ADOPTION

février / February 2012

HccH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

PROJET DÉFINITIF

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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FINAL DRAFT

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

Permanent Bureau | *Bureau Permanent*
6, Scheveningseweg 2517 KT The Hague | *La Haye* The Netherlands | *Pays-Bas*
telephone | *téléphone* +31 (0)70 363 3303 fax | *télécopieur* +31 (0)70 360 4867
e-mail | *courriel* secretariat@hcch.net website | *site internet* http://www.hcch.net

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INTRODUCTION

INTRODUCTION

1. When 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") was first proposed as a new treaty, one of its key features was to be the requirement that all applications for intercountry adoption should be made either through a Central Authority or an accredited body. The purpose of this requirement was to improve standards of intercountry adoption generally, and to discourage or prohibit private and independent adoptions.[1]

2. One of the great advantages of the Convention 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 in different 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.

3. 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.

4. 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.

5. 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 of intercountry adoption. For the accredited bodies as well as the Central Authorities and the competent authorities, that goal is the protection and well-being of the children to be adopted.[2]

6. Guided by their shared goal, 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.

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

- acceptance of the primary mission or 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; and
- continuous dialogue among the players regarding the powers and functions of each and the way in which they are exercised.

8. 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 to focus their statements and their actions on the real reason for intercountry adoption, which is to seek a family for a child

[1] See discussion on issues related to private and independent adoptions in Chapter 1 of this Guide.
[2] See the Preamble to the Convention.

in need. 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.

Purpose and scope of the Accreditation Guide

9. Accreditation practice differs widely. The understanding and implementation of the Convention's obligations and terminology vary 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, parents 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 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. The implementation of the Convention should be seen as a continuing, progressive or incremental process of improvement.

Mandate

15. The responses to the Questionnaire which preceded 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 (hereinafter 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".[3] 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

[3] 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".

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:

> *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.*[4]

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,* a Swedish accredited body. 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 was especially generous in allocating resources for several months to draft a number of chapters.

21. Special thanks are also due to those experts who took take part in the Experts' Working Group and gave up their valuable time to assist the Permanent Bureau in this project. Thanks are also given to the Experts' respective governments or organisations which released them from their normal duties to participate in the Working Group. The Working Group comprised the following persons with their respective Central Authorities indicated: Ms Anne-Marie Crine (French Community of Belgium); Ms Luce de Bellefeuille and Ms Isabelle Sourdif (Quebec (Canada)); Ms Ilvia Ruth Cardenas (Colombia); Ms Edith Nowak (France); Ms Daniella Bachetta (Italy); Ms Odeta Tarvydienė (Lithuania); Mr Jan Vroomans (Netherlands); Ms Bernadette Abejo (Philippines); Ms María Jesús Montané Merinero and Ms Laura Muñoz Pedreño (Spain); Mr William Bistransky and Ms Judith Osborn (United States of America). The independent experts were: Ms Birgitta Löwstedt (*Adoptionscentrum*, Sweden); Ms Marlène Hofstetter (Fondation Terre des hommes, Switzerland); and Mr Hervé Boéchat (International Social Service).

[4] 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"; (hereinafter, "Conclusions and Recommendation of the 2005 Special Commission").

22. In the Permanent Bureau, the co-ordination of the project as well as writing a number of Chapters, and editing the drafts were done by Ms Jennifer Degeling (Secretary), assisted by Ms Laura Martínez-Mora (Adoption Technical Assistance Programme Co-ordinator); Ms Trinidad Crespo Ruiz (Adoption Technical Assistance Programme Consultant); Ms Sandrine Pépit, Ms Emmanuelle Harang and Ms Carine Rosalia (Legal Officers) and Mr Alexander Kunzelmann (Intern). Thanks are due to Mr William Duncan (Deputy Secretary General) for reading the draft and providing comments and to Mr Stuart Hawkins (Administrative Assistant) and Ms Hélène Guérin (Reviser / Editor) for their assistance with formatting.

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 intercountry adoptions under the Hague Convention, 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* [5] (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 1990[6] 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".[7] 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 concerning the adoptability of a child, 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

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[5] *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 > (hereinafter "UNCRC").

[6] 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").

[7] *Ibid.*, *supra*, note 6, para. 62.

trafficking either for purposes of adoption abroad, or under the cloak of adoption, for other – usually illegal – purposes."[8]

29. The general features of trafficking[9] 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 impoverished 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).[10]

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".[11] 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.[12] 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".[13]

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."[14]

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.[15]

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.*[16]*"*

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[8] See J.H.A. van Loon, *supra*, note 6, para. 78.
[9] "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).
[10] See J.H.A. van Loon, *supra*, note 6, para. 79.
[11] *Ibid.*, *supra*, note 6, para. 83.
[12] *Ibid.*, *supra*, note 6, para. 132.
[13] *Ibid.*, *supra*, note 6, para. 136.
[14] *Ibid.*, *supra*, note 6, para. 137.
[15] *Ibid.*, *supra*, note 6, para. 178.
[16] *Ibid.*, *supra*, note 6, 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 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.*[17]

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.[18] 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 13.

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.

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[17] 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").

[18] *Ibid.*, *supra*, note 17, para. 373.

CHAPTER 2
GENERAL PRINCIPLES OF ACCREDITATION

39. 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.

40. 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 and parents concerning accredited bodies, namely, that accreditation is not a guarantee of high quality professional conduct and expertise.

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

2.1 General principles

42. 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.

43. For States which are party to it, 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.

44. 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*[19] (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

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

a. best interests principle: the best interest of the child is the primary consideration in all matters relating to Convention adoptions;

b. subsidiarity principle: the subsidiary nature of intercountry adoption is one element to be considered when applying the best interests principle;

[19] See "*The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice*, Guide No 1", Family Law (Jordan Publishing Ltd) for the Hague Conference on Private International 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 (hereinafter, "Guide to Good Practice No 1") .

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 applied effectively; and

e. competent authorities principle: only competent authorities, appointed or designated in each State, should be permitted to authorise intercountry adoptions.

46. 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. The principles of accreditation should be read in conjunction with the general principles.

2.2 Standards for accredited bodies

47. 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 Intercountry Adoption Process under the Convention).

48. Bodies which meet the obligations set out in Articles 10 to 13 of the Convention, as well as 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.[20]

49. 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;[21]
- only pursue non-profit objectives;[22]
- be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoptions;[23]
- be subject to supervision by competent authorities as to their composition, operation and financial situation;[24] and
- ensure that their directors, administrators and employees shall not receive remuneration which is unreasonably high in relation to services rendered.[25]

2.3 Principles of accreditation

50. Some principles of accreditation are proposed 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.

51. The accreditation principles are:

- Principle No 1: Principle of professionalism and ethics in adoption
- Principle No 2: Principle of non-profit objectives

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[20] See Guide to Good Practice No 1, *supra*, note 19, para. 203.
[21] Art. 10.
[22] Art. 11 *a)*.
[23] Art. 11 *b)*.
[24] Art. 11 *c)*.
[25] Art. 32(3); see also Guide to Good Practice No 1, *supra*, note 19, para. 204.

- 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.

52. These principles should apply to the accredited bodies of the receiving States and of the States of origin. They should be followed by the accredited bodies themselves in all their work. They should be applied by authorities when selecting, licensing and supervising the bodies. However as the majority of accredited bodies are from receiving States, the principles are particularly directed at these accredited bodies.

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

53. Accredited bodies should be bound by obligations of professional competence and ethical practices in intercountry adoption.[26] 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 Convention 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.

54. 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.*

55. 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.*

56. 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 <u>all</u> 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."*

57. To implement this principle, the accredited body should be guided by the statements in the Preamble to the Convention, such as the desirability for a child to grow

[26] For example, the EurAdopt organisation requires its members to supplement existing rules and legislation with commonly agreed Ethical Rules which are available at < www.euradopt.org > under "Ethical Rules" (last consulted 14 February 2012) (hereinafter, "EurAdopt Ethical Rules"); the Nordic Adoption Council, who represents all but one of the Nordic adoption accredited bodies, agreed in 2009 to the "Nordic Approach to Intercountry Adoption". This Approach is a list of standpoints to secure intercountry adoption procedures based on ethics and responsibility; it is available at < www.nordicadoption.org > (last consulted 15 February 2012) (hereinafter, "Nordic Approach").

up in a family environment, preferably with his or her own family, and recognition of intercountry adoption as an option when a suitable family is not found in the country of origin. The accredited body may also be guided by certain basic ethical considerations based on the child's best interests. These considerations include the following:

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. Accredited bodies must be guided by the best interests of the child;[27]

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 prospective adoptive parents. This involves, for example, taking appropriate measures to verify that the subsidiarity principle has been applied and national solutions considered in each case, 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 is avoided.[28]

58. 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.[29]

59. In order to meet the standards of professional competence required by Article 10, it is recommended that the 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, and specifically when receiving States of origin reports on the health and physical condition of children.

60. The practical experience of the accredited body should be adequate and appropriate to meet the needs of intercountry adoptable children in the State of origin where the accredited body works or intends to work.

61. 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 adoption.

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[27] Accredited bodies are bound by the objects of the Convention in Art. 1, as are all actors involved in Convention adoptions.
[28] See EurAdopt Ethical Rules, *supra*, note 26, Art. 25.
[29] See Guide to Good Practice No 1, *supra*, note 19, para. 195.

2.3.2 Principle No 2: Principle of non-profit objectives

62. Article 11 *a)* obliges accredited bodies 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."*

63. 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."*[30]

64. 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)); and
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.

65. 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.[31] "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.[32]

2.3.3 Principle No 3: Principle of preventing improper financial gain

66. 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 8 of this Guide (The costs of intercountry adoption).

67. 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 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".[33]

68. When an accredited body 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

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[30] See Explanatory Report, *supra*, note 17, para. 256.
[31] See EurAdopt Ethical Rules, *supra*, note 26, Art. 21.
[32] See Explanatory Report, *supra*, note 17, para. 532.
[33] *Ibid*., *supra*, note 17, para. 527.

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.

69. 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.

70. 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."*

71. 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.[34]

72. 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.[35]

73. 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.[36]

74. In fact, improper financial gain could arise in a number of common situations, such as:

- the salary of the accredited body's representative in the State of origin is too high compared to the average wage of workers in that country and doing the same type of work;
- professional services offered by certain persons in the receiving State or State of origin are too expensive compared to the same type of service outside of the adoption context;
- administration costs of the accredited body are too high in comparison with the services rendered;
- donations and contributions required of prospective adoptive parents are too high.

75. 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.[37] 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.[38]

76. Article 32(2) and (3) requires 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

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[34] *Ibid*., *supra*, note 17, para. 526.
[35] *Ibid*., *supra*, note 17, para. 533.
[36] *Ibid*., *supra*, note 17, para. 534.
[37] See Guide to Good Practice No 1, *supra*, note 19, Chapter 10.1.
[38] The Optional Protocol on the sale of children also states that in cases where a child is sold, there should be criminal sanctions. See 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 < www.ohchr.org >.

accredited bodies and this is confirmed by Article 11 *c)*. The question of supervision of accredited bodies is discussed in detail in Chapter 7 of this Guide.

77. 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, should take appropriate measures to refuse and prevent improper financial gain. Possible measures which could be taken by the accredited bodies include:

a. publishing their costs for an intercountry adoption, and related costs in the State of origin;

b. 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; and[39]

c. taking responsibility for the working methods of their 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.[40]

78. 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 as explained in paragraph 76. 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."*[41]

79. 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.

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

80. Accreditation and authorisation are two different procedures, according to the Convention. A detailed explanation is given in Chapter 4 (The relationship between accreditation and authorisation).

2.3.4.1 Criteria for accreditation

81. In Articles 10 and 11, the Convention sets minimum standards for the accreditation of adoption bodies. As a matter of good practice and in order to develop an effective system of accreditation, States are expected to develop more detailed rules to implement Articles 10 and 11. In developing their rules for accreditation, the Convention does not prevent Contracting States imposing additional obligations or requirements on bodies seeking accreditation.[42] The Convention's direct obligations together with these additional requirements may be described as "accreditation criteria".

82. 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.

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[39] See EurAdopt Ethical Rules, *supra*, note 26, Art. 23.
[40] *Ibid*., *supra*, note 26, Art. 20.
[41] See Explanatory Report, *supra*, note 17, para. 528
[42] See Guide to Good Practice No 1, *supra*, note 19 para. 205.

83. 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.[43] These criteria should be set by statute or any other similar enactment, provide clear and comprehensive instructions, and be published.[44]

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

85. 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.

2.3.4.2 Criteria for authorisation

86. As noted above at paragraph 80, authorisation is envisaged as a procedure that is separate from accreditation. Authorisation is intended as an additional safeguard for States of origin.

87. It is therefore recommended that States develop criteria for the authorisation of accredited bodies to act in another State, 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 need 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.[45] 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[46] and their profile. These matters are discussed in more detail in Chapter 4.2.4.

88. The entire burden of authorisation should not be placed on the State of origin. The receiving State may assist the State of origin in accordance with its obligations of co-operation by obtaining information about the real need for foreign 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.

89. 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 compared with the number of

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[43] 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 – 1st December 2000)", drawn up by the Permanent Bureau, Hague Conference on Private International Law, April 2001 (hereinafter, "Report of the 2000 Special Commission"), Recommendation No 4c. The Report of the 2000 Special Commission is available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions".

[44] For example, the response of Italy to Questions No 18 and 19 of 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".

[45] For examples of good practice, see the response of Lithuania to question No 23 of the 2009 Questionnaire, *supra*, note 44, and the criteria available at the Central Authority website < www.vaikoteises.lt/en/ > under "Adoption" and "Authorized organisations" (last consulted 14 February 2012). See also the perspective of the Philippines in Annex 3 of this Guide.

[46] See the responses of the States to question No 8 of the 2009 Questionnaire, *supra*, note 44 with regard to imposed limits on the number of accredited bodies.

children in need of adoption. In contrast, another State of origin 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.[47]

2.3.5 Principle No 5: Principle of accountability of accredited bodies

90. 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.

91. To ensure that accredited bodies are accountable for their actions, the following steps may be required:

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); and
e. transparency of the accredited body's organisation and activities, for the benefit of prospective adoptive parents, children, regulators and others.

92. 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.

93. 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 adoptive parents as well as its accrediting authority.

94. A detailed discussion of supervision is in Chapter 7 of this Guide (Procedures for accreditation and supervision of accredited bodies).

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

95. This principle is one for which there should be co-operation and co-responsibility[48] between receiving States, States of origin and accredited bodies. 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".[49]

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[47] See A Discussion Paper on Accreditation Issues, *supra*, note 3, p. 10.
[48] Suggestions to improve co-operation and co-responsibility are discussed in Chapter 12.1.2.
[49] See EurAdopt Ethical Rules, *supra*, note 26, Art. 18.

96. Receiving States, 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.

97. The States of origin could have a system in place to license intercountry adoption representatives.[50] The licensing system should require relevant professional knowledge and experience. Knowledge of the child protection system in the State of origin should be required.[51] States of origin should consider including 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 be supported by the receiving State in whatever way possible.

98. 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.[52]

99. The issue of the representative is discussed in more detail in this Guide at Chapter 6.4 (Representatives of foreign accredited bodies in the State of origin).

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

100. 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.[53]

101. 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.[54]

102. 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.

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[50] States of origin which have a system of licensing for representatives include Lithuania.

[51] A questionnaire on the child protection system in States of origin has been developed by the International Social Service (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, see "Questionnaire on the national situation of children deprived of their family of origin and regarding adoption in a State of origin", 2002, available from ISS upon request, < www.iss-ssi.org >.

[52] *E.g,.* Canada, France, Italy, Sweden.

[53] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 4a.

[54] *Ibid.*, Recommendation No 4b.

CHAPTER 3
GENERAL POLICY CONSIDERATIONS

103. 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.

104. 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.

3.1 What is an accredited body?

105. An accredited body is usually a private adoption agency which has been through a process of accreditation or licensing in accordance with Articles 10 and 11 of the Convention; it meets any additional criteria for accreditation that are imposed by the accrediting country; and it performs certain functions of the Convention in the place of, or in conjunction with, the Central Authority.

106. By contrast, several countries have designated public bodies as accredited bodies.[55] These bodies are financed by the State and do not depend on the number of adoption applications for their financial viability. Public accredited bodies should be bound by the same standards and obligations as other accredited bodies.

3.2 Is it mandatory to use accredited bodies?

107. The Convention permits the Contracting States to call upon accredited bodies to perform some of the functions of Central Authorities, but does not require any State to appoint accredited bodies or use them.[56] However, some receiving States and States of origin do require by law the use of accredited bodies to mediate intercountry adoptions.[57]

108. The use of accredited bodies is considered good practice as it allows the States to engage them in supporting the prospective adoptive parents during and after the adoption procedure, as well as in fighting abuse of procedures, trafficking in children and the failures associated with independent adoptions.[58]

109. 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.

110. Some possible solutions to avoid these problems are: the State of origin could permit adoptions only when it has agreed on the "practical arrangements" for adoptions

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[55] France has designated the Agence Francaise de l'Adoption (AFA), and Italy has designated Agenzia Regionale Per Le Adozioni Internazionali (Regione Piemonte) (ARAI).

[56] See Report 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, para. 54. Available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions" (hereinafter, "Report of the 2005 Special Commission").

[57] See the laws of 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).

[58] 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. Available on the website <www.iss-ssi.org>. For a discussion on independent adoptions, see Guide to Good Practice No 1, *supra*, note 19, 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?"), pp. 11 and 29.

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: independent and private adoptions are prohibited. When prospective adoptive parents wish to adopt from a State where their accredited body does not work, the parents must first 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 by co-operation between the State of origin intermediary and the Dutch accredited body.

3.2.1 Obligation to inform the Permanent Bureau

111. 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.[59] 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.[60] 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).

3.3 Choosing the competent authority to issue accreditation

112. 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".[61]

113. The Special Commission of 2000 made a recommendation regarding designation of the competent authority or authorities that may grant accreditation. This recommendation is referred to in Accreditation Principle No 7: Principle of adequate powers and resources for Authorities. According to this recommendation, the State should make an official public designation, preferably in its implementing legislation,[62] of the authorities competent to grant accreditation, to supervise accredited bodies or to give authorisations. 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.[63]

114. 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.[64] This is not to say that a Central Authority should not be involved in arranging adoptions - the Convention clearly permits it. Indeed, there are times when a Central Authority must intervene, even when cases are usually handled by accredited bodies. For example, when an accredited body ceases to operate, the Central Authority may have to take over the files (as is done in Italy); or a Central Authority may have to perform a function that is usually delegated to an accredited body. But if, as occurs in some States, the accrediting or supervising authority (a public body) as well as accredited bodies are also involved in arranging adoptions, *i.e.*, doing the same work,

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[59] See, in general, the States responses to question No 3 of the 2009 Questionaire, *supra*, note 44.
[60] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 2g. See also A Discussion Paper on Accreditation Issues, *supra*, note 3, p. 7 (Section 4.1) and p. 19 (Section 9 a)).
[61] See Explanatory Report, *supra*, note 17, para. 245.
[62] See Report of the 2005 Special Commission, *supra*, note 56, 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".
[63] See, for example, the response of the United States of America to question No 18 of the 2009 Questionnaire, *supra*, note 44.
[64] See A Discussion Paper on Accreditation Issues, *supra*, note 3, p. 7.

care must be taken to avoid the situation where different standards or different procedures apply to the public authority.

115. The authority competent to issue accreditation will normally be the same as is authorised to deny it, extend it, suspend it and withdraw it. The authority 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 2.3.7.

116. 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.[65] 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.

3.4 Control of the number of accredited bodies

117. 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 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 changed. 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 adapt the profile and the number of bodies accredited and authorised to work in the selected State of origin.[66]

3.4.1 In the receiving State

118. 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 4.3. Where their legal framework permits limits to be placed on the number of accredited bodies and the number authorized to work with particular States of origin, receiving States should 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.[67]

3.4.2 In the State of origin

119. Information in questionnaire responses and from the Hague Conference website indicates that the number of accredited bodies active in some States appears to be disproportionate to the numbers of adoptable children.[68] 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.[69]

120. As mentioned in Chapter 2.3 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. One approach would be to link the number of accredited bodies to the number of adoption applications permitted in the State of origin.

121. When contracting States (and accredited bodies) agree to be partners in adoption arrangements, it is appropriate for the State of origin to specify the number of adoption applications it will accept from the prospective adoptive parents of the partner receiving

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[65] See Explanatory Report, *supra*, note 17, para. 246.
[66] See Report of the 2005 Special Commission, *supra*, note 56 para. 65.
[67] See, in general, the responses to question No 7 of the 2009 Questionnaire, *supra*, note 44.
[68] See responses to questions Nos 7 and 9 of the 2009 Questionnaire, *supra*, note 44.
[69] See A Discussion Paper on Accreditation Issues, *supra*, note 3, p. 9.

State. This will allow the State of origin to maintain control of numbers of accredited bodies and adoption applications and minimize pressure on its authorities.

122. 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. It should authorize only the number of accredited bodies required to meet the need for intercountry adoption in that State.

3.5 Choice of foreign States as partners in adoption arrangements

123. States of origin are not obliged to have adoption arrangements with every receiving State in the Convention. Smaller States of origin may consider it a good practice to work 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.[70] 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 adoption arrangements with more receiving States and their accredited bodies is needed.

124. Likewise, receiving States are not obliged to work with every State of origin in the Convention.[71] Receiving States should aim to establish adoption arrangements with States of origin which have a real need for intercountry adoption.[72] 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.[73]

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

3.6 Data protection

126. The Convention contains specific provisions relating to the preservation of adoption records and access to those records.[74] Each State should set up clear procedures to meet these obligations. In case the accredited body ceases to operate, the continued preservation of its records should be properly secured according to procedures established by the State.[75]

127. The accredited bodies should ensure that unauthorised access to their 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.

128. The designated competent authorities which 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 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.

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[70] See Guide to Good Practice No 1, *supra*, note 19, Chapter 8.2.2.
[71] See Guide to Good Practice No 1, *supra*, note 19, Chapters 8.2.2 and 8.2.3.
[72] See Report of the 2005 Special Commission, *supra*, note 56, para. 42(c). See also Chapter 12 of this Guide.
[73] See Art. 6 (a) of the Swedish Intercountry Adoption Intermediation Act (1997:192). See also the responses of Belgium (Flemish Community), Italy, New Zealand and Spain to question No 28 of the 2009 Questionnaire, *supra*, note 44.
[74] Arts 9 and 30 of the Convention.
[75] For a discussion of record keeping obligations under the Convention, see Guide to Good Practice No 1, *supra,* note 19, Chapter 2.1.3.2 and 9.1.

129. Documents concerning adoption cases should be retained indefinitely and be available to adoptees on request, where permitted by laws governing access to such records. For example, the centralisation of records could be established, *i.e.*, the accredited bodies could deliver the closed case files to a competent authority (which could be the Central Authority) in order to preserve those files, allowing access in the future to a person seeking information regarding origins, if appropriate.[76]

3.7 Subsidies granted to accredited bodies

130. Certain receiving States provide financial support to accredited bodies through subsidies.[77] Those subsidies may be granted to guarantee the viability of the accredited body, or simply to fund particular projects.[78]

131. 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 applicants, *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 applicants and avoids creating too much demand from potential adopters which might never be met. Another advantage for the State is that subsidies may entitle it to closer supervision and review, as subsidies may imply a need for more accountability to the State. One view put forward is that as adoption is a child protection measure, accredited bodies should be supported by the State as for any other agency providing child protection services.

132. 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 impact in the future if they were more widely used. The question of subsidies is also mentioned in Chapter 8.3.1 concerning the basic operating costs of accredited bodies.

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

3.8 Internet advertising

134. The use of internet advertising in the context of intercountry adoption should be limited or prohibited.[79] In some circumstances, information can be published in order to find a family for the child but the child's identity must not be revealed. There is much disagreement on the appropriate use of photos of children in internet websites seeking families to adopt children. On one view, the use of photos of children deprived of their family should be prohibited because of the high risk of improper access to photos.[80] Many States already have national legislation forbidding the use of photos, especially on a website.[81] On the other hand, some find the use of photos to be an effective tool in gaining the interest of prospective adoptive families in adopting children, particularly older children.[82]

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[76] See, for example, the responses of Canada (British Columbia and Québec), Italy, Luxembourg, Norway and Spain to question No 17 of the 2009 Questionnaire, *supra*, note 44.

[77] See, for example, the responses of Belgium, France, Luxembourg, Spain and Sweden to question No 47 of the 2009 Questionnaire, *supra*, note 44. See also the response to the same question of Germany where the organisations' purposes shall be tax-privileged in compliance with §§ 51 to 68 of the German Fiscal Code (Abgabenordnung). In the United Kingdom local authorities are financed centrally through an Area based grant mechanism with local authorities apportioning funds to Voluntary Adoption Agencies as appropriate.

[78] See, for example, the response of France to question No 15 of the 2009 Questionnaire, *supra*, note 44: "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".

[79] See, for example, the responses of Belgium, Germany, Norway, Sweden and the United States of America to question No 42 of the 2009 Questionnaire, *supra*, note 44.

[80] See, for example, the response of Norway to question No 42 of the 2009 Questionnaire, *supra*, note 44.

[81] See, for example, the responses of Brazil, Ecuador, Norway and Venezuela.

[82] See M. Freundlich, S. Gernstand, M. Holtan *Websites featuring children waiting for adoption: a cross-country review*, British Association for Adoption and Fostering, Adoption & Fostering Journal, Volume 31, Number 2, Summer 2007, pp. 5 and 6 for a comparative analysis of photolisting systems in operation in Canada, the

135. Good practice and the use of the Internet is possible. One approach to ethical use of photos is 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 which is usually controlled by the State of origin Central Authority.[83] 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 the accredited body cannot identify such a family within its own applications, 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.

136. 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, too much information might be made available about a specific child, or parents who have not been evaluated might contact the accredited body and obtain information about that 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.. A receiving State may also suspend or cancel the body's accreditation.

137. Other bad practices on the internet include advertising the availability of very young children, advertising the speediness of the procedure by the accredited body in certain States of origin, and requesting higher fees when the child is under one year old.

138. States of origin are also encouraged to monitor the forums used by prospective adoptive parents, as those places of information exchange often present erroneous and sometimes unethical information.

Russian Federation and the United States of America and a discussion on the effectiveness of the respective approaches to use of photos in the placement of children.

[83] China uses this type of web page for special needs children. See also the response of Sweden to question No 42 of the 2009 Questionnaire, *supra*, note 44.

CHAPTER 4
THE RELATIONSHIP BETWEEN ACCREDITATION AND AUTHORISATION

139. The process of accreditation of adoption bodies 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.[84] While some States have very good practices,[85] this double safeguard does not appear to be used to its maximum effect.

140. A distinction has to be made between the domestic (national) nature of accreditation, and the international nature of authorisation.

4.1 What is accreditation?

141. Accreditation is the formal process by which an adoption 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 body, in order to become accredited, 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.

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

4.1.1 Why is accreditation necessary?

143. The need for a system of accreditation is explained in detail in Chapter 1 of this Guide.[86]

144. In summary, accreditation became an important safeguard in the Hague Convention to impose minimum international standards on adoption bodies 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.

145. 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 based on the Convention requirements, to maintain standards by regularly reviewing the activities of accredited bodies, and by withdrawing or cancelling the accreditation of a body which contravenes its conditions of accreditation or fails to maintain standards.

4.2 What is authorisation?

146. 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 obtain the permission or authorisation of the competent authorities of its own State and 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.

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[84] Guide to Good Practice No 1, *supra*, note 19, para. 213.
[85] In the 2009 Questionnaire, *supra*, note 44, see responses of the Philippines, Lithuania and Colombia to question No 5 and of Chile and Costa Rica to question No 23.
[86] It has also been mentioned in the Guide to Good Practice No 1, *supra*, note 19, at Chapter 4.3.5.

147. 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.*

148. The Convention makes it clear in Article 12 that authorisation is a different and separate 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 body 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.[87] 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.

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

150. 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, and possibly only with particular institutions; (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.[88]

151. 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 a specific authorisation for a particular State of origin.[89] 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.

152. 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 continuation and its non-transferability.

153. 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.[90]

4.2.1 Meaning of "to act" in Article 12

154. 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.[91] 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.

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[87] In the Philippines and El Salvador the procedure is called "accreditation" (see their respective responses to question No 1 of the 2009 Questionnaire, *supra*, note 44). The authorisation ("accreditation") criteria in the Philippines are noted in Annex 2B. See also the responses of Chile to question No 23 of the 2009 Questionnaire *supra*, note 44.

[88] See, in general, the responses to question No 10 (i) of the 2009 Questionnaire, *supra*, note 44.

[89] See responses of Denmark, New Zealand and Sweden to questions No 23 and 24 of the 2009 Questionnaire, *supra*, note 44. See, in general, responses to question No 10 (i) of the 2009 Questionnaire, *supra*, note 44. See also Adoption: at what cost?, *supra*, note 58, p. 43.

[90] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 2e. Recommendation No 2 of 2000 was reaffirmed by the Conclusions and Recommendations of the 2005 Special Commission, *supra*, note 4, in its Recommendation No 3. See also Guide to Good Practice No 1, *supra*, note 19, para. 212.

[91] See, in general, the responses to question No 32 of the 2009 Questionnaire, *supra*, note 44.

155. 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.

156. 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".*[92]

157. 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.

4.2.2 Why is authorisation necessary?

158. 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.*

159. In other words, it is clear that a State of origin is not under any obligation to accept accredited bodies on its territory, 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.

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

160. 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.[93] 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 bodies they accredit or authorise to act in specific States of origin.

161. As a matter of good practice, a receiving State will not give an authorisation if, after consulting the State of origin, it is evident that the services of more accredited bodies or of a particular accredited body are not needed in the State of origin.

162. The accredited body should, before requesting an authorisation from its own State and from the State of origin, demonstrate its knowledge of the State of origin, the profile of adoptable children and show how its request would contribute to meeting the specific needs of the country. To do so, it should explore the situation in the State of origin, in collaboration with the Central Authority of the State of origin and other public or private bodies which could provide information.[94]

163. Co-operation from the receiving State will be necessary when the State of origin wishes to obtain the information it needs concerning foreign accredited bodies which request authorisation. For example, for each accredited body requesting authorisation, the State of origin may request a copy of the decision concerning accreditation, the

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[92] See Explanatory Report, *supra*, note 17, para. 269.
[93] See Chapter 3: General Policy Considerations, at 3.4.
[94] See *supra*, note 50.

reason for the decision and other relevant information, to know by what criteria the accreditation (and authorisation) of each body was granted.

164. If there are more accredited bodies seeking authorisation than the State of origin needs, their quality and record could be compared. If the number of experienced bodies is already high, the State can refuse to authorise new bodies. 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 because the services of the accredited body are no longer needed in that State.

165. It is noted in this Guide[95] 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.

166. 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.[96]

4.2.4 Why should criteria for authorisation be used?

167. Criteria for authorisation allow States of origin to communicate clearly what they expect in an accredited body, to elicit applications from accredited bodies that would best meet the needs of the State or origin, and discourage overwhelming numbers of applications of accredited bodies that are not qualified.[97]

168. 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 2.

4.3 Limiting the number of accredited bodies in the receiving State[98]

169. Consistent with the desire to achieve an appropriate balance, 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.[99] States accomplish this through various means, including indirectly, by imposing strict standards for accreditation or directly, by imposing a ceiling on the number of bodies they will accredit or by limiting the number of bodies 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.

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[95] See Chapters 7.4.1 and 7.4.2.

[96] See responses of Italy and Sweden to question No 34 and of Denmark, Italy and Norway to question No 36 of the 2009 Questionnaire, *supra*, note 44. See also Guide to Good Practice No 1, *supra*, note 19, para. 211.

[97] This question is canvassed in Chapter 2.3.4 concerning principles of accreditation, under Principle No 4: Principle of demonstrating and evaluating competence by using criteria for accreditation or authorisation. Chapter 7.3 lists the documents to support a request for authorisation.

[98] See also Chapter 3.4 of this Guide.

[99] See the responses of Belgium (French and Flemish communities) and Québec (Canada) to question No 10 (ii) of the 2009 Questionnaire, *supra*, note 44, and see, in general, the State responses to question No 8 of the same questionnaire.

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

170. 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 of a family, but they lack the capacity to assess eligibility for adoption and consequently 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 monitor the number of bodies which have been accredited or are seeking accreditation and authorisation.

171. As mentioned in Chapter 2 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.[100] 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.[101]

172. The State of origin may decide to stop accepting any new accredited bodies altogether.[102] 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 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 the supervising 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.

173. Accredited bodies that claim to be working in the State of origin but do so without authorisation are 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.[103]

174. Due to the imbalance of power and resources between receiving States and States of origin, the States of origin may feel that they are unable to refuse requests for authorisation. Sometimes, for political reasons, they may feel that they cannot afford to refuse.

175. Some in the adoption community believe that limiting the number of foreign accredited bodies impedes the ability of a State of origin to find the widest range of prospective adoptive parents that could best respond to the needs of its children declared

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[100] See, for example, the responses of Burkina Faso, Czech Republic, Colombia, Ecuador, Estonia, Hungary and Lithuania to question No 31 of the 2009 Questionnaire, *supra*, note 44. See also the State responses to question No 7 of the 2009 Questionnaire, *supra*, note 44 to this respect.

[101] See Response to question No 31 of the 2009 Questionnaire, *supra*, note 44. For Ecuador, see response to question No 31 of the 2009 Questionnaire, *supra*, note 44; 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 "Adopciones Internacionales" (last consulted 14 February 2012).

[102] See the response of Estonia to question No 5 e) 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 for other countries to understand that intercountry adoption numbers are low because of the lack of adoptable children, not because of an 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 this 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, *supra*, note 44, and the public statement on the website of Lithuania's Central Authority, at < www.ivaikinimas.lt > under "Adoption" and "Authorized Organizations" (last consulted 14 February 2012).

[103] See, in general, the State responses to question No 33 of the 2009 Questionnaire, *supra*, note 44.

adoptable. On the other hand, States of origin recognise that with their limited resources, to allow an unlimited number of accredited bodies could impose an excessive burden on them and increase the risk of unethical behaviour because of competition between bodies.

4.5 The relationship between accreditation and authorisation

176. 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 approach is based on 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, on this view, 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 for authorisation from foreign accredited bodies.

177. On the other hand, some receiving States do not separate the process of accreditation from the process of authorisation, and instead treat authorisation as flowing automatically from accreditation.[104] 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.

178. 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.

179. 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.[105]

180. 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 accredited bodies 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 and purpose of the procedure.[106]

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[104] This approach is called “open authorisation”. See, in general, the State responses to questions No 1 and 23 of the 2009 Questionnaire, *supra*, note 44.

[105] 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 controlled conditions. The CNA was assisted by the Permanent Bureau under its Technical Assistance Programme. See also country responses to questions No 23 and 24 of the 2009 Questionnaire, *supra*, note 44, for example Brazil, Chile, Colombia, Costa Rica, Ecuador, Lithuania, Peru, and the Philippines.

[106] The 2009 Questionnaire, *supra*, note 44, in its Introduction, asked countries to explain which terms they used and what meaning they were given.

CHAPTER 5
THE FUNCTIONS OF ACCREDITED BODIES

181. 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.

5.1 Functions of the Central Authority and accredited body

182. 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)).

183. 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 through to and including 21 may be carried out by Central Authorities, public authorities or accredited bodies.

5.1.1 Specific duties of the Central Authority

184. 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]

185. 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]

186. 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.

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

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[107] See Guide to Good Practice No 1, *supra*, note 19, Chapter 4.2.3 for suggestions to enhance better co-operation between States.
[108] *Ibid.,* Guide to Good Practice No 1, *supra*, note 19, Chapter 4.2.2.
[109] See Explanatory Report, *supra*, note 17, para. 212.
[110] This challenge is also recognised by the inclusion of the direct obligation on Contracting States in Art. 32 to prohibit improper financial gain.

188. 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.

189. 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 accredited bodies operating within their own State, and authorised to operate in a State of origin".[112]

190. The resources available to the Central Authority vary "relative to the internal organisation of each country: 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.[114]

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

191. 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.

192. 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.[115]

193. Before commencing their Convention functions, adoption 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[116] at the time of their accreditation.[117]

194. The extent of the functions of each State's accredited bodies should also be explained.[118] The division of responsibilities or functions between the Central Authority and the accredited bodies should be clarified for other Contracting States, for example, by using the Country Profile model form on the Hague Conference website.[119]

195. The Explanatory Report 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*

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[111] Guide to Good Practice No 1, *supra*, note 19, para. 173.
[112] *Ibid.*, *supra*, note 19, para. 174.
[113] See Adoption: at what cost?, *supra*, note 58, p. 36.
[114] See the Guide to Good Practice No 1, Chapter 3.2 and 4.1.2. See also Accreditation Principle No 7: Principle of adequate powers and resources for authorities at Chapter 2.3.7.
[115] In this Guide, approved (non-accredited) persons are discussed in Chapter 13.
[116] See, in general, States responses to question No 3 of the 2009 Questionnaire, *supra*, note 44.
[117] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 2d. Recommendation No 2 of 2000 was reaffirmed by the Conclusions and Recommendations of the 2005 Special Commission, *supra*, note 4, in its Recommendation No 3.
[118] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 2f.
[119] Guide to Good Practice No 1, *supra*, note 19, para. 202. The model form is available at < www.hcch.net > under "Intercountry Adoption Section" and "Country profiles".

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.[120]

196. 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".[121] 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".[122]

197. The delegation of certain functions to accredited bodies will be a necessity for many States whose 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. By choosing to delegate certain functions, the Central Authorities may be more effective in performance of their specific functions, and thereby achieve the objects of the Convention.[123] It is important to note that when the tasks assigned by the Convention to the Central Authority are performed by another authority, body or person, this "delegation" of the tasks 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.

5.2 Role and functions of the accredited bodies

198. The Convention lays down the minimum standards to be observed by accredited bodies. These are discussed in Chapter 2.2. Those standards must be followed by accredited bodies when they perform the Central Authority functions of the Convention.

199. 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.[124]

200. 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 his or her interests and improve his or her living conditions. The accredited body should also be aware of the subsidiary nature of intercountry adoption.[125]

201. 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".[126]

202. 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

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[120] See Explanatory Report, *supra*, note 17, para. 249 and 250.
[121] *Ibid.*, para. 221.
[122] *Ibid.*, para. 222.
[123] See ISS Fact Sheet No 38, *supra*, note 58.
[124] *Ibid., supra*, note 58.
[125] See Arts 20 and 21 of the UNCRC, *supra*, note 5. See also ISS Fact Sheet No 38, *supra*, note 58.
[126] See ISS Fact Sheet No 38, *supra*, note 58.

the Convention. According to the child protection systems in each State, the accredited bodies will be provided with different roles and responsibilities.[127]

203. 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)*); and
- reply to any request for information in order to respond to a particular situation (Art. 9 *e)*).

204. The particular functions associated with these general responsibilities and with the obligations in Articles 14 to 21 are listed below. The lists are not exhaustive. More specifically, the accredited bodies may have functions in both the receiving State and the State of origin.

5.2.1 In the State of origin[128]

205. The State of origin is entitled (but not obliged) to grant accreditation to a suitable local non-governmental organisation or adoption body to perform intercountry adoption related functions under the Convention. Some States of origin have their own accredited bodies which work with foreign accredited bodies from the receiving States. Some States of origin do not accredit any local bodies, but allow non-governmental organisations to provide some services related to intercountry adoption. Other States of origin may authorise a foreign accredited body to perform some Convention related functions in the State of origin, such as, checking applications from foreign prospective adoptive parents before delivering to the Central Authority, participating in matching decisions, and supporting the child and the prospective adoptive parents during the first meeting and the period of familiarisation.

206. It is important to emphasise that the procedures leading up to an intercountry adoption (family preservation programmes and early intervention programmes, the child's entry into the child protection system, the formal assessment of the child's situation, development and implementation of a permanency plan for the child, considering national adoption or permanent family based care) are public measures of child protection, and would usually be performed by a public body. However, in reality many States do not have the resources to provide these services, and non-government organisations are called upon to provide them. These functions, when performed systematically, amount to the effective implementation of the subsidiarity principle – an essential obligation of the Convention. These stages are discussed in detail in Guide to Good Practice No 1, Chapter 6 (The National Child Care Context and National Adoption).

207. In States of origin, many child protection authorities will also provide national adoption services as part of their generic social work services. 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 authority will have specialist adoption social workers who are responsible for these functions.

208. The functions prior to intercountry adoption can be performed by governmental authorities or non-governmental organisations in the State of origin.

209. It is only when intercountry adoption functions arise that the State of origin needs to consider if accredited bodies are required to perform its Convention functions. If they are required, the State of origin must follow the rules of the Convention in order to grant accreditation to its own adoption bodies. If the Convention functions are performed by an

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[127] *Ibid*.
[128] See State of origin responses to question No 57 of the 2009 Questionnaire, *supra*, note 44.

accredited body, this should be done under the supervision of the Central Authority or public body which has statutory responsibility for these functions.

210. If a State of origin has its own accredited bodies, they may perform the functions noted in Chapter 5.2.3 that are otherwise performed by a foreign accredited body or its representative in the State of origin. The challenges surrounding the use of accredited bodies in States of origin are considered in Chapter 10.

5.2.2 In the receiving State[129]

211. The functions of accredited bodies in receiving States 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 different countries;[130]

b. Organising courses for the preparation of adoptive parents for an intercountry adoption;

c. 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;[131]

d. Informing the prospective adoptive parents of the requirements for adoption in the specific 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;

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 with all the parties and authorities 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. Depending on the national law, inform the Central Authority of the proposed match;

k. 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;

l. 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 to the State of origin;

m. Offering any services and advice relating to the proposed adoption, including preparation for travel;

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[129] See receiving State responses to question No 57 of the 2009 Questionnaire, *supra*, note 44.

[130] See for example the International Social Service Brochure "Intercountry adoption and its risks: a guide for prospective adopters", Geneva, 2011.

[131] 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, *supra*, note 44.

Post-adoption

n. Maintaining contact with relevant authorities to ensure the Article 23 certificate is issued;

o. Informing the authorities concerned in the receiving State of the child's arrival;

p. Ensuring that the prospective adoptive parents finalise all the steps to secure the legal status for the child, including obtaining the nationality of the receiving State, and informing the State of origin, if required to do so;

q. Preparing and sending the child's follow-up reports to the State of origin;[132]

r. Collaborating in requests for information about origins;[133]

s. Participating in the development of good practices in matters of intercountry adoption;

t. Supporting adoptive parents and the child during the integration of the child into the family.

212. Professional staff of the accredited body should be responsible for certain functions. These are noted at Chapter 6.3.1: Professional staff.

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

213. The functions of foreign accredited bodies in the State of origin may be the following:

a. Maintaining harmonious collaborative relations with the authorities concerned with the adoption including the emigration process from 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, e.g. whether the prospective adoptive parents accept the proposed child and whether the Central Authority gives its agreement under Article 17 *c)*;

c. Assisting the authorities in the State of origin to find families for special needs children;[134]

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 the national law and Article 17 of the Convention 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;

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[132] See responses of Belgium, Canada (British Columbia, Ontario, Manitoba and Quebec), Italy, Spain, Sweden, and the United States of America to question No 58 of the 2009 Questionnaire, *supra*, note 44.
[133] See responses of Denmark and Sweden to question No 58 of the 2009 Questionnaire, *supra*, note 44.
[134] See response of Ecuador to question No 35 and of Lithuania to question No 57 of the 2009 Questionnaire, *supra*, note 44.

j. Assisting the prospective adoptive parents where an unforeseen problematic situation arises with the child.

214. The functions of the representative in the State of origin may be to perform some of the functions above, as well as certain other functions. The representative's functions are listed in the following chapter at Chapter 6.4.

CHAPTER 6
STRUCTURE AND PERSONNEL OF THE ACCREDITED BODY

215. 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. In this chapter, the focus is on the accredited bodies of receiving States.

216. 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.

6.1 Vision, mission and purpose of the adoption accredited body

217. 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 respects the priority given in the State of origin to family preservation and reunification of children and their birth families. Accredited bodies must therefore not create pressure[135] to find children to satisfy the demands of their prospective adoptive parents.

218. The body should have its own guidelines or regulations for the management of its professional functions and its internal management.[136]

219. 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.[137]

220. 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.

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[135] Examples of pressure on States of origin are given in Chapter 12.3.1.

[136] See responses of Canada (Quebec) and New Zealand and China (SAR Hong Kong), France, India, Portugal, and Slovak Republic to question No 16 of the 2009 Questionnaire, *supra*, note 44 for examples of countries applying this practice. 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), Brazil, Canada (British Columbia, Manitoba, Ontario and Quebec), China (SAR Hong Kong) Denmark, El Salvador, France, Germany, Iceland, India, Italy, Luxembourg, New Zealand, Norway, Portugal, Philippines, Sweden, Switzerland and the United States of America to question No 11 of the 2009 Questionnaire, *supra*, note 44.

[137] 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 of America, they 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 < www. swd.gov.hk > under "Download Area" and "Documents" (last consulted 14 February 2012), pp. 12-13 and Annex 4. See also responses of Belgium (French Community) and Canada (British Columbia and Quebec), *supra*, note 44. Additionally, many States require adoption bodies to provide an attestation regarding adherence to ethical principles and rules of professional conduct, or conduct inspections to that effect. 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 and 16 of the 2009 Questionnaire, *supra*, note 44.

6.2 Structure of the accredited body

221. The 1993 Hague Convention refers to the professional and personal qualifications of the director and staff of the accredited body.[138] 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.[139] Therefore it is left to States to determine the basic structure that its accredited bodies should have.

222. In the case of medium and bigger bodies, it is recommended to have a board of directors with a sufficient number of board members in order to allow more informed and professional decision-making.[140]

223. It is important for staff of accredited bodies to avoid real and perceived conflicts of interests. For example, all paid workers or volunteer workers in an accredited body should have no conflict of interests in relation to the body's activities, and they must have no criminal convictions.[141] For example, the prospective adoptive parents involved in an adoption process should not be part of the board of management during their adoption procedure.

224. 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.[142]

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

6.3 Staff of the accredited body

226. 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."[143]

227. 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 also expected in the personnel of accredited bodies.

228. An adoption accredited body should have competent and sufficient professional, technical and administrative staff for its operations.[144]

229. 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.[145] However they will still be bound by the

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[138] Art. 11 *b)*.
[139] See Explanatory Report, *supra,* note 17, para. 249.
[140] In Italy, bodies are required to have a suitable organisational structure, see response to question No 9 of the 2009 Questionnaire, *supra*, note 44, 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, Division 1.
[141] 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, *supra*, note 44.
[142] See the criteria of the Italian Central Authority for the accreditation of adoption agencies, supra, note 140.
[143] Art. 11 *b)*.
[144] 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 the response of Italy to question No 11 of the 2009 Questionnaire, *supra*, note 44 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's accreditation criteria, extracted at Annex 2A and 2B to this Guide.
[145] See Explanatory Report, *supra*, note 17, para. 260.

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.

6.3.1 Professional staff

230. Accredited bodies should have, or have access to, a multidisciplinary team of professional staff, in particular psychologists, psychiatrists, paediatricians, social workers and lawyers.[146]

231. All of these professionals should be adequately qualified and should have the relevant training and experience to act in the field of adoption.[147]

232. The functions of the accredited body are described in detail in Chapter 5.2. The following general functions should specifically be the responsibility of the professional staff:

- provide the necessary services to adoptive applicants to help them understand and gain knowledge of adoption in order to judge for themselves if they are ready or not to adopt a child;
- 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 and the child to adjust to one another while in the State of origin;
- 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;
- collaborate in requests for information about origins;
- assist in the finalisation of the adoption whether in the State of origin or in the receiving State; and
- provide or arrange provision of post-adoption counselling to the adoptive parents and the 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.

6.3.2 Technical staff

233. 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. Competent financial management is a high priority because of the importance placed on financial transparency of accredited bodies, and the prohibition on improper financial gain.

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[146] Some States require accredited 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, *supra*, note 44. 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, *supra*, note 44.

[147] For some States, specified qualifications are required. See, for example, the responses of Denmark, Italy and Spain to question No 12 of the 2009 Questionnaire, *supra*, note 44.

234. Management of case files, preservation of records[148] and access to information are other important functions of technical staff, and obligations exist in the Convention concerning these functions.

6.3.3 Volunteers

235. It is common for accredited bodies to ask for the help of volunteers from among their members and adoptive parents. Volunteers should be expected to sign a code of ethics[149] and a confidentiality agreement when they assist an accredited body.

236. Volunteers may sometimes be professionally qualified in fields relevant to adoption and they may wish to donate their time and services to the organisation.[150]

237. New 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:[151] 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.

238. 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 a relevant field concerning children and adoption and have experience in it, they may be able to assist in the multidisciplinary team.

6.4 Representatives of foreign accredited bodies in the State of origin

239. In some States of origin the accredited body will have a fully established office, while in others it will only have an individual representative. This will vary according to the requirements of the State of origin, the receiving State and the accredited body itself.[152]

240. 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.

241. 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.[153] In some States of origin it is required to have a legal representative with quite advanced functions.[154] These representatives are the official link between the Central Authority and other authorities or institutions in the State of origin and the 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

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[148] See, in general, State responses to question No 17 of the 2009 Questionnaire, *supra*, note 44.
[149] See the response of Manitoba (Canada) to question No 13 of the 2009 Questionnaire, *supra*, note 44.
[150] In Italy, most 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, *supra*, note 44.
[151] See *Adoption: at what cost?*, *supra*, note 58, p. 45 (professionalization of personnel).
[152] For example, the Russian Federation requires the establishment of an office in Russia.
[153] See responses of Burkina Faso, Chile, Colombia, Ecuador, Hungary, Lithuania, Mexico, Peru question No 32(b) of the 2009 Questionnaire, *supra*, note 44.
[154] This is the case for Colombia (see Annex 2 Section 1.2 of this Guide) and Ecuador (see response to question No 32 of the 2009 Questionnaire, *supra*, note 44).

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 in their selection of a representative before contracting a person for this purpose.

242. On the other hand, some States of origin do not permit the use of representatives. They prefer their Central Authority to provide the prospective adoptive parents with all necessary information and assistance, or they require the foreign accredited body to work with a State of origin accredited body.[155]

243. It is recommended that representatives in the State of origin are also professionals in the field of 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 representative could be part of the State of origin's authorisation procedure for a foreign accredited body.

244. The functions of the foreign accredited body in the State of origin are listed at Chapter 5.2.1. 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 prospective 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; and
- inform in a timely manner all parties to the adoption procedure (prospective adoptive parents, Central Authorities, etc) of any changes in the procedure.

6.4.1 Achieving good practices with representatives

245. The reported 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.[156]

246. As a matter of good practice, the State of origin (through the Central Authority or other public body) which permits the representatives, guides, interpreters or others to work with the foreign accredited body, should have a system of rules or criteria for the approval or licensing or representatives and other co-workers.[157]

247. 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 the Central Authority or other relevant authority in the State of origin.

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[155] This is the case for the Philippines (see Annex 2, Section 3 of this Guide for the perspectives of the Philippines), Czech Republic and Latvia (see responses to question No 32 of the 2009 Questionnaire, *supra*, note 44).

[156] See, for example, Colombia, discussed at Annex 2, Section 1. of this Guide.

[157] See, for example, Lithuania and the Philippines. In Lithuania, the aim of the Order on the Specification of the Procedure 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, the Order is available at < www.ivaikinimas.lt > under "Adoption" and "Authorized Organization", (last consulted 14 February 2012). See also discussion in Lithuania's response to question No 1 of the 2009 Questionnaire, *supra*, note 44. In the Philippines, the process is regulated through the accreditation of local liaison agencies (discussed further in Annex 2A to this Guide). Additionally, some receiving States seek to oversee the activities of representatives in States of origin by monitoring their contractual relations with accredited bodies as part of the accreditation process. See, for example, the responses of France and the United States of America to question No 11, and the response of Norway to question No 19 of the 2009 Questionnaire, *supra*, note 44. 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, see Intercountry Adoption Intermediation Act, Section 6.

Another recommendation is to consult with other human rights or children's rights representatives in the State, such as Unicef, the International Social Service representative, or Save the Children. For some receiving States, their diplomatic mission in the State of origin may be able to assist.

248. Foreign accredited bodies should be obliged to have written agreements with their representatives. The State of origin (the Central Authority and other supervising or regulatory bodies) should have copies of these written agreements.[158]

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

250. The foreign accredited body is responsible for the persons it contracts or hires. The representatives should be supervised and monitored and receive appropriate training and information.[159] 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.

251. 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.

252. The issue of the representative is also discussed in this Guide at Chapter 2.3.6 (The principle of using representatives with an ethical approach).

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

253. There could also be 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 it contracts or hires, 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.

254. A "contact person" is sometimes used when there is no official (appointed) representative. This person gives service to the adoptive family while they are in the State of origin and could be the interpreter, but he or she 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.

255. 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

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[158] As mentioned above, 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.

[159] In the Philippines, the Central Authority provides training sessions for local bodies 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 of the 2009 Questionnaire, *supra*, note 44 . 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 *Adoption: at what cost?*, *supra*, note 58, pp. 38-39.

there is such an agreement, there should also be some form of accountability of all financial transactions.

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

6.5.1 Country specialists in the accredited bodies in receiving States

256. 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. To perform the professional tasks referred to in Chapter 5, 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; and
- the necessary resources to inform, educate and prepare adoptive parents for the requirements for adoption from specific countries, and in particular, the profile and health of the children who may be adopted.

257. 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.

6.5.2 Ratio of staff

258. For better delivery of quality service to the children, the ratio of staff to children and 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.[160]

6.5.3 Training of staff

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

260. 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. Such orientation or introduction provides 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 programmes, services and clientele of the body.

261. To maintain standards of service, a continuous programme of staff development 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.[161]

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[160] This is mandated by the *Minimum Standards for Accreditation of Foreign Adoption Agencies*, extracted at Annex 2B to this Guide.

[161] *Adoption: at what cost?*, *supra*, note 58, pp. 44-45. See also response of Belgium (French Community) to questions Nos 15 and 19 of the 2009 Questionnaire, *supra*, note 44.

6.5.4 Formal requirements (written contract of employment)

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

6.6 Financial issues

263. 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)*).

264. As a consequence of these conditions, the financial records of all receipts, disbursements, assets and liabilities must be maintained[162] and books should be audited annually by a certified public accountant.[163]

265. A copy of the body's financial report should, at a minimum, be provided annually to the Central Authority and the accrediting authority.[164] See also Chapter 8 for a full discussion of financial issues and costs related to adoptions.

[162] 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, *supra*, note 44.
[163] 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, *supra*, note 44.
[164] 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, *supra*, note 44.

CHAPTER 7
PROCEDURES FOR ACCREDITATION AND SUPERVISION OF ACCREDITED BODIES

7.1 Accountability of accredited bodies

266. 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 have already been discussed.[165] The question of choosing the competent authority to grant the accreditation is discussed in Chapter 3.3.

267. 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 should also establish criteria and conditions connected with the supervision of the accredited bodies and renewal of their accreditation.[166] The principle of using accreditation criteria is discussed in Chapter 2.3.4.

268. The supervision and evaluation of the accredited body's activities will be conducted using the standards, criteria and other conditions attached to the grant of accreditation. In particular, their observance of the three most important principles to protect the child should be taken into account: the child's best interests, the subsidiarity principle and the absence of improper gain.[167]

7.2 Accreditation procedure

7.2.1 Application for accreditation

269. An application for accreditation may be made by a body which meets the Convention standards and the legal requirements of the accrediting State. Such bodies will usually be private bodies,[168] 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.[169]

270. 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.[170]

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

7.2.2 Documents to support the application for accreditation

272. In order to ascertain whether the adoption 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

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[165] See Chapter 1 (The need for a system of accreditation) and Chapter 2.3.5 (A principle of accountability)
[166] Art. 11 *c)*.
[167] See UNCRC, *supra,* note 5 and the Convention, as discussed in Guide to Good Practice No 1, *supra,* note 19, Chapter 2.
[168] A public body may also perform accredited body functions. A public body is a government entity and would not usually be expected to apply for accreditation. It might be appointed or designated. It would need to have the powers, resources and competencies to perform accredited body functions.
[169] See Explanatory Report, *supra*, note 17, paras 249-250.
[170] See, for example, the responses of Quebec (Canada), Sweden, Switzerland and the United States of America to question No 18 of the 2009 Questionnaire, *supra*, note 44.

protection of the child's best interests, and the interests of adoptive families and biological families during the adoption procedure.[171]

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

a. the body's incorporation[172] (which ought also to be recorded in a public register in the receiving State);

b. the by-laws and / or regulations of the body;[173]

c. the membership of the body (board, staff, volunteers) and their personal and work profile including:

   i. the names and 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;

   ii. the names, duties and responsibilities of volunteers, if appropriate;

   iii. an attestation by each staff member that they have no criminal convictions and no conflicts of interest;

   iv. an undertaking in writing by the officers and staff to comply with the principles of personal and professional ethics;

d. the body's knowledge and understanding of the legislation of the receiving State and the State of origin with respect to adoption;

e. budget forecasts for a specified period. The Central Authority or competent authority could provide an accounting format;[174]

f. the list of services offered to prospective adoptive parents, and in particular preparation courses, meetings (individual and in groups), documentation, the website information and post-adoption services;

g. the measures put forward to secure the confidentiality and protection of records; and

h. a description of the system for training of staff including representatives.

7.2.3 Duration of the accreditation

274. 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, usually two to five years.[175]

275. 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.[176]

276. 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.[177] For example, in Canada, some

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[171] 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 Annex 2 of this Guide).

[172] This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire, *supra*, note 44.

[173] *Ibid. supra*, note 172.

[174] *Ibid. supra*, note 172.

[175] See, for example, the responses of Belgium (Flemish Community), Luxembourg, Quebec (Canada), Norway, Spain, Sweden, Switzerland and the Unites States of America to question No 21 of the 2009 Questionnaire, *supra*, note 44. An accreditation from France, Germany, Italy, New Zealand and Portugal is granted for an indefinite period i.e. it does not have an expiry date, as indicated in the respective responses to question No 21 of the 2009 Questionnaire, *supra*, note 44.

[176] See *Model Criteria of Euradopt / Nordic Adoption Council, Info Doc No 1, Part II presented at 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) (hereandafter, "Model Criteria of EurAdopt-NAC").

[177] See, for example, the responses of Quebec (Canada) and Sweden to question No 21 of the 2009 Questionnaire, *supra*, note 44. Quebec (Canada): "Accreditation is granted for a maximum period of two years

provinces issue an accreditation and authorisation for two years only when the body is starting co-operation with new States. Thailand has four national accredited bodies with many years of experience. Their accreditation is renewed every year, provided there has been no improper financial gain.

7.2.4 Accreditation is not transferable

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

278. 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 should 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 may need to seek a new accreditation.

7.2.5 Denial or refusal of accreditation

279. 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, including that there is no need for more accredited bodies.

280. If an accreditation or its renewal is denied, the body will usually be allowed the opportunity to challenge the decision.[178] The possibility of further appeal will depend on the laws of the State concerned.

7.3 Documents to support a request by an accredited body for authorisation by the receiving State to act in a State of origin[179]

281. 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.

282. 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:

a) evidence that the services of the accredited body are needed in the State of origin;[180]

b) evidence of the accredited body's knowledge of the State of origin,[181] including in particular:

   1. the profiles of adoptable children, including their health, age, sex, and children with special needs;

   2. the child protection system in the State of origin;

   3. the adoption procedure (statutory and administrative procedures);

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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".

[178] See, for example, the response of Norway to question No 18 of the 2009 Questionnaire, *supra*, note 44.

[179] Authorisation is discussed in detail in this Guide in Chapter 2 (General Principles of Accreditation), Chapter 3 (General Policy Considerations) and Chapter 4 (The Relationship between Accreditation and Authorisation).

[180] 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 < www.commissioneadozioni.it > under "Legislation" (last consulted 14 February 2012).

[181] This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire, *supra*, note 44.

4. the criteria and conditions for adoption;
5. State of origin procedures to investigate the child's origins;
6. the living conditions of children in the institutions;
7. information regarding contacts in the State of origin (institutions, Central Authority, competent authorities);
8. its relations with those authorities;
9. the requirements with respect to follow-up reports;
10. the waiting periods;

c) the breakdown of costs for an adoption with the State of origin;[182]

d) copies of agreements with orphanages or other agencies, if permitted by the State of orgin;[183]

e) 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;[184] and

f) 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).

7.4 Monitoring and supervision of accredited bodies

283. 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.

284. 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 will need to develop more detailed supervision criteria in order to meet that obligation.

285. States are encouraged to implement certain good practices regarding supervision of bodies, such as:[185]

a. enact and enforce regulations concerning accreditation, approval or supervision that are precise, transparent and enforceable;
b. effectively communicate those regulations to the adoption community, to other States and to the public to encourage transparency and accountability;
c. retain State control of supervision functions;
d. provide adequate and appropriate resources to perform the supervisory functions; and
e. retain control or supervision of the parts of the adoption process that are most prone to abuse or exploitation.

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[182] This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire, *supra*, note 44.
[183] 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, France, Italy, Norway, Portugal and Sweden to question No 11 of the 2009 Questionnaire, *supra*, note 44.
[184] This is a requirement in some receiving States. See, for example, the responses of Belgium (Flemish and French Communities), Canada (Manitoba, Ontario and Québec) France, Italy, Norway, Portugal and Sweden to question No 11 of the 2009 Questionnaire, *supra*, note 44. New Zealand indicated at the time of the submission of its response to the 2009 Questionnaire that it will be also a future requirement in New Zealand, see response to question No 11 of the 2009 Questionnaire, *supra*, note 44.
[185] See Guide to Good Practice No 1, *supra*, note 19, para. 207.

286. 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 Convention.[186] That partnership would be directed towards achieving the difficult balance between supervision and support.

7.4.1 Who can supervise accredited bodies?

287. In practice, each body should be subject to regular supervision by the competent authorities of its State.[187] Accordingly, supervision and review of activities require the establishment of suitable tools by the competent authorities of each Contracting State.

288. In a majority of cases, the Central Authority is designated as the competent authority.[188] Certain States have nonetheless chosen to designate a different competent authority to perform those duties.[189]

289. Even if the Central Authority is not designated by the State as the competent authority in charge of supervision 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.[190] For those purposes, the Central Authority could organise working meetings with the accredited bodies on a regular basis, make occasional visits to their corporate offices, and also plan regular meetings with the authority that issues accreditation.

290. The role of the State of origin's institutions in the supervision of foreign accredited bodies is also important: after authorising a foreign accredited body to operate on its territory, a State of origin should evaluate the activities of 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 the authorisation and inform the receiving State and the accredited body.[191]

291. Adoptive parents may also contribute comments on the accredited body's activities and services. The supervising authority could obtain feedback from adoptive parents on the adequacy of services provides by accredited bodies throughout the adoption process.[192]

7.4.2 Supervising the operation of accredited bodies

292. Various aspects of the operation of accredited bodies, such as the organisational and administrative operations can be supervised. 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 competent manner.

293. 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

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[186] See, for example, the practices of Quebec (Canada) and Italy, discussed in their respective responses to question No 15 of the 2009 Questionnaire, *supra*, note 44.
[187] See Explanatory Report, *supra*, note 17, paras 263-264, and Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 4.
[188] See the responses to question No 18 of the 2009 Questionnaire, *supra*, note 44.
[189] This is the practice in the United States of America, see response to question No 18 of the 2009 Questionnaire, *supra*, note 44.
[190] Art. 7.
[191] See International Social Service, "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; available at < www.iss-ssi.org >.
[192] In Switzerland, adoptive parents are now required to complete an assessment form for their accredited body after the adoption. See Switzerland's response to question No 36 of the 2009 Questionnaire, *supra*, note 44. In Italy, adoptive parents complete an anonymous questionnaire in the year after the adoption is completed.

the accredited body,[193] visits to the premises of the accredited body,[194] or reporting by the accredited body on its composition, operation and financial situation.[195] The accrediting or supervising authority can impose any other necessary or desirable requirements which the accredited body must meet.[196]

294. The following methods of supervision are recommended:

a) Reports

295. 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.*[197]

296. 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 promptly 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.

297. 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, including from authorities in the State of origin.

298. 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.[198] 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.[199]

299. 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.

300. 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.

301. All the observations by the supervising authority should be noted, mentioning good practices as well as poor practices and also containing proposals to improve an accredited body's operation.[200] 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.

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[193] This is the practice in some receiving States and State of origin. See, for example, the responses of Belgium (Flemish Community), France, Germany, New Zealand, Spain and Sweden to question No 34, and the response of Burkina Faso to question No 35, of the 2009 Questionnaire, *supra*, note 44.

[194] This is the practice in some receiving States. See, for example, the responses of 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, *supra*, note 44.

[195] 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, *supra*, note 44.

[196] 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. See 22 CFR Part 96, Subpart J. See also, Italy's response to question No 34 2009 Questionnaire, *supra*, note 44, where Italy notes a "complex computer network making it possible to conduct systematic online monitoring of the work of the agencies and the adoption procedures".

[197] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 4d.

[198] See a Discussion Paper on Accreditation Issues, *supra,* note 3, p. 14.

[199] See note 192.

[200] See practices noted in the responses of Belgium (Flemish Community), Canada (British Columbia), France, Germany, Luxembourg, Spain and Sweden to question No 44 of the 2009 Questionnaire, *supra*, note 44.

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

302. Several States provide for other forms of supervision, including the inspection of the accredited body's offices.[201]

303. 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 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.[202]

304. 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.[203]

305. 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.

306. Another form of inspection that should be demanded by the competent authority is the financial audit, as suggested in Chapter 8.7.[204]

c) Monitoring the accredited bodies' websites

307. 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.[205] Sometimes, false claims are made by accredited bodies. Details of costs should be kept up to date, as should the information about States of origin where the accredited bodies are active.

308. The Central Authority of the State of origin where a foreign accredited body is active should also frequently monitor the website information of the accredited body to ensure that it is up to date and accurate, in particular as it relates to information on the characteristics of children in need of intercountry adoption, the adoption procedures and the transparency of costs. See also chapter 3.8 (Internet advertising).

d) A mechanism for complaints

309. One element for a system of supervision could be to establish a mechanism 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.

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[201] See Chapter 7.4.2 of this Guide. See Italy's response to question No. 21 and Sweden's response to question No. 37 of the 2009 Questionnaire, *supra*, note 44.

[202] For example, in Belgium (Flemish Community), the Central Authority has the power to conduct an annual inspection. See response to question No 34 of the 2009 Questionnaire, *supra*, note 44.

[203] For an example of these various forms, see the response of the United States of America to question No 34 of the 2009 Questionnaire, *supra*, note 44.

[204] In New Zealand and Manitoba (Canada), 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, *supra*, note 44 (particularly question No 48).

[205] For example, New Zealand, where websites are checked as part of an annual audit conducted by the Central Authority. See response of New Zealand to question No 46 of the 2009 Questionnaire, *supra*, note 44.

310. The accredited body should have a policy for dealing with complaints about staff, paid and unpaid workers, and the organisation itself.[206] The policy and procedure to make a complaint should be explained to prospective adoptive parents. Likewise, the competent authority should provide for a mechanism to receive and process complaints relating to the operation of accredited bodies.[207]

311. 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.

e) Other forms of monitoring or supervision

312. To supplement the inspections and reports, and as is already done in certain States, monitoring may be carried out in other ways by the competent authority, for example, by means of regular meetings with the accredited bodies (as a group or individually).[208] A Central Authority also has the opportunity to monitor standards when it reviews an adoption file before giving agreement under Article 17 *c)*.

313. 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.[209]

f) Reporting to the State of origin

314. The authorities of the State of origin should, to the extent possible with their available resources, maintain some monitoring and supervision of foreign accredited bodies.[210] 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.

315. 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. Therefore, 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 at least receive the annual report that the accredited body submits to its own accrediting authority. As part of their co-responsibility for accredited bodies, the authorities in the States of origin should inform the Central Authorities of the receiving States of the positive and negative aspects of their accredited bodies' activities.[211] 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.

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[206] 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, *supra*, note 44 and the United States of America' regulations at 22 CFR 96.24 (b)(3) which provides that "To evaluate the agency or person's eligibility for accreditation or approval, the accrediting entity must (…) consider any complaint received by the accrediting entity (…)"

[207] 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, *supra*, note 44.

[208] See *supra,* note 193.

[209] See responses of Denmark and Sweden to question No 35 of the 2009 Questionnaire, *supra*, note 44.

[210] See, for example, the responses of Brazil, Burkina Faso, Chile, and Lithuania to question No 34 of the 2009 Questionnaire, *supra*, note 44. In Chile, all foreign accredited bodies have to present a report every year to the Chilean Central Authority, which is also the competent authority for authorising these bodies to work in Chile. After analysing the reports, the Central Authority arranges a meeting with all the authorised foreign accredited bodies together where the results of their activities are compared.

[211] 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, *supra*, note 44.

7.4.3 Financial situation of accredited bodies

316. 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; and
- reasonable remuneration for members of the accredited bodies in relation to services rendered.

317. 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 8 (The costs of intercountry adoption).

7.4.4 Restrictions may be imposed on accredited bodies

318. 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:

- a 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, one way of reducing the pressure on the States of origin is to restrict the number of registrations of prospective adoptive parents which may be accepted at the beginning of operations, and to increase the number gradually depending on the need and quality of the adoptions;[212]
  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;[213]
- a ban on advertising on the body's website about particular children;[214]
- a ban on disclosure of personal information relating to adoptable children;[215] and
- suspension of registrations owing to exceptional situations in the State of origin that do not affect the standing of the accredited body.

7.4.5 Sanctions for breach of conditions

319. 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, such as alternative care prior to an 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.

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[212] 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.

[213] See, for example, the Code of ethics of international adoption accredited bodies of Quebec (Canada), available at < www.adoption.gouv.qc.ca >, under "Certified bodies" and "Code of Ethics", pp. 9 and 10 [last consulted 14 February 2012]. See also the practice of the Netherlands to limit applications discussed in Annex 2, Section 5 of this Guide.

[214] See, for example, the responses of Belgium (Flemish Community), Brazil, Norway, and Spain to question No 42 of the 2009 Questionnaire, *supra*, note 44.

[215] See, for example, the responses Canada (British Columbia), and Denmark to question Nos 41 and 42 of the 2009 Questionnaire, *supra*, note 44.

320. 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. This means having lighter penalties, such as warnings or fines, for less serious offences, and heavy penalties for more serious offences. 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 State of origin may also suspend or withdraw the authorisation of a foreign accredited body for a breach of conditions or breach of the Convention.

a) Cautions, fines or penalties

321. Each State may take any action it considers appropriate when there is a breach of conditions, such as failure to produce a report, failure to provide updated information, refusal to make necessary changes, unprofessional 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 and if an accredited body receives several official reproaches, its authorisation to work in a State of origin can be withdrawn.[216] In the United States of America, if an accredited body falls out of "substantial compliance" with the United States of America's 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 a specific corrective action to bring itself into compliance; suspending or cancelling accreditation or approval; and refusing to renew accreditation or approval.[217]

322. 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 suspended or withdrawn.

b) Withdrawal or suspension of an accreditation

323. Withdrawal of accreditation ought to be contemplated only in the event of serious misconduct by the body.[218] Depending on the misconduct, the accredited body may be cautioned beforehand. Withdrawal should be justified if the body no longer meets the conditions required in the receiving State or the State of origin or for any other reason deemed essential by the competent authority.

324. 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.[219] Provision must be made for another body or authority to deal with the cases being managed by the accredited body. In addition, provision should be made for the opportunity to appeal against any decision connected with withdrawal or suspension of an accreditation.[220]

325. In other situations, 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.[221] On the other hand, upon expiry of the period, if the body has not

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[216] See response of Italy to question No 39 of the 2009 Questionnaire, *supra*, note 44.

[217] See the response of the United States of America to question No 39 of the 2009 Questionnaire, *supra*, note 44.

[218] See the response of Italy to question No 39 of the 2009 Questionnaire, *supra*, note 44.

[219] See, for example, the response of Spain to question No 39 of the 2009 Questionnaire, *supra*, note 44. See also the legislation of New Zealand (*Adoption (Intercountry) Act 1997*, subsections 19(1)-(3)); and regulations of the United States of America at 22 CFR 96.76 where the accrediting entity must notify an accredited agency or approved person in writing of its decision to take an adverse action against the agency or person. 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.

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

[221] See, for example, the responses of Canada (Quebec) and Sweden to question No 39 of the 2009 Questionnaire, *supra*, note 44. A similar practice is incorporated into the authorization process for foreign

responded favourably to the competent authority's demands, the accreditation should be withdrawn.

326. 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 was 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. However, the actual need for more accredited bodies in that State could be an important factor when considering any request for accreditation or authorisation.[222]

327. 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.

7.4.6 Changes in composition of the accredited body

328. 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.[223]

329. The purpose of reporting such changes 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.[224]

7.5 Renewal of accreditation

330. States should avoid the practice of automatic extension of accreditation without a proper review.[225] Automatic extension is not considered appropriate or adequate for the supervision and review of accredited bodies and for their accountability.[226]

7.5.1 Conditions for renewal of accreditation

331. Article 10 refers to both granting and maintaining 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.

332. It is recommended that the review or the re-accreditation of accredited bodies should be carried out periodically by the competent authority.[227]

333. The application for renewal of accreditation should be forwarded to the competent authority in reasonable time before expiry of the current accreditation. A special form for this purpose could be developed by the competent authority.

334. The conditions for renewal of accreditation should be similar to those relating to the original application for accreditation.[228] The body is bound to provide any documents and information requested by the competent authority within the period required.

335. Before renewing an accreditation, the competent authority should evaluate the work and abilities demonstrated by the body during the previous accreditation. The

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accredited bodies in the Philippines. See the Implementing Rules and Regulations on Inter-Country Adoption (RA 8043), Art. VII.

[222] See the practice of Sweden in Annex 2, Section 6 of this Guide.

[223] This is a requirement in many receiving States. See, in general, responses to question No 11 of the 2009 Questionnaire, *supra*, note 44.

[224] Art. 11 of the Convention.

[225] In many States the conditions of the renewal are the same as for obtaining accreditation for the first time. See the responses of Belgium (Flemish and French Communities), Canada (British Columbia and Ontario), Germany, Iceland, Spain, Sweden and the United States of America to question No 22 of the 2009 Questionnaire, *supra*, note 44.

[226] Adoption: at what cost?, *supra*, note 58, p. 43.

[227] See Report of the 2000 Special Commission, *supra,* note 43 Recommendation No 4e.

[228] See, in general, the State responses to question No 22 of the 2009 Questionnaire, *supra*, note 44.

evaluation should include an examination of the body's past history such as good practice or complaints received, compliance with the laws and administrative rules specific to each State, the relations with the Central Authority and reports of its work in the State of origin.[229]

7.5.2 Conditions for renewal of an authorisation

336. The renewal of an authorisation to work in a State of origin may also be sought at the same time as the renewal of an accreditation.

337. 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.[230]

7.5.3 Duration of the renewal of accreditation

338. As for the first accreditation, the renewal of an accreditation should be granted for a specific duration.[231]

339. 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.

7.5.4 Refusal of renewal

340. Any application for renewal of accreditation may 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 legislation 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.[232]

341. 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.[233] 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.

7.6 Procedure for handling of files when services of the accredited body are discontinued

342. The Central Authority and accredited body should develop procedures for the handling of files in case the services of the accredited body are discontinued, *e.g.*, through loss of accreditation, or withdrawal of authorisation by the State of origin.

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

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[229] See, for example, the responses of Canada (Ontario) and New Zealand to question No 36 of the 2009 Questionnaire, *supra*, note 44.
[230] In Colombia, the competent authority (ICBF) reviews the performance of foreign accredited bodies against the evaluation criteria as part of the accreditation renewal process. See, the response of Colombia to question 35 the 2009 Questionnaire, *supra*, note 44.
[231] This practice is adopted in a number of receiving States. See, for example, the responses of Belgium (Flemish and French), Canada, Norway, Spain, Switzerland and the United States of America to question No 21 of the 2009 Questionnaire, *supra*, note 44.
[232] See, in general, the State responses to question No 22 of the 2009 Questionnaire, *supra*, note 44.
[233] In Italy, the Central Authority takes charge of the files.

344. 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.

345. 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.

CHAPTER 8
THE COSTS OF INTERCOUNTRY ADOPTION

346. The question of money and its influence on intercountry adoption remains one of the most challenging issues in the area of child protection.

347. 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.[234]

348. 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 2.3.2 and 2.3.3 of this Guide.

8.1 Concerns about costs

349. Owing to the pressure sometimes applied by receiving States on States of origin[235] 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 influence the allocation process or "jump the queue" to obtain more speedy or favourable allocations of children ahead of other waiting prospective adoptive parents. Many practices, such as offering attractive financial inducements, result in a situation of unhealthy competition among States, and also among accredited bodies. These practices do not focus on the best interests of children. Indeed, children are frequently the first victims of that outbidding process. The problems of competition were evident in 1993 when EurAdopt adopted ethical rules for intercountry adoption: Article 25 provides that "The adoption work should be carried out in such a way that competition for children or contacts should be avoided." Today the concerns are still valid, as it is shown, for example, by the "Nordic Approach to intercountry adoption". This Approach is a list of agreements on standpoints to secure intercountry adoption procedures based on ethics and responsibility adopted by the Nordic Adoption Council.[236]

350. 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.[237]

8.1.1 Limiting fees and costs

351. Some States are able to place legal limits on fees. Some States do not include a "humanitarian contribution" in their fee structure, while others do. These practices alone may lead to "competition" between States and between accredited bodies. This competition, in addition to a lack of control over fees and costs, may lead to the illicit procurement of children for adoption or other abhorrent means of obtaining children, including a "bidding war" to obtain children for adoption. One receiving State has a guiding principle that "the more money involved, the less likely are safeguards for adoptability to be observed".

352. Many States of origin have expressed particular concerns about the apparent lack of control by receiving States of the costs charged by their accredited bodies. For

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[234] The original ideas of this chapter were written by Claudel Tchokonté, MBA, consultant for the Quebec Central Authority, graduate of HEC Montréal. Lithuania, a State of origin, has indicated its intention to change its law to follow this model.
[235] Examples of pressure are given at Chapter 12.3.1.
[236] EurAdopt and Nordic Approach Ethical Rules, *supra,* note 26.
[237] See the response of Canada to question No 10(8) of the 2005 Questionnaire, *supra*, note 102.

example, some 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.[238]

353. 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.[239] 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.[240]

354. 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.

355. Receiving States (Central Authorities and accredited bodies) could assist States of origin in this regard by providing clearer information about costs to prospective adoptive parents and publishing the costs on their respective websites to facilitate broader access to this information. In particular, it would be helpful to see a breakdown of costs, rather than simply an estimate of the total cost to adopt from certain countries.

356. The breakdown of costs could reflect the following:

- mandatory costs in the receiving State relating to:
    - preparation courses for parents;
    - legal fees or documents;
    - medical fees or documents;
    - preparation of the dossier;
    - other services or functions; and
    - post-adoption functions;
- mandatory costs in the State of origin relating to:
    - administrative fees;
    - legal fees;
    - medical fees;
    - child care (maintenance of the child after matching).

357. All of the functions and services in the receiving State which must be paid for are noted at Chapter 5.2.2. Some of these costs are also noted in Table 1 of Chapter 8 for calculations in specific countries.

8.2 Convention obligations

358. 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.[241] All other entities involved in intercountry adoption, in particular accredited bodies, have a responsibility to support and comply with any such measures.

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[238] 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.
[239] See the practice of Colombia in Annex 2 of this Guide.
[240] See, in general, the State responses to question No 49 of the 2009 Questionnaire, *supra*, note 44.
[241] Art. 8.

359. The Hague Convention in Article 32 allows for the payment of professional fees and services rendered for intercountry adoption, and it refers specifically to bodies involved in an adoption.[242]

360. 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.

361. 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 improved collaboration with 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 refers to various sensitive situations or abuses and is also accompanied by annexes highlighting various kinds of costs, and suggesting a cost-setting methodology.

8.3 Types of costs related to accredited bodies

362. 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.

363. From the point of view of prospective adoptive parents, costs can be divided into two categories. The first category relates to the direct costs of the adoption; the second category is not a direct cost of adoption and should not be characterised as such.

364. The first category relates to the payment to accredited bodies for adoption services or payments to Governmental authorities 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 and social or family background report; (3) the cost of the prospective adoptive parents' travel and stay in the child's State of origin; and (4) post-adoption expenses.[243] The detailed contents of each class are set out in Annex 8A of this chapter. Many of these services can be carried out by adoption bodies, but this varies according to each State.

365. The second category relates to contributions and donations, whether mandatory or not, made by the prospective adoptive parents to support children's welfare and protection services in the State of origin and some humanitarian aid projects.[244] This second category of costs to the adoptive parents cannot be considered as a cost of the adoption. It is a contribution to child protection services, and as such, it is discussed in Chapter 9: Contributions and donations for child protection in States of origin.

366. 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: (1) basic operating costs of the adoption body; (2) fees of representatives and co-workers of the adoption body in the State of origin; (3) other costs of services (fees of professionals and co-workers who are not employees of the adoption body); and (4) travel costs of accredited body staff for their work in the States of origin and in the receiving State, as well as travel costs of representatives and other partners from the State of origin when they are visiting the receiving State. These costs are analysed in detail below.

367. When using the method proposed in this chapter, the Central Authority of the receiving State ought to be able to determine, for each accredited body, the total cost 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

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[242] See also the discussion at Chapter 2.3.3 on "The principle of preventing improper financial gain".
[243] This division is based on the model of the Central Authority of Quebec (Canada).
[244] See also the Guide to Good Practice No 1 at Chapter 6, The national child care context and national adoption.

costs borne to complete an adoption case. Accordingly, the accredited bodies would inform the Central Authority in clear terms of the following:

a. their fixed costs (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.

368. Awareness of that total cost 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 8B of this chapter.

8.3.1 Basic operating costs of the accredited body

369. 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.

370. The accredited body should follow sound management practices, based on a concern for effectiveness and efficiency. Depending on its size and the number of countries where it is active, its operating costs could differ from another accredited body; however, the costs should be reasonable.

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

372. In order to fund themselves, the bodies could have recourse to four possible sources, as shown for example in the Italian model:[245] (1) the fees for establishment of the case file required of prospective adoptive parents; (2) the annual fees collected from members of the accredited body;[246] (3) subsidies;[247] and (4) donations to the accredited body.[248] See also Chapter 3.7 (Subsidies granted to accredited bodies).

373. 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. 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.

8.3.2 Remuneration of representatives and co-workers of the accredited body in the State of origin

374. The Convention's prohibition on improper financial gain in Article 32 is a general principle that applies to everyone, including representatives and co-workers. Similarly, the rules concerning reasonable fees (Art. 32(2)) apply to 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".

375. 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.*

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[245] See the response of Italy to question No 47 of the 2009 Questionnaire, *supra*, note 44.
[246] Some accredited bodies require prospective adoptive parents to become members of the organisation as a pre-condition to providing adoption services. Many prospective adoptive parents remain members long after their adoption is completed.
[247] See *supra*, note 77.
[248] For example, Terre des Hommes requests a contribution to the overhead costs of the body after the child has arrived in the family. The contribution is proportionate to the family's income and does not exceed 5000 Swiss Francs.

> *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.*[249]

376. 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 certain 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.

377. The form of remuneration should be an agreed 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.[250] It is important, therefore, for the accredited body to have, for these classes of positions, information regarding the level of salaries, social security benefits, additional compensation, and reimbursement policies for travel expenses (hotel, transport, meals).

378. 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.

379. 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 percentage of salary for any higher amount to be paid.

380. A salary-based form of remuneration 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.

381. The authorities in the receiving State and the State of origin may co-operate and exchange information to determine what is a reasonable remuneration for the representative and co-workers. Observance of these standards could become one of the criteria for the accredited body to obtain and maintain its accreditation.

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

382. 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.

383. In order to avoid monopolies and to obtain reasonable prices, the accredited bodies could identify and collaborate with more than one service provider for each kind of service. They should compare costs and try to 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

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[249] See EurAdopt Ethical Rules, *supra,* note 26.

[250] 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 comparable data then allow determination of a level of compensation by position for that country.

authorisation, as the case may be. The accredited body should, on a regular basis, re-evaluate the costs and the quality of the service provided.

384. The level of fees should be determined by comparison with local procedures and services requiring a similar type and amount of work.[251] 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 in each State.

385. The costs of services should take into account the fact that several legal advisers may be involved in the process to avoid any conflicts of interest. 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.

386. 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.

387. As regards translations, 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.

388. As with the remuneration for representatives, it is recommended that authorities in 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.

8.4 Transparency of costs

389. In order to achieve transparency, the amount of the costs for each service should be fixed and notified in advance to prospective adoptive parents.[252] 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.[253] This will be possible using the models proposed in Annex 8B of this chapter. This information might also help the prospective adoptive parent to make an informed decision regarding their choice of an accredited body to assist them.

390. 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.[254] 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 objective of intercountry adoption.

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[251] See, for example, EurAdopt Ethical Rules, *supra*, note 26, Art. 21: *"Fees charged to the organisation by professionals should be commensurate with the work carried out."*

[252] This principle is based on the Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 10, in relation to financial contributions not connected with the actual costs of an adoption. See, in general, the State responses to questions Nos 48 and 49 of the 2009 Questionnaire, *supra*, note 44. In some States, fees are set by the accredited bodies alone (for example, Finland, Germany, New Zealand, Norway, Portugal, and the United States of America), or with the approval of the competent authority (for example, Belgium (Flemish Community), Canada (British Columbia), Spain, and Switzerland). It other States, fees are set by the competent authority in consultation with the accredited bodies (for example, Canada (Manitoba), and Italy).

[253] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 8. See also State responses to question No 50 of the 2009 Questionnaire, *supra*, note 44.

[254] This detail may be set out in the contract or agreement that some States require accredited bodies to sign with prospective adoptive parents. See the State responses to question No 14 of the 2009 Questionnaire, *supra*, note 44.

391. The Central Authority of each State should take responsibility for enquiring into and obtaining information about actual costs, including any costs of processing documents by competent authorities in their State, and any changes in costs. They should then make public all the costs of adoption, listed by accredited body and by State. Colombia[255] 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.

392. 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.

393. 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. Any contributions or donations for child protection services and humanitarian aid programmes in the State of origin must be kept completely separate from the intercountry adoption costs.[256] Another mechanism to enhance transparency of costs is to require invoices or receipts in the name of the applicant family when the accredited body or its representative or co-worker provides a service.

394. 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.[257] 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.

8.5 Payment of costs

395. The prospective adoptive parents should, to the extent possible, pay for all expenses involved in the adoption, through the accredited body. They should avoid paying anything to a third party directly.[258] This approach will help protect prospective adoptive parents from exploitation by those persons seeking improper financial gain from the adoption. All costs and other expenses involved in the adoption procedure should be included in the amount that the prospective adoptive parents pay to the accredited body. This includes remuneration for representatives, lawyers and interpreters in the State of origin. Everything would therefore 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.

396. The prospective adoptive parents must be informed of the risks of paying for services directly in the State of origin (except for accommodation and some transports) and strongly discouraged from doing so. If they are asked to pay anything extra connected with the adoption procedure, they should immediately report it to their accredited body in the receiving State and the legal representative of their accredited body in the State of origin. They should also report it to their Central Authority in the receiving State as well as the Central Authority in the State of origin, if possible.

397. Accredited bodies should be seeking the best possible costs for the prospective adoptive parents. By paying all costs through the accredited body, it acquires some bargaining power, thus 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

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[255] See the response of Colombia to question No 49 of the 2009 Questionnaire, *supra*, note 44. This practice is further discussed in Annex 2, Section 1 of this Guide.

[256] See Conclusions and Recommendations of the Third 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 (17-25 June 2010), Recommendation No 2, available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Special Commissions", (hereinafter, "Conclusions and Recommendations of the 2010 Special Commission").

[257] See, for example, the responses of Burkina Faso and Colombia to question No 55 of the 2009 Questionnaire, *supra*, note 44.

[258] 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, *supra*, note 44. A similar system is implemented in Quebec.

prospective adoptive parents' accommodation and travel costs, the costs of lawyers and notaries, and translation fees.

398. 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).

399. 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.

8.6 Reasonable costs

400. In matters of intercountry adoption, the accredited bodies may have different strategies with respect to services. For instance, they may offer a variable range of services, or 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 by the accredited body are reasonable.

401. To assess what is reasonable, several factors need to be considered: the quality and extent of the service provided; the complexity of the case (including the procedures in the State of origin); a comparison with costs charged by a similar body for the same country of origin. Central Authorities themselves can contribute to the debate on what is reasonable by making available on their websites the costs in their own States. Other States can then use this information in their own assessments. In one receiving State,[259] the cost in that State is the same for all prospective adoptive parents, regardless of which State or origin is chosen. This approach is a solidarity principle between accredited bodies. It means the choice of States of origin is not influenced by costs imposed in the receiving State (of course, the costs in different States or origin will vary).

402. In order to define what is a reasonable cost, the Central Authorities of receiving States should be aware of the costs of services in their own State. They should be able to advise adoptive parents of the upper and lower limits of reasonable costs. The Central Authorities should also be aware of the following costs in States of origin. 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 authorisation to work in the State of origin:

- the cost 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; and
- the fees paid to professionals for services provided in the States of origin similar to those required for a national adoption case.

403. A few States of origin declare that in their country "adoption is without cost". But realistically no service can be provided without cost and in these cases, the State subsidises the service, so that adoptive parents are not asked to bear any of the costs of those services.[260] As adoption work is a professional service that requires professional charges, parents may be faced with costs for professional services that are not subsidised in an otherwise "cost-free" system. For example, a Central Authority and public authorities may not impose any costs for their services, but if a private legal representative is needed by the prospective adoptive parents, his or her services would not be free of charge.

404. It is understandable that accredited bodies charge an amount for services in excess of the actual cost, as the margin so generated will allow them to set up a financial

[259] Norway.
[260] For example, Brazil, Portugal, Thailand and Uruguay. In Thailand adoptive parents pay only for the child's passport and medical fees.

reserve required for their financial security. The Central Authority should ensure, however, that this margin is reasonable (See Annex 8B for the calculation of a reasonable margin). Having regard to their legal form as non-profit entities, the consolidation of a financial reserve to guarantee the financial security and long term viability of the accredited body, as well as to improve the provision of services should not be considered as inconsistent with the Convention's obligations in Article 11 that accredited bodies "pursue only non-profit objectives."

405. 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 transactions, 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.

406. One possible approach to better circumscribe the costs in intercountry adoption, would be for the Central Authority, in collaboration with the accredited bodies, where possible, to 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).[261] At the time of the application for accreditation or authorisation, the accredited body would 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.

407. The Central Authority in the receiving State should be more proactive in obtaining information from the State of origin and accredited bodies about costs, and setting guidelines for reasonable costs and fees.[262] Prospective adoptive parents should have easy access to the guidelines to compare with charges imposed by their accredited body. A good practice would be for the Central Authority in the receiving State to promote coordination between accredited bodies working in the same State to standardise processing costs and set reasonable costs.

8.7 Accountability of bodies and control of costs

408. The accountability of accredited bodies for their activities (including financial activity) could 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 (Chapter 2.3.5, and Chapter 7.4: Monitoring and supervision of accredited bodies) discusses possible actions to be taken when an accredited body breaches the conditions of its accreditation.

409. The annual report is the most effective 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.[263] The financial statements should also cover the accredited bodies' activities in the States of origin as well as in the receiving State.

410. The effective review of costs is a crucially important aspect of accountability. An effective review should involve an accounting and financial audit[264] (the modern form of review, checking, inspection, and supervision of accounts). The Central Authority of the

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[261] In Manitoba (Canada), the competent authorities impose a cap on the amount and type of fees that an adoption accredited body may charge. These caps are set out in Schedule A to Adoption Regulation 19/99.

[262] 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 Nos 47 and 48 of the 2009 Questionnaire, *supra*, note 44.

[263] As stated in Chapter 6.6 in this Guide, a copy of the body's financial report should be provided annually. See *supra,* note 163. As for the requirement to submit financial reports to independent auditors, see examples at *supra,* note 164. See also Chapter 7.4.3 of this Guide.

[264] 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".

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.[265]

411. On the basis of a 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.

412. Audits should be conducted by an independent expert, preferably designated by the Central Authority or supervising authority. That independence would secure objectivity and neutrality in the conduct of 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.

413. Thus, the Central Authority could provide an accounting format[266] that could be followed by all the bodies. That proposal would allow the keeping of identical books, and 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.[267]

[265] For an example of the practice of carrying out an 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 the United States of America to question No 51 of the 2009 Questionnaire, *supra*, note 44. In other States, it is the responsibility of accredited bodies to arrange for audits to be conducted by certified auditors. See examples at *supra,* note 163) 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, *supra*, note 44.

[266] An accounting format is a set of rules for valuation and the keeping of records or accounts. Book-keeping may be manual or computerised.

[267] In Italy, 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, *supra*, note 44.

Annex 8A: 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 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 processing fees, legal costs, psychosocial evaluation costs (the home study report), training and education, the costs of the various immigration procedures and certificates. They may include:

(1) Costs for services by the accredited body, such as:

- fees for membership of the body;
- fees for opening of the adoption case file;
- programme-development charges;
- administration and file processing costs;
- communication costs;
- preparation, education and training programmes;
- cost of translation of the prospective adoptive parents' case file; and
- records maintenance, including archiving and protection of confidentiality.

(2) Costs for services by third parties, such as:

- certification of the case file;
- legal fees;
- preparation of the psychosocial evaluation on suitability to adopt (the home study report);
- notary's fees;
- legalisation of documents;
- immigration procedures;
- obtaining certificates (medical, birth, marriage, criminal record);
- obtaining passports;
- translations; and
- health examination.

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 costs may also be imposed by the accredited bodies themselves. They must include the following costs:

- administration and co-ordination;
- legal services (notary, lawyer, court costs);
- doctor's fees for the child's medical record;
- health examination of the child;
- translations;
- costs of the child's maintenance; and
- updating of records.

Contributions to humanitarian aid projects or donations: Although not a cost of the actual adoption, these costs are usually imposed by the accredited body or the State of origin. The prospective adoptive parents are required to pay a contribution for humanitarian-aid projects and / or donations to orphanages or other public or private institutions connected with child protection.

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; and
• travel costs within the State.

Category 4 – 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 include:

• translation of the judgment decision of adoption made in the State of origin;
• post adoption reports;
• translation of post adoption report for the State of origin;
• certification of reports and transmission to the State of origin; and
• for non-Convention adoptions, legal costs associated with a motion for recognition of judgments or rulings.[268]

[268] No additional procedure for recognition of an adoption decision is required for Hague Convention adoptions. Recognition is automatic, as provided in Art. 23.

Annex 8B – Sample calculation of the actual cost of an adoption and setting of the amount 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 co-workers, 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; and
- indirect costs: these are costs to be shared among all the adoption cases performed during the year. These are usually structural costs (rent, insurance, electricity, advertising, salaries, 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 may assess the costs of adoptions using the specific costs method which is set out in the following tables. That method accordingly allows, in the presentation of results, the separation of all the direct and indirect costs (variable costs and overhead costs) incurred for a given State.

For that purpose, the accredited body should provide detailed information according to the model table below (see table 1). Once the actual cost has been determined, the accredited body then knows the level of costs 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 the costs that it will charge to prospective adoptive parents. That total cost would take into account the variable costs of services and correspond to the actual cost plus a reasonable margin for the long term viability of the body (the viability margin).

The Central Authority could then evaluate 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.

Costs[269] = actual cost + viability margin = total cost x (1 + % viability margin).

[269] See example of cost-setting in Table 2 of this Annex.

Table 1 – Calculation of total cost of an adoption from a State of origin (the data are hypothetical)

	State 1	State 2	State 3	Administration	Total
Variable costs					
Legal costs in receiving State	500	500	500		
Legal costs in State of origin	1,500	1,200	1,000		
Fees for professional services in receiving State	3,500	3,500	3,500		
Fees for professional services in State of origin	2,000	1,700	2,400		
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	2,300	6,000	300		
Travel costs	4,000	4,500	4,000		
Immigration costs	400	400	400		
Cost of passport	170	170	170		
Certificates (marriage, birth)	110	110	110		
Updating of record	200				
Child's maintenance			1,500		
Finalisation costs	500	1,000	600		
Post-adoption expenses	180	280	100		
Total variable unit cost	16,360	20,660	15,480		
Volume of activity (number of cases handled)	12	35	20		67
	196,320	723,100	309,600		1,229,020

	State 1	State 2	State 3	Administration	Total
Specific costs					
Direct payroll costs	24,000	30,000	28,000		82,000
Escort costs			5,000		5,000
Cost of authorisation in State of origin		700			700
Indirect payroll costs				140,000	140,000
Others				5,000	5,000
	24,000	30,700	33,000	145,000	232,700
Other shared overhead costs					
Rent					12,000
Electricity					600
Insurance					1,000
Transport					4,500
Advertising					2,500
Communication					3,850
Depreciation					500
					24,950
Total cost	220,320	753,800	342,600	145,000	1,486,670
Cost per adoption	18,360	21,537	17,130		22,189

Table 2 – Setting of the cost of an adoption charged to prospective adoptive parents and computation of the various margins. In this example, the margin is set at15%.

	State 1	State 2	State 3	Administration	Total
Actual cost of an adoption	18,360	21,537	17,130		
Viability margin	15%	15%	15%		
Total costs to prospective adoptive parents	21,114	24,768	19,700		
Volume (number of cases)	12	35	20		67
Income: total cost x volume	253,368	866,870	393,990		1,514,228
Total of variable costs	196,320	723,100	309,600		1,229,020
Margin on variable costs	57,048	143,770	84,390		285,208
Specific costs	24,000	30,700	33,000	145,000	232,700
Net margin	33,048	113,070	51,390	- 145,000	52,508
Other shared overhead costs					24,950
Net earnings					27,558

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 should be sufficient to cover reasonable overhead expenses (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 cost) - variable costs.

CHAPTER 9
CONTRIBUTIONS AND DONATIONS FOR CHILD PROTECTION IN THE STATES OF ORIGIN; DEVELOPMENT AID AND HUMANITARIAN PROJECTS

9.1 Recalling the purpose of intercountry adoption

414. For this discussion it is useful to recall the purpose of intercountry adoption: to find a suitable family in another country when a child cannot be reunited with his birth family and no suitable permanent family can be found for the child in his or her own country.

415. An ethical intercountry adoption therefore requires that the subsidiarity principle, in Article 4 *b)* of the Convention, be applied in the State of origin and the child's adoptability be determined, before any consideration is given to intercountry adoption.

416. If States of origin are to apply the subsidiarity principle more effectively, they must strengthen their child protection systems. Receiving States can and should undertake an important role in helping strengthen the child protection systems in States of origin. This responsibility should not, as a general rule, be placed on accredited bodies, because child protection is a State responsibility (see discussion in Chapter 10). It is better undertaken by development aid bodies.

417. Accredited bodies routinely accept or require contributions and donations from prospective adoptive parents for States of origin to help build up child protection services. Contributions and donations are sometimes justified on the grounds that they will assist States of origin to implement the subsidiarity principle. Unfortunately they sometimes have the opposite effect, when such funds stimulate activity to provide children for intercountry adoption. As the money comes from the fees and payments of prospective adoptive parents, they often unconsciously or otherwise, have an expectation to receive a child because the money has been paid. That expectation may also, in some circumstances, influence officials in the State or origin.

418. Furthermore, a State of origin hoping to ensure a steady flow of external funds to support child protection efforts may feel obliged to ensure donor bodies have a steady supply of children for intercountry adoption. This negates the purpose of intercountry adoption, since the sole motivating force for permitting children to be adopted internationally should be that they a permanent home abroad.

9.2 The recommendations of Special Commissions

419. In 2005, when the experts of receiving States, States of origin and international organisations gathered in The Hague for the 2nd Special Commission meeting, there was agreement that States of origin, if they were to implement the Convention successfully, needed support to strengthen their child protection systems, and that receiving States should provide that support.

420. The experts endorsed the following recommendations which were originally made in 2000:

> *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.*[270]

[270] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 10.

> *Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made.*[271]

421. States of origin still need support and these recommendations continue to be valid and appropriate. However, in practice, it is often the accredited bodies which organise, finance and deliver this type of assistance, either directly or through partner non-governmental organisations. If the implementation of the recommendation – through accredited bodies – is stopped, then governments and development aid bodies of receiving States must do more to provide the support needed.

422. In 2010, the Special Commission took the issue further, with a stronger recommendation regarding co-operation (development aid) projects:

> *The Special Commission emphasised the need to establish, in all cases, a clear separation of intercountry adoption from contributions, donations and development aid.*[272]

423. The complexity of the issue is indicated by the diversity of views of different stakeholders, noted below in Chapter 9.7.

9.3 Contributions and donations[273]

424. 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:

a. 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;

b. contributions demanded by the accredited body, which are usually intended for institutions in the State of origin. The payments may be in the form of maintenance charges, participation in child protection programmes or humanitarian aid projects. Direct payments to institutions are discouraged because of the potential ethical dilemmas associated with them; and

c. donations, which are voluntary payments by the prospective adoptive parents, by way of support for child welfare programmes. These are usually paid to the orphanage or institution connected to their adopted child. Sometimes these payments are not voluntary but are demanded. Parents feel they must pay in order for their adoption to continue. In any case, direct payments to institutions are discouraged; instead, it is preferable to fund institutions through official aid programmes.

425. With a view to transparency, such amounts should be clearly distinguished from the costs of the adoption in the accredited body's published list of fees, if applicable.[274]

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[271] *Ibid., supra*, note 43, Recommendation No 9.

[272] See Conclusions and Recommendations of the 2010 Special Commission, *supra*, note 256, Recommendation 14.

[273] As in the Guide to Good Practice No 1, *supra*, note 19 (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.

[274] 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, *supra*, note 44.

426. In the 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. 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.

427. 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 institutions themselves. That would help prevent solicitation or bribery to expedite the adoption, or conversely, lengthening the time the child is in the institution in order to obtain more maintenance payments.

428. In the case of contributions demanded by the accredited bodies, it must be clearly explained to prospective adoptive parents and to Central Authorities what these amounts will be used for. The Central Authority may need to be involved in setting the amount of such payments.

429. During the adoption process, the prospective adoptive parents ought not to be solicited for donations, to avoid the possibility that the donations will have an influence on the allocation of children.[275] Similarly, the prospective adoptive parents should not offer donations to obtain an advantage over other adopters. The view that donations will not influence outcomes if paid after the adoption cannot be justified in the majority of cases (see Chapter 9.7.1 below).[276]

430. However, some adoptive families may wish to maintain a long term connection to their adopted child's country of birth and do so through ongoing donations to programmes developed or supported by the accredited body they worked with in their intercountry adoption.[277] This is a different situation than the one described in the proceeding paragraph.

431. The State of origin which has received development aid and humanitarian contributions should report on the status of programmes of child protection which are financed by intercountry adoption contributions from receiving States.

9.4 Contributions and donations are not "costs" of an adoption

432. Contributions and donations are not essential parts of every intercountry adoption and States should take steps to avoid creating the perception in the adoption community that they are just another cost. Some receiving States do not permit contributions and donations to be sought as part of their intercountry adoption fees and costs.[278] Some States of origin are strongly against receiving contributions and donations that are connected in any way to intercountry adoption.[279] However, in some States of origin and receiving States, it is a mandatory requirement to provide a financial contribution.

9.5 The risks of allowing contributions

433. The following risks associated with mandatory and voluntary contributions have been identified:

- Dependency by the State of origin on intercountry adoption funds;
- Contributions from prospective adoptive parents may create an incentive for promoting intercountry adoptions over national solutions rather than contributing to building capacity to better implement the principle of subsidiarity;
- Some contributions have the negative effect of prolonging a child's stay in an institution when the institution hopes to maintain a continuous flow of funds for the child's maintenance;

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[275] See Report of the 2000 Special Commission, *supra*, note 43, Recommendation No 9.
[276] 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, *supra*, note 44.
[277] For example, Terre des Hommes receives donations from adoptive parents after the adoption is completed and sends them to the orphanage once a year in an anonymous fashion. That way, the orphanage does not know who made the donation and in what amount.
[278] For example, Norway and Sweden. According to the Swedish model, contributions and donations are not allowed as part of the fee structure, only fees for actual adoption costs. See responses to question No 54 of 2009 questionnaire, *supra*, note 44.
[279] For example, Brazil and Uruguay.

- Some contribution programmes are intended by accredited bodies to generate more children for intercountry adoption;
- When intercountry adoption is demand-driven, adoptability is not properly investigated and subsidiarity is not properly applied; and
- It is naïve to assume that many forms of contributions and donations do not influence outcomes of intercountry adoptions.

9.6 Co-operation projects and humanitarian projects funded by contributions from parents and accredited bodies

434. The obligation of co-operation under the 1993 Hague Convention does not specifically require development aid and humanitarian projects. Such projects existed long before the Hague Convention – largely in response to needs arising from catastrophes, crises, and poverty in States of origin and the lack of national resources to meet the needs - 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.[280]

435. 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. Fortunately there are many examples of co-operation projects undertaken by accredited bodies which are genuinely humanitarian in nature, they are not related to intercountry adoption, and are done with no expectation of any "return" in the form of more children for intercountry adoption.[281] How this can be achieved without discouraging either humanitarian aid or intercountry adoption is the challenge.

9.6.1 Breaking the link between co-operation projects and intercountry adoption

436. It is recognised that some co-operation projects will be necessary to help strengthen the child protection system of a State of origin. The existence of, or progress towards, a child protection system in a State of origin provides the necessary foundation for ethical intercountry adoptions, as it implies that the subsidiarity principle is taken seriously, and it can be applied, because some alternative care options do exist.

437. 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 that a means to channel vulnerable children towards particular institutions for the purpose of intercountry adoption.

438. It is this latter type of project that causes the greatest concern. In many cases, the consequence of these undesirable programmes is to put money into the hands of unscrupulous child finders who deliver children like commercial goods into the hands of adoption institutions. 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 the purpose of facilitating intercountry adoptions are not considered good practice.[282]

439. 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 are raised through them. This may be the proper direction for the future – to break the link with intercountry adoption.

440. Some guidelines on the delivery of humanitarian and development aid by accredited bodies have been written by the Swedish International Development Co-operation

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[280] See for example, the discussion in the International Social Service Report, "Adoption from Vietnam: Findings and recommendations of an assessment", November 2009, at Chapter 5.3.2, pp. 57-65; available from ISS upon request, < www.iss-ssi.org >.
[281] Some examples of such projects are given in the Guide to Good Practice No 1, at Chapter 5.2
[282] Conclusions and Recommendations of the 2010 Special Commission, *supra*, note 256, Recommendation 14.

Agency (SIDA). The Guidelines apply when Swedish accredited bodies get funds from SIDA for undertaking development projects. According to the Guidelines, the accredited bodies must show what steps have been taken to prevent mixing of adoption operations and development projects. The accredited bodies must also be able to show that in Sweden they have separated their activities of development co-operation and intercountry adoption mediation in terms of finances and personnel. Their co-operation partners in States of origin must have the corresponding separation if they operate in both areas.

441. According to the Swedish Intercountry Adoptions Intermediation Act, operations other than intercountry adoptions which are conducted by accredited bodies must not jeopardize confidence in its adoption operations.

9.7 The different views about contributions and humanitarian projects[283]

9.7.1 Separation of activities (View no. 1)

442. Some States, authorities and organisations take the view that any humanitarian aid, which is important and essential for States of origin, should be completely disassociated from intercountry adoptions. According to this view, all assistance to child protection services and institutions should be made via bilateral and multilateral agreements. Accredited bodies and adoption agencies should have no role in providing humanitarian and development aid.

443. The experience of some adoption experts is that the contributions from prospective adoptive parents tend not to contribute to a better respect for the principle of subsidiarity but rather create an incentive for promoting intercountry adoptions over national solutions. Furthermore, it is not accurate to say that donations paid only after the adoption do not influence the outcome. Everyone wants the adoption to be completed quickly and successfully so that the donation can be received. It is difficult to imagine that a donation will not influence the process when an adoption is undertaken on the understanding that a donation will be forthcoming.

444. According to the assessments of some States of origin undertaken by Unicef, mandatory contributions should not be required by States of origin because, among other things, it creates a dependence on intercountry adoption funds. Unicef concludes that multilateral aid is the appropriate way to help improve the child protection system and individual institutions. This approach requires that the development aid bodies of receiving States must become involved in funding the types of projects that will strengthen the child protection system in States of origin.

445. 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 and receiving States construct, or support the construction of, new baby homes and other similar institutions, expecting certain numbers of adoptions in return.

9.7.2 Meeting the needs of States of origin (View no. 2)

446. Other States take a different view to that expressed by supporters of the "separation of activities". They are concerned that by giving unconditional support to the "strict separation" view, receiving States may close their eyes to the real needs of some countries of origin and this will not help to improve the safety of adoptions.

447. Some States of origin are so poor that there is very little funding for the child welfare authorities, including adoption Central Authorities. They cannot do their work effectively due to lack of resources and experience. Supporters of the second view believe that if receiving States or accredited bodies have funds, it seems irresponsible not to help the State of origin. The supporters know that the withdrawal of contributions and donations may result in great hardship for many children and families. In most cases, they developed the child protection programmes because of lack of State of origin

[283] The different views were also discussed in Guide to Good Practice No 1 at Chapter 5. 4.

funding for such programmes. They also recognise that development monies are scarce and there are competing priorities for their use. The solution, they believe, is to ensure much closer monitoring of projects by receiving States. In addition, such funds could be used to organise training, and to help improve the functioning of the State structures.

448. A written co-operation agreement between a receiving State and a State of origin is one method to emphasise the requirement that any humanitarian projects must be kept separate from intercountry adoption. There must be strategies in place to ensure that the separation is maintained. One such strategy is to strengthen the requirement that projects be supervised by the Central Authority of the receiving State in close co-operation with the Central Authority of the State of origin.

449. In the Philippines, a different solution has been found. Foreign accredited bodies or their representatives are not permitted to operate in the country. They may only operate through local non-government organisations. These organisations may receive contributions and donations which are used for specific projects not related to intercountry adoption, such as family preservation and local permanency planning. The Philippines Central Authority controls the adoption process closely.

9.7.3 Successful projects of accredited bodies (View no. 3)

450. A third view is that successful projects must be acknowledged and supported. Some accredited bodies are justifiably proud of their record of humanitarian assistance to States of origin.[284] It is well known that small, well-thought out projects designed for a specific community to address a specific need can be very successful and make a huge difference for the well-being of that community. Such projects are sometimes more quickly and effectively delivered because they can avoid the bureaucracy of governments and large international organisations. Where there is the necessary separation from intercountry adoption, the project continues regardless of the number of intercountry adoptions.

451. Many such projects continue over a long period of time without direct links to intercountry adoption. Key to the success of these programmes is de-linking their ongoing funding from fees charged to adopting families.

452. On the other hand, small organisations can escape attention, and the authorities of States of origin complain that they are not informed about which projects are being undertaken and by whom. In these situations, the States of origin cannot enforce a separation between humanitarian projects and intercountry adoption.

453. Moreover in some cases, accredited bodies are themselves part of larger non-governmental organisations which are involved in various co-operation projects such as family preservation or supporting the education of children. It may be more difficult (but not impossible) for these accredited bodies to maintain the necessary separation. Furthermore, many non-governmental organisations develop projects of “alternative care” that are not only child protection measures but also provide protection from abuses in the field of adoption because they discourage placement of children in institutions. These organisations may have much to offer by demonstrating how to maintain the balance needed to build respect for the subsidiarity principle without overemphasising the role that intercountry adoption plays in it.

9.7.4 The future of contributions and donations

454. It is difficult to find a solution that is both realistic and ethical, to the dilemma posed by the issue of contributions and donations, while taking into account the different views on the subject. It is not likely in the near future that the development aid bodies of the receiving States will begin providing more assistance, either directly or through Unicef and other non-governmental organisations, to strengthen the child protection systems in many States of origin.

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[284] Some successful projects are mentioned in the Guide to Good Practice No 1 at Chapter 5.2.

455. While this should be the ultimate aim, there are some successful current practices that may lead to the desired outcome. One worthy of consideration by Central Authorities and accredited bodies alike is the Swedish model which has the following features:

- the separation of intercountry adoption and humanitarian aid is required by law;
- the development aid body sets the guidelines for grants of funds to accredited bodies for humanitarian projects;
- the accredited body must have a separate unit for humanitarian projects in its structure, with separate accounts and personnel to manage the projects;
- the system requires close co-operation and shared responsibility between the development aid body and the accredited body.

456. If Swedish projects are not funded through the development aid body, and the guidelines do not apply, the legal requirement of separation will still apply and will be monitored by the Central Authority.

CHAPTER 10
PROCEDURES INVOLVING ACCREDITED BODIES IN STATES OF ORIGIN AND RELATED CHALLENGES

457. This chapter presents the different stages relating to the protection of vulnerable children which may precede an adoption and where an accredited body may be involved. In States of origin, it is important to identify areas where the involvement of the accredited body may be problematic.

10.1 Protection of vulnerable children

458. It is the responsibility of the State to protect vulnerable children and to ensure that appropriate measures of protection are available for them.[285] In some States, the child protection services are delivered directly by public authorities. In many other States – receiving States and States of origin alike – some or all of the protection services will be delivered by non-governmental organisations or private bodies on behalf of the government. The government has ultimate responsibility and the non-governmental organisations are accountable to the government.

459. The context in which various measures of protection for vulnerable children should be used was also discussed in the Guide to Good Practice No 1 at Chapter 6 (The National child care context and national adoption). It should be recalled that in all actions affecting children, "the child's best interests shall be a primary consideration."[286] When adoption or intercountry adoption is contemplated, "the best interests of the child shall be the paramount consideration."[287] In the majority of cases, it will be in a child's best interests to keep him or her within the family and out of the child protection system and out of institutions.[288]

460. For families in crisis, some States of origin have measures of protection such as family preservation programmes and early intervention programmes to support families to remain together.[289] 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.[290]

461. Good practices employed in the early stages when a vulnerable child is identified, will help to ensure implementation of good practices in national adoption, and thereby create the foundation for good practices in intercountry adoption.

10.2 Structural challenges for States of origin concerning child protection

462. It is recognised that it is a major challenge for some States of origin to develop systems of public social services, including child welfare and protection. However, the absence of a child protection system means that there can be no effective implementation of the subsidiarity principle if there are no genuine alternative care options for a child apart from intercountry adoption. Children should not be relinquished for intercountry adoption only because of poverty, but in reality this does happen. Paradoxically, the cost of one intercountry adoption would be enough to support a child and his family in their own country for years.

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[285] This issue has previously been mentioned in Chapter 5.2.1.
[286] Art. 3, UNCRC, *supra,* note 5.
[287] Art. 21, UNCRC, *supra* note 5.
[288] There are many situations in which the child cannot stay with his or her family (*e.g.*, for reasons of violence, neglect, abuse) and one must therefore count on the protection systems – which does not always mean institutionalisation.
[289] One of the family preservation services that may be overlooked are programmes to prevent discrimination against children born to young mothers or out of wedlock.
[290] Certain measures of protection including prevention should occur before the child enters the "system". See Guidelines for the Alternative Care of Children, 2009, adopted by the UN General Assembly on 15 September 2009, A/RES/64/142, available at < www.unicef.org > under "Focus Area" and "Child Protection" (last consulted 14 February 2012).

463. In some States, social services for families do not exist or are very limited, and private institutions and non-governmental organisations might have responsibility for identification of children and families in need; for cases of abandonment and abduction; and for voluntary relinquishment. Occasionally, State of origin accredited bodies have also done this work but they should not have a direct involvement in deciding which children will enter into the care of the State or private institutions. Social workers or other professionals from public authorities should be in charge of these stages.[291]

464. The lack of skilled social workers is a general problem in many States. The profession does not exist in some 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 need of support. The lack of understanding and training in child protection and children's rights follows from a lack of social workers and social welfare systems. Receiving States (including Central Authorities and accredited bodies) could consider ways to assist States of origin to build up their social work profession. For example, in some countries, this might be through development and support of academic programs. In other countries, social workers will need to receive more practical training. Scholarships could be given to help increase the numbers in the profession.

465. The absence or inadequacy of a legal framework for child protection and alternative care is a challenge for some States. There may be a lack of legal regulations to direct the authorities along the appropriate steps in reporting the vulnerable child to the relevant authority within the stipulated timeframe. Even if regulations exist, there may be a failure to follow or enforce the regulations because of a lack of resources or a lack of training.

10.3 Challenges before adoption or intercountry adoption

466. Challenges may arise when States delegate responsibility for the child protection system to State of origin accredited bodies and private bodies. Some of these bodies may have several functions:

- they work on family preservation and counsel birth mothers who wish to relinquish their child;
- they take care of different categories of children including relinquished children and children declared adoptable; and
- they work with prospective adoptive parents (for domestic and / or intercountry adoption).

467. This type of system is used in several States in Latin America.[292] While some State of origin accredited bodies do very good work on family preservation and counselling aimed at the reintegration of the child in his or her birth family, other private bodies and institutions aim to have as many adoptable children as possible in order to get more contributions and donations from prospective adoptive parents.

468. The following section notes some challenges which may arise when private bodies and accredited bodies are involved in the four phases of child protection as described in Guide to Good Practice No 1.

10.3.1 Phase one: Child's entry into care

469. There may be a conflict of interest and a risk of partiality if the State of origin accredited body is involved in the identification of children and families in need, or in cases of abandonment or voluntary relinquishment. At this stage, the child protection services should first be seeking family preservation before considering adoption.

470. There could be a conflict of interest if the State of origin accredited body makes the assessment of the abandonment or receives the consent to the adoption of the birth

[291] For example in Chile the local adoption accredited body may identify a child in need, and makes a recommendation to the tribunal to make the decision on the child.
[292] See, for example, responses of Chile and Colombia to question No 57 of the 2009 Questionnaire, *supra*, note 44.

parents and later is the same body which is involved in the matching decision and placing the child with prospective adoptive parents. Again, it is the responsibility of a public authority in the State of origin to perform these functions. This is a major challenge: to balance the possibility of a conflict of interest in these steps against the use and availability of professional resources from accredited bodies.

471. There may be a conflict of interest or suspicion of partiality by the State of origin accredited body or children's home if it is involved in the assessment of the child. Clear regulations and procedures must be in place to prevent this possibility. 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.[293] With this model, the Philippines is able to prevent any conflict of interest between its own accredited bodies and the foreign accredited bodies.[294]

472. The foreign accredited body should in principle have no contact with the caregivers of the child prior to that child being declared "adoptable",, and preferably, matched with the prospective adoptive parents. However it is the reality that in some States of origin, 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.

473. On the other hand, some States of origin ask foreign accredited bodies to complete medical or psychological examinations of the child as part of the child's report for the matching. In addition, these accredited bodies could participate in the matching decision because they know if the prospective adoptive parents have the capacities to meet the needs of the child.[295]

10.3.2 Phase two: Family preservation

474. 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. 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 and admit that they are not in a position to take care of a child (e.g. because they are single mothers), will be judged harshly and discriminated against by police or other authorities.

475. In many States, public authorities are in charge of these important matters.[296] However, in other States this is not possible due to the absence of, or very limited number of public services, or because the system has been developed in this way. Then, State of origin accredited bodies may be involved in the family preservation and

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[293] See Perspective of the Philippines in Annex 2.

[294] The Philippines accredits local child caring agencies as "Liaison Agencies". These agencies are allowed to enter into a Memorandum of Agreement (pre-approved by the Central Authority) with duly authorised foreign adoption agencies to assist families when they arrive to adopt 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 with which the Liaison Agency has an agreement.

[295] For example, foreign accredited bodies may have dedicated staff available present in the State of origin and responsible for collecting information about the child's origins from the child's biological relatives. Foreign accredited bodies may be more effective in collecting truthful information than authorities from the State of origin because individuals may feel too intimidated by authorities to provide genuine and detailed information on the child. Foreign accredited bodies working through local representatives with knowledge of the local dialect, customs and etiquette may be able to elicit informal conversations and obtain relevant information on the child's origins.

[296] 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 finding adoptive families for adoptable children.

reunification programmes and provision of services.[297] In some States of origin, their specialised accredited bodies have developed successful programmes for this work.[298]

476. 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. One way of measuring the objectivity of their work is to determine the percentage of mothers who wanted to relinquish their child, and who finally, after information and counselling, decide to keep their child.[299] Specific programmes for providing continuous help to these families (including practical and material support to the mother) are also needed in order to avoid the situation where they later relinquish their child.

10.3.2.1 When family preservation is not possible; relinquishment and consents

477. Sometimes it is not possible to keep a child with his or her biological family, or extended family. Foster care or other temporary care may be sought pending a permanent solution. Sometimes, a child may be put in an institution by the mother for "temporary" care. In the most difficult cases, the child may remain for years in the children's home, not often visited by his or her family. This may leave the child in a legal and psychological "limbo" and the authorities are unable to take any decisions on the child's future.

478. The other view of this situation is that impoverished parents will, if they have the opportunity, put their child in an institution in order to receive food, shelter and education. The parents may have no means to visit the child but the parents expect the child to return to them when he or she is older to help support the family.

479. These cases are difficult to manage. One the one hand, it could be detrimental to a child's development to grow up in an institution, but on the other hand, the parents believe it is best for their child to have the chance to receive an education. If the impoverished parents received some financial assistance, they could visit the child more regularly at the institution or have the child educated closer to home (if any education is available there – it may not be if the parents are from remote rural areas). In addition, the institution will probably be under pressure to take in more children, and space, provisions and resources may be a problem. These circumstances expose the child care institution to abuses of the welfare and adoption system. Unscrupulous persons may seek to pressure child care institutions or the parents into placing the child for adoption.

480. There is also a dark side to these situations when impoverished parents place great value on an education for their child. Some unscrupulous persons will induce poor and uneducated parents to send their children to institutions for "education", and then falsify documents to have the children declared orphans and available for intercountry adoption.

481. The solution is to try to support the parents. If the parents have not visited the child for some time, efforts must be made to locate them. Support could be financial support to help them keep their child at home or visit the child regularly. They could also be offered advice about alternatives and support to help them to make an informed decision. If adoption or intercountry adoption is considered, the parents must be advised about the effects of relinquishing their child, and the need for their informed consent to any adoption. Information should be provided in a supportive and objective way and should focus on informing the parents of the permanency of the relinquishment and the

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[297] See, for example, the responses of Chile to question 57 and Estonia to question No 56 of the 2009 Questionnaire, *supra*, note 44. In the Philippines, this is the responsibility of local accredited bodies; see its response to question No 57 of the 2009 Questionnaire, *supra*, note 44.

[298] For example in Chile (discussed in its response to question No 57 of the 2009 Questionnaire, *supra*, note 44) and South Africa, where child protection agencies can be accredited to provide adoptions services in addition to its other child protection services (see Chapter 15 of the Children's Act, No. 38 of 2005, available at < www.gov.za > under "Documents", "Acts" and "2005", last consulted 14 February 2012).

[299] For example, in Guatemala from 2008 to 2011, when mothers who intended to relinquish their children were given support, around 50% of them decided to keep the child, see Consejo Nacional de Adopciones de Guatemala, "Informe Final de Gestión 2008-2011", available at < www.cna.gob.gt > under "Documentación", last consulted 14 February 2012). 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 82%.

consequences of the relinquishment. At the same time, the biological parents should be assisted to explore the means by which the family may remain together. These matters are discussed in Guide to Good Practice No 1 at chapter 6.1.3.

482. As another example, sometimes extended families are "forced" to take a child into the family just because they are relatives of the birth mother. In these cases, they may not want the child, and they may not have resources to take care of it, but the authorities.may pressure them into such a situation. This scenario does not serve the best interests of the child who is likely to grow up in an environment where he or she may be subject to abuse, stigmatisation, or subsequent abandonment.

483. If, after counselling, a mother decides to relinquish her child for adoption, 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. Where permitted, the mother's involvement in determining her child's future will be taken into account in the application of the subsidiarity principle, with the appropriate weight given to her preference.

10.3.3 Phase three: Temporary care and institutionalisation

484. Many children in need of temporary care are either with foster families or in institutions for a number of reasons and for different periods of time. For example, temporary care is needed while their legal, social and psychological situation is being assessed and a permanency plan is being developed. Other reasons are described in Guide to Good Practice No 1 at Chapter 6.3.1.

485. Sometimes institutions which take care of these children are also accredited as adoption bodies.[300] Some States have public or private institutions which only receive and care for adoptable children. These arrangements may easily lead to a wide and unacceptable difference in the quality of care and facilities of different institutions, as institutions which are linked with accredited bodies usually receive more funds through contributions and donations. The challenge here is to avoid having such inequalities between the institutions: between those with adoptable children having high standards and good facilities, and the other with non adoptable children having very poor facilities and lack of personnel.

486. Sadly, the opposite situation is also created. There has been a trend for institutions with adoptable children to present them in poor conditions so as to generate more donations.

10.4 Challenges regarding adoptability

10.4.1 Phase four: National adoption or permanent care[301]

487. In order to act in accordance with the principle of subsidiarity, States of origin have to consider different possibilities for a child in need of a family before proceeding to a determination that a child is adoptable. Once a child has been declared adoptable, due consideration must be given to placing the child with a family in the State of origin, before deciding that an intercountry adoption is in the child's best interests.

488. The assessment of the child's adoptability is therefore one of the most important steps in the adoption procedure.[302] 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.

489. The decision of adoptability should be resolved by a competent authority which specialises in social, family or children's issues in the State of origin and not by an

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[300] See, for example, the responses of Estonia, the Philippines and the United States of America to question No 57 of the 2009 Questionnaire, *supra*, note 44. Often in such cases, the whole organisation is accredited, but only one section of it works with prospective adoptive parents.

[301] 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, *supra*, note 19.

[302] Adoptability must include not only legal adoptability but also psycho-social adoptability.

accredited body. Usually a court or tribunal or a qualified public authority will make the decision. The decision should be made within a reasonable period of time that will also allow the necessary background checks to be made. The procedure should be strictly legislated and regulated. Part of the practical work, on which the decision of adoptability will be based, may be performed by a skilled and experienced social worker of the competent authority. In some States this work is also delegated to a State of origin accredited body or to the institution responsible for the child,[303] but in these cases there is a risk of a conflict of interest if the accredited body or institution has a close connection with a foreign accredited body and directs children to that body.

490. 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.

491. 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.[304] Professionals and other officials who handle information and personal items relating to an adopted child should be made aware of the importance of such information and personal items for the children. They should also be aware of the risks that confidential information may not be sufficiently protected.

492. This information in the dossier is essential for the authority 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 State of origin accredited body. After the report on the child has been completed, all efforts should concentrate on trying to find an adoptive family through national adoption or comparable permanent arrangement consistent with the principle of subsidiarity.

493. A competent authority or the State of origin accredited body can be in charge of receiving the application of prospective adoptive parents for national adoption, informing and preparing them, evaluating them, and preparing the report on these parents.

494. The State of origin accredited body or a specialised adoption unit at a public authority can be responsible for the matching procedure for domestic adoption.[305] The matching committee should be a multi-disciplinary team with experts in child welfare. They should have all the 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, in order to make a decision that will be in the child's best interests.

[303] See, for example, the responses of Estonia and the United States of America to question No 57 of the 2009 Questionnaire, *supra*, note 44.
[304] See Guide to Good Practice No 1, *supra*, note 19, Chapter 2.1.3.2.
[305] For examples of accredited bodies carrying out functions in respect of the matching decision, see the responses of Estonia and the United States of America to question No 57 of the 2009 Questionnaire, *supra*, note 44.

CHAPTER 11
PROCEDURES INVOLVING ACCREDITED BODIES IN RECEIVING STATES AND RELATED CHALLENGES

495. In the receiving State, the activities involving the accredited bodies mainly concern the prospective adoptive parents, in particular the assessment, the preparation of, and services for, the adoptive parents, including psychosocial support following the arrival of the child in the receiving State.

496. Although these activities are described 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), this Guide attempts to focus on certain challenges at particular stages of the process.

11.1 Pre-adoption phase

11.1.1 Preparation of prospective adoptive parents and managing their expectations

497. 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.[306] This is crucial for managing the expectations of the prospective adoptive parents and for diminishing the pressures on States of origin. In some cases, prospective adoptive parents mistakenly feel they have a right or entitlement to a child. In other cases, the number or profile of adoptable children does not correspond to their expectations for an adoption.[307] Unfortunately, some prospective adoptive parents will resist the idea that they need preparation for intercountry adoption, sometimes making a comparison with a natural birth where mandatory special preparation and State "interference" are absent. In addition to information sessions about adoption issues in general and the current issues and challenges of intercountry adoption,[308] many receiving States have introduced compulsory preparatory courses for prospective adoptive parents.[309] In some States, these courses are organised and conducted by public authorities (*e.g.*, Central Authority) or by professionals contracted by them;[310] in other States they are organised and conducted by the accredited bodies.[311] The persons who conduct the preparation courses should be professionally skilled for the purpose, and experienced in adoption issues.[312]

498. If an accredited body alone provides the courses, the challenge is to remain impartial and objective. Regardless of who conducts the preparation courses, there should be open and constructive communication between the adoption accredited body, the Central Authority and the professionals who are responsible for the courses.

499. A comprehensive and useful course could consist of several sessions,[313] with some group sessions, and then with men and women separated. This approach will help

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[306] See International Social Service Brochure "Intercountry adoption and its risks: a guide for prospective adopters", Geneva, 2011.
[307] Guide to Good Practice No. 1, *supra*, note 19, para. 406.
[308] See, for example, the response of Belgium (French Community) to question No 56 and Spain to question No 57 of the 2009 Questionnaire, *supra*, note 44. See also Adoption: at what cost?, *supra*, note 58, pp. 32-33.
[309] See discussion in Guide to Good Practice No 1, *supra,* note 19, para. 410.
[310] See for example the practice of the Netherlands in Annex 2, Section 5. In Spain the regional Central Authorities organise and provide the initial counselling and preparation. Some times a private entity is contracted to do so (these private entities are not adoption accredited bodies). After this initial preparation, accredited bodies provide more advice, counselling and preparation to prospective adoptive parents at a later stage.
[311] For examples where these courses are organised by accredited bodies, see the response to question 56 of the 2009 Questionnaire, *supra*, note 44, of Belgium (French Community) and to question No 57 of Canada (British Columbia, Manitoba, Ontario and Quebec), Finland, France, Germany, Iceland, Italy, Portugal, Sweden, Switzerland and the United States of America. See also Adoption: at what cost?, *supra*, note 58, pp. 32-33.
[312] See Adoption: at what cost?, *supra*, note 58, pp. 32-33.
[313] 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

identify different issues of concern to adoptive mothers and fathers.[314] Some States prefer that the preparation courses 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 that adoption is not appropriate 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.[315]

11.1.2 Eligibility and suitability of the prospective adoptive parents

500. Countries of origin intending to give their children for adoption into the care of the receiving State need to be assured that the individuals or couples selected by the receiving State as prospective adoptive parents have been properly and thoroughly assessed as suited to adopt.[316] Receiving countries have an important responsibility to make thorough evaluations of parents, and to manage their expectations, taking into account the needs of adoptable children for intercountry adoption in the various countries of origin.[317]

501. Accredited bodies should be able to inform prospective adoptive parents of eligibility requirements. 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.[318]

502. 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,[319] to ensure an impartial assessment of the suitability of applicants and to apply the same rigorous process to all applicants.

503. In those States which permit the accredited bodies to undertake the assessment, the challenge for accredited bodies at this stage is to ensure the impartial and objective assessment of the suitability of the prospective adoptive parents. The accredited body may be under pressure from the parents to obtain a positive assessment. There may also be other pressures on the accredited body, such as the need to have a certain number of parent registrations in order to remain financially viable.

504. After the prospective adoptive parents have received a positive assessment (i.e. they are eligible and suited to adopt), a formal approval to adopt is usually required. In order to avoid conflicts of interest, accredited bodies should not be the ones to give the formal approval to adopt. In some States, the approval to adopt is given by a competent authority and is based on a positive recommendation of a social worker or psychologist as to the applicants' suitability as adopters, and their capacity to adopt a certain type of child (according to age, gender, health, special needs).[320] Accredited bodies must obtain a copy of the suitability report for sending to the State of origin.

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.

[314] 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 >.

[315] 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 < www.hks.harvard.edu > (last consulted 14 February 2012), in which the rate of non-completion in domestic adoptions in the United States of America was analysed.

[316] Guide to Good practice No 1, *supra*, note 19, para. 402.

[317] *Ibid*, para. 404.

[318] See Art. 5 *e)* of the Convention, as discussed in Guide to Good Practice No 1, *supra,* note 19, para. 399-401.

[319] See the States responses to question No 57 of the 2009 Questionnaire, *supra*, note 44.

[320] This is the case in many States. See, in general, the State responses to question No 57 of the 2009 Questionnaire, *supra*, note 44, and the "Organigram" submitted by individual States in response to the 2005 Questionnaire. These Organigrams are also available on the website of the Hague Conference at < www.hcch.net > under "Intercountry Adoption Section" and "Questionnaires and Responses".

505. The importance of an impartial assessment is emphasised. The receiving State should apply the same standards to intercountry adoption as to national adoption. States of origin report that some accredited bodies accept prospective adoptive parents with a weak adoption profile, whose suitability to adopt is doubtful. One reason for this problem is that there are significant differences among receiving States regarding the criteria to obtain an approval to adopt. Some States use only legal criteria (*e.g.*, age, marital status, absence of a criminal record) and do not undertake the necessary investigation into the psycho-social aspects of suitability to adopt. In these States, the unsuitability of the prospective adoptive parents based on psycho-social reasons does not constitute a basis under their law for denial of the approval to adopt. The accredited bodies are themselves required to accept such prospective adoptive parents as applicants.

506. Once approved in the receiving State, the prospective adoptive parents 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 it is the child who suffers the most, *e.g.*, if the adoptive parents cannot cope with their adopted child.

507. 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. In addition, the States of origin should obtain information from receiving States regarding the criteria and the process by which eligibility and suitability of prospective adoptive parents is established. States of origin may need to be more proactive in refusing applications of unsuitable prospective adoptive parents.

508. Some receiving States complain that they receive requests from some States of origin wanting a detailed analysis of clinical (psychological) and medical data, but without knowing the relevant context. If the request is motivated by the need to find out more about a couple, and the request for more information serves to investigate the issues in more depth, then the request will usually be justified. 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.

509. The problems mentioned above highlight the importance for the competent authorities in the receiving States and the State of origin to exchange information about the process of assessing applicants' suitability to adopt, as well as any evaluation criteria for prospective adoptive parents in the State of origin.

11.1.3 Contract between the accredited body and the prospective adoptive parents

510. Before preparing the adoption application, it is recommended that a contract or written agreement be signed between the prospective adoptive parents and the accredited body.[321] 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, and requirements for post-adoption reports) 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.

511. 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 may be referred to the Central Authority.

[321] 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, *supra*, note 44.

512. All work with the prospective adoptive parents should be performed with respect for the confidentiality of information and preferably in accordance with a code of conduct conforming to national and international standards.[322]

513. 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 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 delay and disappointment for a child who must go through another matching process.

514. However there may be some exceptions when multiple applications are permitted. For example, if adoption programmes are closed indefinitely in one State of origin, prospective adoptive parents should be allowed to register for another State without recommencing the whole procedure. However, the accredited body should still provide specific preparation on the new chosen State. The important principle is not to have two or more adoption files pending at the same time for the same parents in different countries.

11.2 During the adoption procedure

515. Once the prospective adoptive parents have received their formal 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 needs[323]

516. When prospective adoptive parents intend to adopt a special needs child, the authorities should be certain, and the prospective adoptive parents 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. In some States, this preparation is provided by professionals selected by the Central Authority.[324]

517. Accredited bodies in the receiving State might be asked to collaborate to identify appropriate prospective adoptive parents for a child with "special needs". In such a case, the State of origin would send details of special needs children (without identifying information) to the receiving State to help find suitable adoptive parents.[325] This practice of reversing the flow of files is discussed in the Guide to Good Practice No 1.[326] See also Chapter 3.8 concerning the use of the Internet in such cases.

11.2.1.2 Preparation on a specific State of origin

518. At the appropriate stage of the procedure, the adoption accredited body has a responsibility to continue the preparation of prospective adoptive parents and to provide

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[322] See *supra,* note 137.
[323] See the Guide to Good Practice No 1, *supra,* note 19, Chapter 7.3.
[324] 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 313, 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 with and fulfil a child's needs even if those needs are extensive". In the United States of America, the standards applicable to accredited bodies include "provid[ing] 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", see art. 96.48 e) of the Title 22 of the Code of Federal Regulations.
[325] See the Guide to Good Practice No 1, *supra,* note 19, 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, *supra*, note 44.
[326] *Supra*, note 19, para. 394.

them with specific information concerning the adoption procedures in the State of origin selected for the adoption.

519. 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, the accredited bodies have regional and local sections with support groups which include adoptive parents or adopted persons who volunteer to support other families and each other. [327] These volunteers receive special training from the adoption body. Specialist staff in the accredited body are expected to 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.[328]

520. As part of the specialised preparation, the prospective adoptive parents are 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 and bond with their child, from the moment of their first contact.

11.2.2 Preparing and sending applications to the State of origin

521. The accredited body's country specialist will advise on the required application documents and the procedures for each specific country. See Chapter 6.5.1 (Country specialists in the accredited bodies in receiving States).

522. States of origin sometime complain that prospective adoptive parents' applications contain insufficient information. It is the accredited body's responsibility to check that the application details are correct and complete before sending the application documents to the appropriate authority in the State of origin. Only applications from prospective adoptive parents who clearly fulfil the formal and legal requirements of the State of origin should be sent. The application must contain sufficient information to enable the Central Authority or competent authority in the State of origin to decide whether they can accept the application, as well as to enable the authority which is responsible for the matching procedure to make their matching decision with the best possible information and in the child's best interests. States of origin should provide clear instructions about what information and documents are to be included with the application.

523. 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.

524. In some States, the Central Authority requires that all applications be sent by it to the State of origin.[329] 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. In a few States, applications are sent by both Central Authorities and by the accredited bodies.[330]

11.2.3 Verifying and sending details of the matched child to the prospective adoptive parents

525. As soon as the report on the matched child has 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. In some States, the accredited bodies must provide a copy of the report to the Central Authority for its opinion, before contacting the prospective

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[327] For example Denmark, Norway and Sweden. See also the response of New Zealand to question No 59 of the 2009 Questionnaire, *supra*, note 44.
[328] See further discussion at Chapter 6.5.1 of this Guide.
[329] For example, Australia.
[330] For example, Spain.

adoptive parents.[331] 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.

526. Depending on the child's medial condition, it is sometimes necessary for the accredited body to consult with a medical expert and a psychological expert, 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.

11.2.4 Acceptance of the proposed match

527. 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. The time given to prospective adoptive parents to decide should be reasonable, while avoiding the child having to wait too long. This is especially important if the prospective adoptive parents wish to seek further advice from medical professionals.

528. At this point it is appropriate to remind the prospective adoptive parents of any obligations imposed by the State of origin regarding the submission of post-adoption reports.

529. Once they have accepted the proposal, the Central Authority or competent authority will review the documents and the procedure before issuing the agreement in accordance with Article 17 *c)* that the adoption may proceed.

530. In some States, the accredited body will link the family with another volunteer support family 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".[332]

11.2.5 Preparing prospective adoptive parents to travel to the State of origin

531. The accredited body should be aware of the State of origin's travel requirements and should inform prospective adoptive parents at the outset.

532. The accredited body should encourage prospective adoptive parents to travel to the State of origin to get their adoptive child and assist them in organising their travel, *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,[333] and who to contact in case of emergency. The safety of the adoptive family during their stay in the State of origin should be a priority.

533. States of origin should inform prospective adoptive parents if it is mandatory that they come in person to get their child. Some parents do not want to travel and prefer to use an escort for the child. This is not considered good practice, and an escort should only be used in exceptional circumstances.

534. Prospective adoptive parents should be informed of the relevant travel 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.[334]

535. The accredited body, with the relevant authorities in the State of origin, 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.[335]

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[331] *Ibid*.
[332] See, for example, the response of Germany to question No 58 of the 2009 Questionnaire, *supra*, note 44.
[333] See, in general, the State responses to question No 57 of the 2009 Questionnaire, *supra*, note 44.
[334] See further discussion in the Guide to Good Practice No 1, *supra,* note 19, para. 433.
[335] Art. 19 of the Convention.

11.2.6 Ensuring prospective adoptive parents finalise all steps

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

537. 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. It is imperative to avoid the situation of the child not having legal status in the receiving State.[336] See also Guide to Good Practice No 1 at Chapter 8.4.5.

11.3 Post-adoption phase

11.3.1 Post-placement and post-adoption services

538. During the preparation stage, the accredited body should have discussed with the prospective adoptive parents the possible need for post-placement or post-adoption services. One of the primary objectives of such services is to ensure that the adoptive families who encounter adjustment difficulties or other problems with their adopted child have the support they need to deal with these issues. Services may also be provided to help maintain links with and respect for the cultural identity of the adoptee. The accredited body has an important role in providing support to the adoptive families and referring them to services available in the receiving State.[337]

539. The accredited bodies' experience preparing the adoptive parents through the adoption process (completing the home study, guiding the adoptive parents on the specificities of the State of origin, and accompanying the adoptive parents in the decision to accept a proposed match with a child) offers an important background to provide post-placement and post-adoption services. In contrast, authorities in charge of post-placement and post-adoption services who have not worked with the adoptive parents before the placement or adoption may lack the background on the specific family's needs and may not have familiarity with the child's State of origin to fully understand the dynamics at the post-placement of post-adoption phase.

11.3.2 Post-adoption report[338]

540. The failure of receiving States to send post-adoption reports is one of the most serious issues of concern for the States of origin. In many States of origin it is a legal requirement that the reports be sent.

541. The importance of sending post-adoption reports has been discussed from the time the Convention was drafted and at all subsequent Special Commission meetings. A number of Special Commission recommendations have been made. The issues are covered in detail in the Guide to Good Practice No 1 in Chapter 9.3 (Post-adoption reports to States of origin).

542. The essential points are that:

- the State of origin requirements should be clearly explained to Central Authorities, accredited bodies and prospective adoptive parents; and
- the person, body or authority responsible for sending reports from receiving State is clearly established.

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[336] See, for example, the response of Canada (Ontario) to question No 57 of the 2009 Questionnaire, *supra*, note 44, which specifically refers to the additional function of accredited bodies to provide information and assistance in the adopted child's immigration process.

[337] In many receiving States, offering post adoption services is a requirement of accreditation. See, for example, the responses of Denmark, Iceland, and Italy to question No 58 of the 2009 Questionnaire, *supra*, note 44 and the response of Belgium to question 58.

[338] See also the Guide to Good Practice No 1, *supra,* note 19, Chapter 9.3.

543. 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.

544. Some of the follow-up reports will be written by the accredited body, the social worker at the governmental social welfare office, and others may be written by the family. It is a good practice if all reports are read and registered by the accredited body in the receiving State before being sent to the appropriate authority 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 maintained.

545. The submission of follow-up reports is a legal requirement in many States of origin as a condition of granting the adoption. The provision of post-adoption reports may also be a condition for the authorisation of the accredited body in the State of origin. If reports are not submitted, the State of origin may consider withdrawing the body's authorisation.

CHAPTER 12
CO-OPERATION BETWEEN STATES, AUTHORITIES AND ACCREDITED BODIES

546. 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 also be between authorities in those States, or between authorities and accredited bodies, or between accredited bodies themselves.

12.1 Co-operation between States of origin and receiving States

12.1.1 The obligation of co-operation

547. 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.[339]

548. 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.

549. 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.

550. 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

551. 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.

552. 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.[340] The term "co-responsibility" has become widely used as a way to describe the acceptance of shared responsibility.[341]

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[339] 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 principles, in Chapter 3.3.

[340] See Explanatory Report, *supra,* note 17, 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

553. 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, through its Central Authority or accredited bodies, will need to exercise some restraint and follow recommended good practices 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. Pressure may be exerted either deliberately, or indirectly through giving patronage or inducements to officials;[342]
- respecting the requirements of States of origin regarding the profile and number of adoptable children, as well as the desired profile of prospective adoptive parents; not sending applications to adopt children who do not need intercountry adoption, and not sending unreasonably large numbers of applications to adopt;
- respecting the requirements of States of origin regarding the profile and number of accredited bodies that they need; monitoring the number of 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;[343]
- providing improved training and education of accredited bodies so that they understand fully their responsibilities as actors in an international treaty; and
- improving the preparation of prospective adoptive parents for the realities of an intercountry adoption and managing their expectations.

554. 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;
- choosing only the most professional authorities and bodies to work with; and
- seeking information from other States of origin about particular accredited bodies.

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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 of the Explanatory Report.

[341] Adoption: at what cost?, *supra*, note 58, which refers to the "co-responsibility" of receiving countries with regard to existing bad practices and child trafficking, pp 7-8. See also European Network of National Observatories on Childhood (ChildONEurope), *Guidelines on post-adoption services*, Florence, Litografia IP, 2007, available at < www.childoneurope.org > under "Issues" and "Adoption" (last consulted 14 February 2012), 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."

[342] See the Guide to Good Practice No 1, *supra*, note 19, especially at Chapter 10.4.

[343] See Art. 33: it is taken for granted that abuses in individual cases will be reported to the appropriate authority and dealt with.

555. 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.

556. 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.

557. 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.[344] Chapter 8 (The costs of intercountry adoption) has provided some lines of thinking that could lead to candid dialogue.

12.1.3 Improve the exchange of information

558. 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.

559. The reasons to encourage a good exchange of information in order to effectively monitor and supervise accredited bodies have already been stated in Chapter 7.4 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.

560. 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.

561. 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, renewal of accreditation or not, continuation of adoptions or not, or any remedial action if necessary. Ongoing exchange of information fosters a constructive approach to co-operation between States and a dynamic process of improvement of the intercountry adoption system.

562. Frequent exchanges among Contracting States and their Central Authorities and accredited bodies could allow improved preparation for prospective adoptive parents,

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[344] On the other hand, the Optional Protocol on the sale of children is very clear on what constitutes the sale of children in Art. 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 38.

since the information provided to them will be as current, consistent and accurate as possible, regardless of the source.

563. 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

564. 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.

565. 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.

566. Authorities can use personal meetings to discuss the ways in which the receiving State could assist the State of origin to improve its child protection and adoption systems.[345] 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

567. 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.[346]

568. 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.

569. 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.

570. Several situations could be mentioned. For example, in a State of origin where 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 solutions and develop shared practices.[347] 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 take joint

[345] See also Chapter 12.5.
[346] 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.
[347] This approach has been tried with some success by the Permanent Bureau under its Technical Assistance Programme (ICATAP) to encourage countries to respond positively to the need for reform.

action and agree upon the conditions for a possible moratorium, should this become necessary in order to denounce practices inconsistent with the Convention's principles.

571. 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 several countries where it has been working.[348] These groups have met to discuss the situation in these 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 have also participated.

572. A bigger group of "friendly countries" formed a "coalition of willing States" to provide support to Guatemala at a critical stage to help in its reform of intercountry adoption.[349] 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.

573. Similar public co-operation has developed independently in relation to non-Convention States. In several States,[350] the diplomatic missions of receiving States, with Unicef, the Central Authorities and other experts, have worked together to support reform and to assist with progress towards ratification of the Convention.

574. 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

575. When Central Authorities have worked together with a common goal in a particular State of origin, it is incumbent upon the Central Authorities to mobilise their accredited bodies around the same goal. To that end, the accredited bodies working in the State of origin concerned should be kept informed of the issues behind the common goal, its objects and the proposed means to achieve success. In most situations, the accredited bodies will need to be part of the solution.

576. 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.[351] 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.[352]

577. While professional ethics may not solve fundamental ethical dilemmas, their priority role is to set minimal criteria for competence, good practice and supervision. By adopting a code, the accredited bodies display their maturity and ability to commit to established consensus and to ethical principles.

578. In the same spirit, the Central Authorities of the receiving States could develop training, consultation and discussion activities with the accredited bodies. Dialogue with 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.

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[348] For example, Guatemala and Cambodia.

[349] A request for assistance was made by the Government of Guatemala at the 2005 Special Commission. Recommendation No 22 endorsed that assistance, see Conclusions and Recommendations of the 2005 Special Commission, *supra*, note 4.

[350] For example, Vietnam, Nepal and Haiti. Vietnam ratified the Convention on the 1st November 2011.

[351] Where the legislative framework is comprehensive and the Central Authority exercises rigorous supervision, a code of professional and ethical conduct may not be necessary.

[352] An example of such a code is the one developed by EurAdopt. See EurAdopt Ethical Rules, *supra,* note 26, Arts 16 to 28.

579. Likewise, the receiving States could multiply the opportunities to share experience, expertise, and ideas among themselves, and encourage accredited bodies to do likewise with the bodies in other receiving States.[353]

580. 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.

581. 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, more assistance for families for integration of the adopted child, 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

582. The Central Authorities and accredited bodies should work together to foster a mature and constructive relationship, free of tensions and rivalry.

583. In receiving States, some accredited bodies may have more knowledge and experience with the systems in certain States of origin than their Central Authority, as well as closer relations with the Central Authority of the State of origin, resulting in a high level of confidence in the accredited body. This is not surprising when the accredited bodies visit regularly. The Central Authority and accredited bodies in the receiving State should be able to share information and experiences obtained by the accredited bodies, such sharing to be used for the general benefit of adoptions from the State concerned.

584. On the other hand, Central Authorities in receiving States may be limited by a lack of resources to visit States of origin; or to invite visits by Central Authorities from States of origin; or to help strengthen child protection systems in States of origin (especially in "new" States of origin).

585. Some accredited bodies have the skills, experience and possibilities to undertake these activities. It would be desirable if the accredited body and the Central Authority worked collaboratively to maximise the potential to help a State of origin to strengthen its systems and improve its procedures.

586. 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. It also avoids wasting time for the authorities in States of origin with many questions from each of those bodies on the same issues.

587. 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.

12.3 Co-operation to achieve good practices

12.3.1 Avoiding pressure on States of origin from receiving States

588. The question of pressure on States of origin from receiving States has often been mentioned in this Guide.[354] In summary, the pressures arise when there are too many

[353] See for example EurAdopt, *supra,* note 26, whose members meet regularly, as does the smaller group, the Nordic Adoption Council. Central Authorities are usually invited to these meetings.
[354] See, for example Chapters 3.4.2, 4.3, 5.2.3, 6.1, 7.4.4, 8.1, 9.7 and 12.1.2.

accredited bodies competing for a limited number of adoptable children, 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.

589. Pressure on States of origin may also arise when offers of "development aid", contributions and donations are linked to expectations that a certain number of children, or a particular child will be allocated, or that a placement will be expedited There are also direct pressures on Central Authorities such as frequent telephone calls, frequent requests for meetings, or pressure to expedite files.

590. Better communication is encouraged between Central Authorities of each State to understand the needs of the State of origin and how to manage the number of bodies to be 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.

591. 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 accredited bodies to be approved.[355]

592. The number of files needed from each foreign accredited body can easily be managed by the terms of a 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. The withdrawal of the authorisation to work in the State of origin may be considered.

593. 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.[356] Although this can also create certain pressures for the State of origin, such meetings are mutually beneficial and should be encouraged. Authorities should do their utmost to be available for meetings because those meetings are intended to maintain and improve relationships, as well as clarify the situation and improve procedures.

594. 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 authorities or accredited bodies in the receiving States should take more responsibility for improving the selection of suitable prospective adoptive parents for each particular State of origin.

595. 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.

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[355] For example, in Ecuador only a maximum of eight foreign adoption accredited bodies can be authorised to work in that country, *supra,* note 101. Kenya has specific criteria for licensing their own accredited bodies and for foreign accredited bodies. 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, *supra*, note 44, 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" (last consulted 15 February 2012); 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 > (last consulted 15 February 2012); 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 < www.ivaikinimas.lt > under "Adoption" and "Specification"); and Philippines, see Annex 2A and 2B.

[356] It is also stated at Chapter 4.4 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.

12.4 Co-operation among States of origin or "horizontal co-operation"

596. Another form of co-operation which is becoming more common 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.

597. This co-operation is very well accepted by States of origin, as it does not have any hidden purpose and it does not seek, directly or indirectly, to obtain "adoptable children". Usually this co-operation is offered through technical assistance rather than providing funds. Experienced professionals 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 recommend how difficulties could be overcome. In some cases, the professionals from the State of origin with difficulties may travel to the State of origin with good practices to learn more about the child protection system and adoption in the second State.

598. This type of co-operation may take place informally, or it may be established within the framework of ICATAP, or through a bilateral co-operation agreement. In the case of Guatemala, the neighbouring countries of Chile and Colombia have actively participated in the ICATAP 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. As a consequence of the early co-operation between Guatemala and Chile, these two countries later signed a co-operation agreement.

599. In the case of Cambodia, the Central Authority of the Philippines has provided technical assistance under the ICATAP programme. The Philippines has also given technical assistance to Vietnam.

12.5 Other types of co-operation

600. 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 stakeholders. 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.

601. 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 extends the circle of dialogue and also serves as ongoing training.

12.6 Co-operation to deal with cases involving serious defects or abuses

602. Contracting States have expressed a wish to improve co-operation when cases arise where there have been serious abuses of the rights of one of the parties, or serious irregularities in the procedures.[357] Accredited bodies, having close relations with the adoptive families and with their representatives and partner organisations in States of origin, will need to be involved in improving co-operation in such cases.

603. Such cases frequently involve the abduction, sale or traffic of the adopted child, but where the complete facts do not emerge until after the child is integrated into the adoptive family, has learnt the language and reveals details of his or her background to the adoptive parents.

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[357] See Conclusions and Recommendations of the 2010 Special Commission, Recommendation No 2, *supra*, note 256.

604. The situation may be further complicated by the fact that a child who was not in fact adoptable and was illegally removed from his or her family, appears to the adoptive family to have "adjustment difficulties", when in reality he / she is confused at being with a foreign family and is grieving for the loss of his / her loved ones.

605. As for the biological parents of the child, they feel powerless to act. They are often destitute or lack education. They may not know the child has been adopted abroad if, for example, the child was living in an institution for education purposes. If they are aware that the child has been abducted and sent for intercountry adoption, they may not know what to do. Local authorities may not, or may not be able to, help them. Some officials and others in States of origin will not help them because they believe that the child is fortunate to be adopted by a western family and will have a better future.

606. The adoptive family will be shocked to learn that their child was not adoptable and has been taken from his parents and siblings. Some adoptive parents fear they will lose the child and do nothing. Some officials and others in receiving States also take the view that the child is better of in their country and advise doing nothing. Other parents fear they may lose their child but bravely set out to look for the biological family.[358]

607. When such facts become known, Central Authorities of the receiving State and the State of origin should communicate with each other about the situation to understand the underlying facts, what the expectations of the biological parents are and what recourse they may have. The Central Authorities may assist in facilitating information to the parties involved in each State. Some parents may wish to obtain legal representation. Through the exchange of information about a specific matter, the Central Authorities may understand and work together on preventing new incidents.

12.6.1 Practical steps to develop a common approach to preventing and addressing specific cases of abuse in intercountry adoptions[359]

608. Following the discussion on the subject at the Special Commission meeting of 2010, it was recommended that a Working Group be formed develop a common approach. The recommendation stated that:

> *Australia will co-ordinate an informal working group, with the participation of the Permanent Bureau of the Hague Conference on Private International Law, to consider the development of more effective and practical forms of co-operation between States to prevent and address specific instances of abuse. The result of this work will be circulated by the Permanent Bureau for consideration by Contracting States.*[360]

609. The key objectives of the informal working group are to establish some principles and co-operative measures to prevent and address specific instances of abuse in intercountry adoption. As a stating point, the consistent application of the fundamental principles of the Hague Convention are central to the prevention of the abduction, sale of, or traffic in children, in particular, the best interests principle; the safeguards principle; the co-operation principle.[361]

610. Within the framework of the Convention's aim and principles, some principles exist for preventing and addressing specific instances of abuse. Those principles, concerning co-operation, information sharing, and preventing undue pressure on States of origin, provide guidance in developing practical or co-operative measures to prevent and manage cases involving serious defects and abuses.

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[358] See, for example, *Love Our Way* by Julia Rollings, Harper Collins, Sydney, 2008.

[359] The measures suggested in the following section are taken from the *Discussion paper: Co-operation between Central Authorities to develop a common approach to preventing and addressing malpractice in intercountry adoptions,* prepared by the Australian Central Authority, March 2012, and available on their website at < www.ag.gov.au > under "Intercountry Adoption", (hereinafter, "Discussion paper on preventing and addressing malpractice").

[360] See Conclusions and Recommendations of the 2010 Special Commission, *supra*, note 256, Recommendation No 2.

[361] These principles are explained fully in the Guide to Good Practice No 1, Chapter 2, *supra*, note 19.

611. When allegations or concerns of serious abuses in intercountry adoption arise the circumstances can be tragic for all, particularly the child or children involved. In addition to possible criminal actions, other complex issues are raised, including the confidentiality of information, privacy, and the type of assistance or support which is, or should be, provided to the families involved, both biological and adoptive.[362] Practical measures that States may take to respond to these situations and provide support to the affected parties will depend on the laws, resources and procedures of each State.

612. It is important that States co-operate in order to work towards reaching the best possible outcome in the circumstances, including sharing information and co-operating to provide support to the parties to an adoption. Where difficulties in co-operation between States arise, assistance by the Permanent Bureau may be appropriate, if practicable and if resources permit such assistance.[363]

613. The possible measures of co-operation include:

- acknowledgement of concerns and response by the State of origin, which should also nominate a contact person for the case;
- information provided to the affected parties and State about steps taken to investigate the circumstances of a specific case or cases of malpractice;
- if necessary, referral of the case to an investigative body;
- where there is a risk of ongoing non-compliance with principles, States have an obligation to keep each other informed in accordance with Article 7 of the Convention. The Permanent Bureau should also be informed;
- where appropriate, Central Authorities and accredited bodies may be active in facilitating the reunion or contact visit of the child and birth family if it is in the child's best interests; and exchange of photos, letters and other documentation;
- relevant authorities should consider the appropriateness of mediation through a third party, such as International Social Services;
- the families involved, both biological and adoptive, should be referred to services such as counselling, meditation and legal advice services;
- relevant authorities should consider whether DNA testing is appropriate and in the child's best interests (and in accordance with the laws of the State); and
- a new section of the Hague Country profile[364] will allow the Central Authorities to describe how they would respond to cases of alleged or actual malpractice.

[362] See Discussion paper on preventing and addressing malpractice, *supra*, note 359, p. 3.
[363] *Ibid*., *supra*, note 359.
[364] See Country Profiles on < www.hcch.net > under "Intercountry Adoption Section".

CHAPTER 13
APPROVED (NON-ACCREDITED) PERSONS AND BODIES UNDER ARTICLE 22(2)

614. 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.

13.1 Terminology

615. 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.

616. 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.[365] 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",[366] 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".[367]

617. In the United States of America, the term "adoption service provider" is used to refer collectively to accredited bodies and to approved (non-accredited) persons.

618. 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.

13.2 The meaning and intention of Article 22

619. 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.

620. 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*

[365] For one approach, see the response of the United States of America to Section A of the 2009 Questionnaire, *supra*, note 44.
[366] See, in general, responses of question No 6(6) of the 2005 Questionnaire, supra, note 102.
[367] Guide to Good Practice No 1, *supra*, note 19, para. 215.

position they consider the best by remaining silent (indicating acceptance) or by declaring their objection to such participation.[368]

13.2.1 Delegation of Central Authority functions: Article 22(1)

621. 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.

622. 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.

623. 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.[369]

624. 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.[370]

13.2.2 Conditions for delegation of functions to approved (non-accredited) persons: Article 22(2)

625. 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 for such delegation 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 –

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[368] See Explanatory Report, *supra*, note 17, para. 373.
[369] *Ibid.*, *supra*, note 17, para. 374.
[370] *Ibid., supra*, note 17, para. 375.

a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

626. The use of the words "may declare" indicates that there is no obligation on any Contracting State to use 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).[371] This is the first condition.

627. 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.

628. 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.

629. 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 arises in Article 11 *a)* which specifies that accredited bodies shall pursue only non-profit objectives as established by the competent authorities of the State of accreditation. This provision does not apply to approved (non-accredited) persons.

*13.2.2.1 **Limitations on Central Authority functions delegated to approved (non-accredited) persons***

630. 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.[372] 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.[373] Nor can the approved (non-accredited) person undertake the functions in Article 9.

631. 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 might only be permitted to perform the functions in Article 17 (informing prospective adoptive parents of proposed match and obtaining their agreement) and Article 18 (obtain permission for child to enter and reside in the receiving State).

*13.2.2.2 **Standards for approval of approved (non-accredited) persons: Article 22(2) a) and b)***

632. 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.

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[371] Art. 48 *d)*.
[372] See the Guide to Good Practice No 1, *supra*, note 19, para. 216.
[373] Art. 14 is expressly excluded, as suggested by Work. Doc. Nos 139 and 170 of the 1993 Diplomatic Session, submitted by Italy and the United States of America, in Hague Conference on Private International Law, *Proceedings of the Seventeenth Session,* Tome II, *Adoption - co-operation*, pp. 321 and 336.

633. 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 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.

634. 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.[374]

635. 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.[375] They must also be qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.[376] 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.*[377]

636. 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.[378]

13.2.2.3 ***Supervision of approved (non-accredited) persons or bodies: Article 22(2) and 22(5)***

637. 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.

638. 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.*[379]

639. 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.*

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[374] See Explanatory Report, *supra*, note 17, para. 533.
[375] Art. 22(2) *a)*.
[376] Art. 22(2) *b)*.
[377] See Explanatory Report, *supra*, note 17, para. 383. See also paras 386 and 388.
[378] *Ibid., supra*, note 17, para. 387.
[379] *Ibid., supra*, note 17, para. 384.

640. 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 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.*[380]

641. 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.

*13.2.2.4 **A declaration is necessary if functions are delegated to approved persons: Article 22(2)***

642. 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)*.[381]

643. 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 <u>not</u> 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.*[382]

644. 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.[383]

*13.2.2.5 **Inform the Permanent Bureau: Article 22(3)***

645. 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.*

646. 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.[384] 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

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[380] Paragraph 5 was included in response to the suggestion made by the United States of America and Italy in Work. Doc. No 170, supra, note 373.
[381] See Explanatory Report, *supra*, note 17, para. 380.
[382] *Ibid., supra*, note 17, para. 382.
[383] *Ibid., supra*, note 17, para. 381.
[384] *Ibid., supra*, note 16, para. 391.

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 Permanent Bureau will not affect the adoption, but may give rise to a complaint, as permitted by Article 33.[385]

647. 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.

13.2.3 Objection to the involvement of approved (non-accredited) persons: Article 22(4)

648. No State is obliged to accept the participation of approved (non-accredited) persons in intercountry adoptions.[386] 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.[387]

649. 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.*

650. 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.

651. 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.*[388]

652. 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.[389]

653. 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

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[385] *Ibid.*, *supra*, note 17, para. 392.
[386] *Ibid., supra*, note 17, para. 373.
[387] Armenia, Azerbaijan, Belarus, Brazil, Bulgaria, China (Macao and Hong Kong), 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, Greece, Liechstenstein, Luxembourg, Norway, Spain, Sweden and Switzerland (last consulted 15 February 2012).
[388] See Explanatory Report, *supra*, note 17, para. 396.
[389] *Ibid., supra*, note 17, para. 394.

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, 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.

654. 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.[390]

655. 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.

[390] Guide to Good Practice No 1, *supra*, note 19, para. 220.

ANNEX 1
MODEL CRITERIA FOR ACCREDITATION OF BODIES IN RECEIVING STATES

Model Criteria for Accreditation of Bodies in receiving States for Performance of Functions and Duties under the Hague Intercountry Adoption Convention[391]

1. GUIDING PRINCIPLES

There are two international instruments which are widely recognised as fundamental cornerstones in the work of child welfare, child protection, and intercountry adoption:

- the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HC), and
- the 1989 UN Convention on the Rights of the Child (CRC).

The principles and obligations set forth in these instruments provide the international framework for the protection of children in intercountry adoption. The principles of accreditation set forth in the Guide to Good Practice No 2 could provide further guidelines to assist accredited bodies to comply with their Convention obligations and fulfil their obligations to families. Accreditation of accredited bodies to perform functions and duties under The Hague Convention should be granted only to organisations that endorse the principles and requirements laid down in the Convention and the principles of accreditation.

The proposed Model Criteria for Accreditation are a set of criteria that should apply to organisations that are granted accreditation. The criteria are minimum requirements for the structure and function of organisations performing duties under The Hague Convention.

2. CORE PRINCIPLES

2.1 PRIORITY OF THE CHILD'S BEST INTERESTS (HC: Art. 1)

Intercountry adoption is a measure of protection for a child in need of a family. The well-being, rights and best interests of the child are of paramount importance and should take precedence over any other interest. When making decisions about the future of the child, the interests and rights of prospective adoptive parents, institutions, organisations and authorities are secondary to the best interests of the child.

2.2. SUBSIDIARITY PRINCIPLE (HC: Preamble; Art. 4 *b)*)

a) Prevention of child abandonment is a priority as a child protection measure.

b) When a child is in need of a family, various alternative solutions must be considered. When an intercountry adoption is considered for a child, this measure should be compared to alternative permanent placements in the analysis of the best interests of the child. A family placement should have priority over placement in an institution and suitable in-country placements should have priority over intercountry placements.

c) The subsidiarity principle does not require that all possibilities for placement in the State of origin be exhausted, as this could indefinitely delay the possibility of finding a permanent home for a child.

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[391] These criteria are drawn from a number of sources, including the Model Criteria of Euradopt-NAC, *supra,* note 176.

2.3 CO-OPERATION TO ACHIEVE THE OBJECTS OF THE CONVENTION (HC: Arts 1, 7, 9)

The fundamental object of the Convention is to ensure that safeguards are applied to protect the interests of children who may be adopted. Co-operation between all actors involved in the Convention procedures (States, bodies and individuals) is of vital importance to achieve this and other objects of the Convention.

3. ACCREDITATION (HC: Chap. III)

3.1. APPLICATION FOR ACCREDITATION

An organisation should apply for accreditation in the State where it is based. The application shall be in conformity with the legislation of that State and contain all documentation and information deemed necessary by the competent authority of the State.

3.2. ROLE IN THE FIELD OF ADOPTION

a) An accreditation document shall clearly state the functions and duties delegated to the body. Its role and limitations in relation to other bodies and authorities working in the field of adoption within the State and abroad should be defined. The responsibilities of the accredited body in relation to prospective adopters, adoptive families and adoptees before, during and after the completion of the adoption should be defined.

b) Once accredited, the Central Authority of the State in which the accredited body is based should communicate the name and addresses of the accredited body to the Permanent Bureau of the Hague Conference on Private International Law, pursuant to Article 13 of the Convention. The Central Authority of the State in which the accredited body is based should maintain a list of names and addresses of accredited bodies, and should make it such list available to the public.

3.3 GRANT OF ACCREDITATION

a) Accreditation should only be granted to a body which can demonstrate that it has the ability to perform the functions and duties delegated to it. The body should also demonstrate that it has the professional competence and experience to undertake its duties and responsibilities in an ethical manner and with a child-centred approach.

b) The body must not commence its functions under the Convention until it has obtained its accreditation.

3.4 GRANT OF AUTHORISATION

a) The accredited body must not commence its work with or in the State of origin until the authorisation has been granted by the receiving State and the State of origin.

b) When seeking authorisation to act in a State of origin, the accredited body should demonstrate that there is a need for its services in that country. In addition, it should demonstrate that it has knowledge of the laws and procedures of that State relating to intercountry adoption, in particular, the safeguards, such as a process to determine adoptability, which will protect the best interests of adoptable children.

3.5 ACCREDITATION PERIOD

The length of the accreditation period shall be clearly stated in the decision of accreditation. To ensure continuity in its work and reduce administrative work with accreditation renewals, this period should, as a general rule, not be shorter than three years.

3.6 REVOCATION OR TERMINATION

The accreditation may be revoked or suspended by the competent authority at any time if the body has acted against or failed to live up to the objectives and principles of the 1993 Hague Convention, the laws and regulations of the State, or the conditions of its accreditation.

4. ORGANISATION

4.1. RELATION TO THE LAWS OF THE STATE

The objectives and organisational structure of the body must be approved at the appropriate level of the organisation and be laid down in its statute, charter or a similar document that complies with the laws of the State of accreditation. The body must be registered, licensed or incorporated as a non-profit organisation according to the laws of the State in which it is accredited. The objects and methods of work of the body must be in conformity with the laws and regulations of the State in which it is accredited or authorised.

4.2. INSPECTION (HC: Art. 11 *c)*)

The body should be open to inspection by the competent authorities at any time, both with regard to its finances and functions. The competent authority of the State in which the body is accredited shall have the right to carry out inspections within its jurisdiction. The body shall be obliged to provide all material necessary to enable the inspecting authority to satisfy itself that the requirements for accreditation are fulfilled.

4.3. GOVERNANCE (HC: Arts 10, 11)

The body should have a governing entity, which establishes its policy and strategy, decides on its programmes, guides its development and provides leadership. The governing entity shall ensure that the policy and activities of the body are in conformity with The Hague Convention and the laws and regulations of the States in which it is accredited or authorised to act. The members of the governing entity should be well informed and keep themselves updated on developments in intercountry adoption work. The body must have a clearly defined management structure and appoint qualified staff to perform the duties entrusted to it.

4.4. PROFESSIONAL COMPETENCE (HC: Arts 11, 22)

a) The qualifications of the staff, including representatives and co-workers abroad, should be clearly defined and should require, as appropriate for the position:

- high ethical standards,
- knowledge of the principles, conventions, laws and regulations that govern intercountry adoptions,
- suitable theoretical and practical training,
- skills in working across cultural borders,
- skills in social work and child welfare,
- administrative and leadership skills for those in charge.

b) Continuous on-the-job training should be provided to ensure high standards and professional quality of all work.

c) The selection of a representative in the State of origin should be based on professional and ethical criteria. The professional qualifications of the representative must be checked by a competent authority during the selection process.

4.5. PROFESSIONAL ADVISORY SERVICES

The accredited body is responsible for ensuring that it can provide, or has access to. the psychological, medical and legal advisory services needed to perform the tasks entrusted to the body. Advisory services should also be available, at least on referral, for the immediate benefit of adoptive parents and adopted children.

5. FINANCES

5.1. NON-PROFIT OBJECTIVES (HC: Art. 11)

a) The body should have a written policy that establishes its non-profit status. The body should also have a written policy on principles of payment to staff and advisors, both in the State where it is accredited and States where it is authorised to act. Salaries and fees paid to staff**,** representatives and advisors shall be within limits generally acceptable for such professional services in the relevant State. For staff in the receiving State who handle cases, as well as persons in the State of origin who are in a position to influence the number of adoptions, the remuneration should not be based on the number of adoptions.

b) Fees paid by the organisation to professionals should be commensurate with the work carried out.

c) Fees and payments charged to prospective adoptive parents shall reflect operating costs and expenses related to the adoption work performed.

5.2. FINANCIAL STABILITY

The body should have a stable financial basis that allows it to perform its duties and honour its long-term commitments, even if disruptions in its adoption programmes may temporarily reduce its revenues from fees and payments. To this end, a financial reserve fund and a liability policy to cover certain contingencies is desirable.

5.3. FINANCIAL TRANSPARENCY

a) The body should ensure full transparency in financial matters. Information about fees received and the purposes for which they are spent shall be available to the public taking care not to compromise any confidential information relating to the child or the adoptive parents as provided under Article 31 of the Convention. See also 6.2 and 6.8 a).

b) The body must require transparency from its co-operation partners, such as representatives and co-workers. If satisfactory clarity about purposes and / or spending of money cannot be obtained, co-operation should cease.

c) The body should provide the competent authorities of the State of accreditation with all necessary information about its financial management and status and its audited annual accounts. The accounts must show other activities (such as membership activities, humanitarian aid and related programmes) clearly separated from adoption work.

5.4. ACCOUNTABILITY (HC: Art. sub d (4), Art. 8, Art. 32).

a) The body shall follow principles of financial management, book-keeping and accounting that are accepted and mandated by the laws and regulations of the State in which it is accredited. The body is responsible for the financial transactions related to its adoption work including transactions in the State of origin (such as costs of legal

fees, care of children). Such transactions should be identifiable in the accounts.

b) The costs associated with each adoption should be paid through the body; in particular, costs for the State of origin should not be paid directly by prospective adoptive parents when in the State of origin.

5.5. PREDICTABILITY

The principles applied in determining the amount of fees and costs should be established and known to the prospective adoptive parents before the adoption process. If fees and costs have to be changed during an adoption process that may last several years, the reasons for the change and procedures to be followed must be communicated in advance. See Article 6.2.

5.6. CONTRIBUTIONS AND DONATIONS

a) Any welfare projects or contributions must be kept completely separate from adoption activities.

b) Any welfare projects or contributions should be provided for the sole purpose of assisting a State of origin to improve its child protection system, and should not be contingent on the number of intercountry adoptions, or have the purpose of influencing decisions relating to specific adoptions or the number of adoptions.

c) Accredited bodies should advise prospective adoptive parents against direct monetary donations to institutions or individuals in connection with their ongoing adoption process. Donations of supplies, such as medical supplies, toys, training and educational materials, may be permitted.

6. ADOPTION SERVICES (HC: Chap. II-IV)

6.1. AVAILABILITY OF SERVICES

a) The body shall offer its adoption services to applicants on a non-discriminatory basis according to the terms of its accreditation. All applicants should have equal access to services, provided they fulfil the criteria for adoption as stated in the Convention and the laws and regulations of the State.

b) Accredited bodies should, however, only submit applications for adoption which meet the legal requirements of the State of origin and which are in accordance with the State of origin's needs. Such selection should not be construed as discrimination.

c) Multiple applications to several States by the adopting couple should not be permitted.

c) The accredited body should ensure that the offer of its services is not perceived by the prospective adoptive parents as a guarantee that the applicants will receive a child.

6.2 INFORMATION (HC: Arts 5, 17)

The body shall give adoption applicants all relevant information concerning the principles guiding intercountry adoptions, requirements and possibilities to adopt, waiting times, risks and costs. The body shall define the rights and responsibilities of applicants, the body and its co-operation partners and convey this information to the applicants and its co-operation partners. The body should, at an early stage, inform the applicants of the procedural, legal and financial consequences of an interruption of the adoption process by the applicants or the body. The body shall furnish all relevant information to the applicants, its co-operation partners and relevant authorities without

undue delay.

6.3 PREPARATION OF PROSPECTIVE PARENTS (HC: Art. 5)

The body shall promote appropriate preparation of the applicants for an intercountry adoption either through its own programmes or programmes offered by other entities competent to do so. Such programmes should focus on the special psychological, social, cultural and legal issues associated with intercountry adoption, as well as the current trends and challenges.

6.4 ADOPTION COUNSELLING (HC: Arts 5, 15, 17)

Adoption counselling must be carried out according to the rules and regulations defined by the competent authority of the State. The body shall ensure that these standards are upheld and that equal standards are applied to all applicants.

6.5 COUNSELLING ABOUT MATCHING

Prospective adoptive parents should receive counselling (advice, information and support) from their accredited body about the adoptive child who has been referred (matched) to them before they accept the referral / match.

6.6 THE ADOPTION PROCESS (HC: Art. 9 *b)*, Chap IV, Art. 35)

a) The body shall follow a clearly defined adoption policy and a systematic plan for its services throughout the adoption process. It should continuously monitor and evaluate its services and their quality to ensure high standards. It must collect and maintain the information necessary to plan, manage and evaluate its adoption programme properly.

b) The body shall conduct its work taking account of the primary objectives of an intercountry adoption (to find a family that meets the needs and best interests of the child) and ensure the compatibility of those objectives with the services provided to prospective adoptive parents.

c) Expeditious procedures must be followed during its work, but fast and efficient procedures must not jeopardise the observance of safeguards that protect the child.

d) The body must ensure that the child's welfare is safeguarded during the journey to the receiving State. The body should encourage the future adoptive parents to travel to the child's State of origin and bring him or her home.

6.7 POST ADOPTION SERVICES (HC: Arts 9 *c)*, 30)

a) The body shall vigorously promote programmes and procedures to meet the needs of adoptive families and adoptees after the adoption has been formally completed. Such programmes and procedures should take into account the different needs of adoptive families and adopted children at different stages, including as the adopted children grow up, reach adulthood and independent life. A central objective of post adoption services is to strengthen the adoptees' ethnic and cultural identity.

b) The accredited body should assist adoptive parents to comply with the post-adoption reporting requirements of the State of origin.

6.8 DOCUMENTATION (HC: Chap. IV, Arts 30, 31)

a) The body shall maintain client records in a secure manner, ensuring the necessary confidentiality. Information must be protected and preserved in accordance with national laws and international instruments.

b) Documents concerning adoption cases should be preserved in accordance with the laws of the State and preferably for at least 75 years and be available to adoptees on request. In case the body ceases to function, the continued preservation of its adoption records must be properly secured.

c) Such documentation might be used to facilitate research that does not breach the confidentiality of those involved in the adoption. The body should facilitate research that may improve adoption practice and procedures.

6.9 ETHICAL RULES

The body should subscribe to a set of written ethical rules (a code of ethics or code of conduct), which are in conformity with the relevant national laws and international instruments. The rules should also be acceptable to a wider forum of organisations engaged in child welfare work. The body should co-operate with other accredited bodies to develop standards and practice for intercountry adoptions.

ANNEX 2
PERSPECTIVES FROM STATES OF ORIGIN AND RECEIVING STATES

1. STATES OF ORIGIN: Colombia

1.1. Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

656. 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.

657. 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.

658. 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.

1.2. Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

659. 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*.

660. 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.

661. 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.

662. 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.

663. 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.

664. In January 2010, there were eight local accredited institutions ("authorised institutions") and 64 foreign accredited bodies authorised to work in Colombia.

1.3. The respective roles and functions of the Central Authority and accredited bodies

665. 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;
- 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.

1.4. Co-operation and communication between Central Authority and accredited bodies

666. 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.

667. 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.

668. Finally, the Adoption Group within the ICBF employs three specialists who are responsible for liaising with and monitoring foreign accredited bodies.

1.5. Accreditation of domestic bodies

669. 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.

1.6. Authorisation of foreign accredited bodies (art. 12)

670. 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.

671. 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.

672. 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, the supervision of authorised bodies by the ICBF, internal procedures of the ICBF, and the entity responsible for authorisation.

673. 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).

1.7. Specific challenges in the State of origin

674. 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.

675. 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.

1.8. Specific challenges in the receiving State

676. 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.

677. 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.

678. 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.

679. 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.

680. 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.

2. STATES OF ORIGIN: Lithuania

2.1. Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

681. 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.

682. 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.

683. 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 then four accredited bodies to act in Lithuania. In the case of the United States of America 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.

684. 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.

685. 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.

2.2. Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

686. 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.

687. 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).

688. 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.

2.3. The respective roles and functions of the Central Authority and accredited bodies

689. 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.

690. 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; and
- 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.

691. 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; and
- 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.

2.4. Co-operation and communication between Central Authority and accredited bodies

692. 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.

2.5. Accreditation of domestic bodies

693. There is no procedure of accreditation of domestic bodies in Lithuania.

2.6. Authorisation of foreign accredited bodies (Art. 12)

694. 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 United States of America);
- the services provided to prospective adoptive parents and their fees; and
- the representative of the foreign institution in Lithuania.

695. 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.

696. 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.

697. 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.

2.7. Specific challenges in the State of origin

698. We have solved many problems by the authorisation law.

2.8. Specific challenges in receiving States

699. 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.

3. STATES OF ORIGIN: Philippines

3.1. Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

700. 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.

701. 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.

702. 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 Agencies[392] (for local adoptions) was and still is the mandate of the Department of Social Welfare and Development.

703. 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).

704. 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.

3.2. Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

705. 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.*

706. 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

[392] 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).

707. 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.

708. 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).

709. 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); Canada (3); Denmark (2); Finland (1); France (1); Germany (1); Italy (4); Netherlands (1); New Zealand (1); Norway (1); Spain (6); Sweden (1) Switzerland (1) and the United States of America (24).

3.3. The respective roles and functions of the Central Authority and accredited bodies

710. 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.

711. 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.

712. 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.

713. 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.

714. 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.

715. 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.

3.4. Co-operation and communication between Central Authority and accredited bodies

716. 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.

717. 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.

3.5. Accreditation of domestic bodies

718. 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.

719. 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).

3.6. Authorisation of foreign accredited bodies (Art. 12)

720. 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.

721. 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).*

722. 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.

723. 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.

3.7. Specific challenges in the State of origin: Challenges from local intermediaries or Liaison Agencies

724. 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.

725. 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.

726. 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.

3.8. Specific challenges in receiving States

727. 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.

728. 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".*

4. RECEIVING STATES: Belgium

4.1. Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

729. 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.

730. 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).

4.2. Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

731. 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.

732. The adoption accredited bodies' functions are determined and detailed by the legislation.

733. 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.

4.3. The respective roles and functions of the Central Authority and accredited bodies

734. 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.

735. 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; and
- preservation of information relating to the adopted children's origins.

736. Given its involvement in almost all stages of the procedure (other than recognition), the ACC is a veritable hub with respect to adoption.

737. 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.

738. 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.

739. These various functions are carried out under the ACC's supervision.

4.4. Co-operation and communication between Central Authority and accredited bodies

740. 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.

741. 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; and
- 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.

4.5. The accrediting body and the accreditation process

742. 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.

743. 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.

744. An adoption accredited body may be accredited for domestic adoption or for international adoption, or both.

4.6. Adoption arrangements with States of origin

745. Any foreign collaboration of an adoption accredited body requires a permit from the competent Minister, after a report from the ACC.

746. 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.

747. 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.

4.7. Specific challenges in the receiving State

748. 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.

749. 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.

750. 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.

4.8. Specific challenges in the State of origin

751. Note: The criteria for accreditation of the Philippine adoption bodies, and the criteria for authorisation of foreign accredited bodies are contained in Annex 2A and 2B respectively.

5. RECEIVING STATES: Netherlands

5.1. Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

752. The Netherlands ratified the 1993 Hague Adoption Convention on June 26, 1998. The Convention entered into force on October 1, 1998.

753. 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").

754. 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.[393]

[393] 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

5.2. Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

755. 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.

756. 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:

- 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; and
- 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.

757. 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.

758. 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.

759. 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.

5.3. The respective roles and functions of the Central Authority and accredited bodies

5.3.1. Role of the Central Authority:

760. 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.

761. 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.

762. 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, [394] 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.

763. The Central Authority maintains contacts with the Central Authorities abroad and co-operates with these organisations. Where necessary and possible, the Central

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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.

[394] See this Chapter, Section 5.5 and 5.8 of this Guide.

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.

764. 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.

5.3.2. Role of the accredited bodies:

765. The accredited bodies for international adoption mediate between prospective adoptive parents and the competent authorities at their level[395] in the State of origin.

766. 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).

767. 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 standard will apply as the quality standard to be met by adoption procedures for Hague Convention adoptions.

768. 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.

769. 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.

770. 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.

5.4. Co-operation and communication between Central Authority and accredited bodies

771. 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.

772. 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.

773. The supervision of the accredited agencies is laid down with the Inspectorate for Youth Care, and independent authority in the Ministry of Justice. However,

[395] 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.

representatives of the Central Authority, regularly visit the offices of the accredited bodies.

774. The Act contains a provision for a special Complaint Committee to deal with complaints about accredited bodies.

5.5. The accrediting body and the accreditation process

775. 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.*[396] 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.

776. 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.

777. 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 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.

778. In 2008, the Dutch accredited bodies concluded a Quality Framework for Licensed Adoption Agencies involved in International Adoption.[397] 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.

779. The Central Authority keeps a register of all mediation contacts maintained by the accredited bodies in the States of origin.

5.6. Adoption arrangements with States of origin

780. 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

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[396] *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 upon request to the Dutch Central Authority.

[397] *Kwaliteitskader vergunninghouders interlandelijke adoptie*. Text of the Quality Framework is available upon request to the Dutch Central Authority.

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.

781. 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.

782. 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.

783. The accredited bodies are obliged to make annual reports of their activities in the different States of origin, including financial reports.

784. 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.

5.7. Specific challenges in the receiving State

785. 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.

786. 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.

787. 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.

788. 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.

5.8. Specific challenges in States of origin

789. 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.

790. 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.

6. RECEIVING STATES: Sweden

6.1. Then and now: brief description of the situation regarding accredited bodies when the country first joined the 1993 Hague Convention and now

791. 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.

6.2. Policy questions: extent of accredited bodies' functions and powers; limits placed on their activities (if any); number of accredited bodies

792. 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.

6.3. The respective roles and functions of the Central Authority and accredited bodies

793. 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.

794. 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.

795. 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.

796. 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.

797. 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.

798. 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.

799. 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.

6.4. Co-operation and communication between Central Authority and accredited bodies

800. 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.

801. The applicants can make complaints to MIA. MIA examines the cases and can demand redress.

802. MIA also makes inquiries to the adoptive parents to get better knowledge of the work of the authorised associations.

803. 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.

6.5. The accrediting body and the accreditation process

804. 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.

805. 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.

806. 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.

807. 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.

6.6. Adoption arrangements with States of origin

808. 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.

809. 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.

810. 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.

811. 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.

6.7. Specific challenges in the receiving State

812. 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.

6.8. Specific challenges in States of origin

813. 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 circomstances.

Annex 2A

SUBJECT: GUIDELINES ON LIAISON SERVICE FOR INTERCOUNTRY ADOPTION (PHILIPPINES)

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 exercice 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; and

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; and

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 2B:

MINIMUM STANDARDS FOR ACCREDITATION OF FOREIGN ADOPTION AGENCIES (PHILIPPINES)

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.