;
- accommodation costs: hotel and meals;
- single fare for the child;
- guide's and interpreter's costs, if appropriate;
- travel costs within the State.

Category 4 – Contributions to humanitarian aid projects or donations

These costs are usually imposed by the States of origin which demand of the prospective adoptive parents a contribution for humanitarian-aid projects and / or donations to orphanages or other public or private institutions connected with child protection. They may also be imposed by the accredited bodies themselves.

Category 5 – Post-adoption expenses

This category concerns all expenses required to finalise an adoption case and those incurred once the adoption has been completed. The costs to be borne include:

- for non-Convention adoptions, a motion for recognition of judgments or rulings;²⁵⁷
- stamps for the motion for non-Convention adoptions;
- translation of the judgment or ruling by the State of origin;
- reports on the child's development;
- translation of development reports;
- certification of reports and transmission to the State of origin.

²⁵⁷ No additional procedure for recognition of an adoption decision is required for Hague Convention adoptions. Recognition is automatic, as provided in Art. 23.

Annex 9B – Sample calculation of the cost price of an adoption and setting of the price charged to the prospective adoptive parents

In the course of its operations, an accredited body will generate two different types of costs:

- direct costs: in other words, costs directly connected with the processing of a particular case. These are accordingly all the resources consumed directly to perform an adoption in a given State, such as salaries of the workers and co-ordinator in the State of origin, fees for the various professional services rendered in the receiving State and in the State of origin. These costs are variable, *i.e.*, they increase or diminish according to the volume of adoption cases handled;
- indirect costs, which are costs to be shared among all the adoption cases performed during the year. These are usually structural costs (rent, insurance, electricity, advertising, salary of managers, etc.) and interest costs if applicable. In general, these costs are fixed, *i.e.*, they are not affected by variations in the volume of activity, except in certain circumstances: a low volume of activity may require that certain costs be mitigated or eliminated *e.g.*, by choosing smaller premises and so reducing the cost of rent, while a high volume of activity may require an increase in costs *e.g.*, by choosing larger premises and increasing the cost of rent.

The Central Authority should be able to determine the viability of adoptions from each State, in particular for accredited bodies which have more than one authorisation. For this purpose, it would demand to see the costs according to the **specific costs method**, which allocates costs connected solely with a cost object. An example of a cost object would be the authorisation for a given State. That method accordingly allows, in the presentation of results, the separation of all the overhead and variable costs incurred for a given authorisation.

For that purpose, the accredited body should provide detailed information according to the model table below (see table 1). Once the cost price has been determined, the accredited body then knows the floor price below which it has no incentive to offer its services. In order to fund a reserve and secure its viability, the accredited body may set a price that it will charge to prospective adoptive parents. That price would take into account the variable costs of services and correspond to the cost price plus a reasonable margin for the long term viability of the body (the viability margin).

The Central Authority would then be responsible for evaluating the reasonableness of the costs and viability margin collected by the accredited body. In other words, the accredited body should recommend a price enabling it to generate a margin on variable costs that is sufficient to support the infrastructure (*i.e.*, the overheads) and to fund a reserve.

Price²⁵⁸ = cost price + viability margin = cost price x (1 + % viability margin).

²⁵⁸ See example of price-setting in table 2 of this Annex.

Table 1 – Calculation of total cost price (the data are hypothetical)

	Authorisation State 1	Authorisation State 2	Authorisation State 3	Administration	Total
Variable costs					
Legal costs in receiving State	500	500	500		
Legal costs in State of origin	1500	1200	1000		
Fees for professional services in receiving State	3500	3500	3500		
Fees for professional services in State of origin	2000	1700	2400		
Translation of documents in receiving State	500	300	700		
Translation of documents in State of origin		100			
Communication costs in State of origin	500	900	200		
Communication costs in receiving State	2300	6000	300		
Travel costs	4000	4500	4000		
Immigration costs	400	400	400		
Cost of passport	170	170	170		
Certificates (marriage, birth)	110	110	110		
Updating of record	200				
Child's maintenance			1500		
Finalisation costs	500	1000	600		
Post-adoption expenses	180	280	100		
Total variable unit cost	16360	20660	15480		
Volume of activity (number of cases handled)	12	35	20		67
	196320	723100	309600		1229020

	Authorisation State 1	Authorisation State 2	Authorisation State 3	Administration	Total
Specific costs					
Direct payroll costs	24000	30000	28000		82000
Escort costs			5000		5000
Cost of accreditation in State of origin		700			700
Indirect payroll costs				140000	140000
Others				5000	5000
	24000	30700	33000	145000	232700
Other shared overhead costs					
Rent					12000
Electricity					600
Insurance					1000
Transport					4500
Advertising					2500
Communication					3850
Depreciation					500
					24950
Total cost price	220320	753800	342600	145000	1486670
Cost price per adoption	18360	21537	17130		22189

Table 2 – Setting of the price of an adoption charged to prospective adoptive parents and computation of the various margins. The assumption is a 15% margin.

	Authorisation State 1	Authorisation State 2	Authorisation State 3	Administration	Total
Cost price of an adoption	18360	21537	17130		
Viability margin	15%	15%	15%		
Sales price	21114	24768	19700		
Volume	12	35	20		67
Sales	253368	866870	393990		1514228
Variable costs	196320	723100	309600		1229020
Margin on variable costs	57048	143770	84390		285208
Specific costs	24000	30700	33000	145000	232700
Net margin	33048	113070	51390	- 145000	52508
Other shared overhead costs					24950
Net earnings					27558

Thus it can be observed that at a 15% viability margin, the accredited body generates income enabling it to realise a margin on variable costs of USD 285208, which is sufficient to cover the overheads (USD 232700 + USD 24950) and to generate income of USD 27558 to guarantee the future viability of the body.

Margin on variable costs = variable income – variable costs = (quantity x price) - variable costs.

CHAPTER 10

OPERATIONAL CHALLENGES FOR ACCREDITED BODIES IN STATES OF ORIGIN

512. This chapter aims to present the most important operational issues or challenges affecting the work of accredited bodies in States of origin in the context of intercountry adoptions.

513. For States of origin, it is necessary to begin this examination at the point long before an intercountry adoption occurs. For families in crisis, some States of origin may have measures of protection such as family preservation programmes and early intervention programmes to support families to remain together.²⁵⁹ However, those early measure may not always be available or successful. Whatever the circumstances by which a child becomes known to the child protection authorities or enters the system of protection (however established and however described in each State) appropriate measures of protection for that child need to be initiated.²⁶⁰ Those measures may or may not lead to an intercountry adoption. In the State of origin, there may be public authorities, Central Authorities, non-governmental organisations, national accredited bodies and foreign accredited bodies involved in providing the measures of protection needed for the child.

10.1 Protection of vulnerable children

514. For a detailed discussion of the context in which various measures of protection should be used, see the Guide to Good Practice No 1 at Chapter 6 (The National child care context and national adoption). In particular the following issues were considered:

Phase one: *Child's entry into care*

- a. Child's entry into care: identification of children and families in need
- b. Abandonment and abduction
- c. Voluntary relinquishment

Phase two: *Family preservation*

- a. Family preservation and reunification
- b. Strategies to assist family preservation and unification
- c. Keeping families intact
- d. Family reunification
- e. Developing family preservation programmes
- f. Provision of services
- g. Utilising other resources
- h. Co-operative agreements

Phase three: *Temporary care and institutionalisation*

- a. Reasons for temporary care
- b. Facilities for temporary care

Phase four: *National adoption or permanent care*

- a. Permanency planning

²⁵⁹ One of the family preservation services that may be overlooked are programmes to prevention discrimination against children born to young mothers or out of wedlock.

²⁶⁰ Measures of protection including prevention should occur before the child enters the "system". See Guidelines for the Alternative Care of Children, *supra*, note 31.

- b. Delaying permanency planning not in the child's best interests
- c. Designing a national adoption system
- d. Promoting national adoption
- e. Training and approval of adoptive families
- f. Matching children and families
- g. Provision of services.

515. It is not intended to repeat the information above in this Guide, but to relate those steps specifically to the work of accredited bodies, both national and foreign, in the State of origin. It is recognised that it is a major challenge for some States of origin to develop systems of public and child welfare and protection. However, the absence of a child protection system has serious implications for the intercountry adoption process.

516. Another significant challenge is that some States do not have social workers. The profession does not exist in those States. Other States may have very few social workers, and certainly not enough to provide the types of services that are needed for mothers or families in desperate need of support.

517. The lack of skilled social workers is a general problem in many States. The lack of understanding and training in child protection and children's rights follows from a lack of social workers and social welfare systems.

518. In addition, there may be a lack of legal regulations to direct the authorities along the appropriate steps in reporting the child to the relevant authority within the stipulated timeframe. Even if regulations exist, there may be a failure to follow or enforce the regulations.

10.2 The involvement of adoption accredited bodies in the child protection system

519. Several options are possible depending on the structure of each State regarding the involvement of accredited bodies – whether national or foreign – in the first three phases mentioned above (child's entry into care, family preservation, and temporary care and institutionalisation) in a State of origin. Some of these options, which can be also combined between them, are the following:

520. Firstly, there are States where all these phases prior to the declaration of adoptability are dealt with by public authorities, private bodies and non-governmental organisations. Accredited bodies are not involved at all. However, as it is explained in Chapter 9 of this Guide concerning costs, some contributions and donations can be made through foreign accredited bodies to these authorities and NGOs.²⁶¹ The aim of these contributions and donations should be to help improve the child protection system and ensure that the principle of subsidiarity is applied effectively.

521. This system can work well when there is no link between the contribution and intercountry adoptions. However, a first challenge for this type of system is when there are direct links between financial or material contributions and intercountry adoption, or when pressure is applied in order to get more adoptable children. These contributions and donations should not be conditional on "getting" adoptable children or "proportional" to the number of adoptable children that a specific State "gets".

522. If there is a system of local accredited bodies, they might be the best skilled to do the assessment of the child's situation. However, clear regulations and procedures must be in place to avoid the possibility or suspicion of partiality by the accredited body or children's homes involved in the assessment. The Philippines has found a good solution to this issue: if one organisation does the assessment, then it must not be involved in a future proposed matching. That must be done by another organisation.²⁶²

²⁶¹ See, in particular, para. 483.

²⁶² See Perspective of the Philippines in Chapter 13.3.5 (Accreditation of domestic bodies).

523. Secondly, in other States the child protection authorities, in conjunction with or instead of having public institutions, delegate responsibility for the child protection system to private bodies. Some of these private bodies may have several functions:

- they will work on family preservation and will counsel birth mothers who wish to relinquish their child;
- they take care of relinquished children and children declared adoptable and other children as well;
- they will work with prospective adoptive parents (it can be for domestic adoption and / or intercountry). Specifically, in order to exercise this last function they will be accredited as national adoption bodies.

524. This is the case in several States in Latin America.²⁶³ This type of system also faces the challenge explained above of the real use and purpose of contributions and donations. Some of these national accredited bodies do very good work on family preservation and counselling aimed at the reintegration of the child in his or her birth family. But the real challenge is that in other cases, the aim of some institutions and accredited bodies is to have as many adoptable children as possible in order to get more contributions and donations from adoptive parents.

525. Thirdly, some States have public or private institutions for children, which can also be national accredited bodies which only receive and care for adoptable children. This type of system can be problematic as well, especially when only these institutions get the contributions and donations of foreign accredited bodies, thus creating two standards of institutions: the one with adoptable children has high standards and good facilities, and the other with non adoptable children has very poor facilities and lack of personnel.

A. BEFORE ADOPTION OR INTERCOUNTRY ADOPTION

10.3 Phase one: *Child's entry into care*

526. This first phase concerns the child's entry into care: identification of children and families in need; abandonment and abduction; and voluntary relinquishment.

527. At this point, accredited bodies should not have a direct involvement with regard to the ways in which a child can enter into care. However, as explained above, in practice this is not always the case as there are some national private institutions and non-governmental organisations which can be also be accredited as adoption bodies.

528. It would be a good practice if social workers or other professionals from public authorities are in charge of these stages. However, in some States, such services do not exist or are very limited, and a national accredited body might have responsibility, depending on the system in the State.

529. There may be a conflict of interest and a risk of partiality if the local accredited body is involved in the identification of children and families in need, in the early stages of abandonment and in voluntary relinquishment, when the child protection services should first be seeking family preservation before considering adoption. There could be a conflict of interest if the national accredited body makes the assessment of the abandonment or receives the consent to the adoption of the birth parents and later is the same body which is involved in the matching decision and placing the child with prospective adoptive parents. In such cases an objective solution should be found in order to discourage declarations of adoptability for children who in reality do not need to be adopted. This is a major challenge: to balance the possibility of a conflict of interest against the use and availability of professional resources from accredited bodies. .

530. In any case the investigation of a child's background should not be done by the foreign accredited body. The risk of a conflict of interest is too great. The foreign accredited body should in principle have no contact with the child prior to being declared

²⁶³ For example, Chile and Colombia. See their respective responses to question No 57 of the 2009 Questionnaire.

“adoptable” and, preferably, matched with the prospective adoptive parents. However it is the reality that a foreign accredited body often has the resources and is more effective in securing accurate information about the child and can ensure that the subsidiarity principle is applied.

10.4 Phase two: *Family preservation*

531. This second phase aims at family preservation and keeping families intact. When this has not been possible and the child is separated from his or her family, then reunification with the extended family should be sought.

532. The practical work of counselling and advising the birth parents should also be done by skilled and experienced social workers and professionals, preferably those who are specialised in working with birth mothers and relatives. Culture and traditions can have a great impact in the mother’s decision and therefore the social workers must be very knowledgeable about these issues. For example, it is quite common that birth mothers who come forward admitting they are not in the position of taking care of a child, will be judged harshly and discriminated against by police or other authorities.

533. If the mother is involved in the adoption plan, experience has shown that she will have a far better “healing process” if she is encouraged and empowered to participate in the decisions regarding her child’s future.

534. As explained above, in many States it is the child protection bodies and public or private institutions which are in charge of these important matters.²⁶⁴ In that case accredited bodies do not have a direct involvement. They may have an indirect involvement through financial, material or other aid.

535. In some States however, national accredited bodies are involved in the family preservation and reunification programmes and provision of services due to the inexistence or very limited number of public services, or because the system has been developed in this way.²⁶⁵

536. In some of these States local specialised accredited bodies have successful programmes for this work.²⁶⁶ The challenge for these bodies is to maintain a complete separation of, on one side, their programmes for family preservation and reunification and, on the other side, their adoption programmes. A way of measuring the objectivity of their work would be to know the percentage of mothers who wanted to relinquish their child, and who finally, after information and counselling, decide to keep their child.²⁶⁷ Specific programmes for providing continuous help (including practical and material support to the mother) to these families are also needed in order to avoid the situation where they later relinquish their child.

537. There are some negative aspects to the attempts to keep a child in his or her birth family. For example, a child may be put in an institution by the mother for “temporary” care.

538. The birth mother may come back and forth to the children’s home, without making any clear decision. This keeps the child in “limbo” and no authority dares to take the decision on the child’s future. The child may remain for years in the children’s home, not often visited by his or her family, but cannot be adopted because no consent is given.

²⁶⁴ For example in the Philippines, there are two types of NGOs who work very closely with the Philippine authorities. On the one side “child caring agencies” are in charge of children who are abandoned, neglected or surrendered. On the other side, there are “child placing agencies” which are in charge of searching adoptive families for adoptable children.

²⁶⁵ See, for example, the responses of Chile and Estonia to question No 57 of the 2009 Questionnaire. In the Philippines, this is the responsibility of local accredited authorities; see its response to question No 57 of the 2009 Questionnaire.

²⁶⁶ For example in Chile (discussed in its response to question No 57 of the 2009 Questionnaire) and South Africa, where child protection agencies can be accredited to provide intercountry adoptions services in addition to its other child protection services (see Chapter 15 of the Children’s Act, No. 38 of 2005).

²⁶⁷ For example, in Guatemala in 2008, when mothers who intended to relinquish their children were given support, 28 out of 32 decided to keep the child (Consejo Nacional de Adopciones de Guatemala, “Memoria de Labores 2008”). At the “Fundación San José”, a Chilean domestic adoption accredited body, 50% of the birth mothers some years ago were deciding to keep their child after counselling. Now this percentage has gone up to 70%.

539. As another example, sometimes extended families are “forced” to take a child into the family just because they are relatives of the birth mother. They do not want the child, and they do not have resources to take care of it, but the authorities make them feel they have no choice. The child may be abused, stigmatised, or abandoned again.

540. Strict and clear timeframes are needed. The child must not be left in a legal or emotional “limbo”. After a certain time, the court or public authority must make the decision to sever the filiation tie with the biological family.

10.5 Phase three: *Temporary care and institutionalisation*

541. Many children in need of temporary care (and while their legal, social and psychological situation is being determined) are either with foster families or in institutions for a number of reasons and for different periods of time.

542. Sometimes institutions which take care of these children are accredited as adoption bodies.²⁶⁸ Very often accredited bodies (being non-governmental organisations or a foreign accredited body) will have better resources and skills and are more experienced than governmental institutions at caring for children.

543. This type of system easily creates a large and unacceptable difference in the quality of care and infrastructure of the institutions, as institutions which are also accredited bodies always receive more funds through contributions and donations. A good practice to avoid such a problem would be that contributions and donations are given to a national public fund which is responsible for distributing the resources fairly to all institutions which care for children. However, the State of origin must have strict controls to guarantee that the funds are used for the intended purpose.

544. The challenge here is to avoid having inequalities between the institutions: between those which take care of children who are not adoptable or are in temporary care, and those which take care of adoptable children (which could be also accredited bodies).

B. AFTER ADOPTABILITY IS DECIDED

10.6 Phase four: *National adoption (adoptability) or permanent care*

545. This section should be read in conjunction with Chapter 6.4 “Phase four: National adoption or permanent care” and Chapter 7.2 “The Child” in the Guide to Good Practice No 1.

546. In order to respect the principle of subsidiarity, States have to consider different solutions for a child in need of a family before proceeding to a determination that a child is adoptable.

547. The assessment of the child’s adoptability is one of the most important steps in the adoption procedure.²⁶⁹ The assessment may lead to a conclusion that a child is not adoptable, or not adoptable at that moment, *e.g.*, if insufficient efforts were made at the family preservation stage. An intercountry adoption must not take place if the principles of Article 4 of the 1993 Hague Convention have not been followed.

548. The decision of adoptability should be resolved by a competent authority specialised in social, family or children’s issues in the State of origin and not by an adoption accredited body. In most of the cases a court or tribunal or a qualified public authority will make the decision. The procedure must be strictly legislated and regulated. Part of the practical work, on which the decision of adoptability will be based, can be done by a skilled and experienced social worker of the competent authority. In some States it is also delegated to a local accredited body or to the institution responsible for the child,²⁷⁰ but in these cases there is a risk of a conflict of interest if the accredited body or

²⁶⁸ See, for example, the responses of Estonia, the Philippines and the United States of America to question No 57 of the 2009 Questionnaire.

²⁶⁹ Adoptability must include not only legal adoptability but also psycho-social adoptability.

²⁷⁰ See, for example, the responses of Estonia and United States of America to question No 57 of the 2009 Questionnaire.

institution has a close connection with a foreign accredited body and directs children to that body.

549. A dossier on the child should have been created at the moment he / she entered into the protection system as a child without parental care. At each stage of the process, and from each person, authority or institution connected with the child's situation, all the information about that child should be collected and kept in the dossier, including any personal items such as photographs.

550. In relation to the dossier, the Central Authority, public authority and accredited body must understand and comply with the obligation and responsibility to preserve all information on the background of the child (including any items such as a photograph left with a child). Even the smallest detail is important and provides a link to the past when the child, as an adult, searches for his or her origins²⁷¹

551. People who are not close to the child do not understand the importance of this information or personal items and might not give it any priority or even discard it (authorities, police, etc.).

552. There should also be training in how to care for and treat an abandoned child, as well as training in the importance of obtaining and preserving all possible information and documents about the child's situation.

553. This information in the dossier is essential for the person making the decision on adoptability. Once adoptability has been established, a report on the child will be prepared with a view to adoption. This is also a task that can be done by a local accredited body. After the report on the child has made, all efforts should concentrate on trying to find an adoptive family through national adoption or comparable permanent arrangement in order to guarantee the principle of subsidiarity.

554. A competent authority or the local accredited body can be in charge of receiving the application of prospective adoptive parents, informing and preparing them, evaluating them (in many States this is done by a judicial body), preparing the report of the domestic prospective parents.

555. The local accredited body or a specialised adoption unit at a public authority can be responsible for the matching procedure for domestic adoption.²⁷² The matching committee should gather all information about the child from the children's home or homes and all information on the prospective adoptive parents from the unit responsible for the adoption applications.

556. After the matching is done, it is quite usual that the local accredited body will be in charge of all the different steps as well as post-adoption issues.

557. If it is impossible to find an adequate family in the State of origin, then an intercountry adoption should be sought by the authorities of the State of origin. The challenges for accredited bodies in the post-matching stages are dealt with in the next chapter.

²⁷¹ See Guide to Good Practice No 1, *supra*, note 18, Chapter 2.1.3.2.

²⁷² For examples of adoption accredited bodies carrying out functions in respect of the matching decision, see the responses of Estonia and United States of America to question No 57 of the 2009 Questionnaire.

SUMMARY OF GOOD PRACTICES

558. States of origin should be supported to develop systems of public and child welfare and protection. The absence of a child protection system has serious implications for the integrity of the intercountry adoption process.

559. A system of contributions and donations to help improve the child protection system and ensure that the principle of subsidiarity is applied effectively can work well when there is no link between the contribution and intercountry adoptions.

560. States of origin should be supported to develop the profession of social workers. They are an essential part of a country's child protection system to provide advice and support to children and families in need.

561. The practical work of counselling and advising the birth parents should be done by skilled and experienced social workers and professionals, preferably those who are specialised in working with birth mothers and relatives. They should also be independent of those who will be responsible for allocating a child for adoption.

562. Local (national) accredited bodies can be a beneficial source of support across the various phases of a State of origin's child protection system. These bodies are often better skilled and better resourced with more experience in child welfare than public authorities.

563. Accredited bodies must be aware of the need to follow the principle of subsidiarity in Article 4 of the Convention. The first aim of this principle is family preservation and keeping families intact before considering adoption. States of origin have to consider different solutions for a child in need of a family before proceeding to a determination that a child is adoptable.

564. When local accredited bodies are involved in the family preservation and reunification programmes they should maintain a complete separation of, on one side, their programmes for family preservation and reunification and, on the other side, their adoption programmes.

565. When local accredited bodies are involved in the early stages, it is important that clear regulations and procedures are in place to avoid potential or perceived conflicts between the assessment and matching phases for intercountry adoptions. For this reason, in some systems, it may not be suitable for adoption bodies or private institutions to participate in decisions about the placement of the child with foreign adoptive parents. However, there will be times when they should be consulted as they are the ones who usually best know the child and the child's needs.

566. It is not appropriate for accredited bodies to be involved in the decision of adoptability of a child. The decision of adoptability should be resolved by an independent competent authority specialised in social, family or children's issues in the State of origin.

567. The practical work on which the decision of adoptability is based should be done by a skilled and experienced social worker of the competent authority. If a local accredited body is involved in performing the investigation of a child's background, it should be supervised to avoid any risk to the integrity of the process. The background investigation should not be done by the foreign accredited body alone.

568. A child should not be left indefinitely in an institution. Strict and clear timeframes are needed to resolve the child's status. The child must not be left in a legal or emotional "limbo". After a certain time, the court or public authority must make the decision whether to sever the filiation tie with the biological family so that the child may be adopted. The timeframe should be stipulated and determined by law or regulation.

569. Each person, authority, body or institution connected with the child's situation must understand the importance of collecting and preserving as much information as possible about the child. The competent authority to decide if the child is adoptable or not will be assisted by having the best information possible. For the child, the smallest detail is important and provides a link to the past when the child, as an adult, searches for his or her origins.

570. Children's homes or institutions operated by accredited bodies receive more funds through contributions and donations than other government and non-government care institutions. To avoid a system that creates a large and unacceptable difference in the quality of care and resources of the institutions, a good practice would be that contributions and donations are given to a national public fund in the State of origin which is responsible for distribution of the resources fairly to all care institutions.

CHAPTER 11

OPERATIONAL CHALLENGES IN RECEIVING STATES

571. This chapter examines the main operational challenges – the most important or challenging activities – which face the accredited body in the receiving State. These issues obviously refer mainly to the activities involving the prospective adoptive parents, in particular the assessment, the preparation of, and services for, the adoptive parents.

572. As with the preceding chapter regarding States of origin, the functions in this chapter are presented from the viewpoint of the participation of adoption accredited bodies. A detailed description of the procedural aspects of an intercountry adoption under the 1993 Hague Convention, from the viewpoint of the Convention, is given in the Guide to Good Practice No 1 at Chapter 7 (The intercountry adoption process under the Convention), and in particular, Chapter 7.4 (The prospective adoptive parents).

11.1 Pre-adoption phase

11.1.1 Information for prospective adoptive parents

573. At an early stage of the process, receiving States should offer to persons interested in intercountry adoption information sessions about adoption issues in general and the current issues and challenges of intercountry adoption. These sessions should be organised and prepared jointly by accredited bodies and the Central Authority (or other competent authority).²⁷³

574. One of the challenges of these information sessions is to convey clear messages to persons interested in adoption to ensure they fully appreciate the realities of intercountry adoption. The information provided by bodies should be clear and objective with regard to the current situation of intercountry adoption. The sessions should not be seen as an opportunity for the accredited bodies to promote their own services.

11.1.2 Preparation of prospective adoptive parents

575. Experience has shown that special preparation of prospective adoptive parents is needed to create the necessary awareness and comprehension of the complexity of intercountry adoption. Consequently many receiving States have introduced compulsory preparatory courses for prospective adoptive parents.²⁷⁴ In some States, these courses are organised by public authorities (*e.g.*, Central Authority) or by professionals contracted by them;²⁷⁵ in other States they are organised and conducted by the adoption accredited bodies.²⁷⁶ The persons who conduct the preparation courses should be professionally skilled for the purpose, and experienced in adoption issues. The courses may be offered before or after the assessment of suitability although it is recommended to offer them beforehand.

576. As with the information sessions, the preparation courses may be conducted jointly by the accredited body and Central and competent authorities.²⁷⁷ Accredited bodies are often the most up to date and best informed about the current issues concerning intercountry adoption and the situation in particular States. However if an accredited body alone provides the courses, the risk of partiality in the content towards the particular accredited body must be avoided. Regardless of who conducts the preparation courses, there should be open and honest communication between the adoption

²⁷³ See, for example, the response of Belgium (French Community) and Spain to question No 57 of the 2009 Questionnaire. See also I. Lammerant, M. Hofstetter, *op. cit.* (note 70), pp. 32-33.

²⁷⁴ See discussion in Guide to Good Practice No 1, *supra*, note 18, para. 410.

²⁷⁵ See for example the practice of the Netherlands in Chapter 13.5.3.

²⁷⁶ For examples where these courses are organised by adoption accredited bodies, see the responses of Belgium (French Community), Canada (British Columbia, Manitoba, Ontario and Quebec), Finland, France, Germany, Iceland, Italy, Portugal, Spain, Sweden, Switzerland, United Kingdom and United States of America to question No 57 of the 2009 Questionnaire. See also I. Lammerant, M. Hofstetter, *op. cit.* (note 70), pp. 32-33.

²⁷⁷ See I. Lammerant, M. Hofstetter, *op. cit.* (note 70), pp. 32-33.

accredited body and the professionals who are responsible for the courses, as it is in everyone's interest to have well prepared prospective adoptive parents.

577. A comprehensive and useful course should consist of several sessions,²⁷⁸ with best results given where some of the sessions are held in groups, first with men and women together, and then with men and women separated. Different issues may be discussed each time, with special assignments between the sessions.²⁷⁹ Preferably the preparation course will be concluded before the prospective adoptive parents are formally evaluated for their suitability to adopt. It is not unusual that some of them, during or at the end of such a course, will come to the conclusion, after having learnt so much, that adoption is not an option for them. In this regard, it can be said that the preparation course leads to an "auto-evaluation" or a self-elimination from the process. In some States, a significant number of parents decide not to proceed with an adoption after attending preparatory courses.²⁸⁰

578. The practical information about the adoption procedure should be given both through relevant and correct written information and through direct contacts, meetings, and telephone contact with a contact person or team assigned to the family.

11.1.3 Eligibility and suitability of the prospective adoptive parents

579. The determination of the prospective adoptive parents' eligibility to adopt (the legal criteria) should be established by a competent authority early in the process. If the parents do not meet the legal criteria of their own State or the State of origin from which they would like to adopt a child, they should not be allowed to continue in the process.²⁸¹

580. Once the eligibility of prospective adoptive parents is verified, the assessment of their suitability can begin. It is recommended to entrust this task to a public authority, as is the case in most States,²⁸² to ensure an impartial assessment of the suitability of applicants and to apply the same rigorous process to all applicants.

581. Ideally, the prospective adoptive parents will be assigned a social worker or psychologist (or two) to be responsible for the whole evaluation.²⁸³ After a number of meetings with the prospective adoptive parents, including home visits and relevant background checks including medical, criminal, financial checks,²⁸⁴ the social worker or psychologist writes the assessment report / home study report with the recommendations as to the applicants' suitability as adopters, and their capacity to adopt a certain type of child (according to age, gender, health, special needs) always bearing in mind the best interests of the child.

582. In order to avoid conflicts of interest, accredited bodies should not be the ones to give approval to adopt. The application for approval should be forwarded to an authority or impartial body.²⁸⁵ Accredited bodies could ensure the suitability of prospective adoptive parents by obtaining a copy of the report.

²⁷⁸ In Sweden, local municipalities are responsible for organising compulsory preparatory parenting courses for prospective adoptive parents. Course material is developed by the Swedish Central Authority for the National Board of Health and Welfare (*Socialstyrelsen*), which has overall responsibility for the courses. According to the *Adoption Handbook for the Swedish social services* (available at < www.socialstyrelsen.se >), the preparatory course is designed to comprise seven three-hour sessions on either two complete weekends or four days across different weekends, allowing enough time between sessions for reflection. Accredited bodies may impose additional requirements.

²⁷⁹ See, for example, the content of the compulsory preparatory parenting course in Sweden, *Special Parents for Special Children*, available at < www.mia.eu/english/parents.pdf >.

²⁸⁰ See for example, Julie Boatright Wilson, Jeff Katz and Robert Geen, "Listening to Parents: Overcoming Barriers to the Adoption of Children from Foster Care," *Working Paper Series rwp05-005*, 2005, Harvard University, John F. Kennedy School of Government, available at < http://www.adoptioninstitute.org/publications/2005_listenparents_all.pdf >, in which the rate of non-completion in domestic adoptions in United States of America was analysed.

²⁸¹ See Art. 5 e) of the Convention, as discussed in Guide to Good Practice No 1, *supra*, note 18, paras 399-401.

²⁸² See the State responses to question No 57 of the 2009 Questionnaire

²⁸³ See the Guide to Good Practice No 1, *supra*, note 18, paras 401-403.

²⁸⁴ Art. 15.

²⁸⁵ This is the case in many States, see, in general, the State responses to question No 57 of the 2009 Questionnaire, and the "Organigram" submitted by individual States in response to the 2005 Questionnaire.

583. The importance of an impartial assessment is emphasised. States of origin report that some accredited bodies accept prospective adoptive parents with a weak adoption profile. In other words, their suitability to adopt could be questioned. However, once approved in the receiving State, they are usually accepted by the State of origin on the basis of trust and the judgement of suitability made in the receiving State. When problems arise, *e.g.*, if the adoptive parent's cannot cope with their adopted child, where does the fault lie in these situations? With the accredited body, the Central Authority, or the individual who approved the prospective adoptive parents?

584. There is a shared responsibility for this type of situation. The State of origin must make its requirements very clear – to the accredited bodies, the Central Authorities, and on its own website. The receiving State should ensure that its accredited bodies know and understand the requirements of States of origin. The Central Authorities and accredited bodies in the receiving State must not approve unsuitable applicants, however persistent they are in wishing to adopt a foreign child.

11.1.4 Verifying the approval to adopt

585. It is recommended that the accredited body only start its concrete work with prospective adoptive parents on the adoption application for the State of origin once the determination of their eligibility (the legal criteria), the evaluation of their suitability (the psychosocial criteria) as well as the decision granting approval for them to adopt have been made.

11.1.5 Contract with the accredited body

586. All work with the prospective adoptive parents should be performed respecting the confidentiality of information and preferably in accordance with a code of conduct conforming to national and international standards.²⁸⁶ The accredited body should offer its services to prospective adoptive parents on a non-discriminatory basis according to the terms of its accreditation, provided they fulfil the criteria for adoption as stated in the Convention and the laws and regulations of the State.

587. However, the body should not be obliged to sign a contract with the prospective adoptive parents if there are doubts about their capacity to adopt. If such situations are encountered, they should be referred to the Central Authority.

588. To avoid excessive pressure from prospective adoptive parents, accredited bodies should limit the number of registrations of parents seeking adoption.²⁸⁷

589. Before preparing the application, it is recommended that a written agreement be signed between the prospective adoptive parents and the accredited body.²⁸⁸ This agreement should clearly state the roles and responsibilities of each party (the accredited body and the prospective adoptive parents) as well as what happens if either of the parties does not or cannot fulfil the tasks to which they have committed themselves. Full details of all aspects of the procedure (including a description of each stage of the process, costs, duration) should also be set out in the agreement. However, it must be understood by the prospective adoptive parents that by signing the agreement, they are not guaranteed a child. A child who needs a family will only come to them if they are best suited to meet the needs of a particular child.²⁸⁹

590. After signing the contract, it is important that accredited bodies become more active in the adoption process because they are now providing services to the prospective adoptive parents.

591. It is recommended that prospective adoptive parents sign only one contract with one agency and for one State. Prospective adoptive parents should not be permitted to

These Organigrams are also available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions".

²⁸⁶ See *supra*, note 133.

²⁸⁷ See *supra*, Chapter 8.3.5.

²⁸⁸ For State practice on the requirement to enter into a contract with prospective adoptive parents, see *supra*, note 159.

²⁸⁹ See, for example, the agreement between prospective adoptive parents and *Adoptionscentrum*, Sweden.

make multiple adoption applications to different States, with the intention of accepting the first child allocated to them. This practice creates an unreasonable burden on States of origin to process unnecessary applications and causes delay for other parents. It may also cause disappointment for a child.

592. However there may be some exceptional circumstances. For example, if adoption programmes are closed indefinitely in one State of origin, prospective adoptive parents should close that file and be allowed to register for another State and if possible not recommence the whole procedure. However, the agency should still provide specific preparation on the new chosen State. The principle is not to have two adoption files pending at the same time for the same parents.

11.2 During the adoption procedure

593. Once the prospective adoptive parents have received their approval to adopt, there may be additional preparation associated with their choice of State or the characteristics of the child.

11.2.1 Specialised preparations

11.2.1.1 Child with special needs²⁹⁰

594. When prospective adoptive parents intend to adopt a special needs child, the authorities need to be certain, and the prospective adoptive parents need to be reassured, that they will be able to cope with the particular demands or problems associated with caring for their adopted child. Accredited bodies should be able to refer prospective adoptive parents of a child with special needs to professionals to follow a specific preparation that is adapted to the profile of their child. This preparation should be provided by professionals selected by the Central Authority as is already the case in some States.²⁹¹

11.2.1.2 Preparation on a specific State of origin

595. At this stage, the general preparation will have already been done in the (compulsory) preparation course and during the evaluation process, but now it is the adoption accredited body's responsibility to continue the preparation and to provide the prospective adoptive parents with relevant information concerning the principles guiding intercountry adoptions as well as specific information concerning the adoption procedures in the State of origin selected for the adoption.

596. Some accredited bodies arrange workshops and group sessions to provide deeper insight and knowledge of the situation in a specific State. These smaller groups often become an important social network and support for the individual families. In some States,²⁹² in addition to the accredited bodies head offices, there are local sections with support groups all over the country. They are either adoptive parents or adopted persons who volunteer to support other families and each other. In some States, these volunteers receive special training from the adoption body once or twice per year.

597. The accredited bodies are required to have professional competence and be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.²⁹³ They should also have deep knowledge, respect and understanding of the circumstances and special requirements in

²⁹⁰ See the Guide to Good Practice No 1, *supra*, note 18, Chapter 7.3.

²⁹¹ See, for example, the response of Netherlands to question No 13 of the 2005 Questionnaire. See also *Adoption Handbook for the Swedish social services*, *supra*, note 296, which provides for the publicly-appointed social worker to assess prospective parents against the basic principle that the parents "must have the capacity to cope and fulfil a child's needs even if those needs are extensive". In the United States of America, § 96.48 of the Code of Federal Regulations requires the adoption accredited body to "provid[e] additional in-person, individualized counselling and preparation, as needed, to meet the needs of the prospective adoptive parent(s) in light of the particular child to be adopted and his or her special needs, and any other training or counselling needed in light of the child background study or the home study".

²⁹² For example Denmark, Norway and Sweden. See also the response of New Zealand to question No 59 of the 2009 Questionnaire.

²⁹³ Art. 11. For a discussion on the qualifications of staff, see *supra*, Chapter 7.3.

each State where they are active.²⁹⁴ Specialist staff should have a full understanding of legal and social issues, culture and traditions, and language skills as well as an understanding and knowledge about the details of the State of origin's legal and administrative procedure for adoption.

598. The prospective adoptive parents should feel totally secure and confident and should also be encouraged to create a bond with the adoption State. Bonding with the child they are going to adopt starts early with a bonding process to the State of origin. The prospective adoptive parents should be encouraged to learn as much as possible about the country, its traditions, cultures, religion, and language. Even a few words of the language will help them communicate with their newly adopted child.

11.2.2 Preparing and sending applications to the State of origin

599. The accredited body's country specialist will advise on the required application documents and the procedures for each specific country. See Chapter 7.4.1.

600. Through written instructions and personal assistance, the accredited body should guide the prospective adoptive parents through the procedure. In addition, it is the accredited body's responsibility to see to it that every detail is correct before sending the adoption application documents to the appropriate authority in the State of origin.

601. Depending on the requirements in the State of origin, the documents may be sent by a reliable courier to the representative of the adoption accredited body in the State of origin, or directly to the local accredited body with whom they are partnering, or directly to the Central Authority.

602. The number of applications being sent to the State of origin should be agreed upon in communication with the Central Authority or the accredited body in the State of origin. This agreement must be respected to avoid any undue pressure and excessive workload on the authorities in the State of origin.

603. It is the responsibility of the accredited body in the receiving State to only send applications from prospective adoptive parents who clearly fulfil the formal and legal requirements of the State of origin. The accredited body should also give a clear, accurate and detailed presentation about the prospective adoptive parents, their capabilities, their personality and their character. This will make it easier for the Central Authority or competent authority in the State of origin which is responsible for the matching procedure to make their matching decision with the best possible information and in the child's best interests. For example, the presentation shall clearly state if the prospective adoptive parents are approved to adopt a baby, a toddler, or a sibling group.

604. In some States, the Central Authority requires that all applications be sent by it to the State of origin.²⁹⁵ In other States, the accredited body sends the application directly to the State of origin but has to keep their Central Authority informed on a regular basis of all applications sent to the State of origin, and their status.

11.2.3 Verifying and sending details of the matched child to the prospective adoptive parents

605. As soon as the reports on the child have reached the accredited body in the receiving State, either through the representative in the State of origin or directly from the Central Authority or accredited body in the State of origin, a specialised team, or at least an experienced social worker, should study the report before contacting the prospective adoptive parents. The report normally contains both social and medical information and the person who contacts the prospective adoptive parents should ensure that the medical information is conveyed to the family in an appropriate and adequate manner.

606. Depending on the information in the child report, it is sometimes necessary for the accredited body to consult with a medical expert and a psychological expert. This

²⁹⁴ See further discussion at Chapter 7.5.1 of this Guide.

²⁹⁵ See, for example, Australia.

consultation should be concluded before contacting the prospective adoptive parents. This is even more important when the child concerned is a child with "special needs", but in all cases the information about the child should be given to the prospective adoptive parents in conjunction with the expert's assessment.

607. Accredited bodies in the receiving State might be asked to collaborate to identify appropriate prospective parents for a child with "special needs". In this case, the State of origin would send details of special needs children (without identifying information) to the receiving State to find suitable adoptive parents.²⁹⁶ See also Chapter 4.8 concerning the use of the Internet in such cases.

11.2.4 Sending the acceptance of the proposed match

608. The prospective adoptive parents should be given the opportunity to ask questions, and the social worker / contact person at the accredited body should make sure that the prospective adoptive parents have understood all the information, before they accept the proposal. However, the time given to prospective adoptive parents to decide should be as reasonable as possible to avoid the child having to wait too long.

609. At this point the accredited body should remind the prospective adoptive parents of any obligations imposed by the State of origin regarding the submission of post-adoption reports. In many States of origin it is a legal requirement that the reports be sent.²⁹⁷ If the prospective adoptive parents commit themselves to send the reports in order to have the child referred to them, they must take the responsibility seriously and honour their commitment to meet the legal obligations of the State of origin.

610. Once they have accepted the proposal, the prospective adoptive parents should be informed of what they need to do next. The Central Authority, social welfare or public authority should review the documents and the procedure before issuing the agreement in accordance with Article 17 c) that the adoption may proceed.

611. When the acceptance is sent, it is recommended that the accredited body try to link the family with another family which is willing to be linked and which has already adopted a child from this particular country, or who has adopted a child in the same age group or with the same "special need".²⁹⁸

11.2.5 Preparing prospective adoptive parents to travel to the State of origin

612. The accredited body should assist and advise prospective adoptive parents in organising their travel to the State of origin, *e.g.*, the most appropriate date to visit the State of origin, the best mode of transport, any necessary visas, health issues in the State of origin.²⁹⁹

613. For the safety of the adoptive family during their stay in the State of origin, it is important for them to receive good and detailed recommendations on travel and transport within the State of origin, and who to contact in case of emergency.

614. Prospective adoptive parents should be informed of the relevant requirements of certain States of origin and the fact that some States of origin do not permit prospective adoptive parents to travel there until they have been officially authorised to do so.³⁰⁰

615. During the stay in the State of origin, the accredited body should ensure that prospective adoptive parents have access to the accredited body's local representative, or to the accredited body's partner organisation, or to the contact person at the Central Authority. In States where the accredited body has a contracted representative, this person should provide the services needed.

²⁹⁶ See the Guide to Good Practice No 1, *supra*, note 18, Chapter 7.3 (Children with Special Needs). For examples of this practice, see the responses of Denmark to question No 42, and of Italy to question No 57, of the 2009 Questionnaire.

²⁹⁷ See the Guide to Good Practice No 1, *supra*, note 18, Chapter 9.3 (Post-adoption reports to States of origin).

²⁹⁸ See, for example, the response of Germany to question No 58 of the 2009 Questionnaire.

²⁹⁹ See, in general, the State responses to question No 57 of the 2009 Questionnaire

³⁰⁰ See further discussion at para. 433 of the Guide to Good Practice No 1, *supra*, note 18.

616. The accredited body should ensure that the child's welfare is safeguarded after the placement with the prospective adoptive parents in the State of origin and during the journey to the receiving State.

11.2.6 Ensuring prospective adoptive parents finalise all steps

617. The accredited body should inform the adoptive parents of any steps necessary following the arrival of the child in the receiving State, such as judicial proceedings where the adoption decision is not granted in the State of origin, applications for citizenship / nationality, and for non-Hague adoptions – the process for recognising the adoption decision (if required). The accredited body should follow up these steps to ensure they are completed

618. The adoption decision or its recognition in the receiving State has considerable repercussions, in particular on the life of the child. The body should ensure that steps are carried out to finalise the adoption to avoid the child not having legal status in the receiving State.³⁰¹ States of origin have reported cases where a child has been refused the nationality of the adoptive parents, or where the adoptive parents have failed to apply for citizenship for the child. See also Guide to Good Practice No 1 at Chapter 8.4.5.

11.3 Post-adoption phase

11.3.1 Post-adoption services provided by the adoption accredited body

619. One of the fundamental objectives of post-placement 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. Another important objective is to respect the cultural identity of the adoptee. The accredited body should keep in contact with adoptive families and refer them to services offered in the receiving State.³⁰²

11.3.2 Post-adoption report³⁰³

620. For the post-adoption reports, the State of origin should give clear written instructions about their requirements to the foreign Central Authorities and accredited bodies. The latter should give a written commitment to send the reports to the State of origin (this could possibly be sent with each adoption application). The adoption accredited body should be responsible for sending the required follow-up reports on the adopted child to the State of origin, in accordance with the requirements of the State of origin. When accepting the child proposal, the prospective adoptive parents should have been informed about the follow-up requirements and procedures and should have signed an agreement confirming they would fulfil these requirements. The social worker or the person in the public authority who gives the agreement under Article 17 c) should also have full information about the follow-up reporting obligations.

621. Some of the follow-up reports will be written by the social worker at the governmental social welfare office and others can be written by the family. A number of photos should be attached. All reports should be sent to the accredited body in the receiving State to be read and registered before being forwarded on to the Central Authority or adoption accredited body in the State of origin. During this reporting period, which can vary from two years up to 18 years, the contact between the accredited body in the receiving State and the adoptive family will be quite frequent.

622. The submission of follow-up reports is a legal requirement in several States of origin as a condition of granting the adoption. If this undertaking is not fulfilled or if no explanation is provided when a report is not submitted, the State of origin may consider withdrawing the body's authorisation.

³⁰¹ See, for example, the response of Canada (Ontario) to question No 57 of the 2009 Questionnaire, which specifically refers to the additional function of adoption accredited bodies to provide information and assistance in the adopted child's immigration process.

³⁰² In many receiving States, offering post adoption services is a requirement of accreditation. See, for example, the responses of Belgium, Denmark, Iceland, and Italy to question No 58 of the 2009 Questionnaire.

³⁰³ See the Guide to Good Practice No 1, *supra*, note 18, Chapter 9.3.

SUMMARY OF GOOD PRACTICES

623. It is good practice for accredited bodies to conduct preparation courses for prospective adoptive parents prior to the evaluation of the parents' suitability, as these courses usually result in the self-elimination of some parents who realise that intercountry adoption is not suitable for them.

624. To avoid any conflict of interest, the process of evaluating the suitability of prospective adoptive parents should be done by an impartial public authority which is qualified to do this work

625. The process of determining eligibility and suitability of the prospective adoptive parents should be concluded in the receiving State before the accredited body commences work on the adoption process for those parents in the State of origin.

626. There are advantages in using accredited bodies to conduct training and education courses for prospective adoptive parents due to their knowledge of current issues concerning intercountry adoption and the situation in particular countries. Authorities in receiving States need to ensure that courses provided by adoption accredited bodies are conducted in an impartial manner.

627. It is good practice to sign a written agreement with the prospective adoptive parents before preparing application documents. The agreement should disclose all aspects of the adoption procedure, including costs.

628. An accredited body should ensure that only parents who clearly fulfill the formal requirements in the State of origin apply to adopt from that State.

629. Accredited bodies should ensure that prospective adoptive parents understand that there is no right to adopt a child.

630. Accredited bodies should keep prospective adoptive parents informed throughout the entire adoption process. It is good practice for this to be done regularly through an assigned contact person or team using a combination of written communication, face-to-face meetings and teleconferences.

631. Accredited bodies should encourage prospective adoptive parents to create a bond with the State of origin of their adopted child. This may assist in the transition between the two countries and may facilitate a search for origins in the future.

632. If the accredited body sends application files directly to the State of origin, it should identify and respect any quota imposed by that State on the number of applications required so as to avoid any undue pressure and excessive workload on the authorities in that State.

633. Foreign accredited bodies should not make decisions on matching in the State of origin. However, they may be involved in the matching process if requested by the competent authority in the State of origin. Accredited bodies in receiving States may be more actively involved with the authorities in the State of origin to help identify appropriate prospective parents for a child with "special needs".

634. When the proposed match is notified from the State of origin, the accredited body should study the report, and if necessary seek input from medical and psychological experts, before contacting the prospective adoptive parents.

635. As a matter of good practice, prospective adoptive parents should travel to the State of origin to collect their child as this assists them to fully appreciate the child's background and living conditions and understand the potential problems for the child in adjusting to its new home, family and country.

636. After the adoption takes place, the accredited body should keep in contact with adoptive families and refer them to any post-adoption support services offered in the receiving State (as may be required). In particular, the accredited body should ensure that the adoptive family takes necessary steps to ensure that the adoption is and remains valid and recognised in the receiving State.

637. Where post-adoption reports are required, the accredited body should give a written commitment to send the reports to the State of origin and monitor parents' compliance with the requirements.

CHAPTER 12

CO-OPERATION

638. This chapter sets out how the Contracting States can establish various measures for co-operation that will improve the operation of the accredited bodies, and thereby improve the adoption procedures themselves. Co-operation may be between States of origin and receiving States, among receiving States or among States of origin. Co-operation can be between authorities in those States, or between authorities and accredited bodies, or between accredited bodies themselves.

639. This chapter also examines the issue of co-operation in the sense of co-operation projects of a humanitarian nature, sometimes called development aid projects, and some good practice recommendations are made. This aspect was discussed briefly in the Guide to Good Practice No 1 at Chapter 5.2, under the heading "Operational funding for intercountry adoptions".

640. The issue of co-operation as a Convention aim and a Convention principle is addressed in the Guide to Good Practice No 1 at Chapter 2.3; and as a key operating principle, in Chapter 3.3.

12.1 Co-operation between States of origin and receiving States

12.1.1 The obligation of co-operation

641. The Convention, in addition to introducing the concept of co-operation in its very name, specifies in Article 1 *b)* that the establishment of a system of co-operation among Contracting States is one of the Convention's objects.

642. Article 7(1) of the Convention requires the Central Authorities to co-operate with one another and to promote co-operation among the competent authorities in their State to protect children and to achieve the other objects of the Convention.

643. Article 7(2) for its part provides that Central Authorities shall take directly all appropriate measures to provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms, in order to keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

644. The fact that Article 7 only refers to Central Authority obligations which cannot be delegated does not absolve accredited bodies from responsibility for co-operation to achieve the objects of the Convention. As mentioned above, the title of the Convention and its objects in Article 1 make it clear that co-operation is a general obligation on all the actors involved in using the Convention procedures. The Central Authority is also obliged to promote co-operation, including among accredited bodies. Furthermore, the procedural functions of intercountry adoption in Articles 14 to 21, whether performed by a Central Authority or an accredited body, will require a high degree of co-operation between the authorities or bodies in the two States concerned.

12.1.2 Co-operation and co-responsibility: promoting shared responsibility

645. In general, for the Convention to fulfil its objectives with respect to protection of the child's best interests, the Contracting States must not only assume their own specific responsibilities, but also share certain others. In essence, receiving States and States of origin have a collective responsibility to make the Convention work as it was intended, and they must work together to ensure the effective regulation of intercountry adoptions.

646. It is well known that the Convention only sets minimum standards and Contracting States are encouraged to set higher standards. It may be said that shared responsibility or co-responsibility is co-operation at a higher standard. The Convention does not specify how the obligation of co-operation will be met, as the flexibility of the Convention to meet a wide range of laws and procedures must be maintained. However, the Explanatory Report frequently refers to the need for co-operation in the distribution of

responsibilities.³⁰⁴ The term “co-responsibility” has become widely used as a way to describe the acceptance of shared responsibility.³⁰⁵

647. An important aim of co-responsibility is to encourage receiving States to accept that as they are the primary source of the demand for intercountry adoption, and having greater resources – both professional and financial – they have an additional responsibility to assist States of origin to improve their child protection and adoption systems. This is essential if all of the Convention’s safeguards are to be applied. In practice, this means the receiving State will need to exercise some restraint and follow recommended good practices³⁰⁶ such as:

- not creating pressures on States of origin to have or maintain a “supply” of children to meet the demand from prospective adoptive parents from the receiving States. Pressure may be exerted either deliberately, or indirectly through giving patronage or inducements to officials;
- respecting the requests of States of origin regarding the profile and number of children adoptable, as well as the desired profile of prospective adoptive parents; not sending applications to adopt children who do not need to be adopted intercountry, and not sending unreasonably large numbers of applications to adopt;
- respecting the requests of States of origin regarding the profile and number of adoption accredited bodies that they need; monitoring the number of adoption accredited bodies associated with the State of origin;
- being proactive when systemic abuses occur, to try to eliminate them, and if necessary, discontinue adoptions or refuse co-operation with an underperforming State of origin;³⁰⁷
- providing improved training and education of accredited bodies so that they understand fully their responsibilities as actors in an international treaty;
- improving the preparation of prospective adoptive parents for the realities of an intercountry adoption and managing better their expectations.

648. For their part, States of origin need the political will to curb corruption and malpractice, and receiving States should co-operate to assist. Foreign accredited bodies have a duty to inform their Central Authority of corruption and malpractice in States of origin. In addition, States of origin may need to consider, as necessary, the following practices:

- refusing intercountry adoptions with underperforming receiving States or accredited bodies;
- resisting inappropriate pressures of receiving States and accredited bodies to maintain a “supply” of children;

³⁰⁴See Explanatory Report, *supra*, note 16, para. 65, which refers to Art. 1 *b* as aiming “to ‘establish a system of co-operation amongst Contracting States’, thus indicating that the Convention does not pretend to solve all problems related to children’s intercountry adoption, in particular, to determine the law applicable to the granting of the adoption or to its effects. Nevertheless, some jurisdictional problems are dealt with indirectly, *e.g.* by making a distribution of responsibilities between the State of origin and the receiving State. See also paras 104, 173, 294, 307, 490, and 588.

³⁰⁵ I. Lammerant, M. Hofstetter, *op. cit.* (note 70), which refers to the “co-responsibility” of receiving countries with regard to existing bad practices and child trafficking. See also European Network of National Observatories on Childhood (ChildONEurope), *Guidelines on post-adoption services*, Florence, Litografia IP, 2007 (available at the following address < http://www.childoneurope.org/issues/adoption/post_adoption_seminar/post-adoption_def2.pdf > (last consulted 7 May 2010), which observes at p. 24 that “[p]ost-adoption services should be set up within the context of professional network coordination, trust and co-responsibility between Countries of Origin and Receiving Countries.” At the June 2009 Francophone seminar relating to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, experts and judges from various countries, as well as experts from governmental and non-governmental international organisations, unanimously agreed to the following conclusion No 5: “The participants accept and support the principle of joint responsibility, *i.e.*, recognition of the fact that the receiving States and States of origin should share responsibility for developing the safeguards and procedures protecting the child’s best interests.”

³⁰⁶ See the Guide to Good Practice No 1, *supra*, note 18, especially at Chapter 10.4.

³⁰⁷ It is taken for granted that abuses in individual cases will be reported to the appropriate authority and dealt with: see Art. 33.

- choosing only the most professional authorities and bodies to work with;
- seeking information from other States of origin about particular accredited bodies.

649. Effective co-operation and acceptance of co-responsibility demands a shared determination to put the interests of children residing in the States of origin above the political interests that sometimes threaten Central Authorities. This is not easy when very powerful lobbying interests are active and influential. However, receiving States can begin this process by improving the public messages about intercountry adoption: for example, that national adoptions in States of origin are increasing and therefore there are fewer healthy babies in need of intercountry adoption; that more special needs children need a home nowadays through intercountry adoption; that children in orphanages are not always orphans; and that all homeless children or children in orphanages are not necessarily abandoned and adoptable.

650. Co-responsibility also demands that Contracting States be very alert as to the number of accreditations or authorisations granted for a given territory, and exchange information so as always to take into account the needs of children genuinely requiring adoption on that territory, and to prevent competition between accredited bodies for adoptable children.

651. Co-responsibility could also extend to developing a common understanding of certain terminology. In the same way as the concept of the child's best interests is not interpreted identically by all the Contracting States, the concept of "improper gain" is not understood in the same way in all States either. The receiving States and States of origin ought to approach this matter frankly, discuss it and agree upon universal parameters to secure compliance with the Convention in this respect.³⁰⁸ Chapter 9 (The costs of intercountry adoption: transparency and accountability of accredited bodies) has provided some lines of thinking that could lead to candid dialogue.

12.1.3 Improve the exchange of information

652. If co-responsibility is to be successful as a form of co-operation, States must know and understand the political, social, legal and cultural realities of other States. Good, open and honest communication and ongoing exchanges of information between States, supplemented by working sessions in the field in the receiving States and States of origin, will improve knowledge and understanding on both sides.

653. The reasons to encourage a good exchange of information in order to effectively monitor and supervise accredited bodies have already been stated in Chapter 8.3 of this Guide. In summary, candid relations between Contracting States favour improved monitoring of the operations of accredited bodies and contribute to raising the quality of their work.

654. Exchange of information between States of origin and receiving States, including information through accredited bodies, is an essential measure for the establishment of an effective system of co-operation to improve procedures and prevent abuses of the Convention. Accredited bodies are uniquely placed to hear and see what is really happening in the world of intercountry adoption and to keep the appropriate authorities informed of both good and bad practices. Occasional bad practices might be rectified by the accredited bodies themselves, but systemic problems require the intervention of the public authorities and sometimes, the governments of the States concerned.

655. The Contracting States favouring open and transparent relations among themselves could improve the decision-making process relating to accredited bodies, such as the grant or denial of accreditation, maintenance of accreditation or not, continuation of adoptions or not, remedial action if necessary. Ongoing exchange of information fosters a

³⁰⁸ On the other hand, the Optional Protocol on the sale of children is very clear on what constitutes the sale of children in Article 2 a: "*sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration*". See the Optional Protocol, *supra*, note 29.

constructive approach to co-operation between States and a dynamic process of improvement of the intercountry adoption system.

656. Frequent exchanges among Contracting States could allow improved preparation for prospective adoptive parents, since the information provided to them will be as current, consistent and accurate as possible, regardless of the source.

657. Such exchanges of information require a commitment to provide prompt responses to the requests made. As current technology can reduce the problems associated with remoteness and time-zones, its use should be the normal means of communication between Central Authorities and accredited bodies. Where the technology is not so advanced, this ought not to become an obstacle to the need to exchange information.

12.1.4 The value of personal visits

658. Co-operation among Contracting States is at its best when authorities and bodies in the receiving States and States of origin are able to meet, discuss and agree upon elements of their co-operation in respect of intercountry adoption.

659. Such visits are an excellent way to create and nurture a trusting relationship among the Central Authority of the State of origin, the Central Authority of the receiving State and the accredited bodies. Such meetings, in addition to facilitating exchanges of information, provide all the parties with a proper understanding of the child-protection systems of their respective States, as well as the legal, political, economic and social environment surrounding the adoption procedures in each State.

660. Authorities can use personal meetings to discuss the kinds of humanitarian and development aid projects that are genuinely needed in the State of origin and that could be appropriately undertaken or funded by accredited bodies. However, such meetings should not be conducted with the assumption that the particular receiving State will receive more children.

12.2 Co-operation among receiving States

12.2.1 Working together: Central Authorities

661. In the same way that co-operation between the receiving States and States of origin is important to ensure that the accredited bodies and other authorities are fully committed to compliance with the requirements of the Convention, co-operation among receiving States is encouraged in order to explore different ways to improve procedures and provide support and assistance to States of origin, including ways to reduce pressure on States of origin.³⁰⁹

662. The current situation of intercountry adoption indicates a growing imbalance between the number and profile of children genuinely requiring adoption and the number of prospective adoptive parents seeking to adopt. That discrepancy causes tensions between the receiving States and their accredited bodies that seek, each in their own way, to respond to political pressures and the pressure from prospective adoptive parents for whom intercountry adoption may be the last solution to their desire for parenthood. As a result, the receiving States and accredited bodies sometimes behave like competitors in a market environment, instead of agencies united in a single mission of serving the best interests of children.

663. Public co-operation among receiving States for the benefit of a particular State of origin offers the advantage of a positive impact on the accredited bodies.

664. Several situations could be mentioned. For example, where in a State of origin adoption activities have become dubious, the Central Authorities of receiving States should exchange information regarding the dangers and problems caused by the situation and seek ways to act in unity to find solutions. They might then agree upon a joint mission to the State concerned, and make joint strategic representations, share

³⁰⁹ In Europe, annual meetings of the European Central Authorities are held. In April 2010, a similar type of meeting was held for the first time between Latin American Central Authorities in Santiago, Chile.

solutions and develop shared practices.³¹⁰ Where the situation poses serious risks to the rights and interests of vulnerable children, to their biological parents and to prospective adoptive parents because of unsafe adoptions, the receiving States might also agree upon the criteria for a possible moratorium, should this become necessary in order to denounce practices inconsistent with the Convention's principles.

665. Some concrete examples of public co-operation among receiving States can be given from the Permanent Bureau's intercountry adoption technical assistance programme (ICATAP). The programme has relied on international advisory groups in two countries where it has been working since 2007 (Guatemala and Cambodia). These groups have met to discuss the situation in these two countries with the relevant actors, to adopt a common approach and offer technical assistance. Smaller international groups of experts have also been working, for example to provide legal advice on draft legislation. In both types of groups, one or two experts from other States of origin of the region also participated.

666. A bigger group of "friendly countries" formed a "coalition of willing States" to provide support to Guatemala to help in its reform of intercountry adoption.³¹¹ This group met in person in Guatemala and included the persons in charge of children or social issues in the diplomatic delegations in Guatemala who worked closely with their Central Authorities.

667. Similar public co-operation has developed independently in relation to non-Convention States. In Vietnam for example, the diplomatic missions of receiving States, with Unicef and other experts, are working together to support reform and to assist with progress towards ratification of the Convention.

668. Co-operation among receiving States could also be performed through exchanges of documents relating to good practice and their dissemination among the accredited bodies. In fact, as the Central Authorities are responsible for the quality of the services provided by the accredited bodies, it is incumbent upon them to ensure that the accredited bodies receive ongoing training in the area of adoption. The circulation of information is a responsibility that these Central Authorities should assume.

12.2.2 Working together: accredited bodies

669. When Central Authorities have worked together for a common cause in a particular State of origin, it is incumbent upon the Central Authorities to mobilise their accredited bodies around the same cause. To that end, the accredited bodies working in the State of origin concerned should be kept informed of the issues behind the common cause, its objects and the proposed means to achieve success for the cause. In most situations, the accredited bodies will need to be part of the solution.

670. As a way of supporting the accredited bodies in their commitment to improve the quality of the Convention's operation, the Central Authorities of receiving States could assist them to establish a joint code of professional conduct and ethics.³¹² Such a code would bind the officers of the bodies as well as the employees in the receiving State, and their representatives and co-workers in the State of origin.³¹³

671. Professional ethics rarely solve fundamental ethical dilemmas, as their priority role is to set minimal criteria for competence, good practice and supervision. However, by adopting a code, the accredited bodies display their maturity and ability to commit to established consensus and to ethical principles.

672. In the same spirit, the Central Authorities of the receiving States could develop training, consultation and discussion activities with the accredited bodies. Dialogue with

³¹⁰ This approach has been tried with some success by the Permanent Bureau under its Technical Assistance Programme to encourage countries to respond positively to the need for reform.

³¹¹ A request for assistance was made by the Government of Guatemala was made at the 2005 Special Commission. Recommendation No 22 endorsed that assistance.

³¹² Where the legislative framework is comprehensive and the Central Authority exercises rigorous supervision, a code of professional and ethical conduct may not be necessary.

³¹³ An example of such a code is the one developed by EurAdopt. See EurAdopt Ethical Rules, *supra*, note 39, Arts 16 to 28.

and among the bodies would doubtless result in boosting good practices and favouring a partnership connected with their shared objectives, in an atmosphere of respect for the independence of each.

673. Likewise, the receiving States could multiply the opportunities to share experience, expertise, and thinking among themselves, and encourage accredited bodies to do likewise with the bodies in other receiving States.³¹⁴

674. These joint working sessions should also lead them to a good understanding that through their strategic positions, they are the cornerstone of the child-protection measure that is intercountry adoption.

675. The impact of work performed in partnership would be to improve all the practices, harmonise forms of operation, secure consistent action and make the whole established system more efficient. For example, there could be more consistent standards for the development of services for prospective adoptive parents, more support for vulnerable prospective adoptive parents, programmes for vocational training, and development of explanatory guides. There might also be better collaboration for initiating research projects, and for modifying legislation.

12.2.3 Co-operation between accredited bodies and Central Authorities in receiving States

676. The Central Authorities and accredited bodies should work together to foster a mature and constructive relationship, free of tensions and rivalry.

677. In receiving States, some accredited bodies may have more knowledge and experience with the systems in certain States of origin than the Central Authorities, as well as more fluent and close relations with the Central Authorities there and these relations sometimes lead to a high level of confidence in the accredited body. This comes naturally, as the accredited bodies visit regularly. The Central Authorities and accredited bodies in the receiving State should be able to have mature and constructive relationships for sharing information and experiences obtained by the accredited bodies, such sharing to be used for the general benefit of adoptions from the State concerned.

678. On the other hand, Central Authorities (in receiving States) may be limited by a lack of resources to a) visit States of origin; b) invite Central Authorities from States of origin; c) strengthen child protection systems in States of origin (especially in "new" States of origin).

679. Some accredited bodies have the skills, experience and possibilities to support and strengthen systems in States of origin, as recommended in the Guide to Good Practice No 1, but are limited in their activity due to strict regulations in the receiving State on which kind of support can be given. Clearer and stronger recommendations about ethical co-operation projects may help them. As a result, accredited bodies could demand more resources from Government if it is accepted that accredited bodies can do this work.

680. If more than one accredited body from a receiving State is authorised to work in the same State of origin, the Central Authority in the receiving State should demand a high level of co-operation, communication and meetings between the accredited bodies, in order to achieve consistency in services and activities in the State of origin, as well as to exchange information and experiences. This will also avoid "bad practices" in the States of origin, such as conflicting information about the receiving State being given in the State of origin which causes confusion, or wasting time for the authorities with many questions from each of those bodies on the same issues to the same stakeholders.

681. To improve practices it should be possible for accredited bodies to communicate irregularities directly to relevant law enforcement bodies and to the Permanent Bureau, while also informing their Central Authority. This function need not be restricted only to the Central Authorities.

³¹⁴ See for example EurAdopt, whose members meet regularly, as does the smaller group, the Nordic Adoption Council. Central Authorities are usually invited to these meetings.

12.3 Co-operation to achieve good practices

12.3.1 Dealing with pressure on States of origin from receiving States

682. The question of pressure on States of origin from receiving States has been mentioned frequently in this Guide. In summary, the pressures arise when there are too many accredited bodies, too many files of prospective adoptive parents, when applications are sent from unsuitable applicants who have not been properly evaluated or prepared, and when applications are sent for categories of children who are not in need of intercountry adoption. A number of good practices are recommended to address these problems. See also Chapter 12.1.2.

683. Pressure on States of origin also arises from offers of “development aid”, contributions and donations which may be linked to expectations that a certain number of children, or a particular child will be allocated. There are also direct pressures on Central Authorities such as frequent telephone calls, requests for meetings, or pressure to expedite files.

684. Better contact is encouraged between Central Authorities of each State to avoid too many accredited bodies being accredited or authorised. It is recommended that States of origin limit the number of accredited bodies to a manageable level so as to create trust and understanding in the partnership. It is the obligation from both parties to know and understand fully each other’s systems and legislations. A written agreement or memorandum of understanding between the State of origin and the foreign accredited body is recommended.

685. The number of files needed from each accredited body can easily be managed by the terms of the written agreement or memorandum of understanding, revised as necessary by the State of origin and communicated to the Central Authority of the receiving State. Those agreements must be taken seriously and if not respected by the accredited body in the receiving State, this fact should be communicated to the Central Authority of the receiving State and the withdrawal of the authorisation to work in the State of origin could be considered.

686. States of origin should be encouraged to provide their authorities with a stronger mandate to impose conditions and minimum standards on foreign accredited bodies. They should always demand expertise and experience. Some States of origin have detailed criteria for foreign adoption accredited bodies to be approved.³¹⁵

687. Accredited bodies should visit States of origin at least once a year in order to better understand the situation and the system in the State of origin.³¹⁶ However, this can also create pressures for the State of origin if it has to meet with many Central Authorities and accredited bodies.

688. When a State of origin has made known its eligibility criteria for prospective adoptive parents, the State of origin should not be expected to process applications from unsuitable applicants. Such applications indicate poor preparation, or a lack of knowledge or professionalism on the part of the adoptive parents’ accredited body. It also indicates a disregard for the limited resources of the State of origin. The receiving States need to take more responsibility for the better selection of suitable prospective adoptive parents for each particular State of origin.

³¹⁵ For example, in Ecuador only a maximum of eight foreign adoption accredited bodies can be authorised to work in that country, *supra*, note 107. For examples of other States of origin that have developed criteria for the authorisation of foreign accredited bodies, see the State responses to question No 23 of the 2009 Questionnaire, in particular: Colombia (set out in the *Lineamiento Técnico del Programa de Adopciones* adopted by the ICBF, available at < www.icbf.gov.co > under “Familia y Sociedad” and “Programa de Adopciones y Restitución Internacional”; Costa Rica (set out in the *Reglamento para los procesos de Adopción Nacional e Internacional*, Art.89, available via the Costa Rican online legal information portal at < www.pgr.go.cr >; and Lithuania (set out in the *Specification of the Procedure for Granting Authorization to Foreign Institutions in Respect of Inter-country Adoption in the Republic of Lithuania*, available at < <http://www.ivaikinimas.lt> > under “Adoption” and “Specification”).

³¹⁶ It is also stated at para. 173 [Chapter 5.2.3] that it is good practice for an accredited body, before requesting authorisation, to establish (by visits and research) that its services are needed in a State of origin.

689. A similar approach can be taken if the State of origin has made known the profile of its children who may be adopted. If applications continue to be sent to the State of origin for children who do not fit the profile, the State of origin should not be expected to process those applications.

12.4 Co-operation projects, humanitarian projects and development aid

690. The issue of the accredited bodies' involvement in co-operation projects of a humanitarian nature is still a sensitive one. At its best, it is a genuinely altruistic activity that can bring great benefits to children without parental care in the State of origin. At its worst, it is little more than a means to channel vulnerable children towards particular institutions for the purpose of intercountry adoption.

691. It is this latter type of co-operation that must be stopped. It is quite inconsistent with a child-centred approach to intercountry adoption and tends to put the interests of prospective adoptive parents ahead of the interests of children. Co-operation projects which have a direct link to intercountry adoption are not considered good practice.

692. The costs aspects are also considered in Chapter 9.8.

12.4.1 Breaking the link between co-operation projects and intercountry adoption

693. This Guide aims to promote co-operation projects which are undertaken to strengthen the child protection system of a State of origin. The existence of, or progress towards, a child protection system implies that the subsidiarity principle is taken seriously, and it can be applied, because some alternative care options do exist.

12.4.2 Why is this an important issue now?

694. The obligation of co-operation under the 1993 Hague Convention does not specifically require humanitarian aid projects. Humanitarian projects existed long before the Hague Convention, and since the Convention, they have evolved with it. Due to the changing balance of "market forces" there is now a greater risk that humanitarian projects may be used to undermine the integrity of a safe Hague Convention adoption procedure.³¹⁷

695. Unfortunately it is known that co-operation projects that aim to channel children towards intercountry adoption do exist. Ethical practices in adoption require that any such link between co-operation projects and intercountry adoption be broken. To use current terminology, there must be a "firewall" between intercountry adoption and humanitarian aid. Fortunately there are many examples of co-operation projects undertaken by accredited bodies which are genuinely humanitarian in nature and are done with no expectation of any "return" in the form of more children for intercountry adoption. How this can be achieved without discouraging either humanitarian aid or intercountry adoption is the challenge.

696. It is important to emphasise that humanitarian aid could be, and often is, provided directly by governments of receiving States to States of origin. It need not be provided by accredited bodies, even if funds were raised through them from contributions and donations from prospective adoptive parents. This may be the proper direction for the future – to break the link with intercountry adoption.

697. Some guidelines on the delivery of humanitarian aid funded by prospective adoptive parents are currently being written by the Swedish Central Authority and the Swedish International Development Authority (SIDA). As an example of good practice, one Swedish accredited body has a separate co-operation unit which co-operates with SIDA in identifying projects. That Co-operation Unit maintains a separate identity from the accredited body, it has separate accounts, and operates in both the receiving State and the States of origin.

³¹⁷ See for example, the discussion in the ISS Report, "Adoption from Vietnam: Findings and recommendations of an assessment", November 2009, at Chapter 5.3.2.

698. In Italy, the Central Authority has developed a process of “tender offer” for humanitarian aid, to provide the guidelines for projects.

12.4.3 Examples of ethical projects

699. Some examples of ethical co-operation projects which do not compromise the intercountry adoption process were given in the Guide to Good Practice No 1. They are repeated here for easy reference. One Swedish accredited body, *Adoptionscentrum*, has developed strategies for international development co-operation including strategies to prevent the abandonment of children; to give children in institutions a family, primarily within their own, or another family within the country; to educate decision makers about the children and the care takers; to provide children who have grown up in an institution with the capability to lead an independent life as an adult; and to strengthen non-governmental organisations that promote a child’s right to grow up in a family. *Adoptionscentrum* co-operates primarily with non-governmental organisations and foundations which share their values and work towards the same goals. They currently support projects such as:

- training of staff at institutions and other professionals in Ecuador in order to improve the quality of care and finding alternative placements for children;
- capacity building of social workers in the Philippines in order to work more efficiently with child care;
- guidelines for institutional care in India. Other projects include training institutional staff in one State and children’s rights advocacy in another; and a new method to decrease the spread of HIV in India is being undertaken;
- creating networks in Kazakhstan in order to replace institutional care with foster care;
- support to children growing up in institutions in Russia so they can lead a normal life after living in institutional care. Other projects in Russia aim to increase co-operation between authorities and non-governmental organisations in order to raise awareness about children’s needs;
- support to children who leave institutional care in Serbia that will help them lead independent lives;
- establishing an information and training centre, foster homes for children affected by AIDS and training child care workers in South Africa;
- non-governmental organisations in Belarus, together with the authorities, train staff and raise public awareness in order to increase national adoptions, improve care and ease the transition for children leaving institutional care. Single mothers receive support to keep their children;
- training local leaders in the Women’s Union in five provinces in Vietnam to give them knowledge to support other underprivileged women to look after their own rights and those of their children. Training and networks will contribute in improving the situation of handicapped and orphaned children in two provinces.³¹⁸

700. Other examples come from a Dutch accredited body, *Wereldkinderen*,³¹⁹ which supports projects in several States, including Colombia and India. In Colombia, *Wereldkinderen* supports a day centre, *Creciendo Unidos* (Growing up United), which offers education and vocational training to young working street children in Bogotá. It operates in one of the poorest neighbourhoods around Bogotá. Large numbers of children live in slum dwellings and do not go to school. They contribute to the family income as street sellers or labourers, and are exposed to drugs, violence and criminality, or are recruited by the paramilitaries or the guerrilla groups. The day centre offers:

³¹⁸ See the Guide to Good Practice No 1, *supra*, note 18, para. 229.

³¹⁹ See < www.wereldkinderen.nl >, which contains information about current projects (available only in Dutch).

- education and training of children who may get a certificate of vocational aptitude, or follow literacy training and have the possibility to participate in primary education through supplementary training;
- education and assistance for the children's families, in most cases the mothers;
- assistance for working children who receive meals, health care and general education.³²⁰

701. In India, *Wereldkinderen* supports the NAZ Home Based Care Programme, and part of the NAZ foundation's work is to take care of children and their educators in HIV cases. It also reinforces objective factual information on sexual health and HIV. The programme assists more than 200 families affected by AIDS. NAZ offers psycho-social support, extra nutrition, public awareness programmes and capacity building. The programme was initially intended for those adults who were affected by the AIDS virus, but now the emphasis is on children. The NAZ Home Based Care Programme, initiated in 2001, assists 250 children who are, one way or another, victims of the HIV / AIDS virus. They are affected themselves or have lost their family due to the disease. The programme offers emotional and psycho-social assistance to the children. The programme also ensures that all children are able to receive quality care, and that malnourished children receive regular milk, eggs or fruit. The programme offers one of the few places around Delhi where such children can go for support.³²¹

702. In Norway, the development aid body, NORAD³²² provides child protection aid that is unrelated to Norway's involvement in intercountry adoptions. NORAD has given support to a Philippines organisation, Norfin, to enable it to start aid programmes for poverty stricken families in remote areas in the Philippines. Norfin is also the contact organisation of the Norwegian accredited body *Adopsjonsforum*. However, Norfin has no influence on the number of children that are matched with Norwegian families. NORAD has also given funds to support an orphanage in Bombay in India. This orphanage has also been supported by the Norwegian accredited body Children of the World – Norway. Children of the World has mediated some adoptions of children from this orphanage, but no preference is given to Norwegian families, and more children have gone to other States or to national adoptions in India.³²³

12.4.4 Criteria to identify co-operation projects

703. An example of how ethical projects may be identified comes from the Permanent Bureau's technical assistance programme (ICATAP) in Guatemala. A pilot project has been developed in co-operation with the Central Authority and Unicef. The proposed two year pilot project aims to work in two different contexts. The first aspect concentrates on the context of adoption strictly speaking, and the second aspect concentrates on the wider context of child protection.

704. In the adoption context, the Guatemalan Central Authority will work with a very limited number of adoption accredited bodies (a maximum of four is proposed) and their respective Central Authorities which will search for suitable families for the children and adolescents of Guatemala who are in need of an intercountry adoption (in the project the fact is well explained that the number and profile of intercountry adoptable children has changed drastically from the previous system).

705. In the child protection context, the aim of the pilot project is to establish the framework in which ethical co-operation programmes not connected to intercountry adoption may be established in order to help strengthen the child protection system of Guatemala, in particular for the children deprived, or at risk of being deprived of parental care. The Guatemalan Central Authority is working with the Central Authorities or development aid bodies of the selected countries working on the adoption part of the pilot project and other interested Central Authorities. One example of co-operation projects would be the implementation of alternatives for the care of those children and

³²⁰ See the Guide to Good Practice No 1, *supra*, note 18, para. 230.

³²¹ *Ibid.*, *supra*, note 18, para. 231.

³²² See < www.norad.no >.

³²³ See the Guide to Good Practice No 1, *supra*, note 18, para. 232.

adolescents, who will not be able to benefit from an adoption, due to their specific characteristics, such as age or health. The second aspect of the project is developed in conjunction with Unicef and other child protection bodies in Guatemala.

706. This pilot project is based on enhancing the co-responsibility between the Central Authority of Guatemala and the receiving States taking part in the project.

12.5 Co-operation among States of origin or “horizontal co-operation”

707. Another form of co-operation which is developing is between States of origin. In this case co-operation may occur between a State of origin with major problems and a State of origin with a long tradition in adoption which has overcome difficulties and abuses, and has developed good practices.

708. This co-operation is very well accepted by States of origin, as it does not have any hidden purpose and it does not ask, directly or indirectly, for “adoptable children”. Usually this co-operation is done through technical assistance rather than providing funds. Professionals with a lot of experience from the State of origin with good practices may go to the State of origin with problems to assist them in their work, share experiences and study how difficulties could be overcome. In some cases, the professionals from the State of origin with difficulties travel to the State of origin with good practices to learn about the child protection system and adoption directly in the second State. This allows them to meet a very wide range of actors in that State.

709. This type of co-operation has been done in the framework of ICATAP. In the case of Guatemala, the neighbouring countries of Brazil, Chile and Colombia have actively participated in the technical assistance to Guatemala. In these cases the Hague Conference and / or Unicef covered the travel expenses, and the State of origin with good practices offered the time of their professionals. In the case of the co-operation between Guatemala and Chile, these two countries have now signed an agreement of co-operation.

710. In the case of Cambodia, the Central Authority of the Philippines has taken part in the technical assistance under the ICATAP programme. The Philippines has also given technical assistance to Vietnam.

12.6 Other types of co-operation projects

711. Direct meetings among Central Authorities may result in unexpected possibilities for co-operation. An interesting project that arose from a study visit involved Quebec (Canada) and Lithuania. When Lithuanian officials visited Quebec, they were informed of the social services with respect to the protection of youth, and expressed an interest in training for its social workers. A customised training programme was prepared in collaboration with the various players concerned. A team of professionals from Quebec visited Lithuania and enabled 60 Lithuanian social workers to perfect their knowledge in the area of adoption. It should be noted that Lithuania’s aim was to train the social workers in the promotion of domestic adoption.

712. Another positive form of co-operation that sometimes flows from personal meetings arises when the receiving State’s Central Authority contributes financially to the State of origin’s participation in conferences and seminars relating to various topics bearing on intercountry adoption, as well as Special Commission meetings in The Hague. The presence of States of origin in greater numbers at such forums would extend the circle of dialogue and also serve as ongoing training.

12.7 Bad practices

713. Much has been said about avoiding pressure on States of origin. However, receiving States, responding to pressure from their adoptive parents, find their own solutions to meet the demand. A particularly bad practice occurs when accredited bodies construct or support the construction of new baby homes and other similar institutions, expecting certain numbers of adoptions in return.

SUMMARY OF GOOD PRACTICES

Receiving States

714. Good practices regarding co-operation on the part of Central Authorities and accredited bodies in the receiving States include:

- avoiding pressure on States of origin to have or maintain a “supply” of children to meet the demand from prospective adoptive parents. Receiving States may seek to alleviate pressure by improving public messages about the nature and process of intercountry adoption;
- ensuring that State of origin notifications regarding the profile and number of adoptable children are respected;
- respecting the requirements of States of origin regarding the profile and number of accredited bodies that they need, and managing accordingly the number of bodies authorised to act in that State;
- being proactive when systemic abuses exist, to try to eliminate them, and if necessary, discontinue adoptions or refuse co-operation with an underperforming State of origin;
- providing improved training and education of accredited bodies so that they understand fully their responsibilities as actors in an international treaty;
- improving the preparation of prospective adoptive parents for the realities of an intercountry adoption and managing better their expectations;

715. Foreign accredited bodies have a duty to inform their Central Authority of corruption and malpractice in States of origin.

716. Where adoption activities in a State of origin have become dubious, the Central Authorities of receiving States should exchange information regarding the dangers and problems caused by the situation and seek ways to act in unity to find solutions.

717. Co-operation among receiving States is encouraged in order to explore different ways to improve procedures and provide support and assistance to States of origin, including ways to reduce pressure on States of origin.

718. If more than one accredited body from a receiving State is authorised to work in the same State of origin, the Central Authority in the receiving State should demand a high level of co-operation between the accredited bodies, in order to achieve consistency in services and activities in the State of origin.

719. The receiving States need to take more responsibility for the better selection of suitable prospective adoptive parents for each particular State of origin.

States of origin

720. Good practices regarding co-operation on the part of States of origin include:

- demonstrating the political will to curb corruption and malpractice;
- refusing intercountry adoptions with underperforming receiving States or accredited bodies;
- resisting inappropriate pressures of receiving States and accredited bodies to maintain a “supply” of children; States of origin may seek to alleviate pressure by clearly communicating its eligibility criteria for prospective parents and profile of adoptable children and / or by limiting adoption applications from foreign accredited bodies under a written agreement;;
- choosing only the most professional authorities and bodies with which to work (supported by stricter requirements regarding experience and expertise in ethical adoption work);
- prior to granting an authorisation, seeking information from other States of origin about particular accredited bodies.

721. States of origin should limit the number of adoption accredited bodies to a manageable level so as create trust and understanding in the partnership.

722. A written agreement or memorandum of understanding between the State of origin and the foreign accredited body is recommended. This document would be revised regularly, as necessary and as conditions change.

723. Co-operation may occur between a State of origin with major problems and a State of origin with a long tradition in adoption with has overcome difficulties and abuses, and has developed good practices.

All Contracting States

724. Good practices on the part of all Contracting States include:

- being alert as to the number of accreditations / authorisations granted for a given territory;
- exchanging information about the needs of children genuinely requiring adoption, and to prevent competition between accredited bodies for adoptable children. Information could be exchanged through accredited bodies and as far as possible make use of developments in communication technology; and
- developing a common understanding of Convention terminology.

725. Personal visits are an excellent way to create and nurture a trusting relationship among both Central Authorities and accredited bodies.

726. Good practices could be discussed and agreed between States through face-to-face meetings and visits. Documents relating to good practice could be exchanged between States and disseminated among adoption accredited bodies. receiving States in particular could promote good practice among accredited bodies by establishing a joint code of professional conduct and ethics binding upon officers and employees, as well as representatives and co-workers in States of origin.

727. Co-operation projects which have a direct link to intercountry adoption are not considered good practice. States should provide clearer and stronger recommendations to accredited bodies about ethical co-operation projects.

728. Humanitarian aid could be provided directly by governments of receiving States to States of origin.

CHAPTER 13

PERSPECTIVES FROM STATES OF ORIGIN AND RECEIVING STATES

13.1 STATES OF ORIGIN: Colombia

13.1.1 Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

729. The Hague Convention was signed by Colombia in 1993, was ratified in 1998, and entered into force that same year. Even before signing the Convention, Colombia had had over 10 years' experience in intercountry adoption. The *Instituto Colombiano de Bienestar Familiar* (ICBF) is the Central Authority in adoption matters.

730. In general, Colombia's ratification of the Convention signified:

- better organisation and supervision of the intercountry adoption programme (at both the Central Authority and accredited body level);
- improved procedural safeguards;
- improved rate of issuing Article 23 certificates, which is the final document of the adoption process in Colombia, and which assists the child in acquiring the nationality of the receiving State;
- greater transparency and supervision of persons working for agencies, who now must be qualified and act as the legal representative of adoption bodies, rather than as independent intermediaries; and
- improved supervision and monitoring of post-adoption follow-up.

731. The assessment and authorisation of adoption bodies was initially the responsibility of the Protection Division within the ICBF, followed by the Adoption Coordination. Today, it is the Directorate-General of the ICBF, with the assistance of an advisory board, which formulates policy and makes decisions on granting, renewing, suspending, and withdrawing the authorisation of bodies that provide intercountry adoption services. It is also responsible for maintaining an internal information system on accredited bodies, which allows specialists from the national adoption group to provide feedback on their performance from accompanying and preparing prospective adoptive parents, through to post-adoption follow-up.

13.1.2 **Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies**

732. The ICBF supervises the operation of accredited bodies and the activities of their local legal representatives in Colombia by way of technical guidelines called the *Lineamientos Técnicos del Programa de Adopciones*.

733. The technical guidelines (as amended by Article 1 of Resolution No 2550 of 18 June 2008) set out in detail the functions that these legal representatives must perform. These functions include (among other things):

- representing the accredited body before the Central Authority on adoption matters and providing a communication link between the two. The representative must also manage the documentation required for the adoption in addition to representing the family before the ICBF and providing follow-up;
- checking the family's acceptance of the matching proposal, and submitting it to the ICBF or authorised institution together with a "Notice of Family Information for Preparing the Child" (containing as much information as possible) and the teaching aids required by the adoption board;

- providing guidance and advice to families during their stay in Colombia on the adoption procedure;
- compiling post-adoption reports and submitting them to the ICBF as required; and
- attending meetings convened by the ICBF to strengthen the co-ordination and implementation of procedures.

734. The ICBF has noticed that accredited bodies usually offer services in addition to those provided in fulfilment of the above functions, such as accommodation, transport, etc. This poses the risk that the costs allocated by the bodies to these additional services remain unknown as they are offered from the State of origin, which in turn has the potential to restrict the family's freedom to choose particular services, for which the ICBF can offer information free of charge.

735. For this reason, the ICBF highlights the need for constant and open dialogue with Central Authorities in receiving States, which allows information on the actual costs that accredited bodies pass on to prospective adoptive parents to be understood and evaluated.

736. In relation to accreditation policy, Colombian legislation provides that bodies will be authorised based on the need for their services for a period of two years.

737. In January 2010, there were eight local accredited institutions ("authorised institutions") and 64 foreign accredited bodies authorised to work in Colombia.

13.1.3 The respective roles and functions of the Central Authority and accredited bodies

738. Adoption bodies literally act as intermediaries in providing intercountry adoption services, as described in the preceding chapter, and are subject to the requirements imposed by the Central Authority. For its part, the Central Authority performs the following tasks:

- putting in place parameters for the development of the adoption programme in Colombia; and
- inspecting, monitoring and supervising procedures;
- determining the child's adoptability, which is done by Family Advocates within the Central Authority;
- maintaining the integrated information system;
- determining the suitability of the family (which may also be done by authorised institutions, in which, a Family Advocate is charged with reinstating the rights of the child, and a specialist from the Central Authority is charged with providing support and technical assistance to the institution);
- the Family Advocate is responsible for the official meetings between the child and the adoptive family in authorised in Colombia, and to determine whether integration into the adoptive family has been favourable;
- issuing certificates of compliance for all families that are resident in a foreign State; and
- post-adoption monitoring and supervision, and maintaining and updating the information system.

13.1.4 Co-operation and communication between Central Authority and accredited bodies

739. The ICBF has enhanced co-operation and communication with accredited bodies through:

- clear and written regulations;

- creating an atmosphere of trust and personalised attention to legal representatives and / or management (for example, by allowing them to participate in the development of guidelines);
- involving them in the decision-making process of the Central Authority; and
- providing open and respectful treatment.

740. In addition, the ICBF notifies representatives in writing of all changes or updates to the adoption programme, which it conveniently publishes on its website. The ICBF checks websites of foreign accredited bodies, with specific attention to the published prices for services provided during the adoption process in Colombia.

741. Finally, the Adoption Group within the ICBF employs three specialists who are responsible for liaising with and monitoring foreign accredited bodies.

13.1.5 Accreditation of domestic bodies

742. In Colombia, accredited bodies are not used in domestic adoption. There are eight authorised institutions which develop adoption programmes through adoption committees. Authorised institutions are responsible for selecting prospecting adoptive families from Colombia and abroad, and for matching the child, in accordance with law 1098 of 2006, decree 2263 of 1991, decree 2241 of 1996 and the technical guidelines, as agreed by Resolutions Nos 2310 of 2007, 4694 of 2008 and 2660 of 2009.

13.1.6 Authorisation of foreign accredited bodies (art. 12)

743. Accredited bodies are regulated under the Code of Infancy and Adolescence and the technical guidelines. According to these instruments, authorisation of a body is given based on the need for its services, and is renewed every two years.

744. In 2009, a technical committee for authorising foreign accredited bodies and agencies was created within the ICBF. Its function is to make decisions in relation to granting, renewing, suspending, and withdrawing authorisation. It also decides whether to accept or reject the local legal representatives nominated by each body.

745. To be authorised to operate in Colombia, a foreign accredited body must make a bona fide application to the Director-General of the ICBF and must comply with the legal, financial and technical requirements set out in the technical guidelines. These guidelines govern, among other things, the application process for authorisation, the functions of legal representatives in Colombia (see para. 733), the supervision of authorised bodies by the ICBF, internal procedures of the ICBF, and the entity responsible for authorisation.

746. In order for authorisation to be granted, the body must also put forward for the consideration of ICBF programme proposals or plans for humanitarian assistance for children and families in Colombia, both of which are aimed at protecting children through social programmes (either of a preventative or special protection nature).

13.1.7 Specific challenges in the State of Origin

747. As a State of origin, Colombia faces a range of challenges:

- reducing, regulating and monitoring costs, including the proper costs of the adoption procedure and the travel costs of families (there are plans to publish a guide to accommodation to be maintained by the ICBF and Central Authorities in receiving States);
- widespread dissemination of information about the adoption system in Colombia through: (i) agreed training programmes for officials in the Ministry of Foreign Affairs working at Colombian embassies and consulates abroad; (ii) the creation in 2010 (with the collaboration of the Ministry of Foreign Affairs), of a network of Central Authorities participating in the adoption programme in Colombia, with the aim of promoting co-operation and coordination; and (iii) the publication of fees charged by accredited bodies on the ICBF website and the websites of other Central Authorities;

- reviewing the integrated information system, which allows families to track the status of their application online; and
- preventing the involvement of local intermediaries in adoptions performed by the Central Authority or by foreign accredited bodies, which involvement is no longer necessary. Written communication flows through either the legal representative or the Central Authority. The existence of a local representative or lawyer is an additional burden on the ICBF, as it has to verbally report on the progress of the adoption process where this information is already passed through other channels.

748. The ICBF is currently conducting a survey of families prior to issuing the certificate of compliance to determine their level of satisfaction in services provided by adoption bodies in the receiving State and in the State of origin.

13.1.8 Specific challenges in the receiving State

749. The ICBF considers greater co-operation between Central Authorities to be very important in regard to harmonising laws in each State, supervising and monitoring accredited bodies, and in general implementing measures to improve compliance with the Convention.

750. Specifically, it is proposed to promote co-operation and participation with Central Authorities through:

- developing adoption policy based on the present needs of Colombian children;
- joint accreditation and supervision of adoption bodies;
- creating a joint system for managing and handling complaints; and
- regulating co-operation in the area of humanitarian assistance.

751. Another priority for Colombia is to co-ordinate the issue of costs with Central Authorities to achieve total transparency and control. This would facilitate information handling with adoption bodies and prospective adoptive parents. In particular, the challenge of regulating costs is faced by States where Central Authorities have delegated the complete administration of the adoption programme to accredited bodies.

752. A further challenge arises in the case of States whose Central Authorities have delegated the adoption programme to accredited bodies (including the assessment of suitability of prospective adoptive parents and post-adoption follow-up) as certain bodies do not have a head office or regional offices. This poses, among other things, the following problems:

- the family is subjected to the exigencies of the body in locating contact persons to carry out psychosocial studies and post-adoption follow-up; and
- support for the family is impersonal, represents a major cost, and at times takes place via the Internet (through the use of handbooks) or by teleconference.

753. At present, ICBF is making necessary arrangements to add an adoption module to the "Redes Colombia" portal, which is part of the "Colombia Nos Une" programme administered by the Ministry of Foreign Affairs. This module will establish the network of Central Authorities participating in the adoption programme in Colombia, which in turn will facilitate co-operation.

13.2 STATES OF ORIGIN: Lithuania

13.2.1 Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

754. In 1997 Lithuania joined the 1993 Hague Convention and appointed its Central Authority. However, between 1997 and 2000 there was not a law which strictly regulated the sending of applications from foreign families to the Lithuanian authority. At that time prospective adoptive parents could apply through their Central Authority or through

accredited bodies. In addition, some prospective adoptive parents were represented by foreign or even Lithuanian attorneys.

755. In 2000 the Adoption Service under the Ministry of Social Security and Labour started its activities. One of the main questions was how to control the activities of foreign accredited bodies and private persons. Several bilateral agreements with foreign accredited bodies acting in Lithuania were signed.

756. Furthermore some requirements of the adoption procedure were changed. Among other things, private adoptions were forbidden and prospective adoptive parents (not the accredited bodies) have to be personally registered in the waiting list. The Lithuanian Central Authority asked the Italian Central Authority not to allow more than four accredited bodies to act in Lithuania. In the case of the United States of America (USA) it was more problematic, as there were no strict control mechanisms of the American accredited bodies and their practice depended on the American individual state laws.

757. On 3 June 2005, the Minister of Social Security and Labour approved the Order of the Specification of the Procedure for Granting Authorisation to Foreign Institutions in respect of intercountry adoption in the Republic of Lithuania. This Order established the procedure for granting authorisation to foreign adoption accredited bodies as required by Article 12 of the 1993 Hague Convention; the procedure for termination and renewal of such authorisation and suspension and revocation of it; the procedure for issuing and registering a certificate confirming the foreign accredited body's authorisation for intercountry adoption in the Republic of Lithuania; and the functions, rights and duties of the authorised foreign accredited bodies.

758. This Order regulates very clearly the situation and functions of the foreign accredited bodies, and therefore the Lithuanian Central Authority can control foreign accredited bodies' activities directly.

13.2.2 Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

759. In Lithuania there are no national accredited bodies. Only foreign accredited bodies authorised by the Lithuanian Central Authority can act in Lithuania. The number of accredited bodies has not changed since 2006. The reason is that no more foreign accredited bodies were needed in Lithuania and on 17 July 2006 the Minister of Social Security and Labour made a statement that from 1 August 2006 new applications for authorisation of foreign accredited bodies will not be accepted. At the moment there are 14 accredited bodies acting in Lithuania. Their activities and duties are strictly regulated by the above mentioned Order. If they breach them the Lithuanian Central Authority has the power to suspend or revoke the authorisation.

760. Many adoptable children in Lithuania have special needs. Among these children many are older (approximately 20 children under the age of 6 are adopted by foreign prospective adoptive parents per year and almost 80 percent of them are adopted with a brother or a sister); have serious health problems, which can be solved only by medical intervention and intensive permanent care; and / or are siblings (3 and more children from one family).

761. As very young adoptable children are adopted in Lithuania and therefore the number of national adoptions increased, the number of internationally adopted children under 6 years old is very small. In order to minimise the waiting time (which is 4-5 years) for foreign prospective adoptive parents who wish to adopt only small healthy children, the Minister of Social Security and Labour of the Republic of Lithuania on 17 July 2006 established that each year the countries which are working with Lithuania can submit, through its authorised foreign accredited bodies or the Central Authority, not more than two families' applications to adopt a child up to age 6, except in cases when a family wants to adopt a child (children) with special needs.

13.2.3 The respective roles and functions of the Central Authority and accredited bodies

762. The role and functions of the Central Authority are to:

- organise international adoptions (in accordance with the Arts 4, 7, 9, 16, 23 of the 1993 Hague Convention);
- authorise foreign accredited bodies, control their activities, co-operate with foreign Central Authorities or their accredited bodies in the field of adoption and children's rights protection.

763. Under the Order of the Specification of the Procedure for Granting Authorisation to Foreign bodies in respect of intercountry adoption in the Republic of Lithuania the Authorised foreign accredited body shall carry the following functions:

- to represent prospective adoptive parents during the adoption process;
- to inform the prospective adoptive parents who wish to adopt a child in Lithuania about the adoption procedures and requirements in the Republic of Lithuania and provide professional consultations;
- to help prospective adoptive parents to prepare the necessary documents to be included in the register of citizens of the Republic of Lithuania permanently residing abroad and foreigners wishing to adopt a child and, having ascertained that the applicants are fully prepared for adoption, issue a document in compliance with Article 15 of the 1993 Hague Convention;
- to provide prospective adoptive parents with all the necessary information regarding the child's social status, development and health;
- to confirm that the child has been, or will be, granted a permit for entering the receiving State and permanent residence in the country;
- to exchange information about adoption process and measures taken with the Adoption Service;
- to follow the procedure for offering children with special needs that are eligible for international adoption, approved by the Order of the Director of the Adoption Service, for adoption;
- to provide the Lithuanian Adoption Service with feedback on the adopted children (during the first two years after adoption – every six months; during the following two years – once a year; four years and later after adoption – upon request from the Adoption Service), that consists of reports in the prescribed form about the adopted child's integration into the family, living conditions, development and state of health and visual material.

764. The authorised foreign accredited body shall properly, honestly and punctually perform the following duties:

- obey the laws of the Republic of Lithuania and other Lithuanian and international legislative acts;
- gain no illegal financial benefit or unreasonably high remuneration for the services rendered;
- inform the Adoption Service about plans to change the authorised representative;
- every year, no later than 31 January, provide a report on the activity in the Republic of Lithuania during the last calendar year to the Adoption Service.

13.2.4 Co-operation and communication between Central Authority and accredited bodies

765. There is a need to understand the situation in States of origin before starting working with receiving States. Good co-operation and communication is possible when both parties' States of origin and receiving States understand one country's needs and other country's possibilities. The Lithuanian Central Authority is trying to maintain close

co-operation, and keep partners informed of the situation, including any changes to legal acts.

13.2.5 Accreditation of domestic bodies

766. There is no procedure of accreditation of domestic bodies in Lithuania.

13.2.6 Authorisation of foreign accredited bodies (Art. 12)

767. The selection of the foreign accredited bodies was made according to the following criteria:

- the status of foreign institution, a recommendation of the Central Authority of the receiving State;
- the experience in the field of the intercountry adoption;
- the experience in the field of the intercountry adoption from Lithuania;
- the profile of children adopted in the past, the special attention to special needs children;
- the number of prospective adoptive parents willing to adopt in Lithuania (for example there are not a lot of prospective adoptive parents from Sweden so there is no need to have several authorised institutions from that state);
- the adoption procedure in the receiving State, for example if in the receiving State prospective adoptive parents are allowed to go through the Central Authority or the accredited body, there is no need to authorise several foreign bodies from that State (for example there is one authorised body from France, Spain and Germany), but if the receiving state obliges the prospective adoptive parents to go only through the accredited bodies several foreign institutions may be authorised (for example there are four authorised institutions from Italy and four from the USA);
- the services provided to prospective adoptive parents and their fees;
- the representative of the foreign institution in Lithuania.

768. According to this information an Adoption Commission recommends if the foreign institution is able to carry out tasks given to it. The Director of the Lithuanian Central Authority, taking into account the Commission's recommendation, issues a resolution granting or refusing authorisation to work in Lithuania to the foreign adoption accredited body.

769. Authorised foreign accredited bodies are supervised by the Lithuanian Central Authority. Every year, no later than 31 January, they must provide a report on their activity in the Republic of Lithuania.

770. The Director of the Central Authority may suspend the authorisation of authorised foreign accredited bodies if it provides some false information or does not perform, or performs improperly, the functions or the duties imposed by the Order, or if the representative of foreign institution in Lithuania is changed. The authorisation of authorised foreign accredited bodies may be revoked. In four years there have been no cases of suspension or revocation of authorisation.

13.2.7 Specific challenges in the State of origin

771. We have solved many problems by the authorisation law.

13.2.8 Specific challenges in receiving States

772. As mentioned above, accredited bodies must provide a report on their activity in the Republic of Lithuania every year, no later than 31 January. One of the parts of the report is a financial report. In practice it is difficult to check the reliability of this information. The Lithuanian Central Authority asks in its website for co-operation on this issue from receiving States. However, until now there has not been a positive reply. Control would be more efficient if both countries had more communication and exchanges of information about the possible fees before issuing accreditation.

13.3 STATES OF ORIGIN: Philippines

13.3.1 Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

773. The Philippines signed the 1993 Hague Convention on 17 July 1995. In preparation for its ratification on 2 July 1996, the Philippines worked on an implementation plan in order to comply with the objects of the Convention.

774. On 7 June 1995, the Philippine Congress passed the *Intercountry Adoption Act of 1995* or *Republic Act 8043*, closely modelled and in accordance with the 1993 Hague Convention. The law established the Intercountry Adoption Board (ICAB) to serve as the Central Authority. To ensure that the system of implementation of intercountry adoptions will fulfil the mandates of the Convention, the ICAB passed the *Implementing Rules and Regulations of Republic Act 8043 (Implementing Rules)* on 26 December 1995.

775. Prior to the entry into force of the Convention on 1 November 1996, the Philippine intercountry adoption process was carried out by a unit directly under the Office of the Secretary of the Department of Social Welfare and Development or the Philippine Intercountry Adoption Unit (PIAU). The PIAU, having exercised the functions for numerous years, had in place guidelines on accreditation of foreign adoption agencies and their local representatives. Accreditations for the operation of local Child Caring and Placing Agencies³²⁴ (for local adoptions) was, and still is the mandate of the Department of Social Welfare and Development.

776. It is with this background that the Intercountry Adoption Board began the process of accreditation of its partner foreign adoption agencies. A document consolidating and improving the pre-Convention guidelines of PIAU was adopted by the first Board of Directors of the Intercountry Adoption Board in 1996 and is now known as the *Minimum Standards for Accreditation of Foreign Adoption Agencies* (Annex 13B).

777. It is noted that the Philippines has a highly developed procedure for allowing foreign accredited bodies to work in their country. These bodies must first submit to a process of accreditation in the Philippines before being authorised in accordance with Article 12.

13.3.2 Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

778. In keeping with the rights of children as established by the United Nations Convention on the Rights of the Child, the 1993 Hague Convention and other international laws and conventions, *Republic Act 8043* or the *Intercountry Adoption Law* of the Philippines declared a policy of state:

to provide every neglected and abandoned child with a family that will provide such child with love and care as well as opportunities for growth and development. Towards this end, efforts shall be exerted to place the child with an adoptive family in the Philippines. However, recognising that inter-country adoption may be considered as allowing aliens, not presently allowed by law to adopt Filipino children if such children cannot be adopted by qualified Filipino citizens or aliens, the State shall take measures to ensure that inter-country adoptions are allowed when the same shall prove beneficial to the child's best interests and shall serve and protect his / her fundamental rights.

779. The law, recognising the value of the input of all stakeholders in the placement of Filipino children in foreign permanent homes, put in place a process of consultation with

³²⁴ In the Philippines, there are two types of agencies who work very closely with the Philippine authorities. On the one side "Child caring agencies" are in charge of children who are abandoned, neglected or surrendered. On the other side, there are "Child placing agencies" which are in charge of searching adoptive families for adoptable children.

the Philippines' Department of Social Welfare and Development (DSWD), child-care and placement agencies, adoption agencies, as well as non-governmental organisations engaged in child care and placement activities (section 4, Art II Republic Act 8043).

780. ICAB maintains strict control of the numbers of foreign adoption agencies. Where there are numerous accredited foreign adoption agencies from a specific country, the country is made subject of a moratorium from sending new applications for accreditation. Where there is only one accredited body from a receiving State, the Board may accredit another foreign adoption agency from said state depending on the geographic coverage of the foreign adoption agency and circumstances in the specific country. Due to the increasing number of waiting families and the low number of children available for intercountry adoptions, the Board, upon request of the Secretariat, has imposed temporary moratoriums on the receipt of applications for accreditation.

781. The functions and powers of accredited foreign adoption agencies with respect to intercountry adoptions are stated thus: "assume responsibility for the selection of qualified applicants; that it shall comply with the Philippine laws on intercountry adoption; that it shall inform the Board of any change in the foregoing information; and shall comply with post adoption requirements as specified by the Board" (sub-section e, Section 18 of the Implementing Rules).

782. To date, the ICAB works with 105 partners. Its international partners consist of: fifty (50) central authorities, fifty (50) non-governmental foreign adoption agencies, five (5) government adoption agencies. The non governmental partners are broken down as follows: Austria (1); Belgium (2); Denmark (2); Finland (1); France (1); Germany (1); Italy (4); Netherlands (1); Norway (1); Spain (6); Sweden (1) Switzerland (1); USA (24); New Zealand (1); and Canada (3).

13.3.3 The respective roles and functions of the Central Authority and accredited bodies

783. The institutions / bodies involved in intercountry adoption are: the Philippines government represented by the Department of Social Welfare and Development as the competent authority; the Intercountry Adoption Board as the Central Authority; the Child Caring Agency or Child Placement Agency; the Central Authority of the receiving State or the foreign adoption agency.

784. In intercountry adoption, as in domestic adoption, the State is represented by the Department of Social Welfare and Development which acts as *parens patriae* (guardian) to these surrendered, abandoned, neglected and abused children. The Department of Social Welfare and Development Reception and Study Centers for Children (RSCCs) have physical custody of the children who are in the State's care.

785. ICAB is the sole authority under the Intercountry Adoption Law (Republic Act 8043) mandated to deal with Hague and non-Hague countries in processing intercountry adoption cases. Moreover, it is only ICAB as the Central Authority in the Philippines that can undertake the necessary steps to institute a coherent and consistent intercountry adoption policy.

786. Accredited and licensed Child Caring and / or Placement Agencies, both Government and non-government, involved in child welfare and care are the first line of "caregivers" for surrendered, abandoned, neglected and abused children. These institutions are responsible for actively matching the child with the prospective adoptive parents.

787. Applications for intercountry adoption in the Philippines can only be made through accredited foreign adoption agencies or through the Central Authorities, as the case maybe. The ICAB does not accept direct applications by prospective adoptive parents. It is important that prospective adoptive parents have good relations and open communication lines with their chosen Central Authorities or foreign adoption agency.

788. The intercountry adoption process is administrative in nature. The adoption process starts in the prospective adoptive parents' own country since their application is filed with their Central Authority or an accredited foreign adoption agency authorised by the ICAB

as its partner. The processing, matching and placement of the child are done in the Philippines, but the finalisation of the adoption or the issuing of the adoption decree is done in adoptive parents' home country. The receiving State must therefore issue the Article 23 certificate and send a copy to the Philippines Central Authority.

13.3.4 Co-operation and communication between Central Authority and accredited bodies

789. The issues of Co-operation and Communication are very well addressed by the establishment of the "Global Consultation on Child Welfare Services" (the Global). Now on its 10th session, the Global, last held on August 18 to 21, 2009, is conducted every two years. During the consultation, foreign adoption agencies, Central Authorities, and Child Care Advocates are invited to discuss issues pertaining to the improvement of international adoption practices with a focus on setting global standards for intercountry adoptions, emerging trends in social work practices and post adoption issues. The Global provides the opportunity for foreign adoption agencies, Central Authorities, and local child caring agencies to address specific issues and provide a solution which will contribute to the best welfare and interests of the children being matched with foreign families. It is during the Global that existing systems are reviewed and evaluated to determine whether they address the needs of the children.

790. A basic system of communication for queries, sending of new policy statements and receipt of post placement reports is via electronic mail. Any delay in the final placement of a child or finalisation of the adoption is tantamount to a deprivation of the right of a child to a permanent home and family. It is for this reason that a heavy reliance is made on the system of communication through electronic mail. The preference for this mode of communication is also due to ICAB's acknowledgment that mailing costs of documents may be prohibitive and slow. The ICAB has implemented a process wherein scanned post-placement reports are accepted as originals so long as there is an undertaking that the document is a true and faithful representation of the original and that the foreign adoption agency or Central Authority shall make available the originals if required by the ICAB.

13.3.5 Accreditation of domestic bodies

791. Only Child Caring and Placing Agencies which are licensed and accredited by the DSWD to undertake a comprehensive child welfare programme are accredited by ICAB. In the Philippines, the ICAB accredits both foreign adoption agencies and local Child Caring and Placing Agencies.

792. On the domestic front, ICAB has working relationships with forty nine (49) non-governmental Child Caring and Placing Agencies, sixteen (16) Field offices / Regional offices of the Department of Social Welfare and Development and eleven (11) government "Reception and Study Centers for Children". ICAB recognises Liaison Agencies or representatives of foreign adoption agencies. ICAB currently works with six (6) Liaison Agencies whose function is to assist in the provision of services to prospective adoptive parents when they pick-up their children. Liaison groups must be licensed and accredited Child Caring or Child Placing Agencies. To prevent any perceived advantage to FAA's who secure services of Liaison Agencies, ICAB has mandated that liaison groups cannot match children to the agency they represent. The additional guidelines, functions and role of liaison groups are provided for in the Guidelines for Liaison Agencies (Annex 13 A).

13.3.6 Authorisation of foreign accredited bodies (Art. 12)

793. Having noted a deficiency in the formulation of the first Implementing Rules with respect to the role and accreditation of foreign adoption agencies, the ICAB on 8 January 2004, amended the Implementing Rules to restate and specify the grounds within which a foreign adoption agency may be allowed to participate in the Philippine intercountry adoption programme. The amendment recognised the importance of the role of the Central Authority of the receiving State by specifically providing that *"only a foreign adoption agency duly accredited by the Central Authority of a contracting state may*

participate in the Philippine inter-country adoption programme" (para. 2, Section 17, Implementing Rules of 8 January 2004). The same provision set a four year limit for the duration of an authorisation of an accreditation. To re-validate the data submitted by applicant foreign adoption agencies, an accreditation visit was included for the conduct of a due diligence process.

794. As mentioned, foreign adoption agencies (accredited bodies of receiving States which have been accredited in their own State) must first submit to a process of accreditation in the Philippines before being authorised in accordance with Article 12. The ICAB must

accredit and authorise foreign private adoption agencies which have demonstrated professionalism, competence and have consistently pursued non-profit objectives to engage in the placement of Filipino children in their own country provided that such foreign private adoption agencies are duly authorised and accredited by their own government to conduct inter-country adoption (subsection I, Section. 4, art. III, Implementing Rules).

795. The *Minimum Standards for Accreditation of Foreign Adoption Agencies* (Annex 13 B) provide the basic process and requirements to be accredited as an foreign adoption agencies.

796. On 13 March 2007, to prevent trafficking of children to non-contracting states and acknowledging the lack of an avenue for non-contracting states with citizens who seek to adopt from the Philippines, the ICAB amended the Implementing Rules allowing an accreditation process for non-contracting states (para. 3, Section 18, art. VI, Implementing Rules). The requirements of accreditation of a foreign adoption agency of a non-contracting party is the same as those of a contracting party with the additional requirement of the execution of a Memorandum of Agreement with the government agency of the non-contracting state which is in charge of adoptions.

13.3.7 Specific challenges in the State of origin: Challenges from local intermediaries or Liaison Agencies

797. Due to the policy of disallowing child caring agencies which act as liaison agencies for a foreign adoption agency from placing children with the represented foreign adoption agency, together with the strict adherence by Secretariat to the policies on placement of children depending on the needs of the child, liaison agencies have no pressure or influence to match children with its allied foreign adoption agency.

798. In 2008, the ICAB passed new guidelines limiting the activities of liaison agencies. Due to the lack of manpower resources of the ICAB in its earlier year of operation and prior to the release of the new guidelines, Liaison Agencies were allowed to "assist" the ICAB in securing public documents, accompany children to "visa medicals" and "visa interviews" necessary to complete the children's travel documentation. Despite the long standing policy that any monetary support given by foreign adoption agencies should be given in terms of project funding and not based on the number of families that have been "assisted" by the Central Authority, the old procedure has created a situation wherein some Liaison Agencies and their foreign partners have been charging fees from prospective adoptive parents based on the delivery of services on a per document / per child basis. The challenge lies in the removal of this system of fees. Aside from a general appeal made to its foreign partners, the ICAB has acted in the matter by creating a unit that regularly visits the websites of foreign adoption agencies that facilitate the adoption of Filipino children. When there is a schedule of fees based on documentation, the ICAB uses its monitoring powers to immediately request explanation of the fees charged.

799. The ICAB ensures that children identified for intercountry adoption have been subjected to all possible national solutions regarding their placement. Due to stringent measures in place, there is a small number of children cleared for intercountry adoptions. Moreover, due to the decline in the number of children being sent out for adoptions in other countries, the Philippines has been experiencing a steep increase in applications for adoptions. The challenge for the Philippines now lies in the formulation of a system of selective moratorium. The ICAB, based on age range preferences of prospective adoptive

parents, has set a moratorium on accepting applications for children of a certain age where there are numerous pending applicants. There is an ongoing study on country allocation based on the kinds of children that the country will accept. The acceptance of a country of special needs children allows a larger allocation of children.

13.3.8 Specific challenges in receiving States

800. A particular challenge concerns the issuing of visas for children already matched by the ICAB. The issuing by the Central Authorities of a clearance to the parents to adopt a child does not necessarily guarantee that the child will be given a visa by the consulates of the receiving States. The different jurisdictions have diverse interpretations of the Convention; there should be very close co-operation between the Central Authorities and the consulates of the receiving States.

801. The lack of co-operation between the Central Authorities and the consulates of the receiving States is highlighted in the case of adoptions which are finalised by their nationals in jurisdictions of non-Convention countries. Consulates ***should not*** issue residency visas or temporary visas to children who do not have the requisite adoption documentation from their own countries. The very act of issuing of an entry / residence visa without proper documentation from the Central Authority of the nationality of the child is contrary to the stated object of the convention provided in Section (b), Article 1: *“to establish a system of co-operation amongst Contacting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of or traffic in children”*.

Annex 13A:**SUBJECT: GUIDELINES ON LIAISON SERVICE
FOR INTERCOUNTRY ADOPTION****I. DEFINITION:**

Liaison Agency is a Child Caring or Placing Agency (CCA / CPA) representing a Foreign Adoption Agency (FAA) in the Philippines.

II. OBJECTIVE:

To assist the Intercountry Adoption Board (ICAB) in facilitating, delivering and executing services necessary for pre-adoption placements and rendering post-adoption services.

III. POLICIES:

- 3.1 Only a licensed and accredited CCA / CPA shall provide liaison service.
- 3.2 The Liaison Agency shall be accredited by the ICAB.
- 3.3 The agency should have at least five (5) years of experience with good track record in the operation of child caring and / or child placement programmes.
- 3.4 The agency must employ a separate staff member with a degree in social work to do liaison work and maintain separate programme and financial records for liaison services rendered.
- 3.5 Children under the care of a Liaison Agency shall not be matched with the family of a Foreign Adoption Agency (FAA) which they represent except when there are no other families from other FAA's available in the Roster of Approved Applicants (RAAs).
- 3.6 A Liaison Agency may represent a maximum of five (5) Foreign Adoption Agencies (FAAs).

IV. FUNCTIONS:

The following are the functions of an agency providing liaison service:

4.1. Pre-placement

- 4.1.1. Assist / secure additional information and / or documents requested by the ICAB before and after the child has been matched and / or accepted by the Prospective Adoptive Parents.
- 4.1.2. Endorse the dossier to the ICAB Secretariat.
- 4.1.3. Keep separate files of documents / dossier of PAPs and children.
- 4.1.4. Assist in the transfer of children from the DSWD Field Office (DSWD FOs) or CCAs / CPAs to Manila and other services ICAB will authorise and other services ICAB will authorise.
- 4.1.5. Assist the CCAs / CPAs in the physical as well as emotional and psychological preparation of children for adoption, especially in cases of older children.
- 4.1.6. Assist in / facilitate the FAAs' / PAPs' travel itinerary.

4.2. Adoptive Parents' Arrival and Placement

4.2.1. Assist ICAB and the concerned CCAs / CPAs in orienting the PAPs about the child's habits, preferences and behavior to facilitate the adjustment process.

4.2.2. Accompany / facilitate the visit of the PAPs to the CCAs / CPAs and foster family and other places of interest to the family and provide adequate support during their stay in the country.

4.2.3. Assist the PAP's when they receive the child/ren.

4.2.4. Notify the ICAB Secretariat as soon as possible of any significant occurrence or event relative to the placement of the child.

4.3. Post-placement and Post Adoption

4.3.1. Ensure the regular submission by the foreign adoption agency to the ICAB of the Post Placement Reports (PPRs) and pictures.

4.3.2. Ensure the timely transmission to the ICAB Secretariat of all post adoption documents including but not limited to the Decree of Adoption and Naturalisation, Citizenship Certificate inclusive of the Amendment of the child's Birth Certificate.

4.3.3. Transmit to the ICAB Secretariat and to the concerned CCAs / CPAs letters and photographs from PAPs during the post adoption period.

4.3.4. Assist in Post Adoption programmes and services.

V. APPLICATION FOR AVAILMENT OF LIAISON SERVICES BY FAA:

5.1. An FAA desiring to avail of liaison service shall apply to the Board in writing.

5.2. Upon receipt to the Application, the Board shall transmit a list of accredited CCAs / CPAs that provide liaison services.

5.3. The FAA shall inform the Board regarding their choice and submit the Memorandum of Agreement between FAA and CCA / CPA for Board review and approval.

5.4. The ICAB shall communicate in writing to the FAA and the CCA / CPA about the action of the Board.

VI. APPLICATION FOR ACCREDITATION AS LIAISON AGENCY:

6.1. A CCA / CPA desiring to avail of liaison service shall apply to be accredited as a liaison agency.

6.2. Upon receipt of the Application, the Board shall refer the matter to the Secretariat for verification if the applicant has all the qualifications and none of the disqualifications of a liaison agency.

6.3. The ICAB shall communicate in writing its approval / disapproval to the applicant CCA / CPA concerned.

VII. FEES AND FUNDS UTILISATION:

7.1. The accredited liaison agency shall make available a written schedule of fees and of estimated and actual expenses to the duly accredited FAA prior to application for liaison service and shall include the conditions under which fees or costs may be charged, waived, reduced or refunded and when and how such fees shall be paid.

7.2. The accredited Liaison Agency shall enumerate and specify separate funds / fees to provide special services, such as but not limited to medical assistance, psycho-social interventions for children so long as such costs are pre-identified and disclosed to the FAA in advance of actual execution and a full accounting of the use of such funds shall be given.

7.3. The accredited liaison agency shall be guided by utmost ethical considerations when receiving donations from FAAs. Under no circumstances shall an agency doing liaison work solicit for donations for personal gain.

VIII. REPORTS:

Accredited Liaison Agencies shall provide the Board with their annual accomplishment reports. The content of the reports, which may be subject of deliberation of the ICA Board shall include among others, the financial statement, programmes and activities for the year under consideration.

IX. TRANSMITTAL OF CORRESPONDENCES / COMMUNICATION:

The accredited Liaison Agency may communicate directly with its partner FAA regarding final matches deliberated by the ICA Board to ensure the speedy submission of documents and official communications. The accredited Local Liaison Agency shall at all times be guided by discretion and ethical consideration in the exercise of this privilege.

All urgent communications shall be transmitted through the fastest possible means such as courier service, facsimile or electronic mail or as may be required by the ICAB.

X. ACCREDITATION PROCESS:

10.1. Pre-accreditation

10.1.1. The applicant CCA / CPA shall file its application for accreditation with the Board. The following documents shall support their application:

- a. Description of programmes and Services;
- b. List of officers and staff / personnel and qualifications as authenticated by the head of the applicant CCA / CPA;
- c. Audited Financial Statement of the applicant CCA / CPA;
- d. Certified Copy of DSWD licence and accreditation;
- e. Manual of Operations as a CCA / CPA.

10.1.2. The ICAB Secretariat shall review the documents submitted by the CCA / CPA and schedule the same for Board visit.

10.2. Accreditation Proper

10.2.1. The Board shall conduct an accreditation visit to the applicant within three (3) months after receipt of the application.

10.2.2. The Board shall look into the following:

- a. Observe the programme and services of the CCA / CPA;
- b. Interview head of office and staff members assigned to provide liaison service;
- c. Review records of children, programmes / services and administration.

10.2.3. The accreditation of a liaison service provider is valid for a period of three (3) years and may be renewed thereafter.

10.3. Post-Accreditation

10.3.1. The Board's decision shall be transmitted to the CCA / CPA within one (1) month from the time of visit by a Board member or its designated representative.

10.3.2. Accreditation Certificate shall be issued to the CCA / CPA upon meeting the minimum standards set forth the Board.

10.3.3. The ICAB Secretariat shall provide technical assistance to the agency in cases wherein the minimum standards are not met.

XI. GROUNDS FOR SUSPENSION OR REVOCATION OF ACCREDITATION OF LIAISON AGENCY:

11.1. The Board, upon receipt of a verified complaint regarding violations or irregularities by an accredited Liaison Agency shall conduct initial inquiries furnishing the accredited Liaison Agency a copy of the complaint. It shall require the CCA / CPA concerned to answer the complaint against it within fifteen (15) working days from receipt of notice.

11.2. The Board shall conduct an investigation on the issues raised in the complaint observing due process and decide according to the evidence presented.

11.3. A motion for reconsideration of the decision of the Board may be filled within 15 days from receipt of the decision otherwise the decision shall be deemed final and executory.

11.4. The Board shall suspend the CCA / CPA to provide liaison service on any of the following grounds:

11.4.1. Imposing or accepting directly or indirectly any consideration in money, goods or services in exchange for an allocation of a child in violation of the Rules;

11.4.2. Misrepresenting or concealing any vital information required under the Rules;

11.4.3. Offering money, goods or services to any member, official or employee, or representative of the Board, in order to give preference to an applicant;

11.4.4. Advertising or publishing the name or photograph of a child for adoption to influence any person to apply for adoption except in cases of Special Home Finding for difficult-to-place children;

11.4.5. Failure to perform any act required under the Rules that shall result in prejudice to the child or applicant;

11.4.6. Engaging in matching arrangement or any contract to pre-identify a child not related with the PAPs in violation of the Rules; or

11.4.7. Any other act in violation of the provisions of the Act, the Rules and other related laws.

XII. ACTION OF THE BOARD:

Upon termination of the investigation, the Board shall dismiss the charge, or suspend or revoke the accreditation to provide liaison service of the CCA / CPA concerned, if the evidence so warrants and / or recommend the CCA / CPA to the DSWD for further action.

The Board's decision shall be forwarded to the Liaison Agency concerned.

Annex 13B:**MINIMUM STANDARDS FOR ACCREDITATION OF
FOREIGN ADOPTION AGENCIES**

The following standards shall be considered as the minimum requirements for accreditation of foreign adoption agencies:

I. ORGANISATION AND ADMINISTRATION**1. Vision, Mission and Philosophy**

- 1.1. The vision, mission, purpose or function of the agency shall be clearly defined in writing.
- 1.2. The philosophy of the agency shall be child-focused and committed to family preservation and reunification in the State of origin of children.
- 1.3. These shall all be stipulated in the agency's manual of operation.

2. Existence of Agency

The life of an agency shall indicate stability and credibility. An agency in operation for several years shows a stable and well-established foundation. Thus, an agency in existence for five (5) years and above has shown its credibility in responding to the needs of children and as well as a sound financial plan to carry out its defined purpose and provision.

3. Geographical Coverage

The specific areas served by the agency in its capacity as main agency and areas covered by its partner agencies shall be stated.

4. Governing Board

- 4.1. The agency shall have a Board of Directors or its equivalent who shall be responsible for the agency's proper functions in accordance with its purpose / objectives as indicated in the agency manual of operation / Registration or Constitution and By-Laws.
- 4.2. The Board shall be composed of competent and responsible child welfare-oriented leaders of the community to provide inputs on the agency's vision, mission and philosophy.
- 4.3. The Board shall meet regularly at least quarterly or as need arises and shall keep a file of the minutes of the meeting for future references.
- 4.4. The Board of Directors is the policy-making body and its members shall not be the direct implementors of programmes and services of the agency. This shall facilitate objectivity in terms of identifying gaps in the operations of the agency.

5. Types of Employees

- 5.1. The agency shall employ both competent and sufficient administrative and technical staff for its operations.

- 5.2. Adequate clerical services shall be maintained to keep correspondence, records, bookkeeping and files updated and in good order.

6. Linkages with other Agencies

- 6.1. The agency shall establish and sustain linkages / co-ordination with the following:
 - a. State Social Services Department
 - b. Adoption Network within the State
 - c. International Adoption Inter-State Network
- 6.2. Attendance to inter-agency meetings related to child welfare services either for advocacy purposes development of programmes, etc.
- 6.3. The agency shall maintain an update list of child welfare agencies implementing adoption services either statewide or nationwide for easy reference.

II. FINANCIAL STATUS OF MANAGEMENT

1. The agency shall be registered with the IRS or any appropriate agency as a non-profit agency. Documents shall be presented to the accreditor.
2. Financial records of all receipt, disbursements, assets and liabilities shall be maintained and books shall be audited annually by a Certified Public Accountant.
3. A copy of the agency's latest financial report shall be made available.
4. The agency financial plan and disbursement shall show that 60% of its funds is disbursed for direct social work services and only 40% for administrative expenses. The 60% shall include fund allocation for each of the programmes and services being rendered. Further, the 40% shall include the following:
 - 4.1. salary / incentives for employees
 - 4.2. maintenance of facilities (rentals, water, electricity, etc.)
 - 4.3. transportation expenses
 - 4.4. office supplies / materials

5. Stability of Funding

The agency shall have a three-year work and financial plan which shall indicate financial viability or stability for said period and shall include the following:

- 5.1. Source of funds either regular or irregular and corresponding amount expected from the donors either in cash or in kind, *e.g.*, the monetary value of the services of volunteers including consultants, donated equipments, supplies, facilities, etc.
- 5.2. Work plan and corresponding budget for administration and operations.
- 5.3. Resource generation strategy or system to ensure continuity of funds for agency's services / programme.

6. Facilities and Equipment

- 6.1. As much as possible, the agency shall have its own office either owned or rented.

- 6.2. Rooms or interview, counseling, conferences / meetings shall be made available.
- 6.3. Office equipments shall be made available to facilitate smooth operation of the agency for better delivery or services.

III. PERSONNEL MANAGEMENT

1. Manual of Personnel Practices and Policies

The agency shall have a manual of Personnel Policies and Practices which shall include the following:

- 1.1. Job Descriptions – Qualifications functions / duties and responsibilities for each position shall be clearly stated.
- 1.2. Salary rages and provision of increments which should be adequate and commensurate to the position behind held and which shall not be lower to what the labor law provides for.
- 1.3. Employment benefits-incentives including retirement plan, SSS, hospitalisation, medicine and other insurances, vacation sick leaves and other leaves provided by the law.
- 1.4. Annual medical examination including x-ray and psychological evaluation for all personnel particularly those who have direct contacts with the children.

2. Staffing

The agency shall maintain an adequate and competent staff. Every employee shall be given an orientation prior to his assumption of duties which shall include among others his job functions, duties and responsibilities.

2.1. Executive Director

- 2.1.1. The Executive Director should be a registered social worker / ACSW / ICSW. However, someone who has professional training and experience in other related profession in the behavioral services may be considered as next preference.
- 2.1.2. He / she shall possess at least two (2) years of experience in management of a child caring agency and shall render full time service to the agency.

The Executive Director must have undergone medical examination and psychological evaluation to ensure that he / she is physically, mentally and psychologically fit to perform his / her duties and responsibilities as delegated by the Board which includes the following:

- a. overall supervision of agency operation and administration of services.
- b. planning and co-ordination of all phase of the programme and services within the framework of functions and policies established by the Board.
- c. continuous evaluation of the effectiveness of the services.

- d. development of new approaches for better service delivery.

2.2. Supervising Social Worker

A foreign adoption agency who has three (3) or more social workers shall employ a Supervising Social Worker who is a registered social worker trained / accredited and with experience in child welfare and shall have undergone medical examination and psychological evaluation to ensure that he / she is physically and psychologically fit to perform his / her job.

2.3. Social Worker

The agency's social worker shall be registered, trained / accredited with experience in child welfare and shall have undergone medical examination and psychological evaluation to ensure that he / she is physically and psychologically fit to perform his / her job.

2.4. Other Staff (either as a regular staff or outside resources in the community)

The agency shall have either as a regular staff or outside resources in the community the following:

- a. Other professional consultants *e.g.*, psychologist, psychiatrist
- b. Administrative staff *e.g.*, clerk, utility man
- c. Accountant / bookkeeper

3. Staff Client Ratio

For better delivery of quality service to the children, the ratio of staff to the children / families or number of cases shall be manageable.

The Staff ratio shall be as follows:

- 3.1. Social Worker – One (1) full time for every 20-30 cases.
- 3.2. Supervising Social Worker – one supervising social worker if there are three (3) or more social workers.

4. Staff Development and in-Service Training

- 4.1. All staff shall be given orientation and or in-service training by the agency before hiring to provide opportunity to learn what they need to know and expected to do at the agency. This will develop desirable attitude towards his / her work in the agency as well as adequate information on the programme and services and clientele served by the agency.
- 4.2. To maintain standards of service, a continuous staff development programme shall be conducted. Each staff shall be provided the help he needs to make full use of his / her knowledge and skills and to develop special skills in working with adoptive children and families.
- 4.3. A regular staff meeting shall be conducted by the Executive Director to discuss gaps in the operation of the agency as well as solutions / strategies to further strengthen programme operations.
- 4.4. Case conferences shall be conducted regularly and as necessary to work out the best placement of an adoptive child to a family as well as to

provide the necessary services to adoptive families depending on their needs.

- 4.5. Appropriate current books, magazines and periodicals on adoption, foster care, child welfare, etc. shall be made available.

IV. PROGRAMMES AND SERVICES

1. Services

All efforts shall be done by the agency to provide the necessary services to adoptive applicants to help them understand and gain knowledge on adoption as well as to assess themselves if they are ready or not to adopt a child.

Further, approved adoptive families shall be helped to facilitate the adoption process.

1.1. Adoptive Applicants

- 1.1.1. Orientation on adoption either thru individual interview, group orientation or adoptive fora. This should include information on the criteria in assessing suitability for adoptive parenthood and situation and characteristics of children available for adoption.
- 1.1.2. Assistance in the accomplishment of documents required for home study and immigration.
- 1.1.3. Assessment of adoptive applicants and members of the family's capacity and adaptability to meet basic and / or special needs of an adoptive child.

1.2. Approved Adoptive Families

- 1.2.1. Assistance during the waiting period from time the family was approved until they have been matched to a child.
- 1.2.2. Preparation for Pre-Adoptive Placement of the adoptive child.
- 1.2.3. Post-Placement services to help adoptive parents, members of their family and the child to adjust to one another and assistance during supervision of placements.
- 1.2.4. Provision of support services to adoptive family and child *e.g.*, medical care, etc.
- 1.2.5. Assistance in the finalisation of the adoption in court / legalisation of the adoption.
- 1.2.6. Post-legal adoption counseling to both adoptive parents and adoptee for problems arising after completion of adoption including holding of summer camps, heritage camps and other follow-up activities to ensure that smooth adjustment between the child and family is sustained.

2. Case Records

1. The agency shall maintain complete and updated case records of adoptive families and children. Confidentiality shall be observed in the handling of records and may only be inspected by those involved in the case by

reasons of their position or by those authorised in writing by the Executive Director.

2. The agency shall maintain the following supporting documents:

2.1. Adoptive Family

- 2.1.1. Duly accomplished applications form
- 2.1.2. Police, FBI Clearance or its equivalent
- 2.1.3. Health Certificate of household
- 2.1.4. Pictures of applicants and family
- 2.1.5. Certified true copy of marriage certificate, if married
- 2.1.6. Copy of latest income tax return or affidavit of support

2.2. Adoptive Child

- 2.2.1. Child Study Report
- 2.2.2. Birth Certificate or Certificate of Founding
- 2.2.3. Court Declaration of Abandonment, Deed of Voluntary Commitment by parents, death certificate of parents, if indicated.
- 2.2.4. Record of medical, dental, mental examination, psychological, psychiatric examination including the corresponding treatment, evaluation and basic immunisation administered.
- 2.2.5. Placement Authority
- 2.2.6. Supervising Case Recording
- 2.2.7. All communications correspondence concerning the application and their, his, her family child.
- 2.2.8. Adoption Order

V. RESEARCH AND PUBLICATION

- 1. The agency shall develop their newsletters, news bulletins. This is a venue where staff, adoptive parents, adoptees as well as other people in the community and other agencies may share their thoughts on adoption and other programmes of the agency.

13.4 RECEIVING STATES: Belgium

13.4.1 Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

802. A system of accreditation of adoption accredited bodies (involving administrative, methodological, financial and ethical requirements) has been in place in francophone Belgium since 1991. This accreditation also provides for supervision by a public agency, which since 2005 is the francophone Belgian Central Authority itself (the *Autorité centrale communautaire* (ACC)). From 1991 to 2005, however, prospective adoptive parents were under no obligation to make use of an adoption accredited body's services.

803. The adoption reform carried out in Belgium in September 2005 (which is also the date of Belgium's ratification of the 1993 Hague Convention) confirmed the major role played by the adoption accredited bodies by qualifying them, in a sense, as extensions of the ACC, by multiplying and reinforcing their functions (see 1.4.3) and by requiring adoptive parents *de facto* to be assisted by an adoption accredited body (more than 99% of adoptions are now assisted by an adoption accredited body).

13.4.2 Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

804. Adoption accredited bodies are subject to direct supervision by the ACC, which itself is a body under the direction of the government agency in charge of protection of children in francophone Belgium.

805. The adoption accredited bodies' functions are determined and detailed by the legislation.

806. Notwithstanding the fact that the number of adoption accredited bodies is not limited by the legislation, since the mid-1990s the number of adoption accredited bodies has decreased (as a result of stricter requirements and supervision). In addition, no new adoption accredited body has been created since 1995. There are currently six adoption accredited bodies for international adoption in francophone Belgium, none of which carries out more than 100 adoptions a year.

13.4.3 The respective roles and functions of the Central Authority and accredited bodies

807. The ACC is the public agency designated by the Government of the French Community of Belgium to perform on its territory the central authority duties provided for by the 1993 Hague Convention, in compliance with the allocation of jurisdiction under the Belgian Constitution.

808. The ACC mainly has jurisdiction over:

- the phase of preparing the prospective adoptive parents (registration of adoptive parents, practical aspects of the preparation, determination of content, selection of instructors, evaluation of the process);
- the home study (or psycho-social study) required by the judicial authorities to evaluate the prospective adoptive parents' suitability;
- the phase of supervision of the matching: management of all individual cases, agreement upon each offer of a child made by the adoption body, issuance of attestations for foreign authorities; on an exceptional basis, direct management of the matching phase (mainly in connection with international intra-family adoptions);
- accreditation of adoption accredited bodies, issuance of permits for collaboration abroad and supervision of the accredited bodies;
- preservation of information relating to the adopted children's origins.

809. Given its involvement in almost all stages of the procedure (other than recognition), the ACC is a veritable hub with respect to adoption.

810. Adoption accredited bodies are professional multi-disciplinary agencies (set up in the form of non-profit legal entities under public or private law), accredited by the Government of the French Community of Belgium to act as intermediaries in the field of adoption.

811. Adoption accredited bodies intervene at various stages of the procedure:

- participation in the preparation of prospective adoptive parents (individual psychological interviews);
- delivery of an opinion for the home study (or psycho-social study) to evaluate the prospective adoptive parents' suitability;
- supervision of proposed adoptions (from development of the plan to the adoption decision);
- performance of post-adoption follow-up and assistance to families if needed.

812. These various functions are carried out under the ACC's supervision.

13.4.4 Co-operation and communication between Central Authority and accredited bodies

813. Since enactment of the adoption reform, interactions between the ACC and adoption accredited bodies have been reinforced, in particular because the adoption accredited bodies are called upon –through delegations of authority– to perform some of the functions entrusted to the ACC under federal legislation (forwarding of the prospective adoptive parents' dossier abroad, receipt of the offer of a child). This implies stricter monitoring of the adoption accredited bodies, in particular in the day-to-day management of their individual cases, but also increased co-ordination between the adoption accredited bodies and the ACC.

814. This co-ordination takes various forms:

- development by the ACC of several guides to provide the adoption accredited bodies with appropriate knowledge of all the relevant administrative and judicial procedures;
- daily contacts between adoption accredited bodies and the ACC: provision of information on the course of procedures for each prospective adoptive parent; applications for various attestations, forwarding of reports on the children offered for adoption;
- meetings (half-yearly) between the ACC and all the adoption accredited bodies: organised to inform and train the adoption accredited bodies, to develop a "shared culture" with respect to ethics and methodology and to resolve various problems common to the different adoption accredited bodies;
- meetings (occasional) with one or more adoption accredited bodies: to solve specific problems, find solutions for certain individual cases and prepare the establishment of new collaboration arrangements abroad;
- monitoring of the adoption accredited bodies' activities, both on an occasional basis and through annual inspections at the bodies' offices, or during missions abroad, and on an ongoing basis as regards day-to-day management;
- organisation of seminars and training sessions for staff of both the ACC and the adoption accredited bodies;
- programming of investigation missions abroad, increasingly organised jointly by the ACC and adoption accredited bodies with the main objective of analysing adoption needs in certain countries, the desirability of working in such countries, and the reliability of such potential new partnerships.

13.4.5 The accrediting body and the accreditation process

815. Accreditation implies that the adoption accredited body complies with a series of legal, administrative, methodological, financial and ethical rules, the main ones being:

- not to act for profit;
- to act with due regard for the child's best interests and the child's fundamental rights as recognised under Belgian and international law;
- to be managed by persons trained or experienced in the area of adoption, of trustworthy moral standing;
- to work on a multi-disciplinary basis, with at least one co-ordinator, one social worker, one psychologist and one doctor; to ensure the adoption accredited body's professionals receive ongoing training and supervision;
- to comply with the modes of operation required by the ACC;
- to consent to annual inspections by the ACC, and to work in co-operation with the latter.

816. Accreditation is granted for a period of five years and may be extended. An application for accreditation is reviewed by the ACC, which issues a report for the accreditation panel; the latter reports to the Minister who makes the final decision.

817. An adoption accredited body may be accredited for domestic adoption or for international adoption, or both.

13.4.6 Adoption arrangements with States of origin

818. Any foreign collaboration of an adoption accredited body requires a permit from the competent Minister, after a report from the ACC.

819. The ACC ascertains not only the reliability of the proposed collaboration (foreign intermediary's compliance with the applicable law, the child's best interests, the subsidiarity principle), but also the country's adoption needs. The following issues are also examined by the ACC: origin of the children, financial aspects of the proposed collaboration, ethical reliability of the prospective collaborators or partners, etc.

820. After a mission to the State of origin concerned, the adoption accredited body submits a full dossier to the ACC. But increasingly, the ACC itself takes part directly in that first investigative mission, in order to get a more accurate view of the proposed collaboration. The collaboration is first authorised "on probation", and is later confirmed after evaluation of the first completed adoptions.

13.4.7 Specific challenges in the receiving State

821. In order to secure the optimal ethical standard for the adoption accredited bodies (in particular by ensuring they are sufficiently independent and impartial in relation to adoptive parents), but also with a view to stability of operation (regardless of developments in the international situation), the adoption accredited bodies' funding ought to be provided mainly, or even solely, by public authorities, not by the adoptive parents themselves.

822. The ACC and adoption accredited bodies have to deal with the difficulties arising from managing a growing number of applications for adoption while the number of children in need of and suitable for adoption is decreasing. This gap has both quantitative and qualitative implications, since many prospective adoptive parents wish to adopt a child under the age of 3 years, and in good health. The discrepancy results in a substantial increase in the waiting period before an adoption can take place. Psychosocial support for the prospective adoptive parents during this period needs to be assumed by the adoption accredited bodies.

823. In addition, there is a risk that fewer opportunities for international adoption combined with the ever increasing waiting periods will cause the prospective adoptive parents to turn to adoptions of special needs children (older children, sibling groups,

children with health problems), without properly taking into account the specific demands of such adoptions. These risks must be limited by raising the adoption accredited bodies' awareness, ensuring that adoptive parents are subjected to rigorous screening and providing for their preparation.

13.4.8 Specific challenges in the State of origin

13.5 RECEIVING STATES: Netherlands

13.5.1 Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

824. The Netherlands ratified the 1993 Hague Adoption Convention on June 26, 1998. The Convention entered into force on October 1, 1998.

825. At that time there was already a system of accreditation in place, which had been implemented in 1988 together with the "Act on the Placement in the Netherlands of Foreign Foster Children with a view to Adoption". There were eight bodies accredited to mediate in the placement of foreign foster children into families in the Netherlands. With the ratification of the Hague Adoption Convention the Act changed into the "Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption" ("the Act").

826. Currently, the policy of the Netherlands is that all Hague Convention intercountry adoptions takes place through the full mediation of accredited bodies. In 2001, a specific section was introduced into the Act to regulate adoption arrangements with non-Hague States.³²⁵

13.5.2 Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

827. The Central Authority is the Minister of Justice and a special section within the department of Judicial Youth Policy performs the functions and powers of the Central Authority (operated already as such prior to the Convention). This section was also entrusted with the function to grant accreditations.

828. The functions and powers of the Central Authority, mentioned in Chapter IV of the Convention, have been delegated to the accredited bodies. However, two important functions of the Convention were not delegated to them:

- a) the issuance of the agreement that the adoption may proceed (Art. 17 *c*) of the Convention). This duty is therefore reserved to the Central Authority.
- b) the performance of the home study: the Netherlands considers it important that the judgment on the suitability and eligibility of prospective adoptive parents to adopt is performed in an independent and unprejudiced way. Therefore it was decided that the home study should be performed by a Public Authority, such as the Child Care and Protection Agency.

829. During the last decade two accredited bodies decided to terminate their activities and one new body was accredited. The current number of accredited bodies is seven, which is reasonably consistent and appropriate considering the population rate in the Netherlands of 16 million people.

830. The accredited bodies have agreed on the principle that only one agency operates in a State of origin. In certain situations however it can be decided that two or more accredited bodies operate in the same country.

³²⁵ When the prospective adoptive parents wish to adopt a child from in a country where the accredited body is not active, a representative in the State of origin has to be identified and certain other information obtained. The accredited body in the Netherlands has the duty to verify the reliability of the representative and the procedures to be followed in the State of origin and to make a recommendation to the Netherlands Central Authority. The Central Authority then takes a decision, based on the recommendation, whether or not the parents may continue with the application to adopt from that country. The Central Authority may also add a number of conditions to a permission to adopt via the investigated representative.

831. The accredited bodies in the Netherlands are independent organisations which are exclusively financed by adoption fees from the prospective adoptive parents. These fees are set by the accredited bodies themselves. The level of the adoption fees is dependent on the actual costs of adoption both in the receiving State and in the State of origin. The level of the fees also varies between the accredited bodies and from State of origin to State of origin in which they operate.

13.5.3 The respective roles and functions of the Central Authority and accredited bodies

13.5.3.1 Role of the Central Authority:

832. The Central Authority at the Ministry of Justice is responsible for implementing national legislation and regulations in the field of international adoption in accordance with the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption. The Central Authority is also obliged to abide by the rules laid down in the Hague Adoption Convention, the Convention on the Rights of the Child.

833. Based on the regulations, its decisions include decisions on applications for permission to place a foreign child with a view to adoption, submitted by spouses or persons who want to adopt a child from abroad.

834. It also decides on applications for accreditation from legal entities that wish to perform adoption mediation activities in relation to the placement of children from abroad, with a view to adoption. It will also ensure that new accredited bodies commit themselves to the Quality Framework,³²⁶ which is an assessment framework for accredited bodies, to aid in the establishment of a uniform approach and to monitor their own quality, in which the interests of the child are expressed properly.

835. The Central Authority maintains contacts with the Central Authorities abroad and co-operates with these organisations. Where necessary and possible, the Central Authority will facilitate the process, at macro level, when information needs to be obtained from other countries. It will discuss points for attention on the procedure in the country in question with the relevant Central Authority and, where necessary, also raise these points for attention with the Ministry of Foreign Affairs and the Permanent Bureau of the Hague Conference.

836. A specific private organisation (not an accredited body), the Foundation Adoption Services, is designated to perform the duty of the pre-adoption counselling on behalf of the Central Authority. The pre-adoption counselling is compulsory for the prospective adoptive parents. The Foundation has to provide, on an independent basis prior to the home study, general information on adoption and information on adoption to prospective adoptive parents wishing to adopt a child for the first time. The Foundation is also involved in co-ordinating post-adoption care.

13.5.3.2 Role of the accredited bodies:

837. The accredited bodies for international adoption mediate between prospective adoptive parents and the competent authorities at their level³²⁷ in the State of origin.

838. On behalf of the prospective adoptive parents, the accredited body will maintain contacts at its level with the foreign authorities, institutions or individuals involved in the placement of the foreign child (Sections 17a(1)(a) of the Act).

839. In the framework of mediation to adopt a child from a non-Convention country, the accredited bodies will verify the reliability of the foreign representative proposed by the prospective adoptive parents to assist them in the State of origin as well as the procedures to be followed. The Dutch accredited body ensures that the same quality

³²⁶ See para. 850.

³²⁷ There may be cases where a competent authority in the country of origin will wish to communicate solely with the Dutch Central Authority on certain subjects.

standard will apply as the quality standard to be met by adoption procedures for Hague Convention adoptions.

840. Based on the documents available, the accredited bodies verify the adoptability of the child in a medical, legal and psychological sense. They ensure that the criteria, on the basis of which the prospective adoptive parents have been selected for a specific child, are clearly set out. The accredited body might be involved in a matching proposal, in some non-Convention adoptions.

841. The accredited body will arrange supervision (in accordance with Section 17a (1)(g) of the Act) following return of the family and child to the Netherlands. The body will also ensure that a report is issued to the State of origin on the progress of the placement or the adoption in the adoptive family during the period prescribed by the State of origin.

842. The accredited bodies inform prospective adoptive parents about matters relevant to their adoption procedures, may organise meetings with adoptive families and publish their own information bulletins and / or launch their own websites.

13.5.4 Co-operation and communication between Central Authority and accredited bodies

843. The co-operation relationship between the Central Authority and the accredited bodies can be described as satisfactory. There are contacts on a daily basis between the accredited bodies and the Central Authority about individual cases. Moreover, at least once a year the Central Authority convenes a meeting with all accredited bodies to discuss topics of general interest and to exchange information about developments in the field of intercountry adoption. When needed, meetings about specific topics are also held, for example, regarding the situation in a specific State of origin.

844. In exceptional cases representatives of the Central Authority travel together with staff members of the accredited bodies to States of origin to meet with authorities, organisations and others with which the accredited bodies co-operate.

845. The supervision of the accredited agencies is laid down with the Inspectorate for Youth Care, and independent authority in the Ministry of Justice. However, representatives of the Central Authority, regularly visit the offices of the accredited bodies.

846. The Act contains a provision for a special Complaint Committee to deal with complaints about accredited bodies.

13.5.5 The accrediting body and the accreditation process

847. Accreditation of adoption bodies is issued by the Central Authority. To guide the bodies through the accreditation process, the Central Authority has developed an *Operational protocol of the Central Authority in respect of granting licences for mediation in intercountry adoption or in respect of extensions to such licences*.³²⁸ Of particular interest for the operation of ethical accredited bodies, the Protocol, in Chapter IV, describes the type of information that must be submitted with an application for accreditation, in particular how the body intends to perform its functions and to fulfil its obligations while protecting the best interests of each child.

848. With the ratification of Convention, a system was introduced in which the accreditation is limited to a period of maximum five years. In the Act implementing the Hague Adoption Convention, it was decided that the validity of the accreditation granted prior to the date of commencement of the Hague Adoption Convention would automatically expire after two years.

849. Since the Hague Adoption Convention was implemented in the year 1998, the first extensions of the validity of the accreditation were granted in the year 2000. In 2004 a special "operational protocol in respect of the granting of licences for mediation in

³²⁸ *Protocol Werkwijze Bureau Centrale autoriteit bij de verlening van een vergunning om te bemiddelen inzake interlandelijke adoptie of verlenging van de geldigheidsduur van die vergunning*, Doc.Rev.IV 19 mei 04, available at < <http://www.adoptie.nl/WSMdocument/documents/protocolBT.pdf> > (last consulted 7 May 2010).

intercountry adoption or in respect of extension of such licences” was introduced. This protocol contains guidelines for the application of an accreditation or the extension of the validity of such accreditation and for the documentation that should be presented to prove the fulfillment of the legal requirements. On the basis of this protocol the process of extension of the validity of the accreditations was operated in the year 2005 and this process is to be repeated in 2010.

850. In 2008, the Dutch accredited bodies concluded a Quality Framework for Licensed Adoption Agencies involved in International Adoption.³²⁹ This Quality Framework serves as an assessment framework to aid in the establishment of a uniform approach and to monitor their own quality, in which the interests of the child are expressed properly. In this quality framework, among others, collaboration agreements are made in terms of establishing and maintaining new contacts in States of origin. The basic principle in this respect is that only one accredited body may operate in a State of origin, with limited exceptions. The exceptions are assessed on the basis of:

- The view of the competent authority in the country in question;
- The adoption situation locally;
- The advisability of a second accredited body in the country; or
- The willingness to collaborate between the accredited bodies in question.

851. The Central Authority keeps a register of all mediation contacts maintained by the accredited bodies in the States of origin.

13.5.6 Adoption arrangements with States of origin

852. In accordance with Article 12 of the Convention, a foreign accredited body may only work in a State of origin if the competent authority of that State has given its consent to this. This responsibility lies with the Dutch Central Authority to be satisfied that a Dutch Agency has the consent of the competent authority in the State of Origin. Often however it happens that the competent authority in the State of Origin first wishes to see the consent of the Dutch Central Authority. It then is our duty to contact the competent authority in the State of origin in order to arrange a mutual consent.

853. When entering into relationships with foreign partner organisations or authorities in the State of origin, and throughout the relationship, accredited bodies will be obliged, based on the possibilities available to them, to do their utmost to ascertain the reliability of these partner organisations and authorities. For this purpose it is important that they acquire knowledge on the adoption procedure in that State of origin, about how the background of the child is investigated, about how the relinquishment procedure is operated and about how the principle of subsidiarity is taken into consideration.

854. They will also try to obtain a good overview of the finances of foreign partner organisations or authorities, as it is important to have an insight into nature, source and direction of the money flows to and from the organisation.

855. The accredited bodies are obliged to make annual reports of their activities in the different States of origin, including financial reports.

856. Where the accredited body develops activities other than adoption mediation (*e.g.*, development projects) the accredited body has to ensure that the projects do not compromise the integrity of the adoption process.

13.5.7 Specific challenges in the receiving State

857. A specific challenge in recent years in the Netherlands as a receiving State has been to cope with the imbalance between the large number of applications from prospective adoptive parents and the declining number of children available for adoption.

³²⁹ *Kwaliteitskader vergunninghouders interlandelijke adoptie*. Text of the Quality Framework is available in Dutch at the following address < http://www.justitie.nl/images/kwaliteitskader%20vergunninghouders%20interl..._tcm34-121227.pdf > (last consulted 7 May 2010).

858. In order to prevent (as far as possible) the accredited bodies being confronted with large waiting lists, a system was introduced in which a limited number of prospective adoptive parents is allowed each year to enter into the procedure of pre-adoption counselling, offered by the Foundation Adoption Services, and the home study assessment, performed by the Child Care and Protection Agency. The number of prospective adoptive parents that will be allowed to enter into the procedure is decided upon annually together with all the partners in the adoption process. This number is based, with a certain margin, on the number of children that is expected to be mediated in that year by the accredited bodies.

859. For example, the number of prospective adoptive parents that were allowed to enter into the pre-adoption counselling phase was reduced from 1200 in 2007 to 900 in 2009 because of the decrease of the number of children in 2007 (782) and 2008 (767) and the anticipated further decrease in the number of children available for adoption. A further decrease of the number of prospective adoptive parents to enter into the pre-adoption counselling phase is anticipated in 2010

860. In addition, the Foundation Adoption Services organised in 2009 special information sessions for prospective adoptive parents who applied for a permit to adopt. Purpose of these sessions was to inform prospective adoptive parents about the long waiting lists, to individually consult them about their chances to adopt and to inform them about possible alternatives. The current effect of these special information sessions is a decline of the waiting list but also to a decline in the number of applications.

13.5.8 Specific challenges in States of origin

861. States that are a party to the Hague Adoption Convention, do not always provide to the accredited bodies all the information needed about an adoptive child. This information is required to make a well considered decision about a matching proposal. According to the Dutch Quality Framework mentioned above, the accredited bodies are nevertheless obliged to (try to) gather as much information as possible in order to judge a matching proposal made in the State of origin. The required information is the background information on the child, information about the relinquishment procedure and the way the birthparents have been counselled, the consideration of the subsidiarity principle and information about the costs that are involved.

862. In some Hague Convention States of origin, the obligation to appoint a competent authority with the duty to provide a statement that the procedure of adoption has taken place in conformity with the Convention (Art. 23), is not always recognised or understood. These States mostly are unaware that the lack of such a statement puts many adoptive parents and children in a legal limbo, due to the fact that the adoption decision, made in State of origin, cannot be recognised by operation of law. As a consequence the child does not immediately obtain the nationality of the adoptive parents and may in some cases even become stateless. The parents are then forced to start a new adoption procedure in the receiving State in order to secure the position of the adopted child. This procedure may take some time, during which the position of the child may be unresolved.

13.6 RECEIVING STATES: Sweden

13.6.1 Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

863. When, in 1997, Sweden ratified the 1993 Hague Convention the country had already for almost two decades a functioning system with accredited bodies intermediating most of the intercountry adoptions. Legislation to regulate accreditation of voluntary non-profit associations for intercountry adoption intermediation by a central governmental authority was introduced in 1979. A definition was then made of "intercountry adoption intermediation" that is still applicable: activity for the purpose of establishing contact between the person or persons wishing to adopt, on the one hand, and, on the other hand, authorities, organisations, institutions or private persons in the

country where the child is domiciled, and also otherwise providing the assistance needed in order for an adoption to be possible. It has since that time been the established Swedish policy that intercountry adoptions should preferably be carried out through such associations.

13.6.2 Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

864. It was completely natural when the Convention was implemented to choose as the accrediting body under the Convention the same authority that was already in charge of accreditation in accordance with the internal legislation. No changes had to be made of the accreditation criteria to comply with the Convention's rules. Nor did the ratification of the Convention give reasons to change the extent of the accredited bodies' functions and powers. The number of accredited bodies has from the beginning always been relatively small – currently six to serve a population of nine million – and it has therefore never been reasons for any regulations in that respect.

13.6.3 The respective roles and functions of the Central Authority and accredited bodies

865. Generally, to enable Sweden to ratify the Convention and to keep the since long established administrative system in the field of intercountry adoptions, Sweden made use of the vast possibilities to delegate different responsibilities of the Central Authority to other authorities and accredited bodies.

866. The appointment of the Central Authority and the distribution of the different tasks of the Central Authority under the Convention between the Central Authority itself and other public authorities and accredited bodies were made through certain provisions in the 1997 Act on Sweden's ratification of the Convention. The system already in operation remained unchanged and the adoptions were through this delegation still to be handled by the accredited bodies in the majority of cases with normally no involvement in the procedure from the Central Authority's side.

867. The local social welfare authorities on municipality level were – as they still are – responsible for the assessment of the prospective adopters' eligibility and suitability to receive a child for the purpose of adoption and for making the report on the applicants (Art. 15). The Convention introduced a new stage in the procedure – the agreement that the adoption may proceed, to be given by the Central Authorities of both States concerned (Art. 17 c)). After some internal debate in the country it was finally decided to entrust also this task to the local social welfare authorities and not to the accredited bodies.

868. In 2005 the Central Authority, until then the Swedish National Board of Intercountry Adoptions (NIA), was reorganised and the Swedish Intercountry Adoptions Authority (MIA) was created. At the same time the accreditation criteria in the 1997 Intercountry Adoption Intermediation Act were sharpened, especially the criteria in relation to the conditions concerning the legislation, administration and other circumstances in the particular State of origin in which the Swedish association wishes to work. New rules were introduced, taking into account as a precondition for authorisation to work in a specific country, the level of costs and other contributions paid by the accredited bodies in that country. Accreditation is from that year given in two stages: as a first step, accreditation to work in Sweden, and as a second step, authorisation to work in the State of origin. These changes in our legislation have proved to be of great importance, thus enabling the accrediting authority to consider different conditions in the different States of origin to an extent that was not earlier possible. At the same time MIA's role as supervisory body was strengthened in different respects. The above mentioned legislative measures have contributed to a rise in the quality of the accredited bodies and the services provided by them.

869. The accredited bodies are financed mainly by adoption fees from prospective adoptive parents, including membership and registration fees. Accredited bodies also receive a small grant from the government.

870. Adoption fees from prospective adoptive parents are set by the accredited bodies themselves. The size of the adoption fee is dependent on the actual costs of adoption in the receiving State and in the State of origin. There is a fee for the costs associated with the accredited body's adoption activities in Sweden, but the size varies between the accredited bodies. The other part of the adoption fee is based on the actual costs associated with an adoption in the State of origin, including fees to authorities and organisations.

871. Financial transparency is achieved by standard bookkeeping. MIA analyses the annual reports supplied by the accredited bodies every year. The accredited bodies also send yearly reports of each country, where they specify the actual total costs associated with the adoptions that were made from the country the year before.

13.6.4 Co-operation and communication between Central Authority and accredited bodies

872. The co-operation throughout the years between the Central Authority and the accredited bodies must generally be described as good. MIA twice yearly convenes conferences with participation of all the accredited bodies and where all kinds of problems are discussed. Members of MIA's staff regularly visit the associations' offices. Representatives of MIA from time to time travel, together with staff members of the accredited bodies (associations), to the States of origin to meet with authorities, organisations and others with which the associations co-operate. There are close contacts on an almost daily basis between some of the accredited bodies and MIA through telephone and e-mail.

873. The applicants can make complaints to MIA. MIA examines the cases and can demand redress.

874. MIA also makes inquiries to the adoptive parents to get better knowledge of the work of the authorised associations.

875. MIA has regular meetings with the accredited bodies. When needed meetings about special questions concerning for example a special State of origin are also held.

13.6.5 The accrediting body and the accreditation process

876. Accreditation to work with intercountry adoption in Sweden is given by MIA. It can be given for five years. The associations (adoption agencies) seeking accreditation apply to MIA presenting documentation to prove that they fulfil the legal requirements. Certain forms for the purpose are provided by MIA. Accreditation to work in Sweden can be granted only to bodies having as their primary aim the mediation of adoptions. Accreditation may be granted only if it is obvious that the association (adoption agency) will mediate adoptions in a competent and discerning manner, on a non-profit basis, and is an open organisation. It is important that the association does not prevent any group of individuals from becoming members.

877. Authorisation to work in a specific State of origin, in a certain part of another country or with a certain adoption contact in another country, is also given by MIA. It can be given for two years. The accredited bodies choose the countries in which they wish to work and apply to MIA for authorisation. If authorisation is granted, adoptions will be handled by the accredited body in the majority of cases with normally no involvement in the procedure from MIA's side. An accredited body can be granted authorisation to work with intercountry adoption intermediation in a specific State of origin on condition that the accredited body will mediate adoptions in a competent and discerning manner and on a non-profit basis. If an accredited body also carries on work other than intercountry adoption intermediation, *e.g.*, development projects, the other work must not jeopardise the confidence in the adoption work.

878. As a condition for granting the accredited body an authorisation, the specific State of origin also has to have adoption legislation or other reliable regulation based on the principles of the best interests of the child expressed in the UN Convention on the Rights of the Child and in the 1993 Hague Convention. The State of origin must also have a functioning administration for intercountry adoption work. Damaging competition for

children must not arise, nor competition between Swedish accredited bodies operating in that country. The Swedish accredited bodies must account for how their costs in the country are apportioned, and on the basis of the cost picture and other general circumstances, it should be judged suitable for the accredited body to begin or continue adoption work with the other country. A condition for the accredited bodies to be able to render account for a sufficiently detailed cost picture is that the States of origin are open and provide the accredited bodies with financial information.

879. In order to maintain their accreditation to work in Sweden and authorisation to work in a specific State of origin, the accredited bodies have to continuously fulfil the legal requirements. The authorisation shall be revoked if the conditions stated cease to exist. The conditions for renewal of accreditation / authorisation are the same as the conditions for receiving the original accreditation / authorisation.

13.6.6 Adoption arrangements with States of origin

880. When accredited bodies want to start working with adoption intermediation in a new country it is consequently important that they acquire knowledge of the adoption procedure in that other country. When applying for authorisation from MIA the accredited bodies have to describe how the background of the children is investigated, how the principle of subsidiarity is taken into consideration, the matching procedure and what information the prospective adoptive parents get concerning the child. They must inform MIA of their representatives in the country and who they co-operate with. Furthermore, they must inform MIA of the costs related to adoption and what they consist of. If they plan to have activities other than adoption intermediation in the other country, *e.g.*, development projects, they have to describe the projects and how they would ensure that the projects would not compromise the integrity of the adoption process, *e.g.*, the project would not have any impact on the number of children they would get for adoption.

881. An accredited body granted authorisation to work with intercountry adoption intermediation in another country may work in that country only if the competent authority in the other country has given its consent to this.

882. MIA exercises active supervision of the authorised accredited bodies. MIA is given the right to acquire information necessary for supervision, right to access to the association's offices and the right to demand redress. Authorised accredited bodies have accordingly an obligation to disclose information. The accredited bodies have an obligation to mediate intercountry adoption for applicants who have been granted adoption consent from the local Social Welfare Committee. They also have an obligation to document their work. The associations must treat every couple or single applicant without any discrimination.

883. The authorised accredited bodies have to make annual reports of their work in the different countries (including financial reports). MIA travels to the States of origin to supervise the work that the accredited bodies perform and has meetings with different foreign authorities, *e.g.*, the Central Authorities, and with the Swedish embassies. MIA also makes visits to orphanages, holds discussions with Unicef and Save the Children, and has meetings with the representatives of the accredited bodies. Information from ISS / IRC and Unicef is of great importance for MIA as is information exchange with Central Authorities of other countries.

13.6.7 Specific challenges in the receiving State

884. A specific challenge lately in Sweden as a receiving State has been the large number of applications compared with the number of children available for international adoption in States of origin that the accredited bodies co-operate with. The accredited bodies have tried to handle the situation by informing the applicants as well as possible about the situation of longer waiting lines in Sweden before applications can be sent to States of origin, all in order for the applicants to make the best decisions for themselves under the new circumstances.

13.6.8 Specific challenges in States of origin

885. Specific challenges in States of origin have been the quality of the background information concerning the children and control of costs. As the accredited bodies have to make reports to MIA. MIA has, through these reports, visits to the specific country and information from other central authorities and different bodies involved in the intercountry adoption intermediation process, tried to get an understanding of the situation, as wide and clear as possible, all in order to determine the possibility of authorisation and co-operation with regard to the country in question under existing circumstances.

CHAPTER 14

APPROVED (NON-ACCREDITED) PERSONS AND BODIES UNDER ARTICLE 22(2)

886. The focus of this Guide is on issues of accreditation and accredited bodies and not approved (non-accredited) persons or bodies as they are not widely used for Convention adoptions. However, this chapter is included in the Guide to explain the role of approved (non-accredited) persons or bodies and to ensure that it is well understood that the principles and obligations of the Convention do apply to such persons when they perform the Central Authority functions delegated to them. The recommended good practices in this Guide may also apply to them.

14.1 Terminology

887. The term “approved (non-accredited) person” is used in this Guide to describe the person (or body) who (or which) has been appointed in accordance with Article 22(2) to perform certain Central Authority functions.

888. However, the term “non-accredited person” was used in the Explanatory Report to refer to this same person in Article 22(2). This is an accurate description as the Convention does not require that the person or body submit to a process of accreditation.³³⁰ On the other hand, some States now employ the term “approved person” when referring to the person in Article 22(2). As the Permanent Bureau is aware that there is confusion in some States about the operation of Article 22(2) and the use of the term “approved persons”,³³¹ the Guide to Good Practice has followed the usage of the Explanatory Report to try to improve the public’s understanding of the functions of these particular persons. The term “approved (non-accredited) person” is a compromise to retain the precision of the Explanatory Report, but recognises the usage by some States of the term “approved person”.³³²

889. Where the term “approved (non-accredited) person” is used in this Guide, it should be understood to include an approved (non-accredited) body unless otherwise indicated.

14.2 The meaning and intention of Article 22

890. Article 22 represents a compromise provision for the Convention’s negotiators between those who wanted the greatest safeguards possible developed in the Convention and those who wished to preserve some freedom for individuals to operate.

891. The Explanatory Report refers to this debate:

*The so-called “private” or “independent” adoptions were fully discussed in the Special Commission, where the arguments in favour and against were examined at length (Report of the Special Commission, Nos 249-256) and the solution approved [i.e., the text of Article 22] represents a reasonable compromise between antagonistic positions. On the one hand, it permits that some non-accredited bodies or individuals carry out the functions assigned to the Central Authorities under Articles 15 to 21 (as accepted in the Convention), if they fulfil certain minimum standards before being allowed to act, but on the other hand, the Contracting States are not forced to accept the participation of non-accredited bodies or persons by making an express declaration in this sense. Therefore, Contracting States may assume the position they consider the best by remaining silent (indicating acceptance) or by declaring their objection to such participation.*³³³

³³⁰ For one approach, see the response of the United States of America to Section A of the 2009 Questionnaire.

³³¹ See, in general, responses of question No 6(6) of the 2005 Questionnaire.

³³² See the Guide to Good Practice No 1, *supra*, note 18, para. 215.

³³³ See Explanatory Report, *supra*, note 16, para. 373.

14.2.1 Delegation of Central Authority functions: Article 22(1)

892. It is recalled that in Articles 14 to 21 of the Convention, it is stated that the Central Authority shall perform the procedural functions described. The word "shall" indicates that a mandatory obligation is imposed. However, Article 22(1) permits a delegation of those functions. If the Central Authority does not perform some or any of the functions described in Articles 14-21, States may delegate those functions to other public authorities or to accredited bodies. Paragraph (1) states:

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

893. The reason for permitting this delegation is to permit each Contracting State to find the most appropriate solution according to its own conditions, to implement these obligations in the most effective manner. It is important to note that when the tasks assigned by the Convention to the Central Authority are performed by another authority or body or person, this is a "delegation" of the tasks, which carries the understanding that the delegating authority remains responsible for the manner in which the delegated tasks are performed, regardless of which authority, body or person performs them.

894. The Explanatory Report explains that paragraph (1) is intended to express the idea that:

*[...] the procedural rules should be flexible enough to assure the best possible functioning of the Convention. Therefore, it was not considered advisable to impose upon the Central Authorities the obligation to discharge the various tasks assigned to them by Chapter IV, and left to each Contracting State the decision on this important issue. For this reason, paragraph 1 of Article 21 accepts the possibility that Contracting States, to the extent permitted by the applicable law, may delegate the compliance of their duties to other public authorities or to bodies accredited under the rules of Chapter III.*³³⁴

895. Strictly speaking, Article 22(1) is not needed to explain the possibility of delegating Central Authority functions. The Convention is clear about which obligations cannot be delegated (Art. 7), except to public authorities (Art. 8). Compare these articles to Article 9, which enables Central Authorities to act either directly or through other public authorities or accredited bodies in their States, to the extent permitted by the applicable law. Therefore,

*paragraph 1 of Article 22 was included to avoid any kind of misunderstanding, in particular because its second, fourth and fifth paragraphs prescribe a special regulation for certain activities that may be performed by certain non-accredited bodies or persons.*³³⁵

14.2.2 Conditions for delegation of functions to approved (non-accredited) persons: Article 22(2)

896. Article 22(2) permits delegation to approved (non-accredited) persons of certain Central Authority functions, namely those under Articles 15 to 21. It also establishes the conditions under which certain Convention functions may be delegated to approved (non-accredited) persons. It states:

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who –

a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

³³⁴ See Explanatory Report, *supra*, note 16, para. 374.

³³⁵ *Ibid.*, *supra*, note 16, para. 375.

- b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.*

897. The use of the words “may declare” indicates that there is no obligation on any Contracting State to approve approved (non-accredited) persons. However, a Contracting State which does decide to allow approved (non-accredited) persons to perform certain Convention functions must make a declaration to this effect to the depositary of the Convention (the Ministry of Foreign Affairs of the Royal Kingdom of the Netherlands).³³⁶ This is the first condition.

898. The second condition of Article 22(2) is that the law of the Contracting State must define the extent of the activities permitted to the approved (non-accredited) person. The Contracting State must also establish a system of supervision of approved (non-accredited) persons by the competent authorities.

899. The third condition is that the person (or body) seeking approval under Article 22 must meet the minimum standards described in Article 22(2) *a)* and *b)*, referred to above.

900. The standards cited in Article 22(2) *a)* and *b)* and the supervisory requirement noted above are similar in scope to those for accredited bodies found in Article 11 *b)* and *c)*. The primary difference between the provisions of Article 22(2) and Article 11 is the provisions of Article 11 *a)* that accredited bodies shall pursue only non-profit objectives as established by the competent authorities of the State of accreditation.

14.2.2.1 Limitations on Central Authority functions delegated to approved (non-accredited) persons

901. Persons who have been approved or appointed in accordance with the standards set out in Article 22(2) of the Convention may only perform the functions in Articles 15 to 21. This is a more restricted list of functions than that permitted for accredited bodies.³³⁷ The absence of Article 14 from the list of permitted functions indicates that a prospective adoptive parent cannot submit an application to adopt through an approved (non-accredited) person.³³⁸ Nor can the approved (non-accredited) person undertake the functions in Article 9.

902. In addition, just as States may regulate or restrict the activities of accredited bodies so too may they regulate or restrict the activities of approved (non-accredited) persons to any extent necessary for that State. A Contracting State may impose any necessary or desirable limitations or conditions. For example, the approved (non-accredited) person may only be permitted to perform the functions in Article 15 (preparation of report on prospective adoptive parents) and Article 18 (obtain permission for child to enter and reside in the receiving State).

14.2.2.2 Standards for approval of approved (non-accredited) persons: Article 22(2) a) and b)

903. Approved (non-accredited) persons do not have to meet the same eligibility requirements of accredited bodies. For example, they are not bound by sub-paragraph *a)* of Article 11, *i.e.*, to “pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation”. In other words, they may undertake adoptions for profit.

904. However, approved (non-accredited) persons are not exempt from the rule in Article 32 concerning improper financial gain. The general prohibition on improper financial gain (Art. 32(1)) applies to them as it applies to every person involved in intercountry adoptions under the Convention. Approved (non-accredited) persons are

³³⁶ Art. 48 *d)*.

³³⁷ See the Guide to Good Practice No 1, *supra*, note 18, para. 216.

³³⁸ Art. 14 is expressly excluded, as suggested by Work. Doc. No 170 of the 1993 Diplomatic Session, submitted by Italy and the United States of America.

also bound by Article 32(2) concerning costs and fees. They may only charge for the actual costs and expenses of the intercountry adoption and reasonable fees.

905. It must also be emphasised that Article 32(3) concerning remuneration of directors and staff applies equally to accredited bodies and to non-accredited bodies. No distinction is made. The word “bodies” is used without qualification.³³⁹

906. According to Article 22(2) *a*) and Article 22(2) *b*), approved (non-accredited) persons are required to meet certain standards of integrity, professional competence, experience and accountability.³⁴⁰ They must also be qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.³⁴¹ These are minimum standards and therefore, each Contracting State is authorised to establish additional conditions:

*Sub-paragraphs a and b prescribe certain requirements that necessarily have to be complied with by the non-accredited bodies or persons to be allowed to perform the functions assigned to the Central Authorities under Articles 15 to 21, but they are only minimum standards and therefore, each Contracting State is authorised to establish additional conditions, to supervise their activities and to determine the extent of the functions that they may discharge.*³⁴²

907. Sub-paragraph *b* repeats the standards in Article 11 *b*) which apply to the directors and staff of accredited bodies. This was intended to ensure that there is consistency of approach between the regulation of accredited bodies and non-accredited bodies or persons. The latter could not be self-regulatory.³⁴³

14.2.2.3 Supervision of approved (non-accredited) persons or bodies: Article 22(2) and 22(5)

908. Approved (non-accredited) persons or bodies have to be under the supervision of competent authorities. It is a matter for the Contracting State to authorise an appropriate competent authority to perform this task.

909. If the law of the Contracting State permits such persons to operate in the field of adoption, they may only perform their functions “to the extent permitted by the law and subject to the supervision of the competent authorities” of their State: Article 22(2).

*The authorised non-accredited bodies or persons are “subject to the supervision of the competent authorities” of the State that has made the declaration of paragraph 2. Such supervision will certainly include their compliance with the rules of the Convention, in particular, the prohibition to derive improper financial or other gain from any activity related to intercountry adoption and the requirements established by sub-paragraphs a and b of Article 22.*³⁴⁴

910. In addition, any Article 15 or 16 reports which are prepared by an approved (non-accredited) person must be done under the responsibility of a supervising authority: Paragraph (5) states:

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

911. The Explanatory Report at paragraph 398 states that the aims of Article 22(5) are:

to make it clear that non-accredited bodies or persons may participate in the preparation of the reports provided for by Articles 15 and 16. However, at the

³³⁹ See Explanatory Report, *supra*, note 16, para. 533.

³⁴⁰ Art. 22(2) *a*).

³⁴¹ Art. 22(2) *b*).

³⁴² See Explanatory Report, *supra*, note 16, para. 383. See also paras 386 and 388.

³⁴³ *Ibid.*, *supra*, note 16, para. 387.

³⁴⁴ *Ibid.*, *supra*, note 16, para. 384.

*same time, it was stressed that the responsibility for the reports remains with the Central Authority or with the other public authorities or bodies accredited under Chapter III to the extent permitted by the law of its State, as prescribed by paragraph 1 of the same Article 22.*³⁴⁵

912. The rule in Article 22(5) helps to understand the reason that approved (non-accredited) persons are excluded from the operation of Article 14 – the requirement for the prospective adoptive parents to submit an application through the Central Authority or an accredited body. Only if it is done this way can the Central Authority or accredited body know that the approved (non-accredited) person is to be involved in an intercountry adoption as an “agent” for the prospective adoptive parents who use the approved (non-accredited) person’s services.

14.2.2.4 A declaration is necessary if functions are delegated to approved persons: Article 22(2)

913. To permit the involvement of approved (non-accredited) persons in Convention adoptions, a declaration to this effect must be made by the Contracting State of the approved (non-accredited) person. This is the intention of Article 22(2) when read in conjunction with Article 48 d).³⁴⁶

914. If a Contracting State does not make a declaration to allow the involvement of approved (non-accredited) persons in intercountry adoptions, then the absence of a declaration means that the approved (non-accredited) persons are not permitted to carry out in their State the functions assigned to the Central Authorities under Articles 15 to 21. The Explanatory Report clarifies this matter:

*An express declaration by the Contracting State is required by paragraph 2 to permit the non-accredited bodies or persons to discharge the functions assigned to the Central Authorities under Articles 15 to 21. Therefore, the silence of the Contracting State is to be construed as an objection against bodies or persons non-accredited by that State to discharge functions assigned to the Central Authority of that State.*³⁴⁷

915. There is no time limit for making the declaration. It need not be made at the time of ratification or accession. Although not expressly provided for in the Convention, such declaration may also be withdrawn at any time, but the depositary should be notified.³⁴⁸

14.2.2.5 Inform the Permanent Bureau: Article 22(3)

916. Paragraph (3) requires the Contracting State to inform the Permanent Bureau of the contact details of the approved (non-accredited) persons or bodies:

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

917. This rule is similar to the one established by Article 13 for accredited bodies. The purpose of notifying the Permanent Bureau is to ensure that the information can be disseminated to the Member States of the Hague Conference organisation and to the States Parties to the Convention.³⁴⁹ As the Convention relies heavily on co-operation, in particular between the States themselves and between States and the Permanent Bureau, to achieve its objects and for its effective implementation, it is important that Contracting States have accurate and current information from the other Contracting States about the other actors in the intercountry adoption. The failure to inform the

³⁴⁵ Para. 5 was included in response to the suggestion made by the United States of America and Italy in Work. Doc. No 170.

³⁴⁶ See Explanatory Report, *supra*, note 16, para. 380.

³⁴⁷ *Ibid.*, *supra*, note 16, para. 382.

³⁴⁸ *Ibid.*, *supra*, note 16, para. 381.

³⁴⁹ *Ibid.*, *supra*, note 16, para. 391.

Permanent Bureau will not affect the adoption, but may give rise to a complaint, as permitted by Article 33.³⁵⁰

918. There is a great reliance on the Hague Conference website to find the contact details of Central Authorities and accredited bodies. As a matter of good practice and to avoid confusion, Contracting States which permit approved (non-accredited) persons or bodies to arrange intercountry adoptions should make a distinction in their notifications between approved (non-accredited) persons or bodies which are approved under Article 22(2) and accredited bodies accredited under Article 10 and notified under Article 13. As approved (non-accredited) persons are permitted to undertake adoptions for profit, any confusion between approved (non-accredited) persons and accredited bodies should be avoided.

14.2.3 Objection to the involvement of approved (non-accredited) persons: Article 22(4)

919. Paragraph (4) states:

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

920. It is possible to say that Article 22(4) is directed to States of origin, or to receiving States when they are a State of origin for a particular adoption. The reference to “adoptions of children habitually resident in its territory” makes this clear.

921. No State is obliged to accept the participation of approved (non-accredited) persons in intercountry adoptions.³⁵¹ A State of origin may declare, by making a declaration in accordance with Article 22(4), that it will not permit adoptions of its children to be carried out by approved (non-accredited) persons of receiving States.³⁵²

922. The failure to make the declaration under Article 22(4) has serious implications. Silence indicates acceptance: if a State of origin does not make the declaration, it means that approved (non-accredited) persons are allowed to arrange intercountry adoptions of that country’s children:

*[...] according to paragraph 4, silence by a State is to be interpreted as an acceptance that intercountry adoptions of children habitually resident in its territory may also take place if the functions assigned to the Central Authority of the receiving State are performed by non-accredited bodies or persons, as permitted by paragraph 2 of the same Article.*³⁵³

923. Therefore, unless the State of origin intends that the effect of its silence is to indicate acceptance of the involvement of approved (non-accredited) persons, then a declaration must be made to the depositary of the Convention. There is no time limit imposed for this declaration, therefore it may be made at the time of ratification or accession or any time after. Furthermore, although it is not expressly provided for in the Convention, there is no doubt that it is also possible to withdraw, at any time, the declaration made in accordance with paragraph 4. Any such withdrawal should be notified to the depositary.³⁵⁴

924. If a Contracting State (*e.g.*, a State of origin) does not make any declaration at all, neither under Article 22(2) nor 22(4), the effect is as follows. No declaration under Article 22(2) means the approved (non-accredited) persons are not permitted to perform any convention functions in this State, *i.e.*, no declaration means no approval. But if,

³⁵⁰ See Explanatory Report, *supra*, note 16, para. 392.

³⁵¹ *Ibid.*, *supra*, note 16, para. 373.

³⁵² Armenia, Azerbaijan, Belarus, Brazil, Bulgaria, China, Colombia, El Salvador, Hungary, Panama, Poland, Portugal and Venezuela are the countries of origin which have made a declaration under Art. 22(4) of the Convention. Some receiving countries have also made the declaration: Andorra, Australia, Austria, Belgium, Canada (British Columbia and Quebec), Denmark, France, Germany, Luxembourg, Norway, Spain, Sweden and Switzerland (2008 information).

³⁵³ See Explanatory Report, *supra*, note 16, para. 396.

³⁵⁴ *Ibid.*, *supra*, note 16, para. 394.

under Article 22(4), a State of origin makes no declaration, then the absence of a declaration indicates acceptance that the approved (non-accredited) persons from another State may arrange adoptions from the State of origin, *i.e.*, no declarations indicates acceptance.

925. However, it should be clarified that adoptions may still occur between a receiving State which appoints approved (non-accredited) persons and a State of origin which makes a declaration under Article 22(4). The effect of the declaration is that an approved (non-accredited) person must not be involved in any adoptions with that particular State of origin. Only accredited bodies or Central Authorities can arrange adoptions with that State of origin.³⁵⁵

926. Unlike accredited bodies, the Convention does not provide for, but also does not prohibit, approved (non-accredited) persons to be authorised to operate in another State. The Explanatory Report, at paragraph 397 raises this question and concludes that while this could occur, the approved (non-accredited) person or body would be subject to the same procedure in Article 12 as accredited bodies, namely of authorisation by both Contracting States.

³⁵⁵ See the Guide to Good Practice No 1, *supra*, note 18, para. 220.

