Report on Intercountry Adoption

“All things of value are defenceless”

Justitie

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Committee on Lesbian Parenthood and Intercountry Adoption

29 may 2008

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The subtitle for this report has been taken from the works of the poet Lucebert

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Preface

'All things of value are defenceless'. The subtitle for this report expresses two important aspects of the adoption process. The value of a child as a person is self-evident. Added to this is the value that a child has for prospective adoptive parents who would like to have children, but have been unable to do by natural means, and the vulnerability ('defencelessness') of a child who is an orphan or who has been relinquished for adoption. However, the biological parents should not be forgotten either; they are often unable to care for their child as a result of poverty, or do not dare to keep their child due to pressure from the social environment.

The Netherlands has recently been startled by a number of adoption scandals. This news has been met with strong reactions and has had a fundamental influence on attitudes to intercountry adoption. Where attention was first particularly requested for the simplification of the adoption procedure and the broadening or even complete abolition of the applicable age limits, there is now a demand for stricter criteria for and more supervision of the adoption process. A trend has now emerged in which the number of foreign children that are eligible for intercountry adoption is decreasing.

In June 2006, the Minister of Justice submitted a draft legislative proposal on the amendment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption [Wet opneming buitenlandse kinderen ter adoptie (Wobka)] to co-operating organisations and interest groups for the purpose of consultation. Further to the reactions received to this legislative proposal and the developments mentioned above, the Minister of Justice asked the Committee to advise on the future of intercountry adoption.

Given the feelings that the various parties have on this subject, the Committee has decided to enquire as broadly as possible into the many aspects that form part of the adoption process. This explains the references to the literature consulted.

The Committee has also exchanged thoughts on the subject with a number of organisations and individuals concerned, representatives from every side of the adoption triangle. These parties have written to the Committee on their visions, on the bottlenecks experienced and on their wishes in relation to intercountry adoption. On May 15 2008, at a special hearing, the Commission discussed a number of aspects with these parties in more detail.

In this report, the Committee makes a number of recommendations aimed at reducing the vulnerability of the intercountry adoption process, in order to ensure that intercountry adoption really only does take place when the safeguards laid down in the Hague Adoption Convention [Haags Adoptieverdrag] and the United Nations Convention on the Rights of the Child have been met.

In conclusion, the Committee would like to explicitly thank the secretariat for its great efforts and dedication in performing such a large quantity of work in such a short period of time. A huge achievement!

The Committee expects that the report for the Minister of Justice will be used as a guideline for the formulation of future policy and for the amendment of the laws to be announced.

Ella Kalsbeek

Summary and recommendations

In this report, the Committee on Lesbian Parenthood and Intercountry Adoption [*Commissie Lesbisch ouderschap en interlandelijke adoptie*] advises the Minister of Justice on intercountry adoption. In doing this, the Committee responds to the question of how a balanced response can be provided to the interests of children to be adopted on the one hand, and the wishes of prospective adoptive parents who want to form a family on the other hand, and which task and role then emerges for government. The Committee looked in particular at the plea from various groups within the Lower House for the relaxation of the age criteria applicable for adoption, as well as at the decreasing number of foreign children eligible for adoption. The Committee took the best interests of the child as the starting point for its considerations. These interests also form the basis for the Hague Adoption Convention and Article 21 of the United Nations Convention on the Rights of the Child. In addition to the best interests of the child, the Committee also included the interests of the other parties in the adoption triangle, namely the prospective adoptive parents and the biological parents, in its considerations.

Sections 1 and 2 discuss the process of intercountry adoption in a more general sense. It is clear that a large number of children in the world are growing up in poverty, with insufficient care from adults and without any prospect of an improvement. Many children live in children's homes for many years, while research has shown that growing up in such a home is usually harmful for a child's development. What is in the interest of these children? The starting point taken by the Hague Adoption Convention and the United Nations Convention on the Rights of the Child is that, wherever possible, a child must be helped and accommodated in its country of origin, in a family context (returned to parent(s), foster care, adoption). Based on the so-called subsidiarity principle, intercountry adoption is a last resort.

There are different reasons why so many children are living in children's homes in certain countries. Culture (which may include the stigmatisation of unmarried motherhood, preference for a specific gender), religion, poverty, politics and/or population policy are the most important. The culture of a country is difficult to influence, but support could be offered in relation to the assistance and accommodation of unmarried mothers, for example. In the case of poverty, the improvement of the financial-economic situation of the families in question is an important point. Support (financial or otherwise) can help a country to improve its own system of youth care and can bring about a situation where primary efforts in the country of origin focus on ensuring that a child is able to grow up with its own parents. The Committee observes that, at best, intercountry adoption can help individual children to grow up in a family, which is in their interest and to which they are entitled, but cannot serve as a solution for bigger problems, such as poverty. As such, it must not be viewed as 'development aid' either.

In order to achieve a situation where intercountry adoption will be needed less for future generations of foreign children, intercountry adoption must not undermine the subsidiarity principle, nor prevent or obstruct positive local developments. For example, countries could become dependant on income from intercountry adoption, or income from intercountry adoption could result in a situation where there is no incentive to remove the stigma of unmarried motherhood.

The vulnerability of the individual child and the interests of children as a group in the prevention of irregularities and abuse in intercountry adoption make it necessary to impose rules on this and to ensure that these rules are actually enforced. A child is even more vulnerable where intercountry adoption is concerned. Where a child is an orphan or has been relinquished by its parent(s), it no longer has any physical, emotional or legal ties with its parents or family, which means that it is defenceless. If only for this reason alone, the adoption process should take place in a careful manner. Another reason lies in the fact that the number of people in the world wanting to adopt foreign children, in order to be able to form families with them, far outweighs the number of (young and healthy) children eligible for adoption. This puts intercountry adoption at risk of irregularities, with the danger that the economic law of 'demand creates supply' will become decisive. The government is responsible for ensuring that society fulfils the preconditions necessary to safeguard the interests of all of the parties in the adoption triangle. This responsibility also includes the way in which (adopted) children come to the Netherlands.

Recommendations:

The Committee makes the following recommendations in connection with the above:

1. **Strong supervision must be provided in relation to intercountry adoption, where foreign children are brought to the Netherlands for adoption. This will ensure that the co-operating organisations actually act in accordance with the starting points and principles of the Hague Adoption Convention and the United Nations Convention on the Rights of the Child. This applies for adoptions from Convention countries, but also for adoptions from non-Convention countries. An ethically responsible intercountry adoption process demands strict regulation and meticulous checks by the Dutch government and justifies far-reaching government intervention in this area.**

2. **The Minister for Development Cooperation must be encouraged to offer assistance to countries of origin, geared towards the (social-financial) situation of the biological parent(s) and their environment, as well as the structural improvement of youth assistance services, so that intercountry adoption can actually become a last resort. This assistance may not be at the expense of the integrity of the adoption process or create a financial dependence on intercountry adoption.**

In Section 3 (The adoption procedure), the Committee discusses a number of aspects of the adoption procedure that follow attainment of the permit in principle. The Committee observes that different procedure rules apply for intercountry adoptions from non-Convention countries than those applicable for intercountry adoptions from Convention countries. Although the starting points and safeguards of the Hague Adoption Convention do apply to non-Convention countries as well, substantive differences with Convention adoptions can be observed in a number of essential parts of the procedure. The Committee is of the opinion that these differences are inadvisable. Therefore, the Committee is of the opinion that, in order to take into consideration the best interests of the child, the adoption procedure from non-Convention countries must be improved and made more stringent, and indicates the possibilities applicable to this end (including a certificate of approval from the Central Authority for each non-Convention adoption, an authorisation per country, the power of the Central Authority to issue a designation order).

The Committee also expresses its opinion on mediation through private or independent adoption contacts, as provided for in Section 7a of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption. Current practice in relation to mediation through private or independent adoption contacts in the Netherlands involves prospective adoptive parents establishing contacts with authorities, individuals or institutions (also referred to as "the contact") in the chosen country of origin themselves, through which contacts they wish to take in a child. The Committee is concerned about the verifiability of mediation through such private or independent adoption contacts, despite the fact that the procedure has been tightened up in the Quality Framework (see below). The Committee also considers the fact that prospective adoptive parents who request permission for mediation through a private or independent contact often have a preference for a country of origin that has an 'adoption system' that is a complete unknown, in a situation where the Dutch Central Authority has limited time and resources to investigate the adoption in question. Added to this, in the event of mediation through a private or independent adoption contact, the Central Authority will only make prior checks on the amounts to be paid in the country of origin on the basis of estimates. This increases the risk of an improper flow of funds. The Committee also has other objections to mediation through private or independent adoption contacts. For example, in certain cases, a match between the child to be adopted and the prospective adoptive parents takes place before permission has been requested for mediation through a private or independent adoption agency and before the contact in question has been approved. Section 7a of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption does not rule out this course of events. A situation of this nature puts more pressure on the procedure, which the Committee feels is inadvisable. Added to this, one of the starting points of the Hague Adoption Convention is that the best interests of the child will be safeguarded most in the case of mediation through an accredited body, because professional guidance is provided at every stage of the adoption procedure in this situation. This is not the case for mediation through private or independent adoption contacts. Furthermore, the arrangement of mediation through a private or independent adoption contact leaves the possibility open for prospective adoptive parents to be in contact with the individual or institution responsible for the care of a child who is eligible for adoption even before the match (a children's home, for example).

This institution or individual also decides on the individual(s) to whom the child will be allocated for adoption. This is contrary to Article 29 of the Hague Adoption Convention. Although the Committee recognises that there are reasons to opt for mediation through a private or independent adoption contact, the Committee believes that giving consideration to the best interests of the child must lead to the abolition of mediation through such private or independent adoption contacts, given the risk of the inadequate verifiability of mediation through a private or independent adoption contact, the greater vulnerability to irregularities and given the fact that mediation through a private or independent adoption contact undermines the safeguards anchored in the Hague Adoption Convention.

The Committee took note of and was very much in agreement with the Quality Framework for accredited bodies in relation to intercountry adoption [*Kwaliteitskader vergunninghouders interlandelijke adoptie*], which came into effect recently. The Committee is of the opinion that the achievement and maintenance by accredited bodies of the level of quality and professionalism described in the Quality Framework is so important that government must support the accredited bodies in this respect. The Committee feels that it would be appropriate to provide accredited bodies with a structural subsidy. In connection with the quality of the adoption procedure, the Committee also feels that it is important for a licensed adoption agency to continually be in touch with the adoption process and have significant expertise. In the opinion of the Committee, this will contribute to the efficient and professional organisation of accredited bodies. The Quality Framework is a step in the right direction for the achievement of this aim. In addition, the Committee feels that the current statutory minimum of one successful adoption every two years is too limited for the achievement of an efficient and professional organisation. In addition, a small organisation combined with the achievement of a limited number of adoption mediations will logically be accompanied by the risk that this organisation will not be able to continue under certain circumstances. A larger licensed adoption agency will also be under less pressure to allow an individual adoption to go ahead to be able to survive as an organisation. Therefore, the Committee is of the opinion that a minimum of 30 adoption mediations per year must be included in legislation.

In this section, the Committee will look in more detail at the accelerated procedure for granting provisional residence permits, tightening up supervision of the financial aspects of the adoption procedure and the alertness required from the Dutch representation in countries of origin with regard to the situation in this country in relation to intercountry adoption. It points to the importance of full adoption and suggests a number of measures that relate to the conversion from simple adoption to full adoption.

Finally, in Section 3, the Committee will discuss the possibility of international regulation. An important obstacle to the creation of an international supervisory authority is that insights on the intercountry adoption process are diverse, even within a European context. For example, today, countries like France, Italy and Spain are making efforts to achieve an increase in adoption capacity, while this is generally considered inadvisable in the Scandinavian countries and the Netherlands. Another example is the fact that, on 16 January 2008, the European Parliament expressed its preference for a joint policy

to make (international) adoption easier in the European Union, while, by contrast, the opinion still abounds that the various countries in the European Union should organise support for natural parents and their youth care services such that intercountry (European) adoption is not necessary. The content of Sections 1 and 2 do show that the Committee embraces the latter proposal. The Committee would like to urge the government to raise the subject of intercountry adoption in a European context, in order to arrive at a joint vision on this, where possible.

Recommendations

The Committee makes the following recommendations in connection with the above:

3. **The introduction of a 'certificate of approval' when adopting a foreign child from a non-Convention country, which certification will be issued by the Central Authority and will relate to the match and to legal requirements for the eligibility of a child for intercountry adoption.**

4. **The introduction for accredited bodies of an authorisation from the Central Authority, for adoption mediation from a non-Convention country ('authorisation per country').**

5. **The abolition of mediation through a private or independent adoption contact as referred to in Section 7a of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption.**

6. **Detailed documentation, in subordinate regulations, of the accelerated procedure applicable when issuing a provisional residence permit and the responsibilities in this respect.**

7. **In the case of a simple (Convention) adoption, requiring accredited bodies to ensure that the file for the adopted child in question includes the explicit consent of the biological parents for conversion to a full adoption. Where this is not possible, the adoption in question must not take place. It is also advisable to achieve a situation where, in the case of Convention adoptions that are recognised legally here in the Netherlands, the court will be able to decide upon conversion to a full adoption, not only where requested to do so, but also ex officio, so that the child will be able to gain Dutch nationality as soon as possible after its arrival in the Netherlands.**
   To this end, accredited bodies must be required by law to notify the court of the arrival of an adopted child in the Netherlands. In the case of a simple adoption from a non-Convention country, the court must be able, pursuant to Section 7 of the Act regulating the conflict of laws regarding adoption [Wet conflictenrecht adoptie], to officially proceed with conversion of the adoption into a full adoption as part of the acknowledgement procedure for the adoption in question. In the Committee's opinion, the law needs to be adapted to this end.

8. **The achievement of a situation where adopted children are able to regain their original surnames, when requested. Consideration must also be given to a situation where the**

surname of an adopted child can be changed into a double (for instance, hyphenated) name at his or her request, consisting of the original surname in combination with the surname gained as a result of adoption. It is advisable for these points to be taken into consideration by those working on a number of legal aspects with regard to registration of (sur)names.

9. **Where possible, ensure that the content of the Quality Framework becomes imbedded in laws and regulations. Accredited bodies will then be legally obliged to comply with the requirements of the Quality Framework. Compliance with these requirements must also be a condition when granting and extending licences.**

10. **Require accredited bodies to achieve a minimum number of 30 adoption mediations per year, on average, with a view to the efficient and professional organisation of accredited bodies. To be able to achieve an arrangement of this nature in practice, a transitional arrangement will be necessary. It is imaginable that this will entail existing accredited bodies being able to comply with the minimum number of adoptions required after two years. For organisations that want to become involved in adoption mediation (that want to become a 'licensed adoption agency'), an arrangement could apply whereby they are issued with a provisional licence to this end, after which they will be given five years to achieve the 30 mediations required each year.**

11. **Establish the structural subsidisation of accredited bodies, in order to make it possible to achieve and maintain the qualitative and professional level required by the Quality Framework.**

12. **Ensure stricter supervision of the financial aspects of the adoption procedure, by requesting an insight into money flows from the Netherlands to the various countries of origin and the way in which this money is spent. This applies not only to the amounts paid by the accredited bodies in the countries of origin, but also to the amounts which sometimes have to be paid directly by the prospective adoptive parents to individuals or institutions in a country of origin. Compliance with assessment standards included in the Quality Framework in this respect must be subject to strict supervision.**

13. **Introduce an for the Central Authority vis-à-vis the accredited bodies. This will make it possible for the Central Authority to manage adoption situations in a more targeted manner, without needing to use more serious sanction possibilities, such as the withdrawal or suspension of a licence or country-specific authorisation.**

14. **Raise the subject of intercountry adoption for discussion in a European context, with the aim of achieving a joint vision on this subject, wherever possible. Only after a joint European vision has been achieved will it be possible to consider whether - and in what form – the international regulation of compliance with the Hague Adoption Convention can be discussed.**

15. **Promote a situation where the Minister of Foreign Affairs can realise a constant awareness on the part of Dutch representations in the countries of origin with regard to the situation in the country in question in relation to intercountry adoption, even in periods in which there have been no incidents, so that these representations will consistently report abuses in relation to intercountry adoption, or other relevant information, to the Central Authority, not only where requested to do so, but also ex officio.**

In Section 4, the Committee will look at the subject of age limits. This will include a discussion of the suitability required from prospective adoptive parents.

Each adopted child has already experienced at least one, but often many more traumatic situations involving loss. This is why it is important to prevent adopted children from being placed in situations where a far greater risk exists of losing their parents (and other important family members, such as grandparents) at a significantly earlier age than their non-adopted generation peers. For this reason, the Committee feels that it is in the best interests of the child for the natural situation to be approximated as much as possible in terms of the age of the adoptive parents and the difference in age between the adoptive parents and the child to be adopted.

The Committee does not consider the imposition of age limits to be discriminatory. The Committee is not convinced by the argument for an increase in the age limit, namely that women are waiting increasingly longer before having children, since the majority of first children are still being born to women between the ages of 27 and 32. Most women still have their children before the age of 40.

The Committee supports a fixed age limit of 48 (provided the age limit for a child is increased to eight years and the maximum difference in age between the prospective adoptive parent and the child to be adopted is fixed at 40 years; see below). In the case of single-parent adoption, this limit must apply for the partner as well. The advantage of a sharply defined age limit is that it provides clarity and limits the expectations of prospective adoptive parents. At the same time, a limit of this nature may not actually be in the interest of an adopted child in practice, where this means that a biological brother or sister cannot be adopted by the same adoptive parents. In special cases like this, the Committee feels that some flexibility has been allowed for this in legislation.

The Committee supports an increase in the maximum age of the adopted child upon arrival in the Netherlands from six to eight i.e.: up to and including the age of seven. For countries of origin, it is often difficult to accept that older children are apparently not wanted by the Netherlands, but are welcome in families in other receiving countries, such as Sweden, Italy or the United States. An increase to the age of eight is now considered scientifically responsible, in terms of child development. In addition, as far as the Committee is concerned, a maximum difference in age of up to 40 years between the prospective adoptive parent and the child to be adopted will always apply. The Committee is of the opinion that the exception to this rule in Article 3(2)(a) of the guidelines on the placement in the Netherlands of foreign children with a view to adoption [*Richtlijnen opneming buitenlandse kinderen ter adoptie 2000*] (to the

effect that older adoptive parents may take in a child of two years and one day) must be deleted. For example, in this situation, a prospective adoptive parent of 45 will no longer be able to adopt a child of two, as he or she could now, but solely a child of five or older. This adjustment of the age limits will give more older children the opportunity to live in a family context.

The Committee has also taken cognizance of the opinion that the home study is too detailed and that it could be limited, for example, to consultation of the Criminal Records Register [*Justitieel Documentatie Register*] and a medical examination. Here too, the special importance and background of adopted children necessitate the imposition of special requirements in relation to the suitability of adoptive parents. The Committee also refers to the obligation of a home study pursuant to Article 5 of the Hague Adoption Convention. In the case of one-parent adoptions, the requirements applicable in relation to the suitability of prospective adoptive parents and any age limits must also apply for the spouse, registered partner or life partner of the individual wishing to adopt. After all, this partner forms a long-lasting part of the family in which the adopted child will grow up.

In the opinion of the Committee, the increase in the number of older children and special needs children (and the fact that prospective adoptive parents do not always know in advance whether their wish to be able to adopt a child that is physically and mentally healthy will be fulfilled) make it advisable for the adoption of a special needs child and/or an older child to be the starting point for the compulsory information course (in which prospective adoptive parents are also prepared for all other aspects of intercountry adoption) provided by the Foundation for Adoption Services [*Stichting Adoptievoorzieningen*]. In this connection, the Committee also feels that it would be appropriate, following on from the information (and preparation) course, for the Preventive Video Interaction Guidance programme, which is organised by the Foundation for Adoption Services, to be made compulsory for families that have recently taken in an adopted child. The Preventative Video Interaction Guidance programme is an aftercare element that was introduced in 2000 and is already well-established and accepted in the adoption field. The use of the video feedback method is based on empirical evidence. Added to this, a preventative guidance element is cost effective with regard to later curative assistance. The increase in the number of special needs children and older children makes it all the more pressing for the Minister for Youth and Families (and the provinces) to pay sufficient attention to adoption-related problems in child welfare.

Finally, the Committee is of the opinion that regardless of whether a child grows up in a traditional closed or more open adoption situation, openness about adoption is essential. The Committee would like to see the explicit discussion with prospective adoptive parents of the subject of willingness to be open about relinquishment and adoption to be included in the home study conducted by the Child Care and Protection Board, and for the results of this discussion to be taken into consideration when preparing an advice.

Recommendations

The Committee makes the following recommendations in connection with the above:

16. **The use of age limits must be maintained.**

17. **The age of the child referred to in Section 8 of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption should be increased from six to eight (i.e. up to and including the age of seven).**

18. **When determining the maximum age at which adoptive parents are able to adopt, it is recommended that alignment be sought with the average age of biological parents upon the birth of their first child, maintaining a maximum difference in age of 40 years between the adoptive parent and the child to be adopted. In this context, it is recommended that an age limit of 48 be taken as the starting point for the maximum age of the prospective adoptive parent, and only to permit an exception to this where an adopted child has a biological brother or sister that could be adopted. As regards the 40-year maximum difference in age, it is recommended that Article 3(2)(a) of the guidelines on the placement in the Netherlands of foreign children with a view to adoption 2000 (to the effect that older adoptive parents may take in a child of two years and one day) be deleted.**

19. **Adjust the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption, so that, in the case of one-parent adoptions, the requirements applicable in relation to the suitability of prospective adoptive parents, as well as the age limits, will also apply for the spouse, registered partner or life partner of the individual wishing to adopt.**

20. **Ensure that the information course provided by the Foundation for Adoption Services focuses pre-eminently on caring for and raising special-needs children and older children.**

21. **Following on from the information (and preparation) course, ensure that the Video Interaction Guidance programme, organised by the Foundation for Adoption Services, is made compulsory for families that have recently taken in an adopted child.**

22. **Promote a situation whereby the Minister for Youth and Families ensures that sufficient attention and expertise is present within the youth social services agencies with respect to adoption-related problems.**

23. **Achieve a situation where the willingness to be open about relinquishment and adoption is discussed explicitly with prospective adoptive parents during the home study conducted by the Child Care and Protection Board, and where the results of this discussion are taken into consideration when preparing the advice.**

In Section 5, the Committee will look at the waiting list applicable as part of the adoption procedure until a permit in principle is granted. It will also look at adoption capacity (the number of children who are eligible for adoption in the Netherlands). In this section, the Committee will also look at foster care as an alternative for intercountry adoption and at the cost of adoption for (prospective) adoptive parents. Because the number of prospective adoptive parents is higher than the number of foreign children who are eligible for intercountry adoption, there is a 'bottleneck' in the adoption procedure. The Committee believes that it would be preferable to position this bottleneck at the start of the procedure, by means of a waiting list, rather than position it during the mediation stage, after a permit in principle has been granted. The reason for this is that the pressure on accredited bodies to achieve an adoption as quickly as possible (because the age limit has almost been reached, for example) will only increase once the permit in principle has been obtained. This may result in an increase in the chance of irregularities. The waiting list may mean that a considerable period of time elapses between initial registration and the decision on the permit in principle. The permit in principle is sometimes refused, because the maximum age has been reached. However, the best interests of the child must outweigh the interest of prospective adoptive parents, even where this means that some prospective adoptive parents will no longer be able to obtain a permit in principle (or an extension of this permit) because of their age.

The Committee believes that 'management' of the expectations that prospective adoptive parents have with regard to the possibility of adopting a child must be as effective as possible. This will reduce the number of people that apply for a permit in principle, are on the waiting list, and change their minds at some stage. The information provided by the Foundation for Adoption Services, the Central Authority, the Child Care and Protection Board and the accredited bodies already indicates how very difficult it is to adopt a foreign child, and what the reasons are for this situation: few children are eligible for adoption, the question of age, the issue of special-needs children, and the requirements applicable in the countries of origin (which can be very detailed and might even relate to the weight of the prospective parent, for example). Information provision must focus on this.

As regards adoption capacity, the Committee observes that it explicitly does not consider it to be the Dutch government's responsibility to facilitate an increase in the number of foreign children who would be eligible for placement in the Netherlands with a view to adoption.

It would seem a good option to resolve a shortage of foster families on the one hand while, on the other hand, allowing waiting prospective adoptive parents to form a family faster. An inventory shows that there are problems with regard to the waiting list in foster care, but that this is not so much the result of a shortage of foster parents. However, a further growth in demand for foster care can be expected. In order to respond to the current problems and future developments, the Committee believes that the government must ascertain the extent to which gaining the interest of prospective adoptive parents for foster care would be one possible way of increasing the number of prospective foster

parents and achieving a reduction in the waiting list of prospective adoptive parents. Possible further steps, including the introduction of simple adoption for long-term foster care placements with good perspectives, could also be investigated in this light.

The Committee recognises that the costs involved in intercountry adoption are high and that some people who would like to adopt a child are forced to give up solely for this reason, particularly since (some) adoption costs are no longer tax deductible. The Committee considers this a less desirable situation and, because of this, feels that it would be appropriate for (prospective) adoptive parents to be compensated in some way. Some believe that intercountry adoption is a child protection measure and that, because of this, the government must contribute to the costs incurred to this end. The Committee does not share this view. Therefore, as far as the Committee is concerned, the background to the possible compensation of adoptive parents is not that adoption is a child protection measure. The Committee would like to see a compensation amount that reflects compensation paid in Norway and Denmark (€ 4,760 and € 5,400 respectively). However, the Committee feels, as far as a non-Convention adoption is concerned, the condition applicable for payment of this amount is that the process of recognition laid down in Section 7 of the Act regulating the conflict of laws regarding adoption, as well as any conversion procedure where a simple adoption is converted into a full adoption (regardless of whether this concerns a Convention or non-Convention adoption) must have been completed, so that the adopted child has Dutch nationality at the time when compensation is paid.

Recommendations

The Committee makes the following recommendations in connection with the above:

24. Promote a situation where the information provided by the Foundation for Adoption Services, the Central Authority, the Child Care and Protection Board and the accredited bodies also focuses on the realistic expectations of the prospective adoptive parent as regards the possibility of adopting a child, while ensuring that this transfer of information is optimised wherever possible in light of this aim.

25. Ascertain the extent to which gaining the interest of prospective adoptive parents for foster care would be one possible way of increasing the number of prospective foster parents and achieving a reduction in the waiting list of prospective adoptive parents.

26. Compensate adoptive parents for the costs to be incurred in relation to intercountry adoption, to be paid after the arrival of the adopted child in the Netherlands, subject to the condition that, where non-Convention adoptions are concerned, the process of recognition laid down in Section 7 of the Act regulating the conflict of laws regarding adoption, as well as any conversion procedure where a simple adoption is converted into a full adoption (regardless of whether this concerns a Convention adoption or non-Convention adoption) must have been completed, so that the adopted child will have Dutch nationality.

1. Introduction

1.1 Remit

On 26 September 2007, the Minister of Justice created the Committee on Lesbian Parenthood and Intercountry Adoption [*Commissie lesbisch ouderschap en interlandelijke adoptie*][1]. The Committee issued its advice on lesbian parenthood in October 2007. This report contains the committee's advice on intercountry adoption. The Committee was asked to report on its findings on this part of the remit before 1 June 2008.

The Committee immersed itself in the question of how a balanced response can be given to the best interests of the children to be adopted on the one hand, and the wishes of prospective adoptive parents to form a family on the other hand, and which task and role then emerges for the government. The Committee has considered the above in the light of existing frameworks (the Hague Adoption Convention and the United Nations Convention on the Rights of the Child). When doing this, in accordance with the explanation of its remit in the decree establishing the Committee, it paid particular attention to the advice of the Council for the Administration of Criminal Justice and Protection of Juveniles [*Raad voor Strafrechtstoepassing en Jeugdbescherming*], which was sent to the Lower house in a letter of 15 May 2007, the plea by various parliamentary groups to relax the age criteria applicable for adoption, and the decreasing number of foreign children eligible for adoption.

The Committee has taken the best interests of the child as the starting point for its considerations. This interest also forms the basis for the Hague Adoption Convention and Article 21 of the United Nations Convention on the Rights of the Child. The latter Article stipulates that, where adoption is concerned, the Member States must ensure that the best interests of the child is the paramount consideration. In the opinion of the Committee, this does not mean that the wishes and interests of (prospective) adoptive parents do not have any weight, but that, where there is a difference of interests, the best interests of the child must prevail. The Committee also included the interests of the biological parents in its considerations.

1.2 The best interests of the child

This report will look in more detail at the interests and rights of the child, but the Committee would like to observe the following on this subject at this stage. It is clear that a large number of children in the world are growing up in poverty, with insufficient care from adults and without any prospect of an improvement. The United Nations estimates that 106 million children will have lost one or both parents

1 Regulation of 26 September 2007, no. 5507329/07/6, entailing the creation of the Committee on Lesbian Parenthood and Intercountry Adoption, Government Gazette 5 October 2007, no. 193, p. 6.

in 2010, including 25 million orphans as a result of HIV/AIDS[2]. Many children live in children's homes for many years, despite the fact that research has shown that growing up in a children's home is usually harmful for a child's development[3]. What situation can be considered to be in the best interests of these children?

No academic studies conducted have shown that children that grow up in a different country with a different language and culture develop less well than in the country of birth. However, it is clear that adoption (national or international) and foster care create better conditions for children than a long-term stay in a children's home[4]. In their research, Juffer and Van IJzendoorn conclude that "…adoption is an effective intervention, because it results in an impressive recovery in child development"[5]. The psychological and social functioning of most adult adoptees is similar to that of individuals that were not adopted[6]. However, a minority of adult adoptees do have problems of this nature and this minority is bigger than amongst non-adoptees. There is a slightly increased chance of psychiatric problems. Tieman and colleagues found one or more psychiatric problems in 22% of the non-adoptees in comparison with 30% of the adoptees[7]. Added to this, suicide[8] and substance abuse (alcohol, drugs)[9]

2 Children on the Brink 2002, p. 3. This report was produced in collaboration with the U.S. Agency for International Development (USAID), the United Nations Children's Fund (Unicef) and the Joint United Nations Programme on HIV/AIDS (UNAIDS).

3 Every three to four months that a young child remains in a children's home result in one month of development delay; the average intelligence quotient for children living in children's homes is significantly below that of children that grow up in a family (an IQ of 84 versus 100) and 70% of children living in children's homes show disorganised attachment (the most pathological form of unhealthy attachment) in comparison with 15% in the general population (for instance L.C. Miller, The handbook of international adoption medicine: A Guide for Physicians, Parents, and Providers, Oxford, 2005, pp. 29, 30; C.J. Groark et al., Improvements in early care in Russian orphanages and their relationship to observed behaviors, Infant Mental Health Journal, 2005, Vol. 26, p. 96-109; M.H. van IJzendoorn, F. Juffer, The Emanuel Miller Memorial Lecture 2006, Adoption as Intervention, Meta-analytic evidence for massive catch-up and plasticity in physical, socio-emotional, and cognitive development, Journal of Child Psychology and Psychiatry, 2006, Volume 47, p. 1228-1245; M.H. van IJzendoorn, M.P.C.M. Luijk, F. Juffer, IQ of children growing up in children's homes: A meta-analysis on IQ delays in orphanages, Merrill-Palmer Quarterly, July 2008 (currently being printed). Children from children's homes who are placed with a foster family make a leap in intelligence in comparison with children who stay in such a home (in a situation where children are allocated at random to a foster family or continued residence in a children's home (by means of lots)); see Ch.A. Nelson et al., Cognitive Recovery in Socially Deprived Young Children: The Bucharest Early Intervention Project, Science, Volume 318, 21 December 2007, p. 1937-1940).

4 For instance, Miller et al., Health of children adopted from Guatemala: Comparison of orphanage and foster care. Pediatrics, Volume 115, No. 6, June 2005, E710-E717; M.H. Van IJzendoorn, F. Juffer, Adoptie als interventie (1), Kind en Adolescent, volume 29, February 2008, p. 17-31.

5 F. Juffer, M.H. van IJzendoorn, Adoptie als interventie (2), Kind en Adolescent, volume 29, February 2008, pp. 31-49.

6 A. Hjern, F. Lindblad, B. Vinnerljung, Suicide, psychiatric illness, and social maladjustment in intercountry adoptees in Sweden: a cohort study, Lancet 2002, 360: pp. 443-448; H. Storsbergen, Psychische gezondheid en welbevinden van volwassen Grieks geadopteerden in Nederland: De invloed van het geadopteerd zijn, Delft 2004, p. 117; W. Tieman, J. van der Ende, F.C. Verhulst, Psychiatric disorders in young adult intercountry adoptees: an epidemiological study, American Journal of Psychiatry, 162(2): pp. 592-598; F. Juffer, M.H. van IJzendoorn, Behavior problems and mental health referrals of international adoptees: A meta-analysis, The Journal of the American Medical Association, 2005, 293, pp. 2501-2515; F. Juffer, M.H. IJzendoorn, Adoptees do not lack self-esteem: a meta-analysis of studies on self-esteem of transracial, international, and domestic adoptees, Psychological Bulletin, 2007, 133, pp. 1067-1083.

7 Tieman et al. (2005, p. 594).

8 Hjern et al. (2002).

9 Hjern et al. (2002), Tieman et al. (2005).

were more prevalent amongst adoptees than amongst non-adoptees. Finally, adoptees are less likely to maintain a long-term relationship with a partner[10]. In addition to objective research data on how adult adoptees function, literature on the subjective experiences and perceptions of adoptees reveals that being an adoptee must be regarded as an additional development task. Being an adoptee is a lifelong process that continually adds an extra dimension to every normal development task[11]. Some adoptees experience serious psychological and emotional impediments as a result of relinquishment and adoption. They may also struggle with their identity and the fact that they are different in terms of skin colour and (ethnic) origin[12]. Other adoptees have positive experiences and the fact that they are adoptees does not stop them from developing to the full. Added to this, the majority of international adoptees develop well. Research shows that the educational and professional level achieved by young adult adoptees is the same as that of non-adoptees[13].

The starting point taken by the Hague Adoption Convention and the United Nations Convention on the Rights of the Child is that, wherever possible, a child must be helped and accommodated in a family context in its country of origin (returned to parent(s), foster care, adoption). Permanent residence in a family context is the preferred choice above residence in a children's home. Based on the so-called subsidiarity principle, which takes both of the above-mentioned conventions as its starting point, intercountry adoption is a last resort. Intercountry adoption is only an option where there really is no possibility of permanent residence in a family context in the country of birth.[14] The question must always be asked whether intercountry adoption justifies the removal of a child from its own environment and culture.

There are different reasons why so many children are living in children's homes in certain countries. The most important are culture (which may include the stigmatisation of unmarried motherhood[15], or the preference for a specific gender), religion, poverty, politics and population policy. The culture

10 Tieman et al. found (based on gender, age and SES) that adoptees were not married almost two times as often as their non-adopted generation peers. Added to this, fewer adoptees were living with a partner and were less likely to have a relationship that had lasted at least one year. See W. Tieman, J. van der Ende, F.C. Verhulst, Social functioning of young adult intercountry adoptees compared to non-adoptees, Social Psychiatry and Psychiatric Epidemiology 2006, 41(1), p. 70. Storsbergen (2004, p. 76-77) also found that adult adoptees were more likely to be living without (marriage) partners.

11 R. Hoksbergen and H. Walenkamp (ed.). Kind van andere ouders, Theorie en praktijk van adoptie, Houten, 1991; D. Brodzinsky, Geadopteerd, Een leven lang op zoek naar jezelf, Amsterdam, 1997.

12 See, for instance: R. Hoksbergen (ed.), Vertraagde start, Geadopteerden aan het woord, Aspekt, 2006; G. Wekker et al., "Je hebt een kleur, maar je bent Nederlands", Identiteitsformaties van geadopteerden van kleur, Utrecht University, 2007.

13 W. Tieman et al. (2006), pp. 68-74.

14 Guide to Good Practice: Implementation and Operation of the 1993 Intercountry Adoption Convention, produced by the Permanent Bureau of the Hague Conference on Private International Law [Permanent Bureau van de Haagse Conferentie voor Internationaal Privaatrecht] (final draft, 21 April 2008), no. 47: 'Subsidiarity' means that States Party to the Convention recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should intercountry be considered, and then only if it is in the child's best interests. Intercountry adoption serves the child's best interests if it provides a loving permanent family in need of a home. Intercountry adoption is one of a range of care options which may be open to children in need of a family."

15 Just 40 years ago, young, unmarried mothers in the Netherlands regularly (more than is currently the case) relinquished their newborn babies for adoption. The effects are still evident today. Just 14 years ago, the well-known Valkenhorst judgement was rendered (Supreme Court 15 April 1994, NJ 1994, 608) on the right of an adult child to know who his or her father is.

in a country is difficult to influence, but support can be offered in relation to the assistance and accommodation of unmarried mothers, for example. In the case of poverty, the improvement of the financial-economic situation of the families in question is an important point. Support (financial or otherwise) can help a country to improve its own system of youth care and can ensure that the least drastic measures can actually be employed in the country of origin and that efforts are primarily made to ensure that a child can grow up with his or her own parents[16]. The Committee observes that, at best, intercountry adoption can help individual children to grow up in a family, which is in their interest and to which they are entitled, but cannot serve as a solution for bigger problems such as poverty[17]. As such, it must not be viewed as 'development aid' either.

Besides the wish to form a family, intercountry adoption also arises from a wish to enable children with little opportunity of a reasonable future in their birth country to grow up in a family in the Netherlands. In order to achieve a situation where intercountry adoption will be needed less for future generations of foreign children, it must not undermine the subsidiarity principle (intercountry adoption as a last resort), nor prevent or obstruct positive local developments in relation to youth assistance services. For example, a country of origin could become dependent on income from intercountry adoption, or income from intercountry adoption could result in a situation where there is no incentive to remove the stigma of unmarried motherhood[18].

The vulnerability of the individual child and the interests of children as a group in the prevention of irregularities and abuse in intercountry adoption make it necessary to impose rules on intercountry adoption and to ensure that these rules are actually enforced. A child is even more vulnerable where intercountry adoption is concerned. Where a child is an orphan or has been relinquished by its parent(s), it no longer has any physical, emotional or legal ties with its parents or family, which means that it is defenceless.

In an adoption situation, the child is the most vulnerable and weakest party in the adoption triangle (adopted child, biological parents and prospective adoptive parents)[19]. The adoption process should be a careful one for this reason alone. Another reason lies in the fact that the number of people in the

16 L. Fox, Lead Economist with the World Bank observed as follows during a conference: "If the financial and human resources are in the institutions, then that is where the children go. Funding reflects values. So we need to change the values." From: Report on the Regional Conference of Parental Care: Rights and Realities, Budapest, Hungary, October 22-24, 2000. Also see: How Poverty Separates Parents and Children: a Challenge to Human Rights, ATD World Fourth.

17 B. Yngvesson, National bodies and the body of the child, in: F. Bowie ed., Cross-Cultural Approaches to Adoption, London 2004, p. 213; M. Rupprecht, member of the German Bundestag, during the "Round Table Discussion on Intercountry Adoption" with members of the European Parliament, organised by Terres des Hommes (26 February 2008; heard by Mrs. H. Lenters, who was present).

18 For the situation in Europe, see: S. Chou, K. Browne, The relationship between institutional care and the international adoption of children in Europe, Adopting&Fostering, Volume 32, No. 1, 2008 p. 40 et seq.

19 Van IJzendoorn & Juffer (2008), p. 17-31.

world wanting to adopt foreign children, in order to be able to form families with them, far outweighs the number of (young and healthy) children eligible for adoption. This makes intercountry adoption susceptible to irregularities, with the danger that the economic law of 'demand creates supply' will become decisive. See Section 2.3 in this respect.

There are approximately 35,000 intercountry adoptees in the Netherlands[20]. No academic studies are known on the frequency and nature of irregularities and abuses in relation to intercountry adoption, worldwide or in the Netherlands. An estimation cannot be made on the basis of (recent) negative reports. The Committee is opposed to the existence of irregularities in intercountry adoption and deems it of great importance that this problem be dealt with decisively. However, it does not fall within the remit of this Committee to investigate the extent of this problem.

1.3 The interests of the biological parents

The biological parents are often a weak, vulnerable party in the adoption triangle as well[21]. Their rights are also protected by the United Nations Convention on the Rights of the Child and the Hague Adoption Convention. Adoption must be achieved in a careful manner. This concerns relinquishment (a child may not be abducted, of course), but also the requirement that the biological parents must have received sufficient information about the consequences of relinquishment for adoption, particularly as regards the severance of family relationships between them and the child. They must also have given their written permission of their own free will. Their permission may not have been obtained in return for payment or in exchange for another consideration. Another requirement is that the mother may only have given her permission after the birth of her child. Steps must be taken to ensure that the adoption procedure proceeds in a careful manner in other ways too, with regard to the protection of the interests of biological parents. The Committee will look at these subjects in more detail in this report.

1.4 The interests of (prospective) adoptive parents

For (prospective) adoptive parents, the procedure for adopting a child is a very long one. At the current time, the procedure involved when seeking to obtain a permit in principle takes more than two years. This is followed by a (long) waiting time with a licensed adoption agency. With due observance of the best interests of the child, prospective adoptive parents can expect the government to make the procedure relating to permits in principle as short and transparent as possible. They can expect the organisations concerned to act in an efficient, high-quality manner, starting with the adoption procedure in general, from the application for the permit in principle, to the arrival of the adopted child and aftercare. They have a right to (financial) transparency and to sufficient information at every stage of the procedure. This report will look at these subjects in more detail.

Of the three parties involved in the adoption triangle, the prospective adoptive parents are in the best position to express their interests and wishes. Therefore, the Committee observes that the interests and

20 A. Sprangers, J. De Jong, M. van Zee, Halve eeuw adopties in Nederland, Demos, 2006, p. 97-101.

21 See: L. de Leeuw, W. van Sebille, Opgestaan is plaats vergaan: een bericht van en over afstandsmoeders, Amsterdam 1991.

wishes of prospective adoptive parents have influenced political debate on intercountry adoption more in recent years than those of the adoptees and the biological parents.

1.5 Content of this report

In this report, the Committee will look at the background to the vulnerability of the adoption process and the consequences that this has for the role and responsibility of the government. It will do this from the viewpoint of the best interests of the child, as described above, the wishes and interests of (prospective) adoptive parents, and the interests of the biological parents. More specifically, the Committee will look at the adoption procedure, age limits, aftercare, the waiting list preceding the compulsory information course, adoption capacity, as well as at the costs involved in intercountry adoption.

2. The vulnerability of the adoption process

2.1 Introduction

As indicated in Section 1.2, many children grow up in a children's home or require help in other ways. Important reasons for this are culture, population politics, poverty and (as a result) the lack of good youth assistance services (structure, legislation, knowledge and training)[22]. At the same time, there are fewer young, healthy children who are eligible for adoption than people who would like to take part in intercountry adoption. By contrast, the number of older and handicapped children that are eligible for adoption is increasing, but fewer adoptive parents can be found for these children. Literature on this subject does not really dispute this situation, but does say that reliable figures are difficult to obtain. Cantwell says:

> *"By way of conclusion, there are very good grounds for maintaining that, as far as young children in good health are concerned, requests for adoption would seem to outstrip the number of adoptable children, though it would undoubtedly be impossible at this point to estimate a precise ratio in this regard. The reverse seems to be true, however, as regards children described as "difficult to place", for whom suitable prospective adoptive parents would indeed appear to be lacking."* [23]

Below, the Committee will look at possible reasons for the difference between the number of people wanting to adopt a child and the number of children that are eligible for adoption. This will be followed by a discussion of the vulnerability of the adoption process, as well as the consequences of this for the government's role and task.

2.2 Reasons for the relatively limited number of foreign children eligible for adoption

There are different reasons for the fact that the number of foreign children eligible for adoption is much less than the number of (prospective) adoptive parents, which must sometimes be viewed in conjunction with each other[24].

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22 Report of the Regional Conference on Children Deprived of Parental Care: Rights and Realities, Unicef/World Bank, Budapest, Hungary, October 22-24, 2000, p. 22 et seq., p. 38.

23 N. Cantwell, Intercountry Adoption. A comment on the Number of "Adoptable" Children and the Number of Persons Seeking to Adopt Internationally, in: International Child Protection, The Judges' Newsletter, Volume V-Spring 2003. Also see S. Howell, The Kinning of Foreigners, New York/Oxford, 2007, p.20.

24 The Committee has drawn from the following: Terres des Hommes (I. Lammerant, M. Hofstetter), Adoption at what cost? Lausanne, 22 February 2008; Intercountry Adoption, 4 Innocenti Digest (Unicef ICDC, Florence 1999), p. 11; E. Bartholet, International Adoption: thoughts on the human rights issues, Buffalo Human Rights Law Review, Volume 13, August 2007, p. 160 et seq.; N. Cantwell (2007); S. Dillon, Making Legal Regimes for intercountry adoption reflect human rights principles: transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption, Boston University International Law Journal, Fall 2003; P. Selman, Trends in intercountry adoption: analysis of data from 20 receiving countries, 1998-2004, Journal of Population Research, Vol. 23, No. 2, 2006; P. Selman, Adoption, A cure for (too) many ills?, in: F. Bowie (ed.), Cross-Cultural Approaches to Adoption, London 2004; Report on a written discussion, adopted 17 September 2003, Parliamentary Documents II, 2003-2004, 28457, no. 7, pp. 15-16.

- Children's homes house children who still have parents, who have not given their permission for an adoption[25].
- Some of the children in children's homes are so handicapped that they would have to reside in a care institution in the Netherlands as well (this is a contra-indication for adoption to the Netherlands; cf. Section 8 of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption).
- Some of the children in children's homes are older and are no longer eligible for adoption pursuant to the laws in receiving countries. In the Netherlands, for example, an age limit of six applies as the starting point for intercountry adoption (Section 8 of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption).
- Some of the children in children's homes are children for whom no adoptive parent(s) can be found. This might be because these children are considered 'unattractive' because of their age or a handicap.
- There are children in children's homes who are 'invisible', for example in government children's homes where visits by foreigners were (or are) not permitted.
- Some children are not eligible for adoption because the foreign contact persons/members of staff in the children's homes do not consider them suitable or healthy enough for it, despite the fact that these children would benefit from adoption[26].
- An increasing number of countries are moving towards domestic adoption, such as India and Brazil. Incidentally, in practice, this often means that young, healthy children are adopted domestically and that 'special needs children'[27] and older children in particular are 'released' for intercountry adoption.
- Changes to (political) views in the countries of origin. Bartholet comments on Korea as an example:

  "But then South Korea began to limit the number of children released for adoption abroad. Political forces opposed to international adoption criticized the government for 'selling' its children to foreigners, and shamed it in the press during the 1988 Seoul Olympics, changing the overall political dynamic surrounding international adoption."[28]

25 Few children in children's homes are real orphans, in other words few of them have lost both parents. Most children have been abandoned by their families for various reasons, including physical and/or mental illness on the part of their parent(s), an inability to care for a child as a result of conflict, alcohol or drug problems, mental retardation, imprisonment, or a lack of emotional or financial resources (Miller (2005), p. 25/6). Children are also relinquished due to the taboo of unmarried motherhood. See P. Selman, Intercountry adoption: Developments, Trends and Perspectives 2000, London, 2000, p. 34.

26 L. Miller, Head of the International Adoption Clinic in Boston (USA) gives the example of a deaf child that the children's home felt was not suitable for adoption; the child was eventually adopted by deaf parents (personal communication, Prof. Juffer, March 2008).

27 The Committee defines 'special needs children' as children with a medical risk/operable handicap or with a heavily burdened background. The Committee is aware that the accredited bodies interpret this term differently.

28 E. Bartholet (2007), p. 160.

Howell writes about China:

"China claimed in announcing its recent restrictions on international adoption that it is responding to an excess of prospective parents for the eligible children, but there is obviously no dearth of children in need of homes. The likely explanation in fact is some nationalistic concern at being seen as incapable of caring for its children which finds expression in these new restrictions purportedly designed to exclude those less fit to parent."[29]

- Countries of origin are introducing quotas. One example is China, which determines the number of adoptions per receiving country in advance, due to the large number of adoption requests received each year.
- There are countries with children that need help, but from which no adoptions take place for various reasons. Examples are:
- Legislation or case law prohibits adoption (on the basis of religion, for example) or makes it very difficult or impossible in practice (in the past, this was the case in Indonesia and Bangladesh, for example);
- There is too much bureaucracy (files are processed by a large number of agencies; procedures take too much time, causing accredited bodies to decide against adoptions from these countries);
- Payments are required, but it is unclear, for example, what the amounts in question will be used for; there are also situations where receipts are not issued;
- A country is politically unstable or is in a war or crisis situation.

The Committee observes that there have always been fluctuations in the number of adopted children that come to the Netherlands each year. Although it is difficult to predict future developments, the discrepancy between the number of prospective adoptive parents and the number of children that are eligible for adoption will probably increase in the time ahead. The number of people worldwide wanting to adopt is growing. One of the reasons for this is the increase in reduced fertility in couples[30]. Besides this, fewer and fewer children are now eligible for intercountry adoption as a particular result of economic growth in countries of origin and because countries of origin are becoming aware of the importance of caring for their children themselves. The fear is that a decrease in figures in some countries of origin will lead to an increase in pressure to release children for intercountry adoption in other countries.

2.3 Vulnerability of the process

In combination with a number of other factors, the discrepancy between the number of prospective

29 Howell (2007), p. 13,14.

30 In the Algemeen Dagblad newspaper of 22 June 2005, Bert Fauser, professor of reproduction medicine, affiliated to the UMC Utrecht, says that infertility in the Netherlands is becoming an increasingly bigger problem. Currently, one in six couples need help to achieve a pregnancy. However, according to Fauser, this will increase to one in three in the future. Fauser was responding to the outcomes of a British study into infertility in Europe. According to the study conducted by Sheffield Universit

adoptive parents and the number of very young children (wanted and) eligible for adoption forms a risk for the correct implementation of the process.

The Committee refers firstly to the vulnerability of the child. When a child is an orphan or the parent(s) have relinquished it for adoption, it no longer has any physical and formal ties with its parents or family, which means that it is defenceless: it does not have any say in the process, it becomes 'anonymous' ("socially naked"[31]) and, as such, can be placed with a new family. A role is also played by the urgency that some prospective adoptive parents feel with regard to forming a family. Most adoptive families (85%) are families without any biological children. In these families, unwanted childlessness and the wish to form a family are usually strong reasons underlying the decision to adopt a child. There are biological children in 15% of adoptive families. In addition to possible secondary childlessness (the inability to have any more children of one's own following the birth of one or more biological children), idealistic reasons often play a role, such as offering a disadvantaged child the chance to be part of a family[32]. For some people today, the emotional value of having children makes family formation essential for their life fulfilment. They would like to form a family that is as normal as possible[33]. Added to this, people are becoming increasingly used to being able to autonomously decide on the details of their lot in life. In the past, people were expected to simply accept fertility problems. The increase in the number of treatment methods aimed at helping couples to achieve a pregnancy despite infertility has probably increased the stress resulting from fertility problems[34]. This is all the more cogent now that society is increasingly assuming (sometimes incorrectly) that once a choice has been made, it can be achieved by means of individual action[35].

All in all, the above factors mean that a child is worth money; it is "bankable", as the World Bank put it in 2000[36]. In this situation, children can be a commodity with a monetary value, from which money can be earned. This applies all the more since the large distances often applicable between the sending and

31 S. Howell (2007), p.48.

32 F. Juffer, W. Tieman, Investeren in de culturele achtergrond, Adoptietijdschrift, Volume 10, December 2007, p. 18; W. Tieman, R.H. Gast, F. Juffer, Het Leidse onderzoek naar adoptiekinderen uit India, Leiden, p. 8; K. Lovelock, Intercountry Adoption as a Migratory Practice: A Comparative Analysis of Intercountry Adoption and Immigration Policy and Practice in the United States, Canada and New Zealand in the Post W.W.II Period, International Migration Review, Volume 34, Number 3 (Fall 2000), p. 908: "Historically the practice of intercountry adoption in the post World War II period can be conceptualized as having occurred in two waves. (…) The two waves might be characterized from the recipient society view as: 1) finding families for children and 2) finding children for families." During a special hearing (held on 15 May 2008), the Wereldkinderen Foundation and the Stichting Kind en Toekomst (child and future foundation) reported that 2% to 5% of adoptive parents adopt a foreign child for idealistic reasons.

33 S. Howell (2007), p. 63 et seq., p. 79.

34 P.A. Dijkstra and G.O. Hagestad, Childlessness and Parenthood in Two Centuries: Different Roads Different Maps?, Journal of Family Issues, 2007, Volume 28, p. 1525.

35 P.A. Dijkstra and G.O. Hagestad, (2007), p. 1526; A.C. Liefbroer, De maakbare levensloop?, in De maakbaarheid van de levensloop, T. van der Lippe, P.A. Dijkstra, G. Kraaykamp and J. Schippers (ed.), Assen 2007, p.18.

36 R. Post, present at the "Conference on Children Deprived of Parental Care: Rights and Realities, Unicef/World Bank, Budapest, Hungary, 22-24 October 2000, organised by Unicef and the World Bank, notes this in her book "Romania, for export only, The untold story of the Romanian 'orphans'", 2007, p. 71. Also see D.M. Smolin, Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children, The Wayne Law Review, 2005, Volume 52-113, p. 175.

receiving countries involved in intercountry adoption actually means that separation is definite[37] This is also referred to as "commodification"[38].

The economic principle that demand creates supply is also evident here. The fact that intercountry adoption takes place is primarily due to the demand from prospective adoptive parents for adopted children. The urgency to adopt that some prospective adoptive parents feel, and the fact that money can be earned from adoption, can lead to (the temptation to arrange) intercountry adoptions, despite the fact that this may not necessarily be in the best interests of the child.

The combination of the factors mentioned above means that the intercountry adoption process is a very vulnerable process, and susceptible to unwanted and irregular influences. The Committee gives a number of examples of this.

In an interview with the Volkskrant newspaper[39], the Director of the Wereldkinderen (World Children) Foundation observes that certain organisations pay a lot of money for adopted children and that, in India, intercountry adoption is more lucrative than domestic adoption. The quote below has been taken from this interview:
"(…) countries that operate as correctly as possible and organisations like Wereldkinderen are pricing themselves out of the market: they are being allocated increasingly fewer children, and increasing numbers of children are going to the highest-bidding countries. At the moment, these are Spain, France, Italy and the US. Wereldkinderen is not just losing the competition because it 'only' pays 3,000 dollars per child. It also only works with children's homes that do not make payments to people who bring in a baby – whether this be a 'baby scout' or the mother herself. Even the statutory payment of 3,000 dollars per child to the children's home has a corruptive effect, because a children's home only receives 500 dollars when a child is placed with a local adopted family. So, a legal foreign adoption generates six times as much money."[40]

Intercountry adoption is sometimes a source of income which countries can become dependant on. In these situations, it may be unnecessarily maintained especially for this reason. William Duncan, Deputy Secretary-General for the Hague Conference on Private International Law, is open about this:
"One thorny issue is the practice in many countries of origin of employing the intercountry adoption

37 M. Strathern, Partners and Consumers: Making Relations Visible, in: A.D. Schtift (ed.), The logic of the Gift, New York 1997, p. 302; B. Yngversson (2004), p. 212-214; S. Howell (2007), pp. 48.

38 M. Strathern (1997), p. 302. Also see B. Yngversson (2004), p. 212 and K. Lovelock (2000), p. 929.

39 Article by Margreet Vermeulen, Volkskrant 2 July 2007, p. 9.

40 A similar situation happened in Romania. R. Post writes the following about this: "Some adoption NGOs selected babies at the maternity wards, and placed them in a foster family until their adoption was arranged. These foster families received a much higher salary than those hired under the normal Romanian foster family scheme. As a result, foster families for children that were not meant for intercountry adoption had become hard to find." R. Post (2007), p. 50.

process as a means of securing certain contributions to the operations or development of child services within such States." [41]

The Swedish report entitled Adoption – but at what price? (2003) formulates this point as follows:

"As fast as the costs of adoption are forced up in the competition between different receiving states, there is also a risk that in the children's countries of origin a dependency is created on the income deriving from intercountry adoption work. When it is a question of large sums being paid over and above compensation for the actual costs, it may be that it is financially more advantageous to mediate children for intercountry adoption than for national adoption or placement in foster homes. In such cases intercountry adoptions can prevent positive local development, which is unacceptable. There is also a risk that intercountry adoptions contribute to the retention of structures with an archaic view of women and a view of illegitimate children and children with handicaps which Sweden cannot accept. A development of this kind can under no circumstances be accepted. It is of the greatest importance that anyone with any connection to intercountry adoptions strives for high ethical standards in adoption work. Intercountry adoption must be placed in a wider context than has been the case, where it has primarily been seen as an alternative way of forming a family." [42]

An example of a country in which intercountry adoption was a source of income is Romania. Approximately 10 years ago, a so-called 'points system' was in place there. A number of points were allocated depending on the amount paid in relation to the improvement of youth assistance services. Children were eligible for intercountry adoption depending on the number of points. The following was written about this subject in an American report:

"In practice, it does provide much needed financial support for critical child abandonment prevention and family reunification services. But the resources generated by the use of the point system come with a price. The point system inherently fails to put the best interest of the individual children involved in the adoption process first. Instead, the point system puts the goal of generating and coordinating resources for child welfare programs first. As a result of the point system, domestic adoptions and local social services – particularly child welfare services – have become inextricably linked to intercountry adoption. Most of our study participants confirmed that the point system discourages adoption of Romanian children by Romanian families." [43]

Bribes may be used in various ways. A number of years ago, in Guatemala, midwives were paid 50

41 W. Duncan, The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, Its birth and prospects, in: Intercountry Adoption, Developments, trends and perspectives, P. Selman ed., London 2000, p. 49.

42 Adoption – but at what price?, Summary of the report of the enquiry into intercountry adoption and a compilation of adoption research, Stockholm, p. 2003, pp. 13,14.

43 Michael W. Ambrose and A.M. Coburn (authors), Report on Intercountry Adoption in Romania, January 22, 2001. See also R. Post (2007), p.31 et seq., p. 84 et seq.

dollars to arrange the registration of the birth of non-existent children, using a false name for the mother. An amount of 50 dollars was then paid to another woman, who pretended to be the mother of a child (a child that had usually been stolen). She was told to take the child to Guatemala City, for the purpose of "relinquishing" it for adoption. The woman signed all of the notarial documents needed to do this[44]. As the reader will be aware, reports on this situation led the Netherlands to suspend the adoption of children from this country in 2001[45]. In 2003, adoptions from Cambodia to the Netherlands were suspended after the Dutch representation there had reported to the Central Authority regarding the payment of bribes[46]. The Dutch representation produced an extensive report on this matter, in which observations included the fact that various reports showed that adoptive parents were forced to pass through 16 different agencies or offices, to each of which they were expected to pay an amount of 100 dollars.

"As a rule of thumb, and as an adoptive parent puts it: 'the higher the bribe, the faster the process…" [47]

Children are relinquished in a way that too often lacks the due care required. Many examples of this can be found in the media. The Volkskrant reported the following about Albania on 30 September 2003:

> *"An Albanian gang has been accused of taking a three-year old boy away from his parents in the Albanian port city of Dürres in exchange for a television. The little boy was delivered to a childless Italian couple in Calabria for an amount of 5000 euros. (…)"*

Single mothers in particular could also be put under pressure to relinquish their children. In the thesis with which she obtained her PhD on 10 January 2008, Pien Bos writes the following[48]:

> *"However, my research shows that adoption as an intervention designed to get children out of children's homes has an adverse effect. The mothers who took part showed how the current legal adoption system put pressure on their decision to relinquish their children."*

2.4 When is intercountry adoption ethically responsible?

Despite the vulnerability of the adoption process, the Committee does believe that intercountry adoption is a good way of serving the interests of an individual foreign child in those cases where it is not possible to accommodate and assist it in a family in the country of origin, with the prospect of a reasonable future. The Committee believes that the abolition of intercountry adoption would not be consistent with the aim, in the best interests of a child, of ensuring that it can grow up in a family, even if this is in a different country, in the case where accommodation and assistance in the child's

44 United Nations, Economic and Social Council, Commission on human rights, Rights of the child, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, O. Calcetas-Santos, Addendum, Report on the mission to Guatemala, 27 January 2000, E/CN.4/2000/73/Add2.

45 See Kamerstukken II (Parliamentary Documents II) 2000-2001, 27256, no. 8.

46 See Kamerstukken II (Parliamentary Documents II) 2003-2004, 28457, no. 7.

47 The Royal Netherlands Embassy in Bangkok, International child adoption in Cambodia, a situation report, May 2003, p.10.

48 P. Bos, Once a mother, Relinquishment and adoption from the perspective of unmarried mothers in South India, (diss.), Nijmegen 2008, p. 275.

own country is not possible (quite apart from the question of whether abolition would be realistic, as the expectation is that other countries would not be so quick to follow this example). In addition, abolition would entail the real danger that intercountry adoptions would move into the illegal circuit, with all of the risks that this brings, or that more use would be made of legal short cuts, for example the acknowledgement of children or surrogate motherhood. Therefore, the Committee feels that it is preferable to allow the intercountry adoption process to continue.

The Hague Adoption Convention 1993 provides good starting points and principles for an ethically responsible procedure for intercountry adoption. The fact that a number of points in the Convention are not unambiguous does not detract from this[49]. The Committee clearly understands that the use of general terms is vital for the acceptance of the Convention in both sending countries and receiving countries. However, it also means that one country responds differently to the adoption problem than another country. This concerns not just the practical procedure, but also the political attitude. Whatever the case may be, the Committee believes that ethically responsible intercountry adoption to the Netherlands depends on the parties involved actually acting in accordance with the starting points and principles, as they are interpreted in this country. This applies for adoptions from Convention countries, but also for adoptions from non-Convention countries. In this connection, the Committee observes that, given the significant vulnerability of the intercountry adoption process and its susceptibility to unwanted and irregular influences, as described in Section 2.3, an ethically responsible intercountry adoption process demands strict regulation and meticulous checks by the government and, where possible, a reduction in the pressure on countries of origin to make children eligible for adoption. According to the Committee, the protection of the interests of all of the parties in the adoption triangle justifies (far-reaching) government intervention in this area. As far as children are concerned, this vision on the part of the Committee is supported by the Hague Adoption Convention, but also by Articles 3, 20 and 21 of the United Nations Convention on the Rights of the Child. Children are the most vulnerable in society and because of this deserve government protection. The biological parents are also vulnerable in the adoption process, and the government has the responsibility to ensure that society fulfils the preconditions that safeguard the interests of children and their biological parents. This responsibility also includes the way in which these (adopted) children come to the Netherlands.

To be able to justify intercountry adoption, it is also vital that help is offered to structurally improve the (social-financial) situation of the biological parent(s) and their surroundings, and of the youth assistance services in countries of origin, so that intercountry adoption can actually be a last resort. See Section 1.2 above for more details. This financial help could come from the Dutch government and/or from accredited bodies (in the form of project aid from adoptive parents and donors, for example). However, this aid may not be at the expense of the integrity of the adoption process or create a financial dependence on intercountry adoption[50].

49 A number of terms are vague and can be interpreted in a number of different ways, such as the adoptability of a child as referred to in Article 4(1)(a) of the Convention, "improper financial gain" in Article 8, "non-profit" and "persons qualified by their ethical standards" in Article 11.

50 International Social Service, "Humanitarian action and intercountry adoption, a sulfurus mixture of kinds", Monthly Review No 11-12/2007, November – December 2007, Editorial, p. 2.

Recommendations

The Committee makes the following recommendations in connection with the above considerations:

1. **Strong supervision must be provided in relation to intercountry adoption where foreign children are brought to the Netherlands for adoption. This will ensure that the co-operating organisations actually act in accordance with the starting points and principles of the Hague Adoption Convention and the United Nations Convention on the Rights of the Child. This applies for adoptions from Convention countries, but also for adoptions from non-Convention countries. An ethically responsible intercountry adoption process demands strict regulation and meticulous checks by the Dutch government and justifies far-reaching government intervention in this area.**

2. **The Minister for Development Cooperation must be encouraged to offer assistance to countries of origin, geared towards the (social-financial) situation of the biological parent(s) and their environment, as well as the structural improvement of youth assistance services, so that intercountry adoption can actually become a last resort. This assistance may not be at the expense of the integrity of the adoption process or create a financial dependence on intercountry adoption.**

3. The adoption procedure

3.1 Introduction

In this section, the Committee will discuss a number of aspects of the part of the adoption procedure applicable after obtaining a permit in principle. In the last section, the Committee indicated that, given the vulnerability of the adoption process, it is vital that all concerned actually act in accordance with the starting points and safeguards of the Hague Adoption Convention, in order to achieve ethically responsible intercountry adoption to the Netherlands. The above considerations demand and justify strict regulation and meticulous checks on the adoption procedure by the government, in the interest of all of the parties in the adoption triangle. The government has the responsibility for ensuring that the preconditions for intercountry adoption are met.

The Committee observes that the procedure rules applicable for intercountry adoptions from non-Convention countries differ from those applicable for intercountry adoptions from Convention countries[51]. Although the starting points and safeguards of the Hague Adoption Convention do apply to non-Convention countries, substantive differences with Convention adoptions can be observed in a number of essential parts of the procedure. The Committee is of the opinion that these differences are undesirable. Therefore, the Committee believes that, in order to take into consideration the best interests of the child, the adoption procedure from non-Convention countries must be improved and made more stringent and indicates the possibilities applicable to this end. It has also looked more specifically at the activities of accredited bodies, the conversion from simple adoption to full adoption and at international regulation.

3.2 The current situation in relation to checks on the adoption procedure

During the mediation stage, the adoption procedure is checked by the Central Authority. Resources to this end include the issuing of an 'approval' of a match in the case of a Convention adoption (see Section 3.2.1 below) and decisions on deviations from the age limit of the child to be adopted or in relation to the adoption of more than one child at the same time. Other important resources for monitoring arise from the power that the Minister of Justice has to grant licences, or accreditation, to adoption organisations (which for this reason are referred to as "accredited bodies"), enabling them to mediate in the adoption of foreign children. This power makes it possible for the Central Authority to suspend licences (possibly solely in relation to adoption mediation for a certain country, so that mediation activities in other countries can be continued) or withdraw them where – to put it briefly – there is non-compliance with the Act containing rules concerning the placement in the Netherlands of

51 See the following about the adoption procedure: A.P. van der Linden, Adoptierecht, Monografiën Familie, Jeugd en Recht, Part 3, The Hague 2006, p. 57 et seq.

foreign children with a view to adoption[52]. The Central Authority also grants to these accredited bodies all the authorisations required to be able to mediate in Convention countries.

Added to this, the Youth Care Inspectorate [Inspectie jeugdzorg] also plays a supervisory role in the adoption procedure. In short, the Youth Care Inspectorate independently supervises compliance by the accredited bodies with the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption and with the starting points and safeguards of the Hague Adoption Convention[53]. The Youth Care Inspectorate carries out its supervisory role on the accredited bodies on its own initiative or at the request of the Minister of Justice. Financial supervision has also formally been placed with the Youth Care Inspectorate. However, the Inspectorate has indicated that it is insufficiently equipped to do this. The Minister of Justice intends to amend the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption on this point, so that financial supervision of the accredited bodies is placed with the Ministry of Justice[54]. This has actually already been the case since financial year 2005.

3.3 Intercountry adoption from non-Convention countries

3.3.1 Certificate of approval

Pursuant to Article 17 of the Hague Adoption Convention, where adoptions from Convention countries are concerned, both the central authority in the country of origin and the central authority in the receiving country must indicate their approval of the match between a child to be adopted and the prospective adoptive parents in question. No comparable certificate is required for intercountry adoptions from non-Convention countries. Although the then Minister of Justice indicated in a letter to the Lower House dated 21 February 2005[55] that he would provide by law for unilateral approval by the Central Authority of a match between an adopted child and prospective adoptive parents, where adoptions from non-Convention countries were concerned, a (draft) statutory provision of this nature has not been put in place yet.

The Committee is of the opinion that a unilateral certificate of approval, to be issued by the Central Authority, is appropriate especially for individual adoptions from non-Convention countries. In the opinion of the Committee, these adoptions are, after all, more susceptible to irregularities, because

52 Section 18 of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption contains the grounds that must or could lead to the withdrawal of a licence.

53 In accordance with Section 25(1) of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption, the Youth Care Inspectorate is responsible for supervision of compliance by accredited bodies with Sections 16 and 20 to 23 inclusive of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption.

54 This is evident from the draft legislative proposal on the amendment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption and the corresponding draft explanatory memorandum, that the Minister of Justice submitted for consultation to the co-operating organisations and interest groups in July 2006. These can be consulted via the website of the AdoptieOudersOverleg (adoptive parents consultation group). See http://www.adoptieoudersoverleg.nnl/downloads/2006-07/04-MvJ.pdf.

55 Kamerstukken II 2004/05,28 457, no. 20.

central authorities lack the infrastructure and corresponding inspection possibilities. The Committee believes that introduction of a certificate of approval could contribute to the better quality and greater transparency of the adoption procedure. The Committee, for that matter, also fails to see why adoptions from Convention countries are subject to better checks than adoptions from non-Convention countries.

In the opinion of the Committee, a certificate of approval may only be issued when the Central Authority has assessed whether a child is actually eligible for intercountry adoption, as that is one of the most vulnerable parts of the adoption process. The following are some of the factors to be ascertained in the context of this question:

- whether the child is actually a foundling,
- whether the child has been relinquished by its (actual) biological parent(s),
- whether the child was relinquished after birth and with the opportunity to reconsider the decision,
- whether the child was relinquished without coercion and without a (monetary) payment or consideration,
- whether the child was relinquished after the biological parent(s) was (were) informed of the consequences thereof, and
- whether the subsidiarity principle has been observed.

These requirements for intercountry adoptions have been laid down in the Hague Adoption Convention, but should, in the opinion of the Committee, also apply in the case of non-Convention adoptions. In the case of adoptions from Convention countries, responsibility for assessment of whether these requirements have been met lies with the competent authorities in the country of origin. It follows from Article 4 mentioned above that a mutual trust between the Convention countries on the actions undertaken by them is the starting point. Where necessary, authorities from the countries of origin and the receiving countries can approach each other. In the case of adoptions from non-Convention countries, these requirements for intercountry adoption and the starting point of mutual trust in each other's actions shall not apply automatically.

Although, in the present situation, a number of aspects of these requirements are taken into consideration when assessing applications for provisional residence permits, the Dutch government organisation does not currently effect assessments based on these requirements. Some of these requirements are assessed when the decision of whether or not to grant provisional residence permits is made, but the Committee considers this to be too late. In the opinion of the Committee, assessment of these requirements should occur prior to matching wherever possible. This assessment will, after all, determine whether or not a child can be adopted. It is therefore in the best interests of the child and its biological parents to achieve clarity regarding these questions as early on as possible in the adoption procedure. The Committee also believes the Central Authority to be in a better position to assess the documents and situation in question than a Dutch authority that needs to decide whether or not to issue a provisional residence permit. Subsequently, where applications for provisional residence

permits are concerned, the Immigration and Naturalisation Service [*Immigratie- en Naturalisatiedienst (IND)*] can incorporate the assessment of the Central Authority in the certificate of approval regarding the legal requirements for adoption. Also see Section 3.3.5.

In some countries, information on these requirements is only released in the context of a (judicial) decision on the adoption in the country of origin, which takes place after a match. In such a situation the Central Authority can ask the accredited adoption agency whether the above-mentioned adoption requirements are being met and, for example, ask why it believes that the child in question has been relinquished correctly. Moreover, the Central Authority can, as it does in incidental cases, ask the Dutch representation (whether or not via the Ministry of Foreign Affairs) to perform (or commission performance of) an investigation into the correctness of the information provided. The Dutch representation can engage a local confidential counsellor or lawyer to do this. The Committee realises that the engagement of confidential counsellors or lawyers in the countries of origin is time-consuming, but can see no practicable alternative for this method. The imposition of a DNA test would appear to be a way of ensuring that a child who is to be adopted has not been abducted, but such a measure would probably only lead to more reported cases of 'foundlings'. The Committee is aware that when the United Kingdom decided that only foundlings and no relinquished children could be adopted from Guatemala, there was an immediate and significant increase in the number of foundlings.

Regarding the certificate of approval, as well as the 'approval' itself, the Committee also observes the following. Although, at an individual level, these two resources mean that the Central Authority plays an important role in the assessment of intercountry adoptions, this does not release accredited bodies from their own responsibility to comply with the starting points and safeguards of the Hague Adoption Convention, which apply for all adoptions, including adoptions from non-Convention countries. Where an accredited body suspects irregularities, it must report them to the Central Authority, enabling it to fulfil its responsibilities properly. At an individual level, where an accredited body has doubts about whether the best interests of a child has been sufficiently safeguarded with regard to the adoption in question, it must not allow the adoption to continue. In the opinion of the Committee, this does not prevent the possibility of the child in question being adopted by adoptive parents from a different country.

3.3.2 Authorisation per country

Pursuant to Article 12 of the Hague Adoption Convention, an accredited body will only be able to perform its activities in a Convention country if it has been authorised to do so by the competent authorities in both countries. This provision recognises the freedom of each Convention country to refuse an accredited body[56]. In connection with this, Section 4 of the Hague Adoption Convention (Implementation) Act [*Uitvoeringswet bij het Haags Adoptieverdrag*] stipulates that accredited bodies that want to act as mediation organisations in a certain Convention country must have authorisation from the Central Authority in question.

56 Explanatory report Parra-Aranguren (Actes et documents de la Dix-septième session, Tome II, Adoption – coopération), no. 268.

In the above-mentioned letter to the Lower House dated 21 February 2005, the then Minister of Justice also announced that he will require an authorisation per country from the accredited bodies for the performance of these activities, not only for mediation activities in Convention countries, but also for those in non-Convention countries. According to the Minister, one advantage resulting from this would be that the accredited bodies can be managed more effectively. Furthermore, this tool gives the Minister more possibilities to intervene in a corrective action in cases where abuses are observed. The Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption contains just one sanction, namely withdrawal of the (general) licence. With the introduction of an authorisation per country, the number of sanction modalities will be extended, as it will then be possible to withdraw 'just' the authorisation to mediate in a certain country, instead of withdrawing a licence completely. The draft legislative proposal for amendment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption from 2006, as referred to in Section 3.3.1, contains this requirement of an authorisation per country (Section 15(2)), as well as the corresponding sanction modality of withdrawal or suspension (Section 18(4)). In his letter to the Lower House[57] dated 7 November 2007, the present Minister of Justice reconfirmed the intention to introduce an authorisation per Convention country. The Committee endorses this measure.

In connection with the authorisation per country, including where this relates to Convention countries, the Committee observes that in the interest of the quality of the adoption procedure, effective liaison between the Ministry of Justice, via the Ministry of Foreign Affairs[58], and the Dutch representation in a country of origin is advisable. In the opinion of the Committee, the Dutch representation can also be expected, in its official capacity, to report any abuses in relation to intercountry adoption, or other relevant information in this respect, to the Ministry of Justice via the Ministry of Foreign Affairs . The Minister of Foreign Affairs must explicitly notify the embassies and consulates in the countries in question with respect to this measure, in such a manner that alertness to this issue is ongoing and does not disappear in the absence of incidents.

3.3.3 Authority to issue a designation order

The above-mentioned assessment resources available to the Central Authority are either of a 'macro' nature, focusing on a country or an accredited body, or are of an individual nature, focusing on a specific adoption. The Committee feels that a middle course is missing from this system. If, for example, there is a serious suspicion that the adoption of children from a certain children's home is occurring in an irregular manner, the Central Authority cannot implement targeted management without using sanction possibilities such as the withdrawal or suspension of a licence or the authorisation per country. The Committee is of the opinion that in this (and other similar) situation(s), it would be advisable for the Central Authority to have a designation power vis-à-vis the accredited bodies. In the

57 Kamerstukken II 2007-2008, 31265, no. 1, p. 9.

58 So also Mr.dr. Oosting, Verslag van een onderzoek naar het toezicht op de Stichting Meiling in verband met de mogelijke misstanden met betrekking tot adoptie uit India in de periode 1995 – 2002, The Hague, September 2007, p. 13.

situation outlined above, the Central Authority could then, for example, issue an order to the effect that the accredited body may not perform any mediation activities in relation to children from the children's home in question. In this situation, the accredited body in question may perform mediation activities in respect of children from other children's homes in the country in question.

3.3.4 Mediation through private or independent adoption

In the Netherlands it is not possible to arrange an intercountry adoption entirely independently. However, where intercountry adoption from a non-Convention country is concerned, it is possible to arrange so-called mediation through independent adoption. The current practice of mediation through independent adoption from the Netherlands means that prospective adoptive parents themselves establish contact with authorities, individuals or institutions (also referred to as 'the contact')[59] in the chosen country of origin, with whose assistance they wish to adopt a child. Mediation through independent adoption is chosen where a faster procedure is desired, or where prospective adoptive parents want to be very directly involved in the adoption mediation. Mediation through independent adoption may also be chosen because one-parent adoption would be possible in a certain country of origin where the Dutch accredited bodies would not perform mediation activities (the United States, for example). Mediation through independent adoption also makes it possible for prospective adoptive parents with a dual nationality to adopt a child that originates from their original country, in a situation where the Dutch accredited bodies do not perform mediation activities in the country in question (Bangladesh, for example). The Committee is aware of the great criticism of mediation through private or independent adoption. Some feel that the rules on mediation through independent adoption are too strict, and that the procedure takes too much time. Others believe that mediation through independent adoption is insufficiently verifiable.

Mediation through independent adoption requires the approval of the Dutch Central Authority. Prospective adoptive parents must designate a Dutch accredited body to which the Central Authority can send the home study report produced by the Child Care and Protection Board [*Raad voor de Kinderbescherming*]. They must notify the accredited body with regard to which specific authorities, institutions or individuals they wish to use in the country in question. They must also submit all information relevant for the procedure to the accredited body. The accredited body will then assess the purity and care of action on the part of the authorities, institutions and individuals indicated. Following this assessment, the accredited body will issue its advice to the Central Authority[60]. The Central Authority will decide whether or not to approve the mediation through independent adoption as requested, based in part on this advice. Where necessary, the Central Authority will request further information from the prospective adoptive parents or from the Ministry of Foreign Affairs.

59 Mediation through a private or independent contact falls under the term 'independent adoption', indicated in the Guide to Good Practice: Implementation and Operation of the 1993 Intercountry Adoption Convention, formulated by the Permanent Bureau of the Hague Conference for Private International Law (final draft, 21 April 2008), p.10.

60 In the case of so-called 'full mediation (full adoption) through accredited adoption agencies', the accredited adoption agency is involved in every step of the mediation stage. The Dutch term "deel-bemiddeling" (partial mediation) which is also used in the case of a private or independent adoption, indicates that such mediation entails only a partial involvement of the accredited bodies in the adoption process.

The number of mediations through independent adoption is relatively limited (in 2004: 29 mediations through independent adoption versus 1276 mediations through accredited bodies; in 2005: 38 – 1147; in 2006: 44 – 772; in 2007: 44 – 735). The majority of mediations through independent adoption are intercountry adoptions from the United States (2004: 18; 2005: 32; 2006: 38, 2007: 39). Since the United States became a party to the Hague Adoption Convention on 1 April 2008, adoptions for which a permit in principle has been requested after this date can no longer be dealt with via mediation through independent adoption, as laid down in Section 7a of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption. As such, mediation through independent adoption will actually come to an end.

The 2004 evaluation assessment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption observes that mediation through independent adoption is insufficiently verifiable[61]. The Central Authority responded by ordering a stricter approach to the assessment of mediations through independent adoption[62]. The Quality Framework recently produced (also see Section 3.4.1) contains a more detailed definition of the requirements for mediation for independent adoption. Whether this will actually make mediation through independent adoption sufficiently verifiable still remains to be seen. The Committee also takes into consideration that situations arise where applicants for mediation through independent adoption may choose a country of origin with an 'adoption system' that is completely unknown. In the meantime, limited time[63] and resources are available for case assessment. Added to this, the Central Authority will generally only make prior checks on the amounts to be paid in the country of origin on the basis of estimates. This increases the risk of improper money flows.

Another objection to mediation through independent adoption relates to the idea underlying Section 7a of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption, namely that the contact will be assessed before a child is introduced to prospective adoptive parents[64]. This provision however does not rule out a situation whereby a child has already been pinpointed prior to the process of approaching the Central Authority for its approval of mediation through independent adoption in the country in question. This situation is even explicitly taken into consideration in subordinate legislation[65]. However, when a match takes place and permission for

61 Adviesbureau Van Montfoort, Evaluatieonderzoek Wobka, Een evaluatieonderzoek naar de Wet opneming buitenlandse kinderen ter adoptie, July 2004, p. 111. Also see I. Lammerant, M. Hofstetter, Adoption: at what cost? For an ethical responsibility of receiving countries in intercountry adoption, Terres des Hommes, Lausanne, 2007, p. 11.

62 Kamerstukken II 2004-2005, 28457, no. 20, p. 6.

63 Section 7a(4) of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption stipulates that in cases where the advice issued by an accredited body has not been sent to the Central Authority within eight weeks, prospective adoptive parents may approach the Central Authority themselves. The Central Authority will then have eight weeks to arrive at a decision.

64 Kamerstukken II 1993 – 1994, 23137, no. 6, p. 8.

65 Article 1(1)(d) of the decree on the investigation of foreign contacts for prospective adoptive parents [Besluit inzake het onderzoek naar buitenlandse contacten van aspirant-adoptieouders]. The advice provided by the accredited adoption agency must then also relate to the child. To this end, prospective adoptive parents will be expected to submit information on the identity and origin of the child to be adopted, the way in which this child has become eligible for adoption, and the way in which relinquishment has or will be arranged by the parents.

mediation through independent adoption is only requested afterwards, and the contact is still to be approved, the procedure is put under more pressure. The prospective adoptive parents already feel a bond with the child who is to be adopted and, because of this, would like their case to be dealt with urgently. In the meantime, the accredited body still needs to assess the purity and care of the contact, or the Central Authority may want to obtain further information before arriving at a decision. The Committee considers this situation to be an undesirable one.

There are also other important objections to the procedure of mediation through independent adoption provided for in Section 7a of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption. For example, starting points for the Hague Adoption Convention include the idea that the best interests of the child will be safeguarded most effectively by mediation through accredited bodies[66]. After all, this involves professional guidance at every stage of the adoption procedure. This is not the case for mediation through independent adoption. Furthermore, the arrangement of mediation through an independent adoption leaves open the possibility for prospective adoptive parents to have contact with the person responsible for the care of a child who is eligible for adoption prior to a match, despite the fact that this person also makes the decision as to whom the child will be allocated for adoption. This is contrary to the safeguard laid down in Article 29 of the Hague Adoption Convention[67], which stipulates that there may not be any contact between prospective adoptive parents and the biological parents or carers of the child who is to be adopted until the requirements of Article 4(a) to (c) inclusive, and Article 5(a), of the Convention have been met (with the exception of adoption within a family). Said Article 29 is intended to combat practices that run counter to the object and import of the Hague Adoption Convention[68]. The Permanent Bureau of the Hague Conference for Private International Law expresses the background to this provision in the recent final draft of the Guide to Good Practice for the Hague Adoption Convention[69] as follows:

> "To prevent inappropriate or illegal practices before matching, Article 29 clearly prohibits any contact between the prospective adoptive parents and any person whose consent might be influenced, intentionally or otherwise, by the adoptive parents."

Thus, to put it briefly, there may only be direct or indirect[70] contact when it has been decided that a child is eligible for adoption and once a match has taken place. The Committee refers again to said

66 So too the Court of Appeal in The Hague 13 June 2007; LJN: BA9067, Ground 11.

67 The starting points and safeguards of the Hague Adoption Convention also apply for non-Convention adoptions. See Parliamentary Documents II 2004-2005, 28457, no. 20, p. 2. Also see recommendation 11 in Report and conclusions of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protecting of Children and Co-operation in Respect of Intercountry Adoption (2000), and recommendation 19 in Report and conclusions of the Second Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protecting of Children and Co-operation in Respect of Intercountry Adoption (2005).

68 Explanatory report Parra Aranguren (Actes et documents de la Dix-septième session, Tome II, adoption – coopération), no. 495.

69 Guide to Good Practice: Implementation and Operation of the 1993 Intercountry Adoption Convention, produced by the Permanent Bureau of the Hague Conference for Private International Law (final draft, 21 April 2008), no. 358.

70 Explanatory report Parra Aranguren (Actes et documents de la Dix-septième session, Tome II, adoption – coopération), no. 497.

Guide to Good Practice[71], in which the Permanent Bureau observes the following about mediation through private or independent adoption:

"Independent adoptions undermine the system of safeguards put in place by the Convention, in particular Article 29. (…) How the prospective adoptive parents find a child, who arranges the adoption, what the costs are - this information may not be known to the authorities in either country, as there is no supervision of the procedure. They create many problems for officials in both the State of origin and the Receiving country, usually when procedures have not been followed correctly. The practice of allowing independent adoptions is inconsistent with the system of safeguards established under the Conventions and Central Authorities should not participate in this form of intercountry adoption."

The Committee recognises that there are reasons for opting for mediation through independent adoption. However, given the risk of the insufficient verifiability of mediation through independent adoption and the fact that this procedure undermines safeguards which are grounded in the Hague Adoption Convention, the Committee believes that the abolition of mediation through independent adoption would be in the best interests of the child. Although this will not reduce the risk of an increase in the illegal placement of children for adoption, the Committee believes that this risk is limited.

3.3.5 The granting of provisional residence permits

In the case of mediation in intercountry adoptions from non-Convention countries and from some Convention countries[72], accredited bodies will apply for provisional residence permits from the IND. A provisional residence permit will be applied for shortly before a child is actually due to come to the Netherlands. Applications for provisional residence permits are also required for simple adoptions from Convention countries. The IND operates an accelerated procedure for provisional residence permit applications of this type. When applying for provisional residence permits, it is sufficient for accredited bodies to submit a permit in principle. The IND trusts that accredited bodies will have ensured that the other conditions which are applicable for provisional residence permits have been met. The IND will also take into consideration that the Minister of Justice is able to withdraw a licence under Section 18 of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption where irregularities are observed in relation to a specific accredited body. Once consent has been obtained, which usually happens within two weeks, the IND will send a positive decision to the Dutch representation in the country of origin in question. This decision will state the need to comply with the following conditions: "relinquishment certificate signed by the father, relinquishment certificate signed by the mother, permit in principle, health certificate and an adoption certificate in the country of origin", as well as with the conditions indicated in the permission in principle. The Dutch representation will assess these certificates and conditions and then decide whether or not to grant

71 Guide to Good Practice: Implementation and Operation of the 1993 Intercountry Adoption Convention, produced by the Permanent Bureau of the Hague Conference for Private International Law (final draft, 21 April 2008), no. 191.

72 For example, contrary to what is indicated in Article 23 of the Hague Adoption Convention, a certificate of conformity is not issued in some Convention countries

a provisional residence permit. Given the amount of time involved in an independent assessment of applications for provisional residence permits in the Netherlands itself, the IND feels that it is expedient to leave the assessment of said conditions to the Dutch representatives in the countries of origin, since adopted children must remain in the country of origin during these checks, despite the fact that all of the various adoption papers are already ready.

The Committee is a supporter of a smooth procedure. Nevertheless, the present accelerated procedure has not been laid down anywhere, but has developed in practice. What is striking is that a positive decision has already been produced and sent to the Dutch representation to be announced before completion of the assessment of whether all of the various conditions applicable have been met. This raises the question of whether too much faith is being place in assessment by an accredited adoption agency and whether sufficient steps are taken to ensure that assessment by personnel at the Dutch representation is undertaken with sufficient care, since a positive decision has already been given. The Committee feels that this is particularly important because the conditions to be met are intended to ensure that only children who have been adopted in line with the starting points and principles of the Hague Adoption Convention come to the Netherlands for adoption. In the opinion of the Committee, the sanction whereby an accredited body loses its licence is not a sufficient safeguard to ensure that an accredited body consistently performs a full assessment of compliance with the conditions and with sufficient expertise. The procedure must be organised such that the Dutch authorities fully implement their responsibility to avoid situations in which adopted children come to the Netherlands without the correct fulfilment of all of the various conditions applicable. In the opinion of the Committee, the accelerated procedure and the responsibilities arising in this respect must be clearly laid down in subordinate regulations.

3.4 Full and Simple adoption

3.4.1 Introduction

With a view to improvement of the adoption process, the Committee will, in this section, look at full and simple adoption and at the possibility of converting a simple adoption into a full adoption. In the case of full adoption, the family relationships that a child has with its biological parents and its other original family members are broken entirely. These are replaced by a family relationship with adoptive parents. In the case of a simple adoption (an adoption from Haiti, for example), the adoptive parents will gain a family relationship with the child, but the family relationship that the child previously had with its biological parent(s) is not severed entirely. The simple adoption of a foreign child is recognised as such in the Netherlands[73]. In the Netherlands, a simple adoption also has the further legal consequences determined by the country of origin, in addition to the consequences for the family relationship that a child has and the authority of the adoptive parents[74]. In the case of a simple adoption, a foreign child

73 Section 8 of the Adoption (Conflict of Laws) Act.

74 This includes legal consequences in relation to authority, the law on surnames, inheritance law, living expenses and nationality. In accordance with Section 8(1) of the Adoption (Conflict of Laws) Act, adoptive parents will in any event gain authority over the children adopted by them.

will not automatically gain Dutch nationality, even in cases where an adoption from a Convention country is concerned[75].

The Hague Adoption Convention and Dutch legislation show a preference for full adoption. The Convention takes full adoption as its starting point. In accordance with Article 27, in conjunction with Article 4, of the Convention, a simple adoption can be converted into a full adoption in the receiving country.

The conditions applicable for this are that the law of the country permits this and that the original parents, institutions and authorities in the country of origin have given the required consents for an adoption of this nature, after having been informed of the consequences of their consent. With regard to the latter condition, particular consideration must be given to the fact that conversion will lead to the termination of legal relationship between the child and its family of origin. This conversion has been elaborated on for the Dutch situation in the Implement Act for the Convention. Section 11 of the Implement Act stipulates that accredited bodies must ensure that applications for adoption conversions according to Dutch Law are submitted to the courts in the Netherlands.

The Committee endorses this preference for full adoption. The Committee believes that full adoption is in the best interest of the child. Full adoption brings about a more complete integration of the child into the adoptive family[76]. The child will gain the status of a natural child, with all of the rights corresponding to this. Added to this, full adoption contributes to a situation where a child becomes a full member of the adoptive family in every respect, which is of great importance for adopted children in terms of the development of the attachment relationship between parent and child during the early childhood years and for the identification process while growing up[77]. Therefore, full adoption offers a child and its adoptive parents legal and social certainty. Moreover, in the opinion of the Committee, full adoption avoids situations in which children become caught in the middle between the adoptive family and the original (biological) family, and ensures the permanent nature of the adoption. Finally, full adoption also protects the privacy of the adoptive family and the birth parents.

There are also a number of objections to full adoption, which the Committee recognises. The Council for the Administration of Criminal Justice and Protection of Juveniles[78] points out that full adoption creates a distance to the child's past and, as such, can result in discontinuity. Added to this, the definitive severance of all ties with the biological family has the disadvantage that it could contribute to

75 This is evident from Section 5b of the Netherlands Nationality Act [Rijkswet op het Nederlanderschap].

76 Also see J.H.A. van Loon, Report on intercountry adoption, par. 103-105, in: Hague Conference on private international law, Proceedings of the Seventeenth Session, Tome 11, Adoption – co-operation.

77 F. Juffer, Children's awareness of adoption and their problem behavior in families with 7-year-old internationally adopted children, Adoption Quarterly, 2006, Volume 9, No. 2/3, p. 1-22; I.G. Leon, Adoption losses: Naturally occurring or socially constructed? Child Development, 2002, Volume 73, p. 652-663.

78 Council for the Administration of Criminal Justice and Protection of Juveniles, Advies inzake (interlandelijke) adoptie: sterk of zwak?, 12 December 2004.

the "commodification" of a child who has been relinquished, as discussed above in Section 2.3. These objections however, do not lead to the view that simple adoption must be promoted. The Committee also takes into consideration the fact that, in the case of intercountry adoption, a child will have gained a different culture and customs, generally does not have a command of the original language (any more) and was actually adopted because it no longer had anything to expect from its original parents. Essentially, original parents will not be able to realise the rights that they have or might believe that they have in the case of a simple adoption (right to access, reversal of the adoption, for example). Any judicial proceedings will ultimately be conducted in the Netherlands, on the basis of Dutch norms, both substantively and as regards costs. (Alleged) rights of this nature would also be difficult to exercise in practice for a number of other reasons, including the language difference and the geographical distance and/or could be contrary to the best interests of the child (for example, reversal of the adoption in a situation where the child has become attached to its adoptive parents). It must also be considered that the development of young children is particularly characterised by the need for stability and certainty[79]. These needs cannot be equated with the need that young adopted people or adopted adults feel, with respect to the wish to learn about their 'roots'. All in all, the Committee does not feel that the concept of simple adoption is appropriate for intercountry adoption, because intercountry adoption entails that the child grows up at a great distance from its family of origin and becomes part of a completely new environment.

This does not remove the fact that it may be in the best interests of the child to maintain actual ties with the biological family and to exercise openness about the adoption to the child. The Committee believes that the latter does not depend so much on the legal form of the adoption (simple or full), but on the attitude and wishes of the adoptive parents, the adopted children and the original parents, as well as on any agreements regarding contact made between the parties. Regardless of whether a child grows up in a traditional, closed family or in a family that exercises more openness about the adoption, it is of primary importance for the healthy, psychological development of an adopted child that an open, honest, non-defensive and empathetic dialogue takes place within the adoptive family, not only about subjects directly related to relinquishment and adoption, but also about the importance of this and about the ethnic-cultural background of the child[80].

One consequence of adoption is usually that the surname of the adopted child is changed into that of the adoptive parents. Often the given name of the child is also changed into a new name to be determined by the adoptive parents. If, at a certain point in an adoptee's life he or she experiences problems with the loss of his or her original given name and/or surname, there are only a few possibilities under Dutch law to regain the original name. A change of this nature would not seem to be a major problem in relation to an individual's given name. An application for a forename change

79 M.H. van IJzendoorn, Over de grens, Gehechtheid, trauma en veerkracht, Amsterdam 2008. Also see M. Watkins, S. Fisher, Talking with young children about adoption, Yale, 1993; R. Wolfs, Wereldkind. Praten met je adoptiekind, Amsterdam, 2004.

80 D.M. Brodzinsky, Reconceptualizing Openness in Adoption: Implications for Theory, Research and Practice, in: D.M. Brodzinsky, J. Palacios (eds), Psychological Issues in Adoption, Research and Practice, London 2005, pp. 150, 151.

must be submitted to the court (Article 4, Book 1, of the Netherlands Civil Code [*Burgerlijk Wetboek*]. Legislative history shows that courts must assess whether an applicant has sufficient interest in a change to his or her forename. The interest of society in a tightly organised structure must be weighed up against the personal interests of the applicant in relation to a change of name[81]. Case law shows a variety of cases in which some applications were allowed and others not. However, the judiciary would seem to have become more flexible in the assessment of forename changes over the course of time. The Committee feels that it is obvious that the interests of an adoptee who wishes to regain his or her original forename must always be given the utmost weight in considerations. However, current legislation is considerably remiss with regard to the possibility for an individual to 'regain' his or her original surname. An individual is only able to change his surname on the basis of very limited grounds (Article 1, Book 1, of the Netherlands Civil Code in conjunction with the surname-change decree [*Besluit geslachtsnaamswijziging*]), and it is not possible to regain the original surname. The possibilities currently offered by legislation are the hardship clause in Article 6 of the surname-change decree, on the one hand, where the applicant demonstrates that the physical or mental health of the parties in question would be seriously affected if a change to the surname were not effected, and the revocation of the adoption, on the other hand. Both possibilities are essentially unsuitable. The Committee feels that the requirement applicable for use of the hardship clause, namely damage to physical or mental health, is disproportional. Revocation of an adoption is obviously not an appropriate remedy, where merely a change of name is the object envisaged. In addition, revocation is only possible for a very limited period (Article 231, Book 1, of the Netherlands Civil Code)[82]. The Committee considers that a surname reflects part of an individual's identity. Where it is found that an adoptee wants to strengthen the element of his or her original identity at a certain point in his or her life, it should be possible for him or her to regain his or her original name. This will require an amendment to the surname-change decree. The possibility of changing the surname that an adoptee has into a double name consisting of the original surname in combination with the surname gained through adoption must be considered too. The Committee therefore recommends that these points be taken into consideration by the working group that will examine various aspects relating to the law on surnames[83].

3.4.2 Conversion from simple to full adoption

Given the above, the Committee will discuss conversion from a simple to a full (Convention) adoption in this section. This conversion requires the explicit consent of the biological parents for full adoption[84]. Where this consent has not been obtained, or the biological parents are not willing to give this consent, conversion to a full adoption will not be possible. Where a simple adoption cannot be converted, an adopted child will not be given the Dutch nationality. Section 5a(1)(b) of the Netherlands Nationality

81 H. Lenters, Naam en gezag, in: De familie geregeld, Preadvies voor de Koninlijke Notariële Beroepsorganisatie, Lelystad/The Hague, 2000, p. 23.

82 A request for the revocation of an adoption must be submitted to the court no earlier than two years and no later than five years after the date on which the adoptee became an adult, according to Article 231.

83 Handelingen II (Parliamentary Notes II), 2007-2008, no. 50, pp. 3688, 3689.

84 Article 27 of the Hague Adoption Convention, Article 11 of the Implementation Act, Section 9 of the Adoption (Conflict of Laws) Act.

Act [*Rijkswet op het Nederlanderschap*] prevents this. The Committee feels that this is problematic and not in the best interests of the child. Subsequently, the Committee considers it appropriate, partly given the value that it attaches to full adoption, for a number of modifications to be made in order to ensure the proper course of the conversion procedure.

Firstly, in the case of simple adoptions, the Committee believes that the accredited bodies must ensure that the files for the children to be adopted contain the explicit consent of the biological parents for conversion to a full adoption. If an accredited body does not obtain this consent, the Committee believes that the adoption should not take place. After all, in this situation the biological parents are not willing to accept the consequences of full adoption. In this situation, adoption to the Netherlands is contrary to the interests of the biological parents. This will also do more justice to the explicit choice by a country of origin to opt for legal concept of simple adoption.

In the case of Convention adoptions, the Committee also believes that courts must be able to decide on conversion from a simple to a full adoption in the best interests of the child as described above, not only at the request of the adoptive parent, but also in its official capacity. To this end, accredited bodies that which are aware of the arrival of children in the Netherlands by virtue of their activities, must be legally obliged to notify the courts of this immediately after their arrival. In the case of Convention adoptions, a smooth procedure for conversion (whether or not by the court in its official capacity) from a simple adoption to a full adoption will mean that a child gains the Dutch nationality as soon as possible after its arrival in the Netherlands. After all, where Convention adoptions are concerned, prior acknowledgement of a foreign adoption by the Dutch court in not necessary. In the case of a simple adoption from a non-Convention country, the court must be able to proceed to convert the simple adoption into a full adoption in the acknowledgement proceedings, in connection with Section 7 of the Act regulating the conflicts of laws regarding adoption [Wet conflictenrecht adoptie], and do so in its official capacity. In the opinion of the Committee, the Act should be amended to this end.

3.5 The activities performed by the accredited bodies

3.5.1 Quality Framework

Sections 17a et seq. of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption stipulate the requirements which the activities performed by the accredited bodies must meet. The Committee is aware that a Quality framework for accredited bodies in relation to intercountry adoption (hereinafter: Quality framework) was produced recently, and contains further criteria to be met by accredited adoption agencies. The object of the Quality framework is to improve the quality of the activities performed by the accredited bodies as part of the adoption procedure – their mediation activities – and in the field of business operations. The Quality framework was produced under the auspices of the Central Authority and will be signed by all seven accredited bodies. An implementation programme will be necessary for certain parts of the Quality framework, with which the accredited bodies will only be expected to comply on 1 January 2010. When the Quality

framework has been signed by all of the accredited bodies, it will be able to serve as a guideline for the Youth Care Inspectorate in the performance of its supervisory task[85].

The Committee took note of and was very much in agreement with the Quality framework. The Committee feels that the Quality framework is so important that it wants to see the content of this framework grounded in legislation and regulations as much as possible. Contrary to the present situation, accredited bodies will then be legally obliged to meet the requirements of the Quality framework. As such, compliance with these requirements must be a condition when granting and extending licences.

However, the question is raised as to whether accredited bodies may continue to use volunteers. This would be at the expense of the quality and professionalism of the accredited bodies. In this respect, the Committee observes that the expertise requirements that the Quality framework[86] imposes on staff with regard to the determination of the possibility of mediation for prospective adoptive parents, the matching or assessment of matching proposals, the assessment and verification of foreign mediation contacts and the supervision of an adoptive family following the placement of an adopted child, apply not only to staff in salaried employment, but also to volunteers. Where there is sufficient supervision on the part of the government to ensure that volunteers do actually comply with the expertise requirements applicable, the Committee believes that their performance of the activities indicated can be accepted.

3.5.2 Minimum number of adoption mediations

Section 18(2)(b) of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption stipulates that the Minister of Justice may withdraw a licence in cases where an accredited body has not completed an adoption mediation in a period of at least two years. This implies that the Minister is unable to act against an accredited body in cases where the accredited body in question achieves just one adoption mediation every two years for a protracted period of time. In connection with the quality of the adoption procedure, the Committee feels that it is important for an accredited body to be continually in touch with the adoption process and to have significant expertise. In the opinion of the Committee, this will contribute to the efficient and professional organisation of accredited bodies. If for no other reason, the Committee feels that the current statutory minimum of one successful adoption every two years is too limited. In addition, a small organisation and the achievement of a limited number of adoption mediations will logically be accompanied by the risk that it will not be possible to maintain this organisation under certain circumstances. Furthermore, a larger accredited body will be under less pressure to allow an individual adoption to go ahead in order to be able to survive as an organisation. In this connection, the Committee points to the fact that 30 successful adoption mediations per year are the starting point in Flanders[87]. In France, a committee that

85 The Minister of Justice in his letter to the Lower House of 7 November 2007 (Kamerstukken II 2007-2008, 31 265, no. 1, p. 8).

86 Chapter III/Personnel and organisation.

87 Article 38 of the Flemish government decree of 23 September 2005 on intercountry adoption (B.S.18.XI.2005).

issued its advice on intercountry adoption in 2003 also advised 30 successful adoption mediations per year[88].

The Committee feels that it is appropriate to amend Section 18 of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption in the sense that an average number of 30 successful adoption mediations per year will become compulsory. If this average is not achieved over a period of five years, the Minister will be able to withdraw the licence in question. To achieve an arrangement of this nature in practice, a transitional regime will be necessary. This could entail the requirement that accredited bodies be able to achieve the minimum number of adoptions after two years. For organisations that want to become involved in adoption mediation (want to become an 'accredited body'), a regime could apply whereby they receive a provisional licence to this end, after which they will be given five years to achieve the 30 mediations per year. The Committee recognises that achievement of the number of adoption mediations required will put some accredited bodies under pressure, but feels that this risk is acceptable, given the assessment of each individual case by the Central Authority ('approval', certificate of approval) and the limited duration of this pressure.

3.5.3 Subsidisation of accredited bodies

The Committee has asked itself whether the subsidisation of accredited bodies could promote the quality of the adoption procedure. It observes as follows.

The Committee feels that a reserved approach is appropriate for the subsidisation of accredited bodies. After all, subsidies could lead to a situation where the government is actually promoting intercountry adoption. The Committee believes that this is not a government task (see Section 5.3).

By subsidising accredited bodies, the government is able to be in control. However, the Committee believes that the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption, together with the other instruments that the Committee will recommend in this Section, already contains sufficient control instruments. Because of this, the Committee does not feel that it is appropriate to provide a subsidy designed to ensure that accredited bodies do not allow adoptions to go ahead in the interest of their 'turnover' despite the fact that these adoptions are not in compliance with the conditions of the Act and Convention.

88 Marianne Abelson-Laurans (Inspecteur des Services judiciaires), Philippe Larrieu (Inspecteur des Affaires étrangères), Bernard Marrot ( ), Mission sur le dispositif Francais de l'adoption internationale, Rapport final, December 2003, pp. 20-21: "Sur 40 OAA [accredited bodies], 12 seulement réalisent de 30 adoptions annuelles. Le chiffre de 30 adoptions annuelles est considéré, par des experts, comme un seuil minimal d'activité pour pouvoir organiser les prestations qu'exigent l'accompagnement des parents adoptifs et de l'enfant adopté. Or 16 OAA réalisent moins de 10 adoptions (certain n'en réalisent pas tous les ans), et 12 moins de 30 par ans. (…) … le chiffre de 30 adoptions annuelles minimum présenté comme un seuil garantissant une bonne capacité d'action est probablement optimiste. La mission n'est pas insensible aux quelques exemples d'organismes capacité d'action est probablement optimiste. La mission n'est pas insensible aux quelques exemples d'organismes de petite taille qui, reposant sur la force des motivations altruistes de bénévolat, parviennent à réaliser dans de bonnes conditions quelques adoptions annuelles. Mais une action continue et un développement effiface decette démarche ne peuvent se poursuivre en se reposant surle charisme d'une oudeux personnes.".

On the other hand, the Committee feels that it is so important for accredited bodies to achieve and maintain the level of quality and professionalism described in the Quality framework, that it believes that the government must support accredited bodies in this respect. The Committee feels that the provision of a structural subsidy to the accredited bodies to this end would be appropriate. If the government does not facilitate the accredited bodies in this respect, there is a chance that accredited bodies will pass on the cost of maintaining an increase in scale and quality to the prospective adoptive parents. The Committee feels that that would be an unwanted situation, since these costs are already high.

As indicated in Section 3.5.2, the Committee considers a minimum average number of 30 adoption mediations per year to be advisable. It feels that a new adoption organisation (with a provisional licence) will be eligible for a subsidy as soon as the average number per year has been achieved.

3.6 Financial aspects of intercountry adoption

In Section 2.3, the Committee observed that intercountry adoption is susceptible to unwanted and irregular influences as a result of the possibility of monetary gain involved in making children eligible for intercountry adoption. This is recognised worldwide. Article 21 of the International Convention on the Rights of the Child explicitly stipulates that the Member States must put measures in place to ensure that intercountry adoption does not lead to improper financial gain on the part of those involved. Pursuant to Article 4 of the Hague Adoption Convention, the consent of the relevant individuals, institutions and authorities in the country of origin may not have been obtained for money or in exchange for any other consideration. This must be determined by the competent authorities in the countries of origin. Section 20(3) of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption stipulates that an accredited body may not make disproportionately high payments for services that are performed in connection with its mediation. With a view to compliance with this provision, accredited bodies must provide information about their relationships with authorities abroad (Section 20(4) of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption).

The Committee is of the opinion that the supervision from the Netherlands of the enforcement of the said Convention provisions and of sections of the relevant law must become more stringent. The Committee feels that it is important for the accredited bodies to gain as much of an insight as possible into money flows from the Netherlands to the various countries of origin and into the way in which this money is spent. This applies not only for the amounts that the accredited bodies pay in the countries of origin, but also for the amounts that the potential adoptive parents are sometimes expected to pay directly to individuals or institutions in a country of origin. The Quality Framework discussed in Section 3.4.1 contains additional rules on the further insight to be provided by the accredited bodies. The Committee endorses these rules. It stresses the vital need for precise assessment of the evaluation standards that have been included in these rules.

In relation to this, the Committee also observes that it may be customary in certain countries of origin to make a small payment to the individuals or authorities involved in an adoption. The Committee points out that, in principle, the payment of bribes to foreign officials is liable to punishment in the Netherlands (see Articles 177, 177a and 178a of the Criminal Code [*Wetboek van Strafrecht*]). The engagement of local agents or representatives for the actual payment of bribes may result in liability for punishment in the Netherlands. This also applies to accredited bodies. Nevertheless, the Public Prosecution Service will not decide to prosecute where so-called "facilitation payments" are concerned, namely small payments that serve to urge government officials to perform their tasks[89]. The Committee is of the opinion that accredited bodies must have the scope to make "facilitation payments" of this nature where this is customary is in certain countries. However, in these situations, the payments must be small and it must be possible to consider them acceptable[90].

3.7 International supervision

A case is being argued for the establishment of an international authority to ensure compliance with the Hague Adoption Convention[91]. In relation to this, the director of the Wereldkinderen Foundation indicated in her foundation publication that it must be possible to tackle countries that do not abide by the Hague Adoption Convention: ["for example, Convention countries ought to render account of their efforts to place children in a family locally"]. She also observes that the accredited bodies are unable to enter into a discussion on this subject with the countries of origin, as these countries do not see the accredited bodies as official discussion partners[92].

89 Aanwijzing opsporing en vervolging ambtelijke corruptie in het buitenland, Government Gazette. 2 July 2007, no. 124, p. 14: ["The OECD (Organisation for Economic Cooperation and Development) Anti-Bribery Convention [full name: the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions] does not consider small <facilitation> payments as payments "to gain or maintain any other ongeoorloofd advantage". Therefore, this type of 'facilitation payment' falls outside the scope of the obligation under the Convention to penalise the bribery of foreign officials. (…) For liability under criminal law, pursuant to Articles 177a and 177 of the Criminal Code, the ultimate objective underlying the bribing of an official is not of any relevance. As such, strictly speaking, 'facilitation payments' are liable to punishment. However, the Public Prosecution Service does not feel that it is opportune to pursue a more stringent investigation policy on the approach taken to foreign officials than is called for under the OECD Anti-Bribery Convention. This means that actions that can be deemed to be 'facilitation payments' in terms of the OECD Anti-Bribery Convention, will not be prosecuted. Several factors are indicated below that provide further substantiation for prosecution policy. It may be necessary to institute an investigation in order to answer the question of whether one or more of these factors indicate a decision not to prosecute. Factors that make a case against prosecution:
The payment concerned an act or omission that was already legally compulsory for the official in question. The payment may not distort the balance of competition in any way whatsoever.
Small amounts are involved, in an absolute or relative sense.
The payments concerned are made to less senior officials.
The gift must be included transparently in the accounts maintained by the organisation, and may not be concealed.
The gift must have been initiated by the foreign official.
It must be absolutely clear to the international business sector that the mere engagement of a local agent/representative/consultant can also result in a liability to punishment."

90 In this connection, also see Mr.dr. Oosting, Verslag van een onderzoek naar het toezicht op de Stichting Meiling in verband met de mogelijke misstanden met betrekking tot adoptie uit India in de periode 1995-2002, The Hague, September 2007, p. 12, which contains a similar view.

91 In the motion proposed by Van der Staay, a member of the Lower House, on 15 November 2007, Kamerstukken II 2007-2008, 31200 VI, no. 81, the government is requested to ascertain whether broad support can be obtained for an international authority to supervise compliance with the Hague Adoption Convention.

92 Ina Hut, Opinie Wereldkinderen, in: Wereldkinderen, November 2007, p. 13.

The Committee feels that international supervision is a commendable ambition in itself, but adds that an international supervisory authority will be necessary before an optimal result is possible, which authority should be created by all of the countries that are a party to the Hague Adoption Convention, including the countries of origin. The Committee feels that this will not be feasible in the short term.

An important obstacle to the creation of an international supervisory authority is the fact that insights on the intercountry adoption process vary, even within a European context. Countries like France, Italy and Spain for example, are currently pushing for an increase in adoption capacity, whilst this is generally considered inadvisable in the Scandinavian countries and the Netherlands. Another example is the fact that, on 16 January 2008, the European parliament spoke in favour of a joint policy to make (intercountry) adoption easier in the European Union[93], while by contrast, the general view is that the various countries in the European Union should organise support for natural parents and their youth care services such that intercountry (European) adoption is not necessary. The content of Sections 1 and 2 do show that the Committee shares the latter opinion. The Committee would like to urge the government to raise the subject of intercountry adoption in a European context, in order to arrive at a shared point of view on intercountry adoption, where possible. This could be in an EU context, but perhaps also in the context of the Council of Europe. The Committee feels that it will only be possible to consider whether and, if so, in which form supervision of compliance with the Hague Adoption Convention is advisable after a shared European point of view has been achieved.

3.8 Consequences of introducing stricter measures for assessment and supervision

In the sections above, the Committee indicated a number of measures intended to introduce a stricter policy of assessment and supervision of the adoption procedure following the granting of a permit in principle. As a result of these measures, the activities performed by the government organisations in question will increase. The Committee would like to urge that these organisations are equipped such that they are able to perform their tasks properly.

If the measures recommended by the Committee come into force, assessment of the adoption procedure will have been greatly improved. However, in relation to this, the Committee emphasises that abuses can never be ruled out, however well the assessment of the adoption procedure is organised[94].

Recommendations

The Committee makes the following recommendations in relation to the above:

3. The introduction of a 'certificate of approval' when adopting a foreign child from a non-Convention country, which certification will be issued by the Central Authority and will relate to the match and to legal requirements for the eligibility of a child for intercountry adoption.

93 Resolution by the European Parliament, dated 16 January 2008, number: A6-0520/2007. Also see recommendation 10 in Rapport sur l'adoption, Mission confiée par le président de la République et le Premier ministre à Jean-Marie Colombani, Paris, 2008.

94 Also see Mr.dr. Oosting, Verslag van een onderzoek naar het toezicht op de Stichting Meiling in verband met de mogelijke misstanden met betrekking tot adoptie uit India in de periode 1995-200, The Hague, September 2007, p. 14.

4. **The introduction, for accredited bodies, of an authorisation from the Central Authority, for adoption mediation from a non-Convention country ('authorisation per country').**

5. **The abolition of mediation through an independent adoption as referred to in Section 7a of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption.**

6. **Detailed documentation, in subordinate regulations, of the accelerated procedure applicable when issuing a provisional residence permit and the responsibilities in this respect.**

7. **In the case of a simple (Convention) adoption, requiring accredited bodies to ensure that the file for the adopted child in question includes the explicit consent of the biological parents for conversion to a full adoption. Where this is not possible, the adoption in question must not take place. It is also advisable to achieve a situation where, in the case of Convention adoptions that are recognised legally here in the Netherlands, the court will be able to decide upon conversion to a full adoption, not only where requested to do so, but also ex officio. This will make it possible for a child to gain the Dutch nationality as soon as possible after its arrival in the Netherlands.**

   For this purpose, accredited bodies must be required by law to notify the court of the arrival of an adopted child in the Netherlands. In the case of a simple adoption from a non-Convention country, the court must be able, pursuant to Section 7 of the Adoption (Conflict of Laws) Act [Wet conflictenrecht adoptie], to officially proceed with conversion of the adoption into a full adoption as part of the acknowledgement procedure in relation to the adoption in question.

8. **The achievement of a situation where adopted children are able to regain their original surnames, upon request. Consideration must also be given to a situation where the surname of an adopted child can be changed into a double name at his or her request, consisting of the original surname in combination with the surname gained as a result of adoption. It is advisable for these points to be taken into consideration by the working group to tackle a number of aspects of law on surnames.**

9. **Where possible, laying down the content of the Quality Framework in laws and regulations. Accredited bodies will then be legally obliged to comply with the requirements of the Quality Framework. Compliance with these requirements must also be a condition when granting and extending licences.**

10. **Requiring accredited bodies to achieve a minimum number of an average of 30 adoption mediations per year, with a view to the efficient and professional organisation of accredited bodies. To be able to achieve an arrangement of this nature in practice, a transitional arrangement will be necessary. It is possible that this will mean that existing accredited**

bodies will have to be able to comply with the minimum number of adoptions required after two years. For organisations that want to become involved in adoption mediation (want to become an 'accredited body'), an arrangement could apply whereby they are issued with a provisional licence to this end, after which they will be given five years to achieve the required 30 mediations per year.

11. **The structural subsidisation of accredited bodies, in order to make it possible to achieve and maintain the qualitative and professional level required by the Quality Framework.**

12. **The establishment of more stringent measures for supervision of the financial aspects of the adoption procedure, by requesting an insight into the flow of money from the Netherlands to the various countries of origin and the way in which this money is spent. This applies not only to the amounts paid by the accredited bodies in the countries of origin, but also to the amounts to be paid directly by the prospective adoptive parents to individuals or institutions in a country of origin. Compliance with assessment standards included in the Quality Framework in this respect must be subject to strict supervision.**

13. **The introduction of a authority to issue a designation order for the Central Authority vis-à-vis the accredited bodies. This will make it possible for the Central Authority to manage adoption situations in a more targeted manner, without having to use more serious sanction possibilities, such as the withdrawal or suspension of a licence or authorisation per country.**

14. **Raising the subject of intercountry adoption for discussion in a European connection, with the aim of achieving a shared point of view on this subject, wherever possible. Only when a joint European vision has been achieved will it be possible to consider whether - and in which form - international regulation of compliance with the Hague Adoption Convention can be discussed.**

15. **Promoting a situation where the Minister of Foreign Affairs achieves a constant awareness on the part of Dutch representations in the countries of origin of the situation in the country in question in relation to intercountry adoption, even in periods in which there have been no incidents, so that representations consistently report abuses in relation to intercountry adoption, or other relevant information, to the Central Authority, not only where requested to do so, but also ex officio.**

4. Age limits and the suitability of adoptive parents

4.1 Introduction

The Minister of Justice has asked the Committee to give attention, in its advice, to the subject of age criteria, partly in connection with the decreasing number of foreign children available for adoption. In this section, the Committee will look at the age limits applicable, as well as at the requirements to be imposed on suitability as an adoptive parent.

4.2 Current situation

Pursuant to current legislation, the age limits system is as follows – in summary form.

- Age difference between the prospective adoptive parent and child: a maximum of 40 years, except where the Central Authority feels that special circumstances warrant an exception.
- Age of the foreign child: upon arrival in the Netherlands, a child may not yet have reached the age of six, except where special circumstances give the Central Authority cause to permit a deviation from this age limit.
- Age of potential adoptive parents: a permit in principle will be valid until the 46th year. No exceptions are possible in relation to this age limit.
- Age when applying for a permit in principle: up to the age of 42, except where special circumstances give the Central Authority cause to believe that it is advisable for an application for a permit in principle to be allowed. However, the age of 44 is a fixed limit. An example of special circumstances is the situation where parents are willing to adopt a child of two or older or a handicapped child.

Where a prospective adoptive parent is not within the statutory age limit (and no special circumstances apply), the Minister of Justice will reject an application for a permit in principle. This will also be the case where a prospective adoptive parent is not deemed suitable to take care of and raise a foreign child. The Child Care and Protection Board will ascertain the situation in the so-called home study. To put it briefly, this consists of consultation of the Criminal Records Register, a medical examination (a certificate signed by an independent doctor must be submitted) and an assessment of the (social and educational) skills required. The assessment will include a discussion of the expectations that the prospective adoptive parents have, as well as the extent to which any unwanted childlessness has been processed. The findings of the Board will be included in an advisory report[95], on the basis

95 The report also describes the parents and their (residential) situation. The report also serves to provide the relevant foreign authorities with information.

of which the Minister of Justice will decide on the application for a permit in principle. In July 2006, the Minister of Justice submitted a draft legislative proposal on the amendment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption to co-operating organisations and interest groups for the purpose of consultation[96]. This amendment would significantly extend these age limits:

- Age difference between a prospective adoptive parents and child: a maximum of 44 years, except where special circumstances can be invoked;
- Age of prospective adoptive parents: a permit in principle can be granted or extended until the youngest or only prospective adoptive parent reaches the age of 44 or until the oldest reaches the age of 56.

The consultation showed that opinions on extension of the age limits applicable are strongly divided, but are predominantly negative. In February 2007, the then Minister for Integration, Youth Protection, Prevention and Rehabilitation said that she felt the age increase indicated in the draft legislative proposal was a wise proposal, and also expressed the willingness to increase the maximum age of the child upon arrival to eight[97]. These views prompted the Council for the Administration of Criminal Justice and Protection of Juveniles to ask for a broad discussion of intercountry adoption in its letter to the to the Minister of Justice on 23 February 2007. The further preparation of the legislative proposal is currently pending, in anticipation of the findings of the Committee.

4.3 Starting points for the Committee

The Committee believes that the following starting points must apply with regard to the requirements on the suitability of prospective adoptive parents.

a. The best interests of the adopted child must be the principal consideration here too. Based on this view, the age limits and suitability requirements must be approximated.

b. Each adopted child already has already experienced at least one, but far more often a number of situations of loss. It will have been relinquished by a parent or no longer have any parents and then have had to say goodbye to family members, foster parent(s) or a series of carers. As a result, subsequent experiences of loss may have more of an impact on the adoptee and may have negative consequences for his or her socio-emotional functioning and well-being[98]. This is why it is important to prevent adoptees from being at a greater risk of losing their parents (and other important family members, such as grandparents) at a significantly earlier age than their non-adopted peers. The age limit applicable for prospective adoptive parents must be based

96 The draft legislative proposal on the amendment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption and the corresponding draft explanatory memorandum can be consulted via the website for AdoptieOudersOverleg. See: http://www.adoptieoudersoverleg.nl/downloads/2006-07-04-MvJ.pdf.

97 Policy document further to the report on the legislative proposal on amendment of Book 1 of the Netherlands Civil Code, in connection with the shortening of the adoption procedure and amendment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption, in connection with joint adoption by same-sex spouses; Kamerstukken II 2006-2007, 30 551, no. 6, p. 6.

98 D.M. Brodzinsky, et al., Being adopted, The lifelong search for self, New York 1993;H. Keilsen, Sequential traumatization in children, Jerusalem 1979; I.G. Leon, I.G., Adoption losses: Naturally occurring or socially constructed?, Child Development, 2002, pp. 652-663; J. Robertson and J. Robertson, Separation and the very young, London 1989.

on this principle[99]. For this reason, as regards the age of adoptive parents, the Committee feels that it is in the best interests of the child for alignment to be sought with the age of biological parents upon the birth of their first child. The natural situation must be approximated as much as possible in terms of the age of the adoptive parents and the age difference between the adoptive parents and the child to be adopted. The International Social Service[100] says the following in this respect:

"Of course, the actual demographic evolution strives towards delaying the age of parenthood, including the age of biological parenthood. But according to Human Sciences specialist adoption presupposes, in fact, specific adaptive capacities and psychological flexibility, which are presumed to decrease with age. Moreover, the child's development can suffer if it has too old a parental model, or experiences the early death of the adopters."

The Committee observes that current laws and regulations corresponds with the view that the Committee has. Given the above, the Committee is of the opinion that the maximum age of 56 proposed by the then Minister of Justice is too high. The Committee also bases this view on the consideration that an increase to the age limit applicable for prospective adoptive parents will increase the size of this group. This will have consequences for the waiting list and increase pressure on the adoption process, which the Committee considers inadvisable. See Section 5.2 in this connection.

The Committee is familiar with the view that the imposition of age limits is discriminatory. In this connection, it is stated that any unsuitability on the part of prospective adoptive parents will be evident from the home study conducted by the Child Care and Protection Board. Some parties are also of the opinion that the age limits applicable should be amended because people today are having children at an increasingly later age. The Committee does not share this view. As the risk of death increases with age, the age of adoptive parents is a relevant fact when considering the best interests of a child in relation to adoption. As such older parents are different to younger parents in a relevant respect, making it very debatable whether equal cases can apply, as referred to in the prohibition against age discrimination. Where cases are to be considered to be equal, the Committee believes that the best interests of the child (to be protected against another loss experience) justifies a distinction between adoptive parents on the basis of their age.

c. Nor does the Committee endorse the assertion that age limits are superfluous because suitability can be determined sufficiently as part of the home study, also taking the age of prospective adoptive parents into consideration. After all, this study can only be used to determine suitability

99 Academic research is unable to provide a definitive answer to the question of the extent to which parenthood forms a risk factor for the development of children and adolescents, because (adoptive) parenthood at an (extreme) older age is not a common occurrence and barely any studies have been conducted on this subject. In this respect, see Adviesbureau Van Montfoort, Evaluatieonderzoek Wobka, Een evaluatieonderzoek naar de Wet opneming buitenlandse kinderen ter adoptie, July 2004, Section 8.5.1. and the literature cited there.

100 International Social Service, The age prescriptions for the prospective parents, November 2001, p.3.

at the time of the study. No allowance can be made for an increase in the risk of death – which cannot be established for the individual case, but solely on the basis of statistics.

d. Finally, the Committee observes that the average age at which women have their first child has risen over recent decades to 29.4 in 2006. The expectation based on CBS forecasts is that this average age will continue to be approximately 29 in the next 10 to 15 years[101]. The majority of first children are still born to women between the ages of 27 and 32[102]. Most woman still have their first child before the age of 40. Therefore, the Committee does not feel that the argument for increasing the age limits is convincing solely because people today are increasingly having children at a later age. Incidentally, a large number of countries of origin themselves impose age limits and requirements in relation to the suitability of prospective adoptive parents.

e. The Committee supports a fixed age limit of 48 (subject to the condition that the age limit for a child is increased to eight and the maximum age difference between the prospective adoptive parent and the child to be adopted is fixed at 40; see below). One advantage of a fixed age limit is that this provides clarity and limits the expectations that prospective adoptive parents have. However, at the same time, a limit of this nature may not be in the best interests of an adopted child, in a situation where this means that a biological brother or sister cannot be adopted by the same adoptive parents. According to the Committee, some flexibility in the application of the legislation may be appropriate for a situation of this nature and the possibility to make an exception must be available[103]. In this regard, the Committee feels that it is highly likely that in cases involving the possible adoption of a younger brother or sister, the Court would regard the application of a fixed age limit to be contrary to Article 3 of the International Convention on the Rights of the Child.

f. The age limit applicable for a child is currently six (i.e.: up to and including the age of five). Where a child is six or older, prior consent for its arrival in the Netherlands must be requested from the Central Authority[104]. The Committee would like to see this age increased to eight; in other words: up to and including the age of seven. It is often difficult for countries of origin to accept the fact that older children are apparently not wanted by the Netherlands, but are welcome in families in other receiving countries, such as Sweden, Italy or the United States. International academic research has conclusively demonstrated that an important predictor of the later socio-emotional development of adopted children is not so much their age upon arrival,

101 E-Quality, Gezinnen van de toekomst, Cijfers en trends, March 2008, pp. 19 and 20.

102 E-Quality, Gezinnen van de toekomst, Cijfers en trends, March 2008, p. 26.

103 International Social Service, The age prescriptions for the prospective parents, November 2001, p. 3; International Social Service, The evaluation of the candidates: the question of age, Fact sheet No 25, November 2006.

104 This consent from the Central Authority is referred to as a 'registered permission in principle'.

but particularly the extent of neglect and deprivation prior to the adoption placement[105]. Various studies also show that the outcome resulting from the adoption of 'older' children (above the age of five) does not compare unfavourably with the adjustment of children adopted when they were younger[106]. Meta-analytical research has shown that children who are adopted after their first birthday have an increased chance of problems in their attachment development, later school achievements and physical growth, but extra risks were not determined for children who were adopted at an age (that is significantly) older than two[107]. The Committee therefore feels that there are good arguments for a higher age limit. The Committee feels that an upper limit of up to and including the age of seven would be appropriate, as the Committee believes that it is best to place an adopted child in a new family, and allow it to integrate into its new family, before he or she reaches puberty, as puberty is usually a period in which a child experiences developmental changes and relational shifts occur in the family. Because the start of puberty can be earlier in adopted children[108], a limit of eight was chosen. The Committee would like to see that the adoption of older children is prepared well and supervised (see below) and also that the course of these adoptions is followed and evaluated.

As far as the Committee is concerned, a maximum age difference of up to 40 years will apply between the prospective adoptive parent and the child to be adopted. The Committee feels that the exception to this rule laid down in Article 3(2)(a) of the guidelines on the placement of foreign children for adoption 2000 [Richtlijnen opneming buitenlandse kinderen ter adoptie 2000] (making it possible for older adoptive parents to place a child aged two and one day) must be cancelled. For example, a prospective adoptive parent aged 45 will then no longer be able to adopt a child of two, something which currently is possible, but only a child aged five or older. This adjustment of the age limits will give more older children the opportunity to live in a family environment. In this manner, a maximum age of 48 is arrived at for adoptive parents.

g. The Committee is also aware of the opinion that the home study is too detailed and could be limited, for example, to consultation of the Criminal Records Register and a medical examination. Here too, the special significance and background of adopted children necessitate

105 M. Dalen, International adoptions in Scandinavia: Research focus and main results, in: D.M. Brodzinsky & J. Palacios (ed.), Psychological issues in adoption. Research and practice. London, 2005, p. 211-231; D. Howe, Parent-reported problems in 211 adopted children: some risks and protective factors. Journal of Child Psychology & Psychiatry, Volume 38, 1997, p. 401-411; D. Howe, Patterns of adoption. Nature, nurture and psychosocial development. Oxford, 1998, p. 71-133. F. Juffer & M.H. van IJzendoorn, Behavior problems and mental health referrals of international adoptees: A meta-analysis, The Journal of the American Medical Association, Volume 293, 2005, p. 2501-2515; M.H. van IJzendoorn, F. Juffer, and C.W. Klein Poelhuis, Adoption and cognitive development: A meta-analytic comparison of adopted and non-adopted children's IQ and school performance. Psychological Bulletin, Volume 131, 2005, p. 301-316; F.C. Verhulst, Internationally adopted children: The Dutch longitudinal adoption study. Adoption Quarterly, Volume 4, 2000, p. 27-44.

106 Juffer and Van IJzendoorn (2005), p. 2512. In a recent study amongst internationally adopted children in Spain and Italy, better adjustment was found in children with an arrival age of six and older than amongst children who arrived between the ages of three and five. See D. Barni, E. Leon, R. Rosnati and J. Palacios, Behavioural and socio-emotional adjustment in international adoptees: A comparison between Italian and Spanish adoptive parents' reports, Adoption Quarterly, 2008 (in print).

107 Van IJzendoorn and Juffer (2006), p. 1240.

108 L.C. Miller (2005), p. 338-344; W. Oostdijjk, Groei en puberteit bij adoptiekinderen, in: R. Hoksbergen and H. Walenkamp, Adoptie: een levenslang dilemma. Houten, 2000, p. 83-95; M.H. van IJzendoorn, M.J. Bakermans-Kranenburg and F. Juffer, Plasticity of growth in height, weight and head circumference: Meta-analytic evidence of massive catch-up after international adoption. Journal of Development and Behavioral Pediatrics, Volume 28, 2007, pp. 3343-343.

the imposition of special requirements in relation to the suitability of adoptive parents. After all, in many cases children to be adopted already have a (physical and/or psychological) delay when they arrive in the Netherlands[109]. In relation to this, the Committee refers to the rationale underlying Article 5 of the Hague Adoption Convention, on the basis of which countries of origin may expect the Dutch government to carefully ascertain whether prospective adoptive parents have the social and educational skills necessary for adoption[110].

h. In the case of one-parent adoptions, the requirements applicable in relation to the suitability of prospective adoptive parents and any age limits must also apply for the spouse, registered partner or life partner of the individual wishing to adopt. After all, this partner forms a long-lasting part of the family in which the adopted child will grow up. In this connection, the Committee refers to the judgment by the European Court of Human Rights concerning E.B. versus France of 22 January 2008[111], where it was ruled as follows:
"(...) the question of the attitude of the partner, with whom she stated that she was in a stable and lasting relationship, is positively relevant with regard to the assessment of her application. It is legitimate for the authorities to ensure that all safeguards are in place before a child is taken into a family. Accordingly, where a male of female applicant, although unmarried, has already set up a home with a partner, that partner's attitude and the role he or she will necessarily play on a daily basis in the life of the child who is to join the home environment require a full examination in the child's best interests. It would moreover be surprising, to say the least, if the relevant authorities, having been informed of the existence of a *de facto* couple, pretended to be unaware of that fact when assessing the conditions in which the child would be given a home and his future life in that new home. The legal status of a person seeking to adopt is not incompatible with an examination of his or her actual situation and the subsequent finding of not one but two adults in the household."

The Committee also considers that in the current situation, the partner will be included in the home investigation in the event of one-parent adoption, but will not be expected to produce a certificate evidencing that he or she is willing to provide the child in question with the medical care needed[112]. It is the opinion of the Committee that the wish expressed by a prospective adoptive parent who wants to adopt alone for practical reasons should not be honoured.

i. In the opinion of the Committee, the increase in the number of children with special needs (and the fact that prospective adoptive parents do not always know in advance whether they will actually be able to adopt a child that is physically and mentally healthy) and older children make it advisable for the adoption of a child with special needs and/or an older child to be the

109 Juffer and Van IJzendoorn (2008), pp. 31-49.

110 See explanatory report Parra-Arranguen (Actes et documents de la Dix-septième session, Tome II, Adoption – coopération), no. 180.

111 EHRM 22 January 2008, Case of E.B. versus France, Application no. 43546/02.

112 The phrase "the medical care required" can be defined in a number of ways, including the immunisation of a child where customary and allowing it to have a blood transfusion.

starting point for the compulsory information course (in which prospective adoptive parents are also prepared for all other aspects of intercountry adoption) provided by the Foundation for Adoption Services. In this connection, the Committee also feels that it would be appropriate, following on from the information (and preparation) course, for the Video Interaction Guidance programme organised by the Foundation for Adoption Services to be made compulsory for families that have recently received an adopted child into their family. The preventative Video Interaction Guidance programme is an aftercare element that was introduced in 2000 and which is already well-established and accepted in the adoption field. The video feedback method used is based on empirical evidence[113]. In addition to this, a preventive guidance element is cost effective as regards later curative assistance. The increase in the number of children with special needs and older children makes it all the more pressing for the Minister for Youth and Families (and the provinces) to pay sufficient attention to adoption related problems. In this context, the Committee also refers to the *Blauwdruk Nazorg Adoptie (blueprint for adoption aftercare)*[114], which the Committee has taken cognizance of, with much appreciation.

j. A case however is being argued for more contact between the adopted child and its biological parents. The Committee believes that regardless of whether a child grows up in a traditional closed or a more open adoption situation, openness about adoption is essential. The Committee refers to the discussion of this subject in Section 3.4.1. The Committee would like to see the explicit discussion of the subject of willingness to be open about relinquishment and adoption with prospective adoptive parents in the home study conducted by the Child Care and Protection Board. The result of this discussion should be taken into consideration when preparing an advice.

Recommendations

The Committee makes the following recommendations in connection with the above:

16. The use of age limits must be maintained.

17. Increase the age of the child referred to in Section 8 of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption aged from six to eight years (i.e. up to and including the age of seven).

18. When determining the maximum age at which adoptive parents are able to adopt, it is recommended that alignment be sought with the average age of biological parents upon

113 M.J. Bakermans-Kranenburg, M.H. van IJzendoorn, and F. Juffer, Less is more: Meta-analysis of sensitivity and attachment interventions in early childhood. Psychological Bulletin, Volume 129, 2003, p. 195-215; F. Juffer, M.J. Bakermans-Kranenburg, and M.H. van IJzendoorn, The importance of parenting in the development of disorganized attachment: Evidence from a preventive intervention study in adoptive families. Journal of Child Psychology and Psychiatry, Volume 46, 2005, p. 263-274; F. Juffer, R.A.C. Hoksbergen, J.M.A. Riksen-Walraven, and G.A. Kohnstamm, Early intervention in adoptive families: Supporting maternal sensitive responsiveness, infant-mother attachment, and infant competence. Journal of Child Psychology and Psychiatry, Volume 38, 1997, p. 1039-1050.

114 Werkgroep Nazorg, Blauwdruk Nazorg Adoptie, Utrecht, May 2007.

the birth of their first child, maintaining a maximum age difference of 40 years between the adoptive parent and the child to be adopted. In light of this, it is recommended that, as a starting point, an age limit of 48 be employed regarding the maximum age of the prospective adoptive parent, and that an exception only be made where an adopted child has a biological brother or sister that could be adopted. With regard to the 40-year maximum age difference, it is recommended that Article 3(2)(a) of the guidelines on the placement in the Netherlands of foreign children with a view to adoption 2000 (to the effect that older adoptive parents may place a child of two years and one day) be deleted.

19. **Adjustment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption, so that, in the case of one-parent adoptions, the requirements applicable in relation to the suitability of prospective adoptive parents and age limits will also apply for the spouse, registered partner or life partner of the individual wishing to adopt.**

20. **Ensure that the information course provided by the Foundation for Adoption Services focuses pre-eminently on caring for and raising special needs children and older children.**

21. **Following on from the information (and preparation) course, make the Video Interaction Guidance programme organised by the Foundation for Adoption Services compulsory for families that have recently adopted a child.**

22. **Promote a situation where the Minister for Youth and Families ensures that there is sufficient attention and expertise present in youth social services organisations with respect to adoption-related problems.**

23. **Achieve a situation where willingness to be open about relinquishment and adoption is discussed explicitly with prospective adoptive parents during the home study conducted by the Child Care and Protection Board. The result of this discussion should be taken into consideration when preparing the advice.**

5. Waiting list, adoption capacity and costs

5.1 Introduction

In this section, the Committee will look at the adoption procedure up to the point at which a permission in principle is granted and at adoption capacity. The reason for this is the discussion between the Minister of Justice and the Lower House in 2003, further to the introduction of a waiting list. This discussion related not only to the waiting list, but also to the discrepancy between the number of potential adoptive parents and the number of children eligible for adoption[115]. In this discussion, some Members of Parliament also expressed the view that Dutch licensed adoption agencies ought to look for new adoption channels far more actively[116] and that the Ministry of Justice ought to pursue a proactive and incentive-based policy, in order to increase adoption capacity (the number of foreign children eligible for adoption in the Netherlands)[117]. In this Section, the Committee will also look at foster care as an alternative for intercountry adoption and at the cost of adoption for (potential) adoptive parents.

5.2 Waiting list

The granting (or refusal) of a permission in principle is preceded by an information course provided by the Foundation for Adoption Services and a home study conducted by the Child Care and Protection Board. This takes a period of 12 months. In 2003, the Minister of Justice introduced a waiting list, as a result of which the period between the application for and the granting of a permission in principle has become significantly longer in practice. The waiting time preceding the information course is currently approximately 15 months.

The reasons that the then Minister of Justice had for introducing a waiting list in 2003 can be summarised as follows[118]. Because the number of potential adoptive parents is higher than the number of (very young, healthy) foreign children who are eligible for adoption, there is a 'bottleneck' in the adoption procedure. If the procedure for obtaining a permission in principle were to be reduced to one year, this would not have any effect on the total length of the adoption process. However, it would mean that more potential adoptive parents would enter the mediation stage than is currently the case, as a result of which this stage would take longer (three to six years). Because of the limited adoption capacity, this situation would result in an 'accumulation' of potential adoptive parents with a permission in principle. So, in this situation, the bottleneck would move to a different stage in the

115 See, for example, Parliamentary Documents II, 2003-2004, 28457, no. 7, pp. 15-16.

116 See, for example, Parliamentary Documents II, 2003-2004, 28457, no. 7, p. 18.

117 See, for example, Parliamentary Documents II, 2003-2004, 28457, no. 7, p. 24, no. 15, p. 2.

118 See Parliamentary Documents II, 2003-2004, 28457, no. 7, pp. 14, 15, 18; no. 8, p. 2; no. 9 (motion); no. 14, pp. 1-2.

procedure. The Minister of Justice has chosen to position this bottleneck at the start of the adoption procedure, before a permission in principle is issued. This avoids a situation where a permission in principle, which is valid for three years, needs to be extended, which would require the performance of another home study by the Child Care and Protection Board. The reason for the limited validity of a permission in principle is that the home study (and the permission in principle based on this) is intended to provide an impression of the capacity of the potential adoptive parents that is as up-to-date as possible. Added to this, positioning the bottleneck in the mediation stage would mean that pressure on the licensed adoption agencies to quickly propose a child would increase, which would be at the expense of the quality of the adoption procedure. This would not be in the best interests of the child.

The waiting list in place at the Foundation for Adoption Services reflects the number of foreign adoption children available. When an increase or fall is expected in the number of children, more or less applications will be processed respectively. This influences the size of the waiting list and, as such, waiting times for attendance of the information course. As already indicated above, this is currently approximately 15 months. Subsequently, the procedure up to the stage at which a permission in principle is issued takes eight to twelve months from the start of the information course.

The use of a waiting list prior to processing an application for a permission in principle is not undisputed, as is evident if only from the discussion with the Lower House mentioned above. Added to this, the Netherlands Court of Audit [*Algemene Rekenkamer*] ruled as follows in its 2004 report *Beslistermijnen*, Waar blijft de tijd, bearing in mind the arguments of the Minister of Justice, as indicated above:

> *["The Netherlands Court of Audit observes that the Central Authority would seem to ignore the interest that potential adoptive parents have. After all, these individuals are entitled to certainty about the permission in principle desired by them within a reasonable period of time."]*

In 2001[119], the National Ombudsman also ruled that the use of a waiting list does insufficient justice to the interests of potential adoptive parents to obtain certainty about their suitability for adoption. However, in recent proceedings the court of appeal in The Hague agreed to the use of a waiting list in its judgment of 13 June 2007[120]:

> ["The Court of Appeal considers it to be sufficiently plausible that the total length of the adoption procedure (the time between an application for a permit in principle and the placement of an adopted child) is determined by the limited supply of children to be adopted. The Court of Appeal therefore considers it to be insufficiently plausible that this length of time (even today) is the result of capacity problems in the relevant government bodies, as [the appellant] asserts. Moreover, the Court of Appeal considers it to be sufficiently plausible that reduction of the period expiring between an application for a permit in principle and a decision with respect to

119 See report 2001/387.

120 Court of appeal in The Hague 13 June 2007, LJN: BA9067.

that application will be problematic in the sense that the period expiring between the time at which a permit in principle is obtained and the time at which a child becomes available will be such that the studies conducted will lose their value. The Court of Appeal considers this to be a sufficiently serious problem to justify the use of a waiting list."]

With regard to the waiting list, the Committee firstly observes that 'management' of the expectations that prospective adoptive parents have with regard to the possibility of adopting a child must be optimal. This will reduce the number of people applying for a permit in principle, on the waiting list, and changing their minds at some stage[121]. The Committee is aware that the information provided by the Foundation for Adoption Services, the Central Authority, the Child Care and Protection Board and the accredited bodies already indicates how difficult it is to adopt a foreign child and what the reasons for this are, which including the following aspects: few children are eligible for adoption, the question of age, the issue of children with special needs, and the requirements applicable in the countries of origin, which can be very detailed (and may even include stipulations in relation to the weight of the prospective parent, for example). It is the opinion of the Committee that the transfer of information must focus on this and, given this fact, must be optimised wherever possible.

The Committee believes that the use of a waiting list at the beginning of the procedure is preferable to allowing a bottleneck situation to arise once a permit in principle has been granted. The pressure on accredited bodies to achieve an adoption as quickly as possible (because the age limit has almost been reached, for example) will, after all, increase once a permit in principle has been obtained. This could result in an increase in the likelihood of irregularities. The introduction of a waiting list could result in the expiry of a considerable period of time between the initial registration and the decision on a permit in principle. Sometimes[122] a permit in principle will be refused due to an applicant having reached the maximum age. However, in the event of there being a long waiting time after a permit in principle is granted, the permission in principle may lapse, after which the age limit applicable will prevent renewal of the permit in principle. All in all, this means that it will be impossible for a limited category of prospective adoptive parents to obtain a permit in principle as a result of the waiting list. As the Committee has stressed in Section 1 of this report, however, the best interests of the child must outweigh the interests of prospective adoptive parents, even where this means that some prospective adoptive parents are no longer able to obtain a permit in principle (or an extension to this) because of their age.

The Committee feels that the reasons given by the Minister for the introduction of a waiting list, as indicated above, are justified. The Committee also considers the following to be important in this

121 The Committee is aware that currently approximately half of applicants for a permit in principle will withdraw their applications before the information course starts.

122 During the hearing on15 May 2008, the Wereldkinderen Foundation and Stichting FLASH indicated that when registering with this organisation (after obtaining a permit in principle), the average age of prospective adoptive parents is approximately 38 and 39 respectively. Stichting Kind en Toekomst has indicated that approximately 60% of recent registrations are prospective adoptive parents above the age of 40.

connection. In Section 2, reference was made to the risk of an adverse effect in relation to intercountry adoption. The urgency to adopt that is felt by some prospective adoptive parents and the fact that money can be earned from adoption may create an adverse effect: there is a temptation to allow more children to be eligible for adoption than is actually necessary (see Section 2.3). The Committee believes that it is the responsibility of countries of origin and the receiving countries to reduce this adverse effect where possible, in the interest of the quality of the adoption process. In the opinion of the Committee, the introduction or enforcement of a waiting list is one of the appropriate means by which the achievement of this objective can be met[123]. The fact that accredited bodies have themselves had to introduce waiting lists for prospective adoptive parents who have already obtained a permission in principle shows, for that matter, that certainty that a permit in principle will be granted quickly must make way for the best interests of the child, which will be served by avoiding the unwanted side effects of the adoption procedure wherever possible.

5.3 Adoption capacity

The Committee believes that with regard to intercountry adoption, the government has a responsibility to protect the interests of children as a group, which interests will not always coincide with the best interests of an individual child. When protecting the interests of children as a group, this will involve monitoring the quality of the adoption process and combating the risks outlined in Section 2.3 wherever possible. In the opinion of the Committee this means, in concrete terms, that the government must monitor the adoption procedure and combat the adverse effect of adoption wherever possible. The Committee also feels that it is important to provide help, financial or otherwise, to the countries of origin, making it possible for them to set up their own system of youth care. The Committee does not feel that it is the responsibility of the government to facilitate an increase in the number of children that are eligible for adoption in the Netherlands. After all, as the Committee has already indicated in Section 1.2, intercountry adoption can, at best, help individual children to grow up in a family, but cannot serve as a solution for the poverty problem, and must not be viewed as 'development aid'.

5.4 Foster care as an alternative to intercountry adoption?

It would seem a good option to resolve the shortage of foster families on the one hand and on the other hand enable waiting prospective adoptive parents to form a family faster. A case is therefore being argued from various sides to establish a link between adoption and foster care. In the Netherlands, there are children residing in children's homes due to the fact that, supposedly, no foster families can be found for them[124]. This leads to the question of whether the Netherlands itself is actually complying with the norms of the Hague Adoption Convention (subsidiarity principle). An increased need for foster

123 An opinion also shared by International Social Services, as evidenced by its editorial "Interesting initiatives to channel the flow of adoption requests and to reduce the pressure on countries of origin", Monthly Review No. 3/2008, March 2008, in which an appreciation is express of the waiting list introduced in the Netherlands. Also see N. Cantwell, "Suite à votre demande pressante ..." ou l'adoption internationale dans tous ses États, Journal du Droits de Jeunes, No. 258 – October 2006, p. 19.

124 Anneke Vinke, Verbind adoptie nu met pleegzorg, in: Volkskrant, 13 February 2007; CDA Tweede Kamerfractie, Initiatiefnota Pleegzorg "Gezin boven tehuis", 19 November 2007, p. 24; Juul Polders in an interview with Ger Dullens, Wachtlijsten eenvoudig wegwerken. Sla brug tussen adoptie en pleegzorg. Perspectief, December 2006, p.6.

families for young children, however, is also being reported[125], whilst at the same time the Netherlands is allowing children from that same age group to come to the Netherlands to be adopted. The number of new foster-care placements is increasing, but the number of registrations for new foster parents is not keeping up with this increase[126]. The government responded to this situation by temporarily spending extra money on the reduction of waiting lists. The organisations involved indicate that these funds ought to be provided on a structural basis, as the increase in demand for foster care is set to continue. Therefore, to attract more foster families from amongst prospective adoptive parents, consideration is being given to strengthening the position of foster parents, to the introduction of simple adoption in the Netherlands as an alternative to long-term foster care with good prospects, to have the information sessions for adoption to coincide in part with the information for foster care or, otherwise, to gain the interest of prospective adoptive parents for fostering.

To be able to determine the extent to which there is a shortage of foster parents and whether the establishment of a link between foster care and adoption could resolve the long adoption waiting lists, the Committee has endeavoured to gain more of an insight into the need for foster parents. Although no concrete conclusions can be drawn on the basis of the figures obtained, an inventory of the organisations in question, for figures on the number of children in children's homes that are waiting for a foster family and children who are on the waiting list for foster care, shows that a shortage of foster families in an absolute sense does not apply so much at the current time. This registration, however, is not conclusive. In practice, placement problems are often found to arise. Matching in particular is often problematic. The overview obtained is also distorted by the fact that an ambulant alternative is being sought (out of necessity)[127]. The funding method used for foster care is another point for attention. The funding provided for the increase in foster care is not structural, as a result of which the institutions concerned will continually be faced with the need for new waiting lists if demand for foster care does not decrease[128].

However, based on the growth in recent years and on the increasing number of child protection measures and reports to the Child Abuse Counselling and Reporting Centre [*Advies- en Meldpunt*

125 "Pleeggezinnen in het zonnetje", speech by the Minister for Youth and Familes during the Kinderhulp Pleegzorgweekend (April 2007; www.jeugdengezin.nl/actueel/toespraken).

126 The number of foster care placements was 2,918 in 1996, 7,447 in 2006 and 7,338 in 2007; the number of new foster-parent registrations accepted was 1,498 in 1996, 2,952 in 2006 and 3,142 in 2007 (Factsheets Pleegzorg 2006 and 2007; www.pleegzorg.nl).

127 Study on regional differences on the efficiency of youth care by Bestuur & Management Consultants (BMC-groep), as commissioned by the Ministry of Health, Welfare and Sport. The figures provided are for 2005. p. 39.

128 The foster care service in Limburg has now sounded the alarm bell, as it has been unable to place children in foster families for months now. Not because of a lack of families, but because no money is available for the payments required and for the supervision of foster families. The province has now decided to release money itself to work through the waiting list (www.zorgwelzijn.nl, 3 March 2008).

Kindermishandeling][129], a further growth in demand for foster care can be expected. The same development has happened in other countries, with an ever increasing demand for foster care[130]. In order to respond to current problems and to future developments, the Committee believes that the government must ascertain the extent to which gaining the interest of prospective adoptive parents for foster care could be a solution to the problem of increasing the number of foster parents and reducing part of the waiting list for prospective adoptive parents. The Committee views the present general information sessions on adoption and foster care that are attended by prospective adoptive parents as a good step in this direction. In light of this, possible further steps, including the introduction of simple adoption for permanent foster care placements with good prospects, could also be explored.

5.5 Compensation of costs

The Committee recognises that the costs involved in intercountry adoption are high and that some people who would like to adopt a child are forced to give up solely for this reason, particularly since (some) adoption costs are no longer tax deductible. The Committee considers this a less desirable situation and, because of this, feels that it would be appropriate for (prospective) adoptive parents to be compensated in some way. Some believe that intercountry adoption is a child protection measure and that, because of this, the government must contribute to the costs incurred to this end. The Committee does not share this view, although adoption does serve to protect the children in question. The Committee, however, does not consider adoption to be a child protection measure. It is an independent legal concept that creates a new family relationship and, as such, has legal consequences that apply even after a child becomes an adult[131]. Therefore, as far as the Committee is concerned, the basic principle behind a proposal for the possible compensation of adoptive parents is not the idea that adoption is a child protection measure.

Different methods of compensation are possible. The Committee observes that if the government wants to compensate adoptive parents, this should be effected such that the quality of the adoption process is maintained. One of the costs involved is an amount of € 900 for the compulsory information course. The Committee is aware that more than half of applicants for a permit in principle drop out after receiving the giro collection form for this course. Receipt of the giro collection form is obviously a point at which people ask themselves whether they really do want to start the adoption procedure. It is good for this choice to be made as early as possible in the process. The Committee is of the opinion that

129 Since 2004, the number of investigations that the BJZ/Child Abuse Counselling and Reporting Centre has commissioned with the Child Care and Protection Board has increased as follows: 2004: 8261, 2005: 9913, 2006: 10295, 2007: 11524. The number of applications that the Child Care and Protection Board has submitted to the judiciary has increased as follows: 2004: 7108, 2005: 8324, 2006: 9812, 2007: 11533. The number of (temporary) family supervision orders/custodial placements initiated by BJZ has increased as follows: 2004: 7797, 2005: 8934, 2006: 10057, 2007: 12274. Comment: All of the above figures are exclusive of the numbers originating from institutions working at a national level. The figures for 2007 have been extrapolated on the basis of the most recent figures available from sources. Source: Factsheet programma Beter Beschermd, November 2007, www.justitie.nl.

130 C.J. Ross, Foster children awaiting adoption under the Adoption and Safe Families Act of 1997. Adoption Quarterly, Volume 9, 2006, No. 2/3, p. 121-131. S.L. Smith et al., Where are we now? A post-ASFA examination of adoption disruption. Adoption Quarterly, Volume 9, 2006, No. 4, 19-44.

131 Also see: Independent Panel of Family Law Experts of EU Member States, Summary of opinion on the matter of adoptions, Brussels, 19 May 2004, not published, but reproduced where relevant in: R. Post, Romania, for export only, 2007, p. 147.

payment of the amount of € 900 is an appropriate threshold in the light of the current waiting list, which would disappear if prospective adoptive parents were to be compensated at this stage of the adoption procedure.

Another method would be the payment of an amount to the accredited bodies, making it possible for them to charge a lower amount to prospective adoptive parents. In this situation, accredited bodies would actually be receiving a subsidy intended to cover part of their costs. However, the Committee does not feel that this is advisable. See Section 3.5.3. The Committee sees more in the compensation of adoptive parents once an adopted child has arrived in the Netherlands. This is what happens in Norway and Denmark, for example. In these countries, these amounts are € 4,760 and € 5,400 respectively. A similar amount could be considered for the Dutch situation. However, as far as non-Convention adoptions are concerned, the Committee feels that the condition applicable for payment of this amount would be completion of the acknowledgement procedure laid down in Section 7 of the Adoption (Conflict of Laws) Act, as well as any conversion procedure, where a simple adoption is converted into a full adoption (regardless of whether a Convention or non-Convention adoption is concerned; see Section 3.4.2), so that the adopted child has the Dutch nationality.

Recommendations

The Committee makes the following recommendations in connection with the above:

24. Promote a situation where the information provided by the Foundation for Adoption Services, the Central Authority, the Child Care and Protection Board and the accredited bodies also focuses on the realistic expectations of the prospective adoptive parent as regards the possibility of adopting a child, while ensuring that this transfer of information is optimised wherever possible in light of this aim.

25. Ascertain the extent to which gaining the interest of prospective adoptive parents for foster care would be one possible way to increase the number of prospective foster parents and to achieve a reduction in the waiting list of prospective adoptive parents.

26. Compensate adoptive parents for the costs to be incurred in relation to intercountry adoption, to be paid after the arrival of the adopted child in the Netherlands, subject to the condition that, where non-Convention adoptions are concerned, the acknowledgement procedure laid down in Section 7 of the Adoption (Conflict of Laws) Act, as well as any conversion procedure, where a simple adoption is converted into a full adoption (regardless of whether a Convention or non-Convention adoption is concerned) must have been completed, so that the adopted child has the Dutch nationality.

Appendix
Contributions made by the organisations concerned at the hearing on 15 May 2008

Prior to the hearing, the organisations below were asked to inform the Committee in writing of any thoughts that they wished to share on the vulnerability of the adoption process, the broadening of limits with respect to the age criteria, adoption capacity, waiting lists, the subsidisation of accredited bodies, as well as full, simple and open adoption and the connection between adoption and foster care, and to do so prior to the hearing. Based on the letters received, the Committee spoke to the organisation in question in more detail. Their contributions have been reproduced briefly below.

1. Mrs. Van Sloten

Mrs. Van Sloten, Director of the International Foster Care Organisation (IFCO) until 31 December 2007, urges the establishment of a link between foster care and (intercountry) adoption. She observes that intercountry adoption is not always the last solution in terms of enabling a child to grow up as part of a family. The report by Terres Des Hommes and the PhD research by Pien Bos show that the explosive increase in adoption is preventing the achievement of local developments. Adoption money is not benefiting the provision of aid to mothers, for example. Nevertheless, she would not support a prohibition on intercountry adoption, but suggests reversing the situation: the receiving countries must stop exercising pressure and focus their energies on helping children and their parents in the countries of origin. The Netherlands could be a forerunner in attention for and the support of local accommodation and assistance and the subsequent phasing out of intercountry adoption within the next 10 years.

Mrs. Van Sloten stresses the importance of a child's own identity. A child's name, acknowledgement of relinquishment and, where possible, contact with the parents are important in this respect. As an example, she refers to the situation in England, where, as part of the national adoption process, prospective adoptive parents are only able to adopt a child when they have sworn before the court that they will permit the child to have contact with its parents. Another example that she provides is the situation in Romania, where contact with the first carers that a child has is compulsory.

2. Foundation for Natural Mothers of Adopted Children [Stichting Afstand Moeders]

Mrs. Van Sebille, former Chair and founder of the Foundation for Natural Mothers of Adopted Children [*Stichting Afstandsmoeders*] stresses that not only the mother, but her entire family and circle of

acquaintances are effected by having to relinquish a child. Due to the large number of prospective adoptive parents wanting to adopt children in those days (in the 1960s), the pressure on birth mothers increased. Financial and social support made it possible to prevent relinquishment. In the Netherlands, the number of domestic adoptions fell significantly with the advent of the Social Assistance Act [*Algemene Bijstandswet*] and interest groups like Single Mothers by Choice [*Bewust Ongehuwde Moeders (BOM)*] which caused social pressure to fall. At this point, foreign adoptions increased.

Naming is another important aspect that must not be forgotten, since a name is often the only thing that a birth mother is able to give her child. Giving a child a new name when adopted can be regarded as a denial of the child's origin.

3. Foundation for Adoption Services [Stichting Adoptievoorzieningen]

In his experience, Mr. Benders, Director of the Foundation for Adoption Services, has found that people make different choices where proper information is provided prior to the adoption procedure. For the first time in years of increasing registrations, the number of new registrations has fallen, because people are aware of the changing situation. Sending countries are adopting a far stricter attitude to age limits. As such, stretching these limits in the Netherlands would be giving prospective adoptive parents the wrong expectations. The Foundation for Adoption Services states that the chance of adopting a child of six months old is nihil. People know this, but are not yet expected to make a choice, because this only happens later in the process (several years later). Until recently, 35-40% of prospective adoptive parents dropped out for various reasons between the time of registration and commencement of information provision. In 2007, this percentage increased to 60% and would now seem to be stabilising again, at 50%. Whether this means that the remaining parents make a deliberate decision to adopt older children or children with special needs because the chance of this is more realistic will only be clear in two to three years time. What is clear is that people do try to influence their chances of adoption during the procedure.

The strong increase in the number of intercountry adoptions worldwide is putting pressure on the rules of the Hague Adoption Convention. With the introduction of the Quality Framework for accredited bodies, the small accredited bodies will disappear and expansion will occur automatically, which will make it easier for accredited bodies to improve their professionalisation. The Foundation for Adoption Services is urging deliberate management towards the achievement of this situation. The subsidisation of accredited bodies could contribute to a reduction of improper flows of money.

4. Child Care and Protection Board, National Division [Raad voor de Kinderbescherming, Landelijke directie]

Mrs. Polders, a policy adviser, and Mr. van Egmond, Director, believe that the government is not responsible for promoting a situation where more children come to the Netherlands to be adopted, but should support sending countries, making it possible for children to grow up in a permanent home situation in their own countries. Compliance with the Hague Adoption Convention and the International Convention on the Rights of the Child are the starting points for this.

The Board stresses that adoptive parents must realise that they are going to take care of a child that has been born to someone else. Family studies conducted by the Child Care and Protection Board show that the majority of prospective adoptive parents would prefer to place healthy children, who are as young as possible. To ensure that older children also become eligible for adoption, a solution could be sought in a maximum age difference between a child and adoptive parent. The Board supports a situation where the current age limits are maintained, with the exception of the special arrangement applicable for prospective adoptive parents who are 42 or older. Steps must be taken to limit the chance of a child losing a parent once again at a young age, or becoming responsible for a parent with a care need at a young age. Nor must a child be placed in an especially unique position in relation to children at school and in their social network, by having adoptive parents who are much older than the parents of their peers. Sending and receiving countries are both responsible for finding suitable alternative parents for a child.

Due to the increase in the number of older children and children with special needs, the Board supports a situation where the suitability of prospective adoptive parents is advised, based on the "no - except in the case of.." principle. Adoptive parents must prove their suitability for adoption.

The Board rejects mediation through private or independent adoption, because in this situation people then look for children abroad themselves. This makes it all too clear that children are a scarce and sought-after commodity, which may cause people in the countries of origin to adopt practices that do not correspond with the starting points of the Hague Adoption Convention and the International Convention on the Rights of the Child.

When the actions of prospective adoptive parents result in the placement of a child with a family in the Netherlands in an illegal manner, the adoption in question should not be allowed to take place. Through the employment of strict measures in instances of this nature, a clear signal will be given. Exceptional situations, for example when adoption is requested by adults who had no involvement in the process whereby a child was brought to the Netherlands illegally can, in any case, always be submitted to the court.

5. Council for the Administration of Criminal Justice and Protection of Juveniles

Mrs. Smit, Mr. Ten Siethoff and Mr. Slot, members of the Council for the Administration of Criminal Justice and Protection of Juveniles, are urging that the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption should be more sharply defined, in the spirit of the International Convention of the Rights of the Child. Where adoption was initially a form of child protection, its chief object now is family formation. As far as the Council for the Administration of Criminal Justice and Protection of Juveniles is concerned, this means that efforts must be made, wherever possible, to achieve the placement of a child in its country of origin and that the age limits for prospective adoptive parents must not be relaxed. When determining the age limit for children, the question for older children is whether it is in their best interests to come here. As regards prospective adoptive parents, the question ought to be whether the best interests of the child demand an increase

in the age limit of prospective adoptive parents. If certain studies suggest that a higher age in parents is not automatically a risk factor, it must be considered that (a) these studies relate to older than average, people who are in their thirties and (b) that adoption involves parents who ultimately decide to embark on the lengthy adoption process after a history of unwanted childlessness, medical treatment and numerous disappointments. At the present time, the waiting list problem reflects the problems of prospective adoptive parents and not the best interests of the child. It can be deduced from the appeal cases dealt with by the Council for the Administration of Criminal Justice and Protection of Juveniles that scarcity causes prospective adoptive parents to have unclear expectations. As such, a clear procedure is necessary.

The Council for the Administration of Criminal Justice and Protection of Juveniles is urging the creation of an independent body that is and continues to be up-to-date on the developments that take place abroad in respect of adoption. In order to prevent fraud in relation to the relinquishment and transfer of a child, the Council for the Administration of Criminal Justice and Protection of Juveniles suggests that DNA testing could be carried out in order to establish whether it is the actual mother who is relinquishing a child. As regards the scale of the accredited bodies, the Council for the Administration of Criminal Justice and Protection of Juveniles observes that the best interests of the child, and quality, should come first and that these are the criteria for the assessment of expansion.

6. Association for Intercountry Adoptees [Samenwerkingsverband Interlandelijk Geadopteerden (SIG)]

Mrs. Van Uden, on behalf of Arierang (association for Korean adoptees) and Mr. Tack, Chair of the *Samenwerkingsverband Interlandelijk Geadopteerden* (SIG) and also speaking on behalf of Peruchua (association for Peruvian adoptees), consider intercountry adoption to be acceptable as a last resort where there are no prospects for a child to live in a family context in its own country. The reason for this is that intercountry adoptees often do actually do very well. But where do the limits lie? Development assistance at a local level is important. Sending and receiving countries must align their definitions. At present, sending countries are regarded too much from a Western point of view. It is important to be straight and honest when considering these issues.

Biological parents are often found to be unaware of the consequences of relinquishing their children. A reconsideration period of half a year must be introduced, even where this means that a child will have to stay in a children's home. That is not always a mistake. Children live in children's homes in the Netherlands as well. In the light of the subsidiarity principle, the Netherlands ought to apply the same norms for foreign children as well.

The age limit for children must not be increased. A child that arrives in the Netherlands at the age of seven and then has to start school in the nursery class will have an especially unique position. In addition to this, it is very often possible to find a solution for a seven year old within the broader family in the country of origin. The SIG would not support a situation where priority is given to applicants for a permit in principle who immediately indicate their wish to adopt a child with special needs. Why

should adoptive parents be allowed to make this choice when biological parents are not able to do so? In addition to this, the SIG points to the danger that applicants will opt for a child with special needs when they do not actually want to, but do so because of the reduction in the waiting time that this facilitates. This can lead to difficulties and eventual regret. Finally, it is difficult to arrive at a definition.

As regards naming, an adoptee should from the age of 12 already be given the opportunity to revert to the use of their original name.

7. United Adoptees International

Mrs. Hansink, Press Officer and Vice Chair, and Mr. Westra, Chair, report that United Adoptees International (UAI) is not against intercountry adoption. However, Mr. Westra does expect intercountry adoption to die out in time, given the subsidiarity principle. The term 'institutionalisation' should be more clearly defined, as the way in which this is defined affects the number of children that do not grow up in families (or situations that resemble families). It is in this way that welfare projects such as the 'living with the neighbour' project in Columbia are often regarded as institutes, despite actually involving life in a family context. As a result, more children become eligible for (intercountry) adoption.

International criteria must be formulated for children with special needs, as here too a role is played by the demand side. In the (recent) past, it has been found that people in Asian countries also regard adoption, for example, as a way of giving their children a better education. Parents are surprised when they later find that their child will never be coming back.

The members of United Adoptees International can be characterised as a reflection of a large number of adoptees. These members do not necessarily feel negatively towards (their) adoption. However, the experience is that adoption is something that you carry with you through your life and can suddenly start to play a role at important times, even where it did not seem to play any role at all initially for the person in question. This might happen when an individual starts to become older. Adoptees are more susceptible to identity and identification problems than has been assumed to date.

Within United Adoptees International, a dialogue is underway on whether adoptees ought to (be able to) regain their original name in approximately their 16th or 18th year, or even earlier, because experience also shows that gaining the name of the family in which you grow up helps you to integrate into the environment in which you are living. However, United Adoptees International believes that the original name may not be lost when being given a new name.

8. Foundation Wereldkinderen [Vereniging Wereldkinderen]

Besides being an accredited body, the Foundation Wereldkinderen (foundation for children of the world) is also an association for adoptive parents with more than 7,000 members. Mrs. Hut, the Director, and Mrs. Miedema, Head of Information and Communication, report a supply of prospective adoptive parents that is such that the waiting list for children with special needs has been closed at the Foundation Wereldkinderen too. At this Association, older children and children with special

needs also include children from the age of five, children with a medical and/or social defect or a child who forms part of a multiple birth. The Foundation Wereldkinderen would not support a situation where waiting-list priority is given to applicants for a permit in principle who immediately indicate their wish to adopt a child with special needs. As regards the choice for a child with special needs, prospective adoptive parents are often found to progress gradually towards this decision. At the start of the procedure, they often do not know exactly what they want and there is just a very small group that chooses this option deliberately right from the start. Due to the increasing number of eligible children with a need for extra care, the Foundation Wereldkinderen is in favour of compulsory aftercare.

With the relaxation of the age limits for prospective adoptive parents, the supply of parents will increase and, as such, pressure on the procedure will increase too. Before the decision is made to increase the age limit for children, the Foundation Wereldkinderen urges that further research be done on the effects that this will have. The average age of prospective parents registering with the Foundation Wereldkinderen is approximately 38. Idealistic reasons play a role in 5% of cases at the most. There is a trend whereby people are wanting to adopt a child after having their own natural children.

A child that comes to the Netherlands illegally to live with prospective adoptive parents must be placed with a (different) foster family, because the completion of the adoption procedure in this situation will have an adverse effect. Flows of money to children's homes from which children are adopted must stop and, although it sounds idealistic, this ought to be resolved in an international context, with the other countries that have signed the Hague Adoption Convention, in order to facilitate an effective approach.

Where applicants are cohabiting, applications for one-parent adoptions are treated as applications that have been submitted by couples. Situations where one-parent adoption can be used to sidestep the advanced age of one partner are considered to be unfair.

The Foundation Wereldkinderen is against mediation through private or independent adoption, except where this can be monitored such that the quality of this type of mediation can be guaranteed. This form of mediation should really, however, be removed from the law. The adoption system should also be made more professional. A minimum number of mediations, performed by qualified professionals, whether or not in permanent employment, could contribute to this. However, mediation solely by professionals is (too) expensive for prospective adoptive parents. This would make it necessary to subsidise accredited bodies, with the requirement that this subsidy be repaid where the requirements applicable are not met. Possibilities for the development of a new channel for adoption in a particular country depend on factors in the country chosen, including factors such as whether or not proper procedures are already in place, signing of the Hague Adoption Convention and the existence of corruption.

9. "The Child and the Future" Foundation [Stichting Kind en Toekomst]

Mrs. Treur, the Director, and Mrs. Baakman, Assistant Manager, observe that prospective adoptive parents would prefer to have young children. Children from the age of 24 months are already considered to be older children, whereas Stichting Kind en Toekomst defines an older child as 36 months and older. *Stichting Kind en Toekomst* understands 'children with special needs' to mean children with a congenital handicap, children who form part of a multiple birth and children with a problematic social background. At Stichting Kind en Toekomst, parents wishing to place a child with special needs have a separate intake interview, two weeks after which they will be expected to once again argue their case in a letter. At this stage, it is often clear that this is not really what these parents want. *Stichting Kind en Toekomst* has a shortage of prospective adoptive parents who meet the criteria stipulated by sending countries in relation to the placement of this type of child. These criteria stipulate heterosexual couples with a good physical and psychological health, who are also willing to place a child with special needs in their family. In the last year, *Stichting Kind en Toekomst* has had to return 19% of the home study reports sent to it, due to the lack of mediation possibilities.

Approximately 60% of people who register with *Stichting Kind en Toekomst* are older than 40. Approximately 2% of prospective adoptive parents opt for adoption for idealistic reasons. Increasing the age limit by two years seems acceptable, but a maximum age difference of 40 must be maintained. As regards increasing the age limit of children, *Stichting Kind en Toekomst* feels that an increase to the age of eight is acceptable. If a child is older than eight, it will be influenced too much by two different cultures, which is not beneficial to the attachment process.

The illegal placement of children should not be permitted, due to the adverse effect that this has. This can be made clear by punishing such practices. However, a complete discontinuation of the flows of money involved in intercountry adoption would not seem realistic for the next 50 years. In addition to this, some payments are necessary. Some payments, such as the payment necessary in order to obtain a medical certificate, or a contribution to a children's home that is receiving too little money from the government to be able to provide for the necessities of life, for example, are considered reasonable.

Stichting Kind en Toekomst thought that mediation through private or independent adoption from the United States would cease to be possible as soon as the Hague Adoption Convention had been ratified by the United States. However, there is still a backlog of two-and-a-half years that will be processed in the manner customary to date. This is because these mediations cannot yet be deemed to be Convention adoptions. When adoption occurs in line with the Quality Framework, it will not be necessary to abolish mediation through private or independent adoption. The advantage of this for accredited bodies is that good mediation contacts may be gained from this type of mediation.

To be able to continue to work with professionals, a minimum number of mediations will be necessary. If an accredited body is unable to achieve a minimum of 20 adoptions, it should question its professionalism.

Stichting Kind en Toekomst feels that it is not a particularly good idea to admit new accredited bodies, because the whole world has already been 'ransacked'.

10. The FLASH Foundation [Stichting FLASH]

Mr. Ellemans, Office Manager, reports that *Stichting FLASH* is only offered a child with special needs approximately three times a year. *Stichting FLASH* understands children with special needs to be children with a long-term permanent handicap, children who have a developmental delay that will require extra attention for a protracted period of time and children who are older than four. *Stichting FLASH* permits (married) couples to submit applications for one-parent adoptions. In cases where there is a big age difference between the two people who form a couple, steps will be taken to find an older child for them. *Stichting FLASH* does not support an increase in the age limits applicable. The average age of prospective adoptive parents registering with *Stichting Flash* is approximately 39.

Stichting FLASH has consciously chosen to continue to be a small organisation with approximately 35 to 50 mediations per year. According to the experience of *Stichting FLASH*, it took approximately four years to develop a professional organisation and to achieve approximately 20 adoptions per year.

11. Hague Conference for Private International Law (Permanent Bureau) [Haagse Conferentie voor Internationaal Privaatrecht (Permanent Bureau)

Mrs. Degeling, Principal Legal Officer, indicates that as regards the duties and responsibilities applicable for the receiving countries, they will have to consider the joint or shared responsibility they have towards the countries of origin to ensure that intercountry adoption procedures are responsible and effective. Countries of origin cannot be expected to bear this burden themselves. The receiving countries are developing the demand for children; they are more prosperous, have better resources and it is easier for them to play a leading role in setting a good example for responsible adoptions. In this way, they can also help countries of origin to achieve higher standards. They can help these countries by preventing or avoiding the pressure to supply children. This can be achieved through better training for and the better preparation of future adoptive parents, and by making extra efforts to ensure they align their expectations in line with the reality of adoption. Many future adoptive parents, for example, continue to request the adoption of young, healthy babies even when young, healthy babies are not available for intercountry adoption in certain countries. In some situations, the only children eligible may be children with special needs.

In response to the question of what a receiving country ought to do where there are problems with the procedures in a country of origin, Mrs. Degeling answered that the appropriate response by a receiving country in this situation depends on the seriousness of the problems at hand. In the event of a fairly small irregularity in an individual adoption procedure, this must be rectified as soon as possible, without affecting the validity of the adoption. Where serious irregularities are found in an individual adoption procedure, for example if the appropriate consent for adoption has not been obtained, the adoption procedure must be stopped and the problem investigated by the authorities. Where serious problems arise with a certain country of origin on a regular basis and these problems bring the validity

of adoptions into doubt, the receiving country must consider ending the adoption programme, whether temporarily (to investigate the problems) or permanently.

Receiving countries are expected to also apply the norms of the Hague Adoption Convention to adoptions from non-Convention countries. The meetings of the Special Commission of the Hague Conference for Private International Law, in which compliance with the Hague Adoption Convention was examined, led to the recommendation that Convention countries must also apply the principles and norms of the Hague Adoption Convention to their adoption arrangements with non-Convention countries. The Netherlands took part in these meetings and has endorsed this recommendation. Incidentally, this recommendation is a non-binding recommendation.

In response to the question of how competition between receiving countries can be reduced, Mrs. Degeling mentioned the claim that some receiving countries want to maintain the 'supply' of adoptable children for their future adoptive parents and, as such, to achieve this, may not always comply with the safeguards and norms laid down in the Hague Adoption Convention. Countries like the Netherlands, which attempt to impose strict requirements on the adoption procedure, feel that they are being overlooked in the 'competition' for the children that are eligible. Under no circumstance may a receiving country that imposes strict requirements on adoption reduce its norms in the hope of being able to receive more children. This is firstly due to the risk that these adoptions could be wrongful, secondly because countries of origin respond positively to and attach great value to countries that adopt a responsible attitude, and thirdly because intercountry adoption should be a procedure in which the best interests of the child comes first. Receiving countries should try to arrange high-level discussions with other receiving countries that engaged in dubious practices. In order to implement a policy in which the best interests of the child comes first (the opposite of a policy in which the interests of the parents comes first), it is important to gain support at a high level (higher than the level of central authorities) in order to achieve a change in attitude and practices.

Recent statistics show that there are approximately 45,000 intercountry adoptions worldwide per year. This is a small number in comparison with the millions of children that are deprived of parental care. Obviously, not all of these children are adoptable. However, receiving countries could do more to support countries of origin when strengthening their national child protection system and developing a procedure making it possible to determine with certainty which children can be given a home by means of intercountry adoption.

The Permanent Bureau is in the process of conducting a study on the costs involved in adoption. This is a sensitive point for many countries and organisations. A Good Practice Guide is being developed on the costs of adoption in the various stages of the adoption process.

Mrs. Degeling identifies the question of how pressure on sending countries can be avoided as the biggest problem. The task here is to educate prospective adoptive parents properly and to maintain an active dialogue with accredited bodies and Convention partners with respect to their responsibilities.

12. Consultative Council of Adoptive Parents Organisations [*AdoptieOudersOverleg*]

Mr. Willemsen, Chair of the National Association of Adoptive Parents [*Landelijke Vereniging Adoptieouders (LAVA)*] and Mr. Boender, Chair of Protea (association of adoptive parents of South-African children) are critical about the government. They observe that adoption according to the Hague Adoption Convention is a child protection measure and that the government must facilitate and promote adoption for this reason. Prospective adoptive parents have a right, laid down by law, to a permit in principle or a rejection, to be issued within a reasonable period of time. For this reason, the government may not hold up the granting of a permit or rejection, not even where this would result in a reservoir. The situation concerns a decision, and a decision is subject to a deadline. A prior waiting list is not necessary, as prospective adoptive parents take responsibility themselves and pull out in cases where no children are eligible, knowing that they do not have a right to a child. As such, the expectation is that an increase in the age limit will not lead to a far higher number of prospective adoptive parents. In the procedure for children with special needs, the best interests of the child must always be the key focus. Priority on the waiting list for prospective adoptive parents wishing to adopt these children will need to be subject to proper investigation as part of the procedure. There are examples of parents who have opted for a child with special needs because of time pressure (reaching the age limit), but who were insufficiently aware of what they were entering into. The *AdoptieOudersOverleg* feels that sending countries are well within their rights to impose stricter requirements on the environment in which their children end up. However, it is also possible that our requirements could be stricter than those of the sending country.

It is observed that sending countries are under increasing pressure to resolve the problems for their children themselves. The *AdoptieOudersOverleg* informs prospective adoptive parents of the decreasing possibilities for intercountry adoption. An independent supervisory authority must be created, because accredited bodies and the judiciary are currently monitoring themselves. Just as there is a Netherlands Authority for the Financial Markets [*Autoriteit Financiële Markten*], so an 'adoption authority' should be created. This could include a complaints committee, so that the parties concerned are no longer forced to submit complaints to the organisation on which they are dependent.

Adoptive parents have a great need for both preventive and curative aftercare, as described in the *Blauwdruk Nazorg Adoptie* [blueprint for adoption aftercare], produced by a committee which was launched under the chairmanship of the Ministry of Justice and of which the judiciary no longer forms a part.

The subsidisation of accredited bodies ought to benefit prospective adoptive parents, so that adoption is not reserved for the wealthy. The *AdoptieOudersOverleg* is against government subsidisation of project aid via the accredited bodies.

13. COC Netherlands

During the public hearing, Mr. van Soeren, Policy Officer at the COC, and Mr. de Witte van Leeuwen, who is a member of *Belangenvereniging Zelfdoeners in Adoptie* (BZA) (the interest group for 'do it yourself' adoption) stress that adoption by homosexual couples (via the one-parent adoption procedure) is only possible by means of mediation through private or independent adoption and then virtually only from the United States. The COC is asking for the introduction of intercountry adoption by homosexual couples in the Netherlands as soon as possible. In contrast to the Netherlands, joint adoption by homosexual couples is possible in the United States, the COC observes. The fact that homosexual adoption is currently virtually solely possible from the United States is attributed to the accredited bodies. In the opinion of the COC, the Foundation Wereldkinderen has a monopoly position in South Africa, which probably does accept adoption by same-sex couples. Prospective adoptive parents do not have the power to break through this policy (because of their dependency on the accredited bodies) and are arguing for government supervision of the initiation of contacts that do permit this by accredited bodies. The COC is urging the development of a bilateral convention between the Netherlands and South Africa on intercountry adoption by same-sex couples.

Due to the various requirements applicable in relation to mediation through private or independent adoption, this is considered to be a very scrupulous procedure. According to the COC, mediation through private or independent adoption will continue to be possible, in theory, where a country becomes a party to the Hague Adoption Convention, because as soon as a contact has been registered there, it can be used as part of the adoption procedure (Article 22 of the Convention). The COC has made a number of suggestions for the improvement and acceleration of mediation through private or independent adoption. It is urging regular investigations of adoption contacts by embassies, instead of the questionnaires from the Central Authority for each adoption, the accelerated settlement of files involving mediation through private or independent adoption and a knowledge centre for mediation through private or independent adoption. Biological parents and prospective adoptive parents do not have any prior contact with each other, because biological parents approach adoption agencies themselves.

People with a registered partnership are not eligible for intercountry adoption. Therefore, in the evaluation report on the opening up of civil marriage and partner registration it is recommended that research be done on this possibility. The COC stresses its wish for the amendment of the Act containing rules concerning the placement in the Netherlands of foreign children with a view to adoption, making it possible for same-sex couples to adopt children from abroad too.

With regard to the age limits applicable, the COC observes that homosexual couples often start the adoption procedure later because of practical and social obstacles. It is important for the Committee to refer in its report to the evaluation report on the opening up of civil marriage and partner registration, in which recommendations are made on conducting research in this respect.

Besides functioning as a complaints committee, an 'adoption authority' could also have a role as a centre for knowledge.

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