Myndigheten för
internationella
adoptionsfrågor

02/03/2015 Ref. no. 1.1.1:485/14

Commission Concerning Bilateral Agreements on Intercountry Adoption
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Report to the Government

Postal address: Box 308, 101 26 STOCKHOLM • Visiting address: Vasagatan 38
Telephone: +46 (0)8-54 55 56 80 • Fax +46 (0)8-650 41 10
E-mail: info@mia.eu • www.mia.eu

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Summary

The Swedish Intercountry Adoptions Authority (MIA) has been commissioned by the Government to analyse the advantages and disadvantages for Sweden in concluding bilateral agreements with countries of origin regarding intercountry adoptions (S2014/6315/FST [partially]).

In conjunction with the execution of this commission, MIA has consulted with both Swedish and foreign authorities and organisations, along with private individuals.

In recent years, various sources have claimed that it has become increasingly common for States of origin to request that bilateral agreements be concluded between the State of origin and the receiving State. This applies both to States of origin that have acceded to the 1993 Hague Convention and to those that have not. However, in the contacts MIA has had with various central authorities and organisations etc., views are divided on this issue. In the case of the receiving States' central authorities, some have not experienced any increased demand for bilateral agreements, while others have.

The actual occurrence of bilateral agreements among the receiving States that MIA has been in contact with is not that widespread. This may have to do with which States the cooperation refers to. The States of origin seeking bilateral agreements are located in different parts of the world and have different reasons for their request.

The 1993 Hague Convention has had a high level of accession. The States that have not yet done so should be encouraged to accede to the Convention, once they have adapted their legislation and administrative system to it. This is preferable to bilateral arrangements.

It is the opinion of MIA that it is important not to undermine the Hague Convention, which has been widely accepted and represents an international standard in the field of adoption. On the contrary, joint efforts should be made to maintain the Convention's standing and improve its application. This is best achieved through multilateral cooperation and information exchange.

Based on its analysis, MIA generally deems the disadvantages of entering into bilateral agreements with States of origin that have not acceded to the Hague Convention to outweigh the advantages from a child rights perspective. Such agreements should only be considered if very strong reasons exist in the individual case. In this event, the agreements should then correspond to the fundamental principles of the Hague Convention in order to ensure an adoption procedure of equal standard and similar to the Hague Convention. It is inappropriate to conclude an agreement that does not correspond to, or indeed works against, these principles, for example by including requirements of financial assistance to the State of origin.

In the case of States of origin that have acceded to the Hague Convention, bilateral agreements should be able to be considered if the aim is to improve the application of the Convention (Article 39.2). In doing so it is important not to derogate from any provisions other than the ones stated (Articles 14–16 and 18–21), and only for the purpose of improvement. Agreements that only serve

as a repetition of the content of the Convention should be avoided, but agreements concerning matters not governed by the Convention could be considered, provided that the basic objectives of the Convention are respected. In assessing whether it is appropriate to conclude an agreement, an overall assessment should be made with regard to all the circumstances in the adoption cooperation with the country in question. The primary focus must always be on ensuring the rights of the child from different aspects.

If a bilateral agreement should be considered in relation to any State of origin, regardless of whether or not it has acceded to the Hague Convention, an in-depth analysis of the impact on children and child rights is required. The purpose of adoptions is always for children to have parents, not for parents to have children. The starting point when considering to enter into an agreement must therefore be that children who cannot find parents in their own country shall be able to find parents in the receiving country. However, it is also important to consider other issues of concern from, inter alia, a child rights perspective.

Bilateral agreements on intercountry adoptions with States of origin may be entered into by the Government (Chapter 10, Section 1 of the Instrument of Government) or by MIA or another authority empowered by the Government (Chapter 10, Section 2 of the Instrument of Government).

According to MIA's assessment, any agreements with States of origin that have not acceded to the Hague Convention should be concluded at the government level, as such agreements call for a far more extensive regulation than agreements with Hague States and concern several authorities' areas of responsibility.

Any agreements with States that have acceded to the Hague Convention should, however, be significantly smaller in scope and only cover certain specific matters, as in these cases the Convention functions as a base in the adoption cooperation. MIA's view is therefore that MIA should be able to be conclude such agreements as the Central Authority in Sweden following authorisation from the Government.

It takes both time and resources to conclude bilateral agreements, as well as to modify and terminate such agreements. The labour and cost involved in agreement discussions can vary significantly depending on the circumstances of the individual case. It is therefore impossible to specify the cost of entering into and maintaining a bilateral agreement. Nor is it possible to estimate in advance the number of agreement negotiations involved or the scheduling of such negotiations.

However, during periods when agreement negotiations are underway, it may require extensive work by MIA staff. Agreement negotiations therefore affect MIA's budget. Depending on the issues that the States of origin wish to regulate, there may also be costs for commitments made by Sweden.

1. The MIA commission

Swedish Intercountry Adoptions Authority (MIA) has been commissioned by the Government to analyse the advantages and disadvantages for Sweden in concluding bilateral agreements with countries of origin regarding inter country adoptions. The analysis shall include administrative, organisational, legal, economic and diplomatic implications, as well as an assessment of possible consequences for the functionality of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, both for Sweden and the international community. Both countries of origin that have acceded to the 1993 Hague Convention and countries that have not shall be included. The consequences for the child shall be thoroughly elucidated, including the conformity with the purpose and principles of the UN Convention on the Rights of the Child (CRC) and the 1993 Hague Convention.

2. Method and execution

MIA has consulted with the National Board of Health and Welfare, the Ministry for Foreign Affairs, Adoptionscentrum, Children Above All – Adoptions (CAA–A), Swedish Friends of Children, Adopterade Etiopiers och Eritreaners Förening (AEF), Adopted Koreans' Association (AKF), SL-adopterad, Organisation for Adult Adoptees and Fosterchildren (AFO), Swedish Korean Adoptees' Network (SKAN), International Social Service/International Reference Centre for the Rights of the Children Deprived of their Family (ISS/IRC), Professor of Private International Law and Civil and Criminal Procedural Law at Uppsala University, Maarit Jänterä-Jareborg and Nigel Cantwell, independent expert at UNICEF.

Furthermore, MIA has sent a questionnaire to a number of receiving States and has received responses from the central authorities in Australia, Belgium (the Flemish Community), England, Finland, France, the Netherlands, Switzerland, Spain, USA and Austria. In addition, MIA has visited the central authorities in Denmark, Norway and Germany.

MIA has also sent a questionnaire to a number of States of origin and received responses from the Philippines, Poland, the Republic of Korea (South Korea), Slovakia and Zambia.

MIA has visited the Permanent Bureau of the Hague Conference on Private International Law.

3. Current rules regarding bilateral agreements on intercountry adoption

Rules regarding bilateral agreements on intercountry adoption are found in the 1993 Hague Convention as regards agreements between States that have acceded to the Convention. Bilateral agreements between States, where at least one has not acceded to the Convention, are not covered by the provisions of the Convention. Such agreements are instead subject to the general

principles of international law. Article 21 e) of the CRC concerns bilateral agreements in the field of intercountry adoptions.

3.1 The 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

The purpose of the Hague Convention is

a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

In accordance with the Act (1997:191) consequent on Sweden's accession to The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, the 1993 Hague Convention applies as law in Sweden. The Act specifies, inter alia, that MIA is the Central Authority under the Convention; that MIA issues certificates according to Article 23 of the Hague Convention; and the tasks under the Convention which are to be undertaken by the Social Welfare Board and authorised adoption organisations respectively.

Article 39 of the Convention deals with the situation wherein States Members, prior to acceding to the Convention (39.1), have entered into agreements with each other regarding matters governed by the Convention, or subsequently do so (39.2).

Article 39.1 states that the Hague Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument (cf. for Sweden the Nordic Convention of 6 February 1931 whose provisions are contained in Ordinance (1931:429) on Certain International Legal Relationships relating to Marriage, Adoption and Guardianship).

According to Article 39.2, any Contracting State may enter into agreements with one or more other Contracting States, with a view to *improving the application of the Hague Convention* in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21.

The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention (Ministry of Foreign Affairs, the Netherlands). However, no States have submitted a copy of an agreement to the depositary[1].

> *Article 14:* Persons who wish to adopt a child shall apply to the Central Authority in the State of their habitual residence.

[1] According to information from the Permanent Bureau of the Hague Conference on Private International Law.

> *Article 15:* The Central Authority in the receiving State shall prepare a report about the adoption applicants (point 1) which shall be transmitted to the Central Authority of the State of origin (point 2).
>
> *Article 16:* If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall prepare a report including information about his or her upbringing and background, ensure that consents have been obtained in accordance with Article 4 (from relevant persons, institutions and authorities, the child when such is required) and determine whether the envisaged placement is in the best interests of the child (point 1). And thereafter transmit the report to the Central Authority of the receiving State (point 2).
>
> *Article 18:* The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.
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> *Article 19:* The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied (point 1). The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents (point 2). If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them (point 3).
>
> *Article 20:* The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.
>
> *Article 21:* Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular: to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care; in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents; as a last resort, to arrange the return of the child, if his or her interests so require (point 1). Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article (point 2).

Article 39 does not contain any provisions regarding the possibility/suitability of bilateral agreements with countries that have not acceded to the Convention. This is beyond the scope of the Convention.

According to *Article 25*, any Contracting State may declare to the depositary of the Convention that it will not be bound to recognise adoptions made in accordance with an agreement concluded by application of Article 39.2.

The following 18 States have made a declaration in accordance with Article 25:
Australia, Armenia, Azerbaijan, Bulgaria, Canada, Denmark, France, Greece, Italy, China, Croatia, Liechtenstein, Luxembourg, Montenegro, Panama, Switzerland, United Kingdom including Northern Ireland, Venezuela.

According to *Article 48 e*, the depositary shall notify the States Members of the Hague Conference on Private International Law regarding the agreements referred to in Article 39.

3.1.1 The Explanatory Report on the Hague Convention

The Explanatory Report on the Convention is prepared by Mr. G. Parra-Aranguren, rapporteur during the inception of the Hague Convention, and includes commentary on the Convention. Among other things, the Explanatory Report states the following as regards bilateral agreements.

Article 39.1 takes into account the situation of States that, when acceding to the Convention, are already bound by treaties on adoption matters, like the Nordic countries. The Convention does not affect such agreements, even if the agreements deviate from the Convention, unless a contrary declaration is made by the States Parties to such an instrument. There is no time limit to making this type of declaration. However, the other Contracting States are not obligated to recognise an adoption carried out through the application of such an agreement. There is no obligation for States to announce an agreement under Article 39.1 or transmit a copy to the depositary[2].

Together, Articles 39.2 and 25 represent a compromise between the proponents and opponents of the opportunity to conclude agreements parallel to the Convention. If a State accedes to the Convention and wishes to make a declaration regarding agreements previously concluded with other states under Article 39.2, such a declaration shall be made in connection with the accession. It can also be submitted later, but then has no retroactive effect. If a State has already acceded to the Convention and an agreement between other States is subsequently concluded, the declaration shall be submitted as soon as possible, but there is no established time limit. It can also be submitted later, but then has no retroactive effect. The effect of a declaration under Article 25 is that a third Contracting State is not bound to recognise adoptions made in accordance with an agreement under Article 39.2. However, there is no prohibition to recognize them according to the internal law of the Contracting State that has made the declaration[3].

The possibility to conclude future agreements, in accordance with Article 39.2, with one or more Contracting States, despite having acceded to the Hague Convention, aims to respect the traditional links and the historical, geographical or other factors that may approach certain Contracting States, as is the case with the Nordic countries, the States of the European Union, and the new States that have come into existence since the dissolution of the former Union of Socialist Soviet Republics (USSR), Czechoslovakia and Yugoslavia. However, it also applies where such background is not so important, like between Canada and the United States of America, or the United States of America and Mexico[4].

Article 39.2 does not include agreements such as the 1980 Hague Child Abduction Convention and the 1984 Inter-American Convention on the Adoption of Minors[5].

Bilateral agreements may only derogate from the provisions of Articles 14 to 16 and 18 to 21, the idea behind this prohibition being that the fundamental rules of this Convention shall not be affected by future international instruments[6].

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[2] Point 566–568
[3] Point 429-435
[4] Point 570
[5] Point 571
[6] Point 573

Article 39.2 implies an important restriction of the rule of Article 41 of the UN Vienna Convention on the Law of Treaties, that acknowledges in principle the freedom of the States to enter into multilateral or bilateral treaties derogating from an existing multilateral convention[7].

That States which have concluded an agreement under Article 39.2 shall transmit a copy to the depositary is particularly important to enable the third Contracting States to make the declaration permitted by Article 25[8].

3.1.2 Special Commissions in The Hague

According to Article 42 of the Hague Convention, the Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention. When a Special Commission has been held, the Permanent Bureau of the Hague Conference prepares a report with the conclusions of the Special Commission. The issue of bilateral agreements has been addressed, to a limited extent, by the 2000, 2005 and 2010 Special Commissions.

2000 Special Commission
According to the report[9], some States have concluded bilateral agreements reflecting the principles of the Convention. Agreements have been concluded with both Convention and non-Convention countries. Some concern was expressed regarding agreements that seemed to supplant rather than improve the application of the Convention. It was reminded that such agreements may only derogate from the provisions of Articles 14–16 and 18–21, and the obligation to submit a copy of the agreement to the depositary of the Convention.

The Special Commission agreed to recommend that States Parties, as far as possible, apply the same "standards and safeguards" to adoptions from non-Convention countries as from Convention States:

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

2005 Special Commission
During the Special Commission, a question was raised regarding whether it is mandatory to conclude bilateral agreements in order to implement the Convention between the two States. It was clarified that there is no such obligation. It was stated that, for practical reasons, most countries require a formal or informal procedure to be put in place with another country before

[7] Point 574
[8] Point 575
[9] Report of the 2000 Special Commission: http://www.hcch.net/upload/scrpt33e2000.pdf

adoptions can be arranged between them, and, according to the report of the Special Commission, that this is usually done through a bilateral agreement. As the Convention provides only a basic framework for co-opration, additional requirements may be imposed by means of a bilateral agreement[10].

2010 Special Commission
Some experts were of the opinion that the bilateral agreements between Convention and non-Convention States were useful and underlined the importance for States Parties to ensure they meet the basic principles and safeguards of the Convention, which are essential in their co-operation with non-Party States. However, this is not always the case in practice. The opportunity to address issues that are not covered by the Convention, to promote transparency of internal procedures and to participate in the preparation of prospective adoptive parents, are among the benefits of bilateral agreements, even between Contracting States. Some experts expressed their concern about agreements that were not always consistent with the Convention[11].

3.1.3 Guide to Good Practice No 1

The Permanent Bureau of the Hague Conference has developed Guide to Good Practice for the Hague Convention. The aim is to facilitate and improve the application of the Convention. The Guide to Good Practice No 1 states, among other things, the following regarding bilateral agreements.

The Convention provides only a basic framework, i.e. minimum requirements for the co-operation between countries. Additional requirements for improving the application of the Convention may be imposed by means of bilateral or regional agreements. Such agreements can be arranged through informal agreements or agreements under Article 39.2. If it is a question of formal bilateral agreements pursuant to Article 39.2, a copy shall be submitted to the depositary[12].

Referenced examples of matters that can be regulated by bilateral agreement include practical issues concerning the transmittal of child reports/files and the documents which must accompany an application for adoption. Furthermore, the responsibilities of the various agencies can be specified[13].

3.2 The United Nations Convention on the Rights of the Child

A central concept in the CRC is the best interests of the child. Along with the principles regarding the right of non-discrimination, the right to life, survival and development, and the right to be heard, the principle of the best interests of the child is considered one of the Convention's core principles.

Article 21 of the Convention specifically concerns issues relating to the adoption of children. The article declares that States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the

[10] Report of the 2005 Special Commission: http://www.hcch.net/upload/wop/adop2005_rpt-e.pdf
[11] Report of the 2010 Special Commission: http://www.hcch.net/upload/wop/adop2010_rpt_en.pdf
[12] Point 443 and 452
[13] Point 365 and 452

child shall be the paramount consideration in adoption[14]. The child's best interests must therefore be the decisive factor when considering adoption. No other interests shall take precedence over or be equivalent to those of the child, whether those raised by parents or economic or political interests. The child being referred to is of course the child being proposed for adoption, but the best interests of the child should not necessarily be limited to that particular child. Other children may also be affected by the adoption process. An adoption that is considered to violate the best interests of other children can be difficult to enforce in accordance with the principles of the CRC[15].

The matter of the best interests of the child when it comes to intercountry adoption has recently been reviewed within the framework of the UNICEF Office of Research. The results of the work have during the summer of 2014 been published in the report "The Best Interests of the Child in Intercountry Adoption". The report notes that there is no universal agreement as to who is ultimately responsible for determining what is in a child's best interests, nor what such an assessment should be based on. According to the report, this may entail risks for children's rights. It states that determining whether it is in the best interests of a child to be adopted requires a thorough review of the individual child's situation and needs, as well as the possible consequences for principally all the rights of the child.

The report contains a proposed checklist to support a systematic assessment of the best interests of the child in the intercountry adoption process. One source of inspiration for the checklist is the general comment regarding the right of the child to have his/her best interests taken as a primary consideration, which the Committee on the Rights of the Child published in 2013 as a guide in decision-making for everyone concerned with children[16].

According to *Article 21 e)*, States Parties shall promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

According to UNICEF Sweden's *Handbok om barnkonventionen* (Implementation Handbook for the CRC), 2008, the 1993 Hague Convention is the most important agreement for States to ratify[17]. The Committee on the Rights of the Child has systematically registered the States which have acceded to the Convention and praised them, while it has recommended other States to accede to the Convention. The handbook does not go into further detail regarding bilateral agreements.

3.3 International organisations' views on bilateral agreements in the adoption area

"The Best Interests of the Child in Intercountry Adoption", Nigel Cantwell, UNICEF, 2014

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[14] Article 21 thus takes one step further than Article 3, which expresses the general principle of the best interests of the child. Article 3 states that *the best interests of the child shall be a primary consideration*.
[15] See *Handbok om barnkonventionen* (Implementation Handbook for the CRC), UNICEF Sverige, 2008, p. 215 *ff*
[16] General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, 2013
[17] Page 218

Chapter 3.6 of the report deals with bilateral agreements. It highlights, inter alia, that Contracting States, through agreements in accordance with Article 39.2 of the Hague Convention, seek to create better safeguards for the children's rights and to streamline the adoption process. However, all articles of the Convention must be carefully respected in such agreements.

With regard to bilateral agreements between States Parties and States that have not acceded to the Convention, the report indicates that some States view such agreements as an effective way to bring intercountry adoptions under public control, outside the Hague framework, and thus legitimise them.

At the same time, concerns have been voiced by many about these bilateral agreements with non-Hague States. One concern is that concluding such an agreement might undermine any motivation for non-Hague States to ratify the Convention. Another concern is that this kind of agreement would be tailored to fit, in particular, the non-Hague system in the country of origin and would not therefore ensure the appropriate safeguards foreseen by the Convention. This is compounded by a fear that such agreements will not be comprehensive or detailed enough to cover all requirements for adoption procedures and mechanisms that meet the required standards.

As an example of problems, the report mentions the agreements that many receiving countries signed with Vietnam in the early 2000s. Vietnam's announced accession to the Hague Convention was then subsequently postponed on several occasions. The premiss of some of these agreements was that adoption is a humanitarian or charitable act rather than, as it should be, a child protection issue. Furthermore, there were demands for assistance/humanitarian projects linked to adoption. Issues regarding fees were unsatisfactorily regulated, along with the accreditation of adoption agencies. Matching of children and prospective adoptive parents is another example of an issue that was not regulated, and some agreements did not regulate the issue of the child's consent. Furthermore, the application of the subsidiarity principle was not properly regulated[18].

According to the report, there is reason to believe that future agreements between receiving countries that have acceded to the Hague Convention and countries of origin that have not will be characterised by the same weaknesses as the agreements with Vietnam, and will continue to expose the child's best interests and rights to risks. The receiving countries, which in these situations are not bound by any obligations other than those covered by Article 21 of the CRC, seem willing to accept much lower standards in their "felt-need" of access to children in non-Hague countries now that many of the States of origin, which meet the Hague Convention requirements, show greater determination to find preventive measures within their own country.

However, there are strong arguments for requiring States that have acceded to the Hague Convention to uphold the same Hague standard regarding all their intercountry adoption co-operation. As the best interests of the child are to be at the centre of the intercountry adoption process, receiving countries that have acceded to the Hague Convention have an ethical responsibility to ensure children from non-Hague countries the same legal protection as children from Hague countries[19].

[18] See further below: "Adoption from Viet Nam: Findings and recommendations of an assessment", International Social Service, 2009

[19] See further below: "Adoption at what cost? For an ethical responsibility of receiving countries in intercountry adoption", Isabelle Lamerant and Marlène Hofstetter, Terre des Hommes, 2007

"Adoption from Viet Nam: Findings and recommendations of an assessment", International Social Service (ISS), 2009
In addition to what has been set out above regarding the problems with the bilateral agreements from 2004 and 2005 with Vietnam[20], ISS states the following.

The possibility of concluding bilateral agreements that improve the application of the Hague Convention has been foreseen in Article 39.2 of the Convention. Therefore, bilateral agreements that curtail the fundamental principles of the Hague Convention are therefore qualified as insufficient, inadequate and contrary to international standards. The existence of the old Vietnam agreements meant that Vietnam's accession to the Hague Convention was postponed. When the agreements were terminated, a need arose to manage a large number of pending cases, which led to ethical and practical problems.

States that have acceded to the Hague Convention should have the same attitude when entering into agreements with States not party to the Convention as when entering into agreements with States Parties, i.e. that the agreements must improve the application of the Convention's principles. ISS is far from convinced that this attitude has been applied in the case of the old bilateral agreements with Vietnam. Agreements with non-Convention States should at least contain a clause to the effect that the agreement will automatically be terminated on the date the Convention enters into force for the State concerned.

"*Adoption at what cost? For an ethical responsibility of receiving countries in intercountry adoption", Isabelle Lammerant and Marlène Hofstetter, Terre des Hommes, 2007*
In addition to what has been set out above regarding the problems with the bilateral agreements from 2004 and 2005 with Vietnam[21], Terre des Hommes states the following.

In view of the limited number of bilateral agreements that existed when the report was written (2007), Terre des Hommes concludes that there is no rush on the part of the receiving States to establish bilateral guarantees comparable to those of the Hague Convention for adoptions which are not covered by the Hague Convention. A further in-depth analysis must be pursued as to whether such agreements are consistent with the best interests of the child. The report notes that the agreements are otherwise at risk of becoming a way to accommodate the receiving States' need for the States of origin to provide them with children. Terre des Hommes believes that it would be regrettable if States could conclude bilateral agreements rather than accede to the Hague Convention, as the Convention would then lose its status as an international reference for intercountry adoptions.

"Child Adoption: Trends and Policies", United Nations Department of Economic and Social Affairs, Population Division, 2009
As indicated in the CRC, bilateral agreements offer an important tool for ensuring that intercountry adoptions take place in accordance with established rules and under conditions that protect the interests of minors. One of the most

[20] See "The Best Interests of the Child in Intercountry Adoption", Nigel Cantwell, UNICEF, 2014
[21] See "The Best Interests of the Child in Intercountry Adoption", Nigel Cantwell, UNICEF, 2014, and "Adoption from Viet Nam: Findings and recommendations of an assessment", International Social Service (ISS), 2009

common objectives for bilateral agreements is to streamline the adoption process. The report notes that although some States have concluded bilateral agreements to facilitate the procedure regarding intercountry adoptions, other States have indicated that they prefer multilateral agreements.

4. Previous Swedish bilateral agreements on intercountry adoption

Bilateral agreements concluded between Sweden or Swedish authorities and other States, etc.
From the mid-1950s until the year 1965, the National Board of Health and Welfare had the task of mediating contact between adoption applicants and foreign agencies, particularly the International Social Service (ISS). From the year 1965, the National Board of Health and Welfare more actively assisted those who wished to adopt children. In order to achieve a more comprehensive approach to adoption operations, an Advisory Board was established in 1971 within the National Board of Health and Welfare which, in 1974, was converted to the Swedish Council for Intercountry Adoptions (NIA). NIA and Adoptionscentrum arranged applications for adoptions of foreign children up until 1979. Thereafter, operations were carried out by accredited associations, over which NIA had oversight. In 1981, NIA became an independent agency, the National Board for Intercountry Adoptions. In 2005, NIA was wound up and reorganised as MIA.

4.1 Agreements in force

All the agreements listed below were entered prior to the Hague Convention.

*Agreement between **the Philippines** and Sweden on intercountry adoption program, 16 May 1975*
Parties: The National Board of Health and Welfare/NIA and Department of Social Welfare, the Philippines.Valid until further notice.

The agreement governs the procedure, etc. for adoptions from the Philippines to Sweden. According to Adoptionscentrum, the agreement currently has no bearing, as Adoptionscentrum's collaboration partner no longer is the Department of Social Welfare but the Philippine Central Authority Intercountry Adoption Board, ICAB.

*Convenio de adopción entre **Ecuador** y Suecia, 11 November 1976*
Parties: The National Board of Health and Welfare and the Ministros de Relaciones Exteriores y de Trabajo y Bienestar Social, Ecuador. Published in the Official publication series of Swedish Agreements with Foreign Powers, SÖ 1976:132. Valid until further notice.

The agreement governs the procedure, etc. for adoptions from Ecuador through arrangement by Adoptionscentrum. The agreement has thereafter been subject to discussions and correspondence between Sweden and Ecuador due to changed conditions for applying the agreement. Due to the introduction of the Mediation of Intercountry Adoptions Act on 1 July 1979, Sweden and Ecuador agreed, at the end of the 1980s, that the agreement shall be applied to every accredited Swedish adoption organisation. However, it has not been necessary to make any formal amendments to the agreement text.

According to Adoptionscentrum, the Ecuadorian Central Authority is of the opinion that the agreement is no longer valid.

*Agreement between the Babies Center Metera, **Greece**, and the Swedish National Board for Intercountry Adoptions, NIA, Sweden, on an intercountry adoption programme, on 1 August 1985*
Parties: NIA and Babies Center Metera, Greece. Valid until further notice.

The agreement governs the procedure for adoptions from Babies Center Metera to Sweden through arrangement by Swedish accredited adoption organisations. For a long time, there has been no adoption arrangement from Greece to Sweden and no Swedish adoption organisation is accredited to mediate adoptions from Greece.

4.2 Terminated agreements

*Agreements between the Swedish Council for Intercountry Adoptions, Sweden, and the organisation Social Welfare Society, Inc. **Korea** on 7 April 1975 and 18 March 1980.*
Terminated on 22 September 2006.

These agreements governed the procedure for adoptions from the organisation Social Welfare Society (SWS), the Republic of Korea, to Sweden through intermediation by Adoptionscentrum. The same day as MIA cancelled the agreements, SWS and Adoptionscentrum entered into a collaboration agreement.

*Agreement entered on 4 February 2004 between the Socialist Republic of **Vietnam** and the Kingdom of Sweden regarding mutual collaboration concerning adoptions.*
Terminated on 23 October 2008 and expired on 1 May 2009. When the agreement was in force, Vietnam had not acceded to the Hague Convention.

Among other things, the agreement regulated the procedure during adoptions between the States, the legal consequence of adoption and the co-operation between the States.

The Swedish Government terminated the agreement because Vietnam's adoption legislation did not sufficiently observe the fundamental principles for international adoption as expressed in the CRC and the 1993 Hague Convention. Its accession to the latter Convention appeared to stall. The country also lacked an adequately efficient administration concerning the intercountry adoption operations to allow for the adoption work to continue.

5. Bilateral agreements under Article 39.2 of the Hague Convention

As stated in Section 3.1, any Contracting State may enter into agreements, according to Article 39.2, with one or more other Contracting States with a view to improving the application of the Hague Convention in their mutual relations. These agreements may only derogate from the provisions of Articles 14–16 and 18–21.

One question concerns what is meant by “a Contracting State” in this context. Does it only refer to agreements concluded by the Government or does it also include agreements entered into by an authority? Some other central authorities claim that agreements concluded by an authority at the working level do not constitute an agreement under Article 39.2.

Article 2.1 (a) of the Vienna Convention on the Law of Treaties defines treaty as an international agreement concluded between States and governed by international law. The Vienna Convention contains no description of the States' internal structure and its authorities, as these can vary significantly. However, the Vienna Convention concerns the internal organisation, for example in Article 27, which declares that the State may not invoke national legislation as justification of the fact that the State does not live up to its obligations under international law. The internal authorities are thus unable to obstruct an international agreement.

In Sweden, agreements with other States are concluded by the Government, in accordance with Chapter 10, Section 1 of the Instrument of Government. According to Chapter 10, Section 2 of the Instrument of Government, the Government may commission an administrative authority to conclude an international agreement on an issue where the agreement does not require the participation of the Riksdag or the Advisory Council on Foreign Affairs. That, in some cases, the participation of the Riksdag or the Advisory Council on Foreign Affairs is required before the Government enters into an agreement with another State is clear from Chapter 10, Section 3 of Instrument of Government.

Thomas Bull and Fredrik Sterzel's *Regeringsformen: en kommentar* (The Instrument of Government: a commentary) (2010, page 249) states that the aforementioned paragraph indicates that the Government can delegate its treaty-making authority to the administrative authorities in the circumstances described.

MIA is the Central Authority under the Hague Convention. For MIA to be able to conclude international agreements, it must be authorised to do so by the Government. This follows from Chapter 10, Section 2 of the Instrument of Government. There is no such general authorisation in MIA's instruction; instead, a special government decision must be made in each individual case.

According to the ministry memorandum *Riktlinjer för handläggningen av ärenden om internationella överenskommelser*[22] (Guidelines for the management of cases regarding international agreements), it is not the name that is crucial to an agreement's legal status, but its meaning, and whether the agreement includes any obligations, i.e. if the agreement is of such a nature that it is governed by public law. The most common names include convention, agreement, treaty, covenant, Memorandum of Understanding (MOU), Agreed Minutes.

According to the above ministry memorandum, the state is bound by these agreements under international law when they have been entered into by an administrative authority authorised by the Government. The foreign State may be represented in different ways at the conclusion of an agreement with a Swedish administrative authority, depending on its national organisation. Its representative can thus be an authority or other public body, which would be

[22] Ds 2007:25, page 9–17

the normal case. But nothing prevents the government or a ministry from being a counterparty.

An agreement concluded by the Government with a country of origin that has acceded to the Hague Convention is undoubtedly an agreement under Article 39.2 of the Convention. Depending on the content of the agreement, legislative measures may also be necessary, which require parliamentary involvement.

A bilateral agreement with international (as opposed to civil law) content, concluded by MIA or another Swedish authority authorised by the Government, with a State of origin that has also acceded to the Hague Convention is thus an agreement under Article 39.2.

6. Request from the States of origin regarding bilateral agreements on intercountry adoption

In recent years, various sources have claimed that it has become increasingly common for States of origin to request that bilateral agreements be concluded between the State of origin and the receiving State. This applies both to States of origin that have acceded to the Hague Convention and to those that have not done so.

In the contacts MIA has had with various central authorities and organisations, etc., MIA has investigated whether there is merit to this view. The results of the investigation have been divided.

The States of origin that have responded to MIA's questionnaire, and which have bilateral agreements, have stated the following reasons for requesting bilateral agreements.

- A need to specify the application of the Hague Convention and national law in more detail.
- Requirements of national law.
- To achieve compliance with the Hague Convention's principles.
- The possibility of control and evaluation to ensure compliance with rules for intercountry adoption.

One State of origin has indicated that they do not have bilateral agreements at the state level, but that the adoption organisations may have agreements with their partner organisations.

According to the adoption organisations, there are several reasons for the States of origin wanting to have bilateral agreements with the receiving States, including the following.

- Requirements of national law.
- The States of origin want to have control through agreements at the central authority level, for example, due to uncertainty regarding the adoption organisations' quality (especially if there are many organisations working in the country).
- The foreign authority wants a joint contracting party at the same level, usually central authority level.

- The Hague Convention is not comprehensive enough. Among other things, there are no rules on post-adoption reporting and how organisations should work and their obligations.
- Cultural reasons.
- Intercountry adoptions can be disputed within the country.
- There is a desire to clarify.
- There is a desire to bring order and be able to regulate various issues. This includes a desire to limit the number of foreign organisations that may work in the country.
- Direct contact between central authorities is perceived as a greater security.
- The collaborative conditions in each country are not known to the country of origin, and a level of regulation in this respect is desirable. The social safety nets in the States of origin are often deficient, and there is thus a desire to regulate issues relating to the social safety net in the receiving countries. In many cases this is an information issue.
- There is a desire to protect the best interests of the child, particularly if there have been cases where children have ended up in trouble.
- That "blanket requests" to many countries have been common can be explained by the fact that even if problems have only been identified in a certain country or countries, there is a reluctance in the State of origin to single out that particular country/those countries with a specific request, as this is considered to be diplomatically difficult.

In the case of the receiving States' central authorities, some have not experienced any increased demand for bilateral agreements, while others have. This may have to do with which States the cooperation refers to.

The receiving States' central authorities believe that the reasons that States of origin request bilateral agreements may include following.

- A need for control and better regulation of various issues.
- A need for anchoring higher up in the hierarchy.
- A way to demonstrate responsibility.
- Requirements of national law or legal tradition.
- Political demands in the State of origin.
- Clarification of child rights based on an increased focus on the CRC.
- Bad experiences with adoption cases.
- A desire to better control which, and how many, States/organisations to cooperate with.
- A desire to regulate the post-adoption reporting obligation in order to justify intercountry adoptions within their own country.
- It is possibly felt that the Hague Convention is insufficient.
- The Hague Convention's provisions may need to be supplemented with additional explicit content.

According to the information MIA has received, the following States of origin have requested bilateral agreements with receiving States: Bolivia, the Philippines, Honduras, Cambodia, Mauritius, Russia, Slovakia, South Africa and Vietnam. All these States have acceded to the Hague Convention except for Honduras and Russia.

Zambia has stated that the country has bilateral agreements with a number of receiving countries. However, it seems likely that these are agreements with adoption organisations in the various countries and not at the state level.

7. The receiving States' stance on bilateral agreements

No receiving States have indicated that they themselves are in need of bilateral agreements with States of origin, but that the initiative always comes from the State of origin.

There is a consensus that accession to the Hague Convention is preferable to bilateral agreements and that the States of origin that have not acceded to the Convention should be encouraged to do so. Many believe that bilateral agreements parallel to the Convention are unnecessary, and that the Convention is sufficient. The general opinion being forwarded is that multilateral agreements are preferable to the bilateral kind.

Most believe that agreements between the adoption organisations and their collaborative partners are preferable to bilateral agreements between receiving States and States of origin. The adoption organisations are in charge of the practical work with adoption mediation, and it is appropriate for issues related to this work to be regulated in agreements at the organisational level. However, depending on the situation in the country of origin, this country may desire bilateral agreements at a higher level in order for an adoption collaboration to take place.

Most of the receiving States that MIA has been in contact with have not made any decision in principle or performed any detailed analysis regarding the advisability of entering into bilateral agreements with States that are not party to the Hague Convention. However, one receiving State has decided that no agreements shall be concluded with States of origin that have not acceded to the Hague Convention. The reason for this stance is a desire not to undermine the Convention.

In the other receiving States, the advisability of entering into bilateral agreements is assessed based on the circumstances of each case. The focus is on the content of the proposed agreement and its general advisability.

With regard to the suitability of bilateral agreements with States of origin that are party to the Hague Convention, the following comments were also received.

A starting point is that Article 39.2 permits the conclusion of bilateral agreements that improve the application of the Convention. It has been emphasised that it is important for bilateral agreements to respect the fundamental principles of the Hague Convention and the CRC. Nevertheless, agreements may be concluded that in practice might instead impair the application of the Conventions.

One issue raised is whether to be generally sceptical of agreements or whether to be pragmatic and ensure the content. Can there really be reason to be generally sceptical, if agreements are concluded that improve the application of the Convention and perhaps also improve child rights? In such cases it may be difficult to justify a rejection of an agreement, but this is a political issue.

It has been argued that bilateral agreements do not by definition have to be a bad thing, if the agreements are in line with the Convention. Agreements can

be advantageous if they create a basis for dialogue and a formalised cooperation between authorities.

If the agreement is an exact repetition of the text of the Convention, it provides no improvement in the application of the Convention, but no impairment either. It is debatable what such an agreement actually achieves.

With regard to the suitability of bilateral agreements with States of origin that are not party to the Hague Convention, the following comments were also received.

One question is whether a receiving State should say no to an agreement, and hope that the States of origin accedes to the Convention. However, the fact that agreements are in demand indicates a need on the part of the States of origin, which may involve an attempt to better control who they cooperate with.

Some consider there to be a greater need for agreements concerning non-Hague countries in order to ensure that the collaboration follows proper legal procedure. The standard of the adoption process should in itself be the same as for Hague countries, but when it comes to non-Hague countries, it is conceivable that there are greater benefits for the receiving country with an agreement.

One receiving State has indicated that it is open to agreements with States of origin depending on the content of the agreement, but that they only cooperate with States that maintain the Hague standard.

8. The occurrence of bilateral agreements

The receiving States that MIA has been in contact with have submitted the following information on bilateral agreements.

Australia has an agreement with South Africa, which has acceded to the Hague Convention. In addition it has agreements with Fiji, the Philippines and Thailand, concluded before their accession to the Hague Convention. The agreement with Fiji is currently suspended and the cooperation with the Philippines and Thailand is now subject to the Hague Convention. Australia has also had an agreement with Ethiopia, which has not acceded to the Convention. All bilateral agreements in Australia have been concluded at the state level, either by a Minister of State or, following delegation, by government officials or the Australian Central Authority.

Belgium (the Flemish Community) has agreements with South Africa and Vietnam. The agreements were concluded when both these States were party to the Hague Convention. They were concluded at the administrative level by the Belgian Central Authority.

Denmark has an agreement with Vietnam from 2003, i.e. before Vietnam acceded to the Hague Convention. The agreement was concluded on behalf of the Kingdom of Denmark by Denmark's then ambassador in Vietnam. In practice, this agreement is no longer applicable. If bilateral agreements are concluded in Denmark, these have thus far been implemented at the highest level (“state to state”), not at the central authority level. It might be

appropriate to have agreements at the central authority level, but with government approval.

France has an agreement with Russia, which entered into force in December 2013. The agreement was concluded by the Parliament.

The Netherlands has agreements with Slovakia and South Africa, both of which have acceded to the Hague Convention. The agreements were concluded by the Dutch Central Authority.

Norway has an agreement with Vietnam from June 2013, i.e. after Vietnam acceded to the Hague Convention. The agreement is a Memorandum of Administrative Arrangements and it was concluded by the Norwegian Central Authority.

Switzerland has an agreement with Vietnam from 2006, i.e. before Vietnam acceded to the Hague Convention. The agreement was concluded by the Swiss Parliament. In practice, this agreement is no longer applicable.

Spain has agreements with Bolivia, the Philippines, Russia and Vietnam. The agreements with Bolivia and Vietnam were concluded before these States acceded to the Hague Convention. The agreement with the Philippines was concluded when both Spain and the Philippines were party to the Hague Convention. Russia has not acceded to the Hague Convention. The agreement with Russia has been signed but not yet ratified. In Spain, bilateral agreements are concluded at the highest political level.

Germany has an agreement with Vietnam from June 2013, a Memorandum of Administrative Arrangements. It was concluded by the German Federal Central Authority. It is not viewed as an agreement under Article 39.2 of the Hague Convention, as it was not signed by the Parliament or the Minister of Justice, but as an agreement at the working level. The German Minister of Justice has decided that no bilateral agreements concerning intercountry adoptions shall be concluded at the state level, i.e. through agreements adopted by the Parliament. Any agreements shall be concluded at the working level by the German Federal Central Authority. It is considered that the term “Contracting State” in Article 39.2 does not relate to agreements at the central authority level, but that they must take place at a higher level.

The USA currently has no existing bilateral agreements at the state level. However, there are sometimes informal operational agreements reached with States of origin.

England and Finland have no bilateral agreements.

Slovakia has stated that its bilateral agreements have been concluded by the Central Authority. However, it is unclear with which states Slovakia has concluded agreements (aside from the Netherlands, see above).

Zambia has stated that the country has bilateral agreements with a number of receiving countries (Australia, Belgium, Canada, Denmark, England, France, India, Luxembourg, the Netherlands, Germany, USA and Austria). However, it seems likely that these are agreements with adoption organisations in the various countries and not at the state level. Zambia has stated that the agreements have been concluded by the Zambian Government or by the Central Authority.

Poland and the Republic of Korea (South Korea) have no bilateral agreements.

In summary, the following has emerged.

As shown in Section 6, various sources have claimed that it has become increasingly common for States of origin to request that bilateral agreements be concluded between the State of origin and the receiving State. This applies both to States of origin that have acceded to the Hague Convention and to those that have not.

In the contacts MIA has had with various central authorities and organisations, etc., we have investigated whether there is merit to this view. The results of the investigation have been divided. In the case of the receiving States' central authorities, some have not experienced any increased demand for bilateral agreements, while others have.

The actual occurrence of bilateral agreements is not that widespread among the receiving States that MIA has been in contact with. This may have to do with which States the cooperation refers to. MIA is not privy to knowledge on the existence of bilateral agreements with receiving States other than those MIA has been in direct contact with. The countries of origin seeking bilateral agreements are located in different parts of the world and have different reasons for their request.

Of the central authorities MIA has been in contact with, England, Finland and the United States of America have no bilateral agreements.

When it comes to agreements that the receiving States have concluded with States of origin when these were not party to the Hague Convention (Bolivia, Fiji, the Philippines, Russia, Thailand and Vietnam), the majority have been concluded by the receiving States' government or parliament. It happens also that the central authority, following delegation by the government, has concluded such agreements. Some of these States of origin have subsequently acceded to the Convention and it has been indicated that some of the agreements have therefore in practice no longer applied, with cooperation instead being subject to the Hague Convention.

Agreements with States of origin which have been concluded when these were party to the Hague Convention (Philippines, Slovakia, South Africa and Vietnam) have usually been concluded by the receiving States' central authorities, but it has also happened that the agreements have been concluded by the government or parliament.

Slovakia has stated that their bilateral agreements are concluded by the Slovak Central Authority.

9. Issues regulated in bilateral agreements

With respect to the issues regulated in bilateral agreements, or which have been requested by countries of origin in their desire for an agreement, there are some which recur in the responses of the central authorities in receiving countries that MIA has been in contact with.

One such issue is the recognition of the adoption decision. It is clear from the responses of receiving countries that this is an issue that both Hague countries and non-Hague countries wish to regulate in agreements.

Another such issue is the regulation of post-adoption reporting after the adoption has been completed. According to the receiving countries, it may involve specifying the obligations of both the authorities and accredited organisations in terms of post-adoption reporting, the coordination between the countries' authorities, and up to what age reports on the child are to be sent. One country of origin has also indicated that the forms and frequency of reporting is one of the issues that have been regulated in bilateral agreements.

One receiving country suggests that, in their experience, the requests of the countries of origin concern issues where the Hague Convention does not provide any answer. One such issue, which many receiving countries have mentioned, and which is of course relevant even if the country of origin is a non-Hague country, is the desire of countries of origin to limit the number of foreign adoption organisations in their countries. The Swedish adoption organisations have also highlighted that the desire to limit the number of foreign adoption organisations is an important issue for the countries of origin. Furthermore, the International Social Service (ISS) has stressed that some States may prefer to cooperate on a bilateral basis rather than accede to the Hague Convention, particularly with the objective of trying to limit the number of partner countries.

One receiving country states that its agreement with Vietnam, which was entered after Vietnam acceded to the Hague Convention, contains nothing more than what is provided for in the Convention and, in reality, contains no improvements in relation to it. Entering this agreement was a way to maintain cooperation between the countries. Another receiving country has indicated that it has experienced requests for agreements with the same requirements as prescribed in the Convention. However, the country of origin concerned is not evident from the answer.

The receiving countries and countries of origin that MIA has been in contact with have also mentioned several other issues that are included in concluded agreements or among issues that countries of origin have wished to regulate. Among others, the following.

- General principles, procedures and conditions.
- Overall cooperation.
- The cooperation between the central authorities and other actors in both countries.
- Applicable law.
- Defining authorities' and accredited organisations' respective obligations.
- Child protection.
- Improved methods for exchanging information.
- The content of the home study and child report.
- Necessary documents.
- Transfer of documents.
- Deadlines for communication.
- Fees, costs and legalisation.
- Clarification of an adoption process in the spirit of the Hague Convention.
- Ensuring that the necessary consents have been provided in accordance with the rules of the Hague Convention and national law.

- A ban on adoptions that are not mediated by adoption organisations, so-called “independent adoptions”.
- Citizenship issues.
- Obligations and influence of the authorities in the country of origin as well as the receiving country in the event that the child cannot remain with the adoptive parents, including the possibility of a new adoption in the receiving country.

MIA makes the following assessment.

The receiving countries that MIA has been in contact with have provided examples of the various issues regulated in bilateral agreements, as well as the issues that countries of origin have wished to regulate when requesting such agreements.

One receiving country's central authority has expressed that there is no common theme for the issues that the countries of origin want to reach an agreement on. For obvious reasons, however, non-Hague countries desire a more complete regulation of the adoption cooperation than the Hague countries.

Much of what is requested is really about sharing information between the countries. Something that MIA finds surprising is that Hague countries want to conclude agreements regarding the recognition of adoption decisions. Automatic recognition of such decisions is one of the fundamental principles of the Hague Convention and such agreements should therefore not occur.

Some issues are recurring. One such issue, which is mentioned by several receiving countries and by the Swedish adoption organisations, is the countries of origin's desire to limit the number of foreign adoption organisations in the country. A picture emerges wherein the countries of origin sometimes find it difficult to say no to proposed collaborations. The Swedish adoption organisations believe that this has various causes, including cultural history, and that the countries of origin need to reinforce their right to say no to receiving countries that pressure them to allow adoptions to take place.

However, countries of origin are not obligated to cooperate with all receiving countries that wish to do so, but may choose to cooperate with how many or how few (if any) receiving countries and adoption organisations they themselves consider to be appropriate (also refer to Section 12). This applies both to States of origin that have acceded to the Hague Convention and to those that have not. This is an issue where continuous information appears to be needed. The issue usually comes up at the Special Commissions' meetings in The Hague. MIA also discusses it in meetings with States of origin, and the Swedish adoption organisations have also indicated that they accept their share in the responsibility for such information.

Even if rules in support of limiting the number of organisations are requested from the countries of origin, the situation may be that the receiving countries are unable to conclude agreements on such regulation. For Sweden's part, this would be impossible because Swedish law (Intercountry Adoption Intermediation Act) does not permit such a limitation.

Also with regard to certain other issues that may be requested in an agreement discussion, it may be impossible to reach an agreement as, from a Swedish

perspective, they are regulated through legislation, e.g., issues concerning applicable law and citizenship.

According to MIA, certain issues relating to the practical work with adoption mediation fit better, for Sweden's part, in agreements between the adoption organisations and their collaborative partners.

In a situation where a State of origin that is party to the Hague Convention wants an agreement with the same content as the Convention, the question that should be asked is how such an agreement improves the application of the Convention in the mutual relations between Sweden and the other country. MIA argues that, in such a situation, it should instead be an issue of providing information about Swedish law. MIA has on several occasions provided verbal and written information to countries of origin regarding adoption operations in Sweden and the obligations of the Swedish authorities and adoption organisations. This has led to the countries concerned being satisfied with the information they have received and in their adoption cooperation subsequently relinquishing their request to enter into bilateral agreements with Sweden.

The Swedish adoption organisations and the adoptee organisations have emphasised that receiving countries, in discussions regarding agreements, can take the opportunity to raise issues of interest to them pertaining to improvements and regulation. Examples of such issues may be how the children are investigated, the preparation of the children, documents to be included in the dossier, and origin issues. However, none of the responses from the receiving countries/countries of origin that MIA has been in contact with indicate that these type of issues have been included in concluded agreements or have been up for discussion.

10. Advantages of bilateral agreements

The actors that MIA has been in contact with have given examples of advantages and disadvantages that may be associated with bilateral agreements. Some of these advantages and disadvantages differ depending on whether or not the country of origin has acceded to the 1993 Hague Convention, while others are applicable across the board. This section and the next (Section 11) provide an account of the advantages and disadvantages that have been highlighted.

Section 12 presents the views that have been advanced which have a bearing on the functionality of the Hague Convention. In part, this coincides with the overall general views that have been expressed regarding the advantages and disadvantages of bilateral agreements, which are presented in this section and Section 11.

Common advantages of bilateral agreements *regardless of whether or not the country of origin has acceded to the Hague Convention*:

- Through agreement, the child's rights are better protected and the process can be centred more around the child.
- Trafficking in children can be prevented, as well as unfounded financial demands and other requirements.

- Agreements can lead to children, who would not otherwise find a family, getting one through acceptable adoptions, along with an opportunity for medical treatment and education.
- Central authorities can collaborate on difficult issues related to intercountry adoptions, and decide on suitable alternative placements that safeguard the best interests of the child.
- Receiving States may, when discussing agreements, take this opportunity to set their own requirements, for example in terms of origin issues.
- If decisions on origin issues are made within the framework of the agreement, e.g., that the child report shall include additional background information, this may mean better opportunities to inform the child about his/her origin as well as for people who wish to trace their origin.
- Agreements can represent a tool for streamlining the adoption process. It is in the best interests of the child for the adoption process not to drag on for administrative reasons.
- Agreements can create a uniform adoption process for all intercountry adoptions.
- Clarifications can be achieved through agreements, for example, responsibility for different issues as well as procedures and costs.
- Agreements lead to closer and better cooperation between central authorities and clearer communication. Information can be shared and the parties can update each other on developments in the area.
- The adoption process can be clarified in cases where citizens of the country of origin residing in the receiving country wish to adopt from their country of origin.
- It allows for retrospective review of adoptions to ensure they meet all requirements of the bilateral agreement.
- It is possible to influence the content of an agreement, as opposed to the content of national law.
- Agreements can enable the possible involvement of adoption organisations in mediating adoptions from the country of origin.
- It is positive that States are prepared to take responsibility.

Advantages of bilateral agreements *when the country of origin has acceded to the Hague Convention*:

- An agreement may contain provisions stipulating that the child report shall include information on the opinions of the child and his/her consent, in cases where the child has attained sufficient maturity.
- By way of agreement, the central authorities in each country can feel more confident that expectations in regard to assessments of the child's adoptability and the subsidiarity principle, including post-adoption reports, will be fulfilled.
- The Hague Convention provides a basic framework that may need to be filled with more specified content regarding policy issues, e.g., prohibition of financial gain, fees, registration of adoption organisations.
- Administrative processes are clarified, including methods for transmitting documents and the content of the home studies and child reports.
- A basis for dialogue and a formalised cooperation between the authorities is created.
- There is potential to define specific aspects in terms of legislation and the adoption process in both countries.
- The actual negotiation process improves the cooperation between the receiving country and country of origin.

Advantages of bilateral agreements *when the country of origin has not acceded to the Hague Convention*:

- International standards of child protection can be ensured.
- Bilateral agreements provide an opportunity to establish an adoption procedure that attains the same standard or similar to that of the Hague Convention.
- Increased security for receiving countries to ensure that the collaboration follows proper legal procedure.
- It may be better for intercountry adoptions from a non-Hague country to be regulated by an agreement than taking place outside the framework of any formal framework.

One receiving State suggests that there are no advantages nor disadvantages with bilateral agreements with countries of origin, regardless of whether or not they have acceded to the Hague Convention.

In summary, the following has emerged.

The advantages that have been highlighted, in particular by the receiving countries and countries of origin that MIA has been in contact with, relate in particular to the fact that the adoption process can be clarified and streamlined, and that the child's rights can be reinforced. Cooperation and information issues, e.g., between the authorities in receiving countries and countries of origin, recur in several comments.

The Swedish adoption organisations have stated that a bilateral agreement may be a prerequisite for an organisation to work in certain countries of origin at all. Both the adoption organisations and the adoptee organisations consider it an advantage of bilateral agreements that the receiving country gets an opportunity to include origin issues in the discussion, which can mean that adoptees who later wish to obtain information about or trace their origin can be better informed. Other issues, where the receiving country is interested in setting their own requirements, can also be brought up in an agreement discussion. However, as shown in the previous section, it does not appear, as far as MIA can see, that such issues have been included in concluded agreements or were discussed in connection with agreements.

Another advantage that is expressed in the comments is that adoptions that come about thanks to bilateral agreements can benefit children who are in need of alternative placement in the form of intercountry adoption, as these children would not otherwise have had the opportunity to live in a family.

As regards bilateral agreements with non-Hague countries, several respondents suggest that agreements with these countries on how adoptions shall be carried out provide a certain degree of assurance, which is positive. The question that must be asked, however, is whether a bilateral agreement can provide adequate assurance and why the country in question does not accede to the Hague Convention.

11. Disadvantages of bilateral agreements

As presented in Section 10 above, some advantages of bilateral agreements have been highlighted in the contacts MIA has had with various actors. A number of disadvantages have also been noted. Just as with the advantages, the account in Section 12 (on the functionality of the Hague Convention) coincides partially with the overall general views which have been advanced regarding disadvantages.

Common disadvantages of bilateral agreements *regardless of whether or not the country of origin has acceded to the Hague Convention*:

- Bilateral agreements tend to perpetuate the existence of intercountry adoptions between the two contracting party States, and there can be a latent pressure on the country of origin to ensure that there are children who can be adopted internationally, which poses a threat to the rights of the child.
- The rights of the child are in jeopardy if agreements are concluded in order to meet “the demand for children” in receiving countries.
- Regulation of the obligation to provide post-adoption reports may raise issues regarding the child's privacy, especially when a long time has elapsed since the adoption and when the child gets older. In particular, a conflict could arise in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 8[23].
- When cooperation under the agreement is terminated, it becomes problematic to manage ongoing adoption cases (“transition/pipeline cases”).
- Issues regarding whether the child shall preserve their native language through home language instruction may come up in connection with agreements. Imposing such a moral obligation on the individual cannot be considered appropriate. One should generally never enter agreements with obligations that cannot be met.
- Agreements provide an opportunity for States of origin to put forward demands, for example in terms of humanitarian aid, which would not be possible otherwise.
- It can be very time and resource-consuming to design and implement a bilateral agreement. It may therefore take time before the cooperation gets underway. If the need arises to change an existing agreement, this can also be time-consuming.
- It can be difficult and time-consuming to terminate an agreement, which may cause problems if a party wants to terminate the collaboration on short notice.
- There is a risk that agreements are not flexible enough to be modified in pace with changing conditions in the international adoption sector.
- If an agreement is concluded at a high level and the central authority in the receiving State wishes to terminate the adoption collaboration due to

[23] Article 8 – Right to respect for private and family life
1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

problems in the adoption operations, this can lead to diplomatic difficulties.
- If an agreement is concluded by the government or at an authority level, the Swedish adoption organisations have no direct insight or influence.

Disadvantages of bilateral agreements *when the country of origin has acceded to the Hague Convention*:

- If an agreement does not improve the application of the Convention, it may cause problems in terms of the child's rights.
- If countries to an increasing extent make a declaration (in accordance with Article 25 of the Hague Convention) that they do not need to recognise adoptions made in accordance with bilateral agreements, there will be a growing problem of adoptions not being automatically recognised, which is one of the Convention's core aims.

Disadvantages of bilateral agreements *when the country of origin has not acceded to the Hague Convention*:

- If receiving countries do not conduct adoption operations based on the same standards and starting points, there may be a risk that children from certain countries of origin are put up for adoption to receiving countries that accept a lower level of ethics in the adoption proceedings.
- If the political will is lacking, bilateral agreements may lead countries to consider such agreements adequate, resulting in a reluctance to accede to the Hague Convention.
- At the international level, a multilateral agreement is better than bilateral agreements, as a multilateral agreement establishes a common standard.
- The Hague Convention must be seen as a whole. Therefore, it becomes problematic if only certain parts of the Convention are included in a bilateral agreement (a problem that also can apply when the country of origin is party to the Convention).

In summary, the following has emerged.

Among the advantages of bilateral agreements highlighted by various actors that MIA has been in contact with, and as outlined in the previous section (Section 10), is the possible reinforcement, by various means, of children's rights. However, in the contacts that MIA has had, it has also been highlighted that there are many risks and disadvantages in respect of the rights of the child.

Among other things, various sources have pointed out that bilateral agreements can cement a partnership between countries, which means that a country of origin may experience pressure to put children up for adoption, and that intercountry adoptions may be expected even if they are not objectively necessary. It can be very difficult for a country of origin to escape that role. This can lead to the country of origin not sufficiently investigating possible alternatives for the placement of children within their own country, but being too hasty with decisions to have children adopted internationally instead. This represents a clear threat to the rights of the child.

Many respondents feel that it can be complicated and both time and resource-consuming to conclude bilateral agreements, as well as to modify and terminate such agreements. One particular problem that has been highlighted

relates to agreements concluded at the government level (or other high level) and the central authority of the receiving State wanting to terminate the adoption collaboration due to problems in the adoption operations.

One question that several respondents to MIA's queries ask themselves is whether certain requirements relating to post-adoption reports may involve a conflict with certain rights of the child. With regard to the risk of violating the child's privacy, the European Convention is mentioned in particular.

Something that several respondents have brought up is the risk that countries that have not acceded to the Hague Convention will fail to accede to the Convention if they can instead cooperate within the framework of bilateral agreements. If the Convention receives even wider support than is presently the case, this means that even more countries undertake to pursue adoption activities based on the same standards and starting points. These issues are discussed further in Section 12.

12. The functionality of the 1993 Hague Convention

The purpose of the Hague Convention is to protect children and their families against the risks of illegal, invalid or ill-prepared intercountry adoptions, and against intercountry adoptions that are “premature”, i.e. that take place before sufficiently investigating the opportunities for the birth family to keep their child or for the child to be offered a permanent solution in the country of origin. The Convention contains rules to ensure that the best interests of the child are taken into account, rules on cooperation between States, and rules stipulating that adoptions carried out in accordance with the Convention shall be recognised by other States Parties.

Through the Convention, the responsibility for adoptions is divided between the child's country of origin and the country where the adopting parties live, i.e. the receiving country. The country of origin shall, inter alia, make sure that the child is available for intercountry adoption, while the receiving country is responsible, inter alia, for the suitability of the prospective adoptive parents and for the child getting permission to enter the country and stay there permanently.

Bilateral agreements between Contracting States are permitted, according to Article 39.2, in order to improve the application of the Convention in their mutual relations. These agreements may only derogate from certain specified articles.

Currently, 93 States have acceded to the Convention.

There is a consensus among the actors that MIA has been in contact with that accession to the Hague Convention is preferable to bilateral agreements, and that the States of origin that have not yet acceded to the Convention should be encouraged to do so. MIA shares this view.

Presented below are the views that have been advanced, which have a bearing on the functionality of the Hague Convention. In part, this coincides with the general views that have been put forward regarding the advantages and disadvantages of bilateral agreements, see Section 10 and 11.

In the case of bilateral agreements *between States that have acceded to the Convention*, the following viewpoints have been provided.

Advantages:

- The Convention provides a basic framework that may need to be filled out with more specified content, e.g., regarding the prohibition of financial gain, fees, registration of adoption organisations.
- Agreements may be needed with regard to issues not addressed in the Convention, such as post-adoption reports.
- An agreement can make the adoption process more efficient.
- Guidelines, manuals for cooperation between certain countries may be required.
- An agreement may allow for an adoption collaboration.

Disadvantages:

- It is serious if agreements are concluded in order to meet "the demand for children" in the receiving countries.
- If the agreement does not improve the application of the Convention, problems may arise with regard to childen's rights.
- Problems may arise with regard to automatic recognition of adoption decisions, which is one of the aims of the Convention. Currently, 18 States have made a declaration according to Article 25 that the State shall not be bound to recognise adoptions made in accordance with agreements concluded by application of Article 39.2. There is a risk that more States will make such a declaration, thereby undermining the Convention's value.
- At the international level, it is easier and better to have a multilateral agreement, as everyone must then apply the same standard.
- The articles that the Convention allows parties to derogate from for the purpose of improvement (Article 14–16 and 18–21) are all of a general nature, except for Article 21. It is difficult to see how one could effectively formulate agreements in their regard for the purpose of improvement.
- There is a risk of agreements being concluded, which in practice rather impair the application of the Convention. Such agreements can be said to be contrary to international standards.

In the case of bilateral agreements *between States where at least one has not acceded to the Convention*, part of the above arguments also apply. In addition, the following viewpoints have been provided.

Advantages:

- Agreements with contracted procedural rules and requirements may lead to adoptions maintaining a higher standard than would otherwise have been the case, perhaps even attaining the Hague standard.
- Agreements can be an effective way to bring intercountry adoptions under public control outside the Hague framework.
- When a country is working to adapt and to join the Hague Convention, it may be possible to establish an agreement in the meantime.
- Agreements with one or a few receiving States may be a way to make the process smoother for States of origin intending to accede to the Convention. If the agreements contain similar procedural rules as the Hague Convention, these States can thereby test the system as a first step towards implementing the Convention.
- Some argue that even if the provisions of the Convention are only partially included in an agreement, it still brings the process closer to the

Convention, and that this is “better than nothing” when it comes to some countries of origin, which are far from acceding to the Hague Convention.

Disadvantages:

- If not all receiving countries work based on the same ethical standards, there is a risk that children will be put up for adoption to receiving countries that accept agreements of a lower ethical level. It is serious if such agreements are concluded in order to meet “the demand for children” in the receiving countries, when the number of children is decreasing from countries of origin that meet the Hague Convention's requirements, and which have shown determination to find preventive and remedial measures within their own country.
- Bilateral agreements may defeat the purpose of improving multilateral cooperation for childprotection.
- Agreements can be tailored to fit the non-Hague system in the country of origin and would therefore not ensure the appropriate safeguards foreseen by the Convention.
- If States of origin conclude bilateral agreements rather than acceding to the Convention, the Convention may lose its status as an international standard for intercountry adoptions.
- The same standards should be applied both in regard to Hague countries and non-Hague countries (see the recommendation of the 2000 Special Commission). All the Convention's principles should therefore be reflected in an agreement. As the Convention must be seen as a whole, it can cause problems if an agreement only incorporates certain parts of the Convention. This may result in the adoption procedure not maintaining the desirable standard.
- An agreement may undermine the Convention. It has therefore been suggested that it is inappropriate to enter into any agreement with States of origin that have not acceded to the Convention.
- Some countries do not wish to accede to the Convention for political reasons, instead preferring agreements on their own terms.
- An agreement can be a way for a country to circumvent the Convention, and to avoid acceding to it.
- Bilateral agreements can mean that it takes longer for a country to accede to the Hague Convention than it would otherwise. A country with a bilateral agreement does not have the same political incentives to align its legislation and its administrative system and accede to the Hague Convention.

Some of the actors MIA has been in contact with have stated that they do not consider the existence of bilateral agreements to constitute a risk of delay with regard to the accession of States of origin to the Convention.

MIA makes the following assessment.

Intercountry adoptions must take place in an orderly fashion, in a legally secure manner and with the best interests of the child and respect for his/her fundamental rights as the primary objective. The Hague Convention contains provisions that allow this. The Convention has received a high level of accession. The States that have not yet done so should be encouraged to accede to the Convention, once they have adapted their legislation and administrative system to it. This is preferable to bilateral arrangements.

MIA's position is that it is important not to undermine the Hague Convention, which has been widely accepted and represents an international standard in the field of adoption. On the contrary, joint efforts should be made to maintain the Convention's standing and improve its application. This is best achieved through multilateral cooperation and information exchange.

When a country of origin that has not acceded to the Hague Convention wishes to conclude a bilateral agreement, it is important to find out the reason why the country does not instead accede to the Convention. Is it because its legislation and administration fall short of the fundamental principles of the Convention? Is there something in the Convention that the country is negative towards and does not want to adhere to?

MIA shares the concerns that have been expressed regarding the disadvantages of entering into agreements with non-Hague countries. Agreements with non-Hague countries may expose the child and its rights to risk. Only if very good reasons are presented should such agreements be considered. And if they are, they should correspond to the fundamental principles of the Hague Convention so as to attain the “Hague standard” for the adoptions.

Agreements that do not correspond to or indeed work against these principles; for example, by including requirements of financial assistance to the State of origin, must not be concluded.

An important aim of the Convention is for adoptions carried out between States Parties in accordance with the Convention to be automatically recognised in other States Parties (see Article 23).

However, it is not possible, in a bilateral agreement with a State of origin that have not acceded to the Hague Convention, to introduce a provision stipulating that adoptions carried out under the agreement shall be recognised in Sweden, as this would require legislation.

There sometimes seems to be a misconception that a country of origin that has acceded to the Convention must cooperate with, and adopt children to, all receiving countries (see, e.g., Section 9). This is clearly not the case. The country of origin can choose to cooperate with as many or as few (if any) receiving countries and adoption organisations as it sees fit. This is an information issue, and it is important that receiving States do not put pressure on States of origin to adopt their children.

The purpose of adoptions is for children to have parents, not for parents to have children. The reason for considering to enter into agreements should therefore be for children who cannot be matched with parents in their own country to be able to find parents in the receiving State. Agreements must never be concluded in order to meet “the demand for children” in the receiving States.

In the discussions held by MIA with countries of origin that have requested bilateral agreements, it has been shown that it is possible to get quite far with clear information. On several occasions, MIA has provided verbal and written information to countries of origin regarding adoption operations in Sweden and the obligations of the Swedish authorities and adoption organisations. This has led to the countries concerned being satisfied with the information

they have received and in their adoption cooperation subsequently relinquishing their request to enter into bilateral agreements with Sweden.

For example, in an agreement, countries of origin can request to regulate/establish which authorities in the receiving country are responsible for different parts of the adoption process. For Sweden's part, such matters are already regulated in the Act (1997:191) consequent on Sweden's accession to The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Incorporation Act). The Act specifies which authority is the Central Authority under the Convention (MIA) and that Authority's responsibilities. Furthermore, the tasks of the social welfare boards and the accredited adoption organisations are outlined. The tasks of the Swedish Migration Agency and the Swedish Tax Agency are specified in other legislation.

Other legislation is also significant for the understanding of Sweden as a receiving country as viewed by the countries of origin, such as the Children and Parents Code, the Intercountry Adoption Intermediation Act (1997:192), the Act (1971:796) on International Legal Relations Concerning Adoption, the Ordinance (2007:1020) containing instructions for MIA, the Social Services Act (2001:453), the Social Insurance Code and the Act (2001:82) on Swedish Citizenship. In Sweden, the same system is applied regardless of whether or not the country of origin has acceded to the Hague Convention.

Other issues may also be regulated by law in the States of origin or in the receiving States, such as fees, authorisation requirements and registration of adoption organisations.

When an issue is governed by law, there is no possibility of concluding a bilateral agreement regarding the same issue. However, it is important to have clear information for the countries of origin.

The Hague Convention provides a base framework of minimum standards. This means that it may need to be filled out with more specified content. In Sweden, adoption mediation is performed by adoption organisations accredited by MIA. These organisations often have agreements with their foreign partners on how the practical mediation work should be done, etc. In most cases this is enough for the States of origin.

When a country of origin that has acceded to the Hague Convention wishes to conclude a bilateral agreement, it is of course important to find out the reason for this. If the purpose is to improve the application of the Convention, an agreement should be considered, but it is important not to derogate from any provisions other than the ones stated (Articles 14–16 and 18–21), and then only for improvement purposes.

Such agreements, which in practice constitute an impairment of the application of the Convention, should not occur. Agreements that only serve as a repetition of the content of the Convention should be avoided, while agreements concerning matters not governed by the Convention could be considered. In assessing whether it is appropriate to conclude an agreement, an overall assessment should be made with regard to all the circumstances in the adoption cooperation with the country in question. The primary focus must always be on ensuring the rights of the child from different aspects.

In the case of bilateral agreements with countries of origin, MIA generally encourages consultation with other receiving countries in order for all parties to base their work on the same ethical standards, to the greatest extent possible. If many States adopt a similar position when it comes to the suitability of agreements in general, or on specific issues, this can help to maintain the Convention's status and increase the number of States acceding to the Convention. Otherwise there is a risk that the Convention's functionality will be impaired.

13. Diplomatic consequences

The 1993 Hague Convention has applied as law in Sweden since 1997. Adoptions to Sweden take place both from countries that have acceded to the Hague Convention and from those that have not. The conditions required for a Swedish adoption organisation to obtain authorisation to mediate adoptions from another country are stipulated in Section 6 a of the Intercountry Adoption Intermediation Act (1997:192).

According to MIA, Sweden has no reason to initiate bilateral agreements on intercountry adoption. Instead, cooperation under the Hague Convention is preferable. This stance is shared by the receiving States that MIA has been in contact with. The Convention should be viewed as a whole, meaning that all States shall apply the same standard. Also refer to MIA's assessment in Section 12 regarding the functionality of the Hague Convention.

When the States of origin attempt to initiate a bilateral agreement, it is important to find out the reason, and why the State, if it has not already done so, does not accede to the Hague Convention. As has been stated in Section 12, many issues can be resolved by providing clear information.

The country unit in question at the Ministry for Foreign Affairs should be consulted to obtain more detailed information on the country concerned, in order to judge the advisability of the agreement in each case. Consultation should take place with other relevant Swedish authorities, but also with the central authorities in other receiving countries.

Bilateral agreements often contain a provision requiring regular consultation between the two States to evaluate the agreement's functionality. This is an important instrument for effective cooperation and to solve any problems that may arise. Furthermore, there are provisions on how changes are to be made to the agreement and how the agreement can be terminated. This can involve time-consuming work if the need for modification of an agreement arises.

When a contract is terminated, there may be a number of pending adoption cases. As a result, difficult ethical problems may arise regarding how and if these cases are to be finalised. Diplomatic problems may also arise in such a situation, depending on the States' stance on the cancellation of the adoption cooperation. This can impact the children and their prospective adoptive parents.

If a bilateral agreement has been concluded by the Government, a delicate situation may arise if MIA finds that the conditions for an adoption organisation's accreditation application are not met with regard to the situation in the country concerned, or if MIA for the same reason considers revoking an existing accreditation, perhaps on short notice. Before a decision

is made, discussions should normally have been held with the relevant country in order to find a solution. MIA is autonomous in its exercise of authority, but its decisions may have consequences in relation to the country in question. The Government may then also need to take a stance on whether to terminate the agreement.

If, in a similar situation, it is instead MIA that has entered into the bilateral agreement, the consequences may perhaps be less severe.

When there is no bilateral agreement whatsoever with the country concerned, a decision where MIA revokes an existing accreditation or does not grant an accreditation application may possibly be perceived as less negative.

14. Organisational and administrative implications

Bilateral agreements on intercountry adoption with States of origin may be entered into by the Government (Chapter 10, Section 1 of the Instrument of Government) or by MIA or another authority empowered by the Government (Chapter 10, Section 2 of the Instrument of Government), also refer to Section 5. This applies to agreements with both Hague countries and non-Hague countries.

Section 8 shows that in the case of agreements that receiving States have concluded with States of origin when these were not party to the Hague Convention, the majority have been concluded by the receiving States' government or parliament. There are also instances where the central authority has concluded such agreements, following delegation by the government. Agreements with States of origin that have been concluded when these were party to the Hague Convention have usually been concluded by the receiving States' central authorities, but there have also been cases where the agreements have been concluded by the government or parliament.

In their contact with MIA, the adoption organisations have expressed the opinion that MIA is most suited to conclude any bilateral agreements. In their view, the desire abroad is an effective counterpart with expert knowledge, something which they consider the Central Authority to have.

The adoptee organisations also consider it most appropriate to have MIA conclude any bilateral agreements on Sweden's behalf. They feel that MIA has a high level of knowledge in the field of adoption, is neutral and is the obvious counterpart to the authorities of the countries of origin.

MIA makes the following assessment.

Bilateral agreements with States of origin that have not acceded to the Hague Convention require a much more extensive regulation than agreements with Hague States. In reality, a regulation as comprehensive as that of the Hague Convention is required. As far as Sweden is concerned, such agreements would therefore concern several authorities' areas of responsibility, such as MIA, the National Board of Health and Welfare, the Swedish Migration Agency, Swedish embassies, the Swedish Tax Agency, as well as the operations of the adoption organisations.

For these reasons, MIA deems it to be most appropriate for any agreements with States of origin that have not acceded to the Hague Convention to be

concluded at the government level. MIA and other authorities must, of course, assist the Government Offices in this work.

When it comes to agreements concluded with States of origin that have acceded to the Hague Convention, the situation is different. The Convention then functions as a basis for the adoption cooperation. Under Article 39.2, agreements may be entered into solely for the purpose of improving the application of the Convention, and they may only derogate from certain articles. Any agreements with Hague countries should thus be significantly smaller in scope and cover only certain specific issues. Negotiations on agreements would usually be handled mainly between the two States' central authorities. If issues are dealt with, which in Sweden fall under some other authority's area of responsibility, this authority must naturally also be involved in discussions prior to the agreement. As an example, if the remit of the social welfare boards is up for debate, the National Board of Health and Welfare must be involved.

For these reasons, it should be considered whether it is appropriate to have any agreements with States of origin, which have acceded to the Hague Convention, concluded by MIA as the Central Authority in Sweden, following authorisation from the Government.

However, one complication is that MIA is the authority that authorises the Swedish adoption organisations to mediate adoptions from a particular country and, where appropriate, revokes said accreditation. MIA also supervises the organisations' operations with adoption mediation. The question is then whether it is appropriate for MIA to also negotiate and possibly conclude an agreement with a country of origin.

Bilateral agreements often contain a provision requiring consultation between the States at regular intervals to evaluate the agreement's functionality. This is an important instrument for cooperation to be effective and to solve any problems. If problems occur in the adoption cooperation, discussions should be held with the relevant country to achieve a solution. This can involve time-consuming work if the need for modification of an agreement arises. As a last resort, the agreement can be terminated.

According to MIA's assessment, an agreement concluded by MIA does not prevent MIA from making an independent assessment of whether the conditions for, or revocation of, accreditation are met. These decisions may need to be taken regardless of whether there are ongoing discussions pertaining to the agreement. A decision by MIA to refuse or revoke accreditation can be appealed by the adoption organisation to the Administrative Court. The fact that there is a bilateral agreement does not mean that a Swedish adoption organisation must mediate adoptions from the country in question.

MIA's summary assessment is that it would often be appropriate to have any agreements with States of origin that have acceded to the Hague Convention concluded by MIA as the Central Authority in Sweden, following authorisation from the Government. However, if the agreement only covers issues that fall under the responsibility of another authority, this authority should conclude the agreement, following authorisation by the Government and in close consultation with MIA.

Whether it is the Government, MIA or other authority that is the contracting party, agreement negotiations are time-consuming. Political assessments need to be made regarding the appropriateness of concluding a bilateral agreement on intercountry adoption with a given country. Several different categories of staff need to analyse the content of the agreement, particularly as regards the impact on the rights of the child. Trips to the country in question may be required in connection with agreement discussions, for the purpose of follow-up, or during any amendments to or termination of the agreement. Visits to Sweden by representatives from the country of origin will likely happen. Consultation with other receiving States should also take place.

When it becomes time to commence negotiations, consideration must be given to the measures that may be needed at the national level in Sweden, such as legislation, in order to implement the agreement[24]. However, it is difficult to imagine that Swedish legislation would be adapted for the sole reason of concluding an agreement with a single country of origin. In such situations, the most prudent thing is probably not to conclude an agreement with the country in question.

When a contract is terminated, there may be a number of pending adoption cases. It takes time and difficult ethical problems arise with issues of how and whether such cases are to be finalised.

As it is now, the adoption organisations often have agreements with their foreign partners regarding the practical management of the adoption collaboration, etc. Even if Sweden concludes an agreement with a country of origin, the adoption organisations will likely require their own agreements.

15. Economic consequences

As noted in Section 14, discussions and negotiations on bilateral agreements require extensive work by staff at the Government Offices and/or Swedish authorities, especially MIA. The time required for this process depends on whether it relates to countries of origin that have or have not acceded to the Hague Convention. Furthermore, it depends on the extent of the regulation desired.

Staff costs will thus arise in connection with agreement discussions and negotiations, during regular meetings, which are customary for the monitoring of agreements, and in connection with the amendment or termination of the agreements.

Furthermore, there are costs for travel to the country of origin in order to meet with relevant authorities etc. The cost of such trips is of course dependent on where in the world the country is located and how many trips must be made. The number of trips will depend on the scope of the agreement or the issues being covered by the agreement.

In addition, it is expected that representatives from the country of origin will wish to visit Sweden to meet with various authorities such as the Government Offices, MIA, the National Board of Health and Welfare, a social welfare board, court and adoption organisations. In MIA's contacts with other

[24] Ds 2007:25 *Riktlinjer för handläggningen av ärenden om internationella överenskommelser* (Guidelines for the management of cases regarding international agreements), page 9–17

receiving States, it has emerged that countries of origin have requested that the receiving States cover such travel costs. MIA has not funded visits to Sweden by States of origin representatives, but it has received visitors and sometimes taken them to lunch.

As described, the labour and cost involved can vary significantly depending on the circumstances of the individual case. It is therefore impossible to specify the cost of entering into and maintaining a bilateral agreement. Nor is it possible to estimate in advance the number of agreement negotiations involved or the scheduling of such negotiations.

During periods when agreement negotiations are underway, extensive work may be required by MIA staff. In such situations, which can arise at relatively short notice and which are not always possible to predict, MIA may require additional financial resources for extra staff. Otherwise, other tasks may need to be deprioritised, which can impact other areas of MIA's operations. Agreement negotiations therefore affect MIA's budget.

Depending on the issues that the States of origin wish to regulate, there may also be costs for commitments made by Sweden.

Examples include post-adoption reports that the children's representatives abroad wish to receive in order to stay updated on the status of the children in their new family. This often involves several reports over a specific period of time (sometimes up until the child turns 18 years old), and many want these reports, or part of them, written by administrators within social services. The countries of origin may also request that such a report contain a report from a paediatrician or child welfare centre regarding the child's health status. It is usually the case worker who performed the home study who writes the post-adoption report together with the adoptive parents. This does not require a decision by the Social Welfare Board. The adoptive parents pay for the translation of the reports and then send them (often with the help of the adoption organisations) to the children's countries of origin[25].

However, there is no Swedish statutory regulation regarding post-adoption reporting, i.e. no legal obligation for social services to compile such reports. Instead, this is based on a voluntary commitment from the social services side. There are however good reasons for social services to write post-adoption reports. It is, for example, a good opportunity to follow up on how the adoption has gone and whether the adoptive family needs support and help.

There is no statutory obligation for adoptive parents to send post-adoption reports. This is based on a voluntary commitment they make when they choose to adopt from a particular country.

If a bilateral agreement is concluded between Sweden and a country of origin with an obligation for social services to write post-adoption reports, this would entail an increased commitment for social services, which, in addition to increased costs, would require legislation. We might instead consider that, even in such a situation, it is voluntary for social services to write post-adoption reports and that it is not possible for adoption applicants to adopt

[25] See also the National Board of Health and Welfare: Adoption. *Handbok för socialtjänstens handläggning av internationella och nationella adoptioner* (Handbook for Swedish social services management of intercountry and national adoptions), 2014, page 149-150

from the country in question unless the social services has agreed to participate in the writing of reports.

The National Board of Health and Welfare has stated that, for a social worker who is used to dealing with these issues, it takes about a day to write a post-adoption report. The cost of labour for writing such a report can be estimated at approximately SEK 2,200–2,500. For a less experienced social worker it would take longer.

The National Board of Health and Welfare has furthermore indicated that if one intends to conclude agreements that go beyond the content of the Board's aforementioned Handbook and *Allmänna Råd om socialnämndernas handläggning av ärenden om adoption* (General Guidelines on social welfare boards management of cases regarding adoption)[26], there will be costs for the National Board of Health and Welfare for revising the Handbook and the General Guidelines. However, it may be difficult to adapt to demands from a single country of origin.

The adoption organisations have stated that, during the period when the process is underway, when a country of origin has requested a bilateral agreement, the organisations risk financial loss. This is particularly noticeable when it comes to a country where the adoption organisations are engaged in ongoing mediation activities and the country requests a bilateral agreement so that the activities can continue. In this case, it is often impossible to mediate adoptions, but the organisations nevertheless need to continue with their ongoing activities with regard to the country in question. Travel and working hours associated with meetings etc. to deal with the agreement issue also entail costs. Aside from the purely economic consequences, psycho-social consequences may also arise. Adoption applicants who have pending cases in the country or who are part of a queue system obviously become worried. In addition to the stress it causes them, it may also require certain operations, such as social services and health care services, to employ resources to address this anxiety.

16. MIA's considerations

In recent years, various sources have claimed that it has become increasingly common for States of origin to request that bilateral agreements be concluded between the State of origin and the receiving State. This applies both to States of origin that have acceded to the Hague Convention and to those that have not. However, in the contacts MIA has had with various central authorities and organisations, etc., views are divided on this issue. In the case of the receiving States' central authorities, some have not experienced any increased demand for bilateral agreements, while others have.

The actual occurrence of bilateral agreements, among the receiving States that MIA has been in contact with, is not that widespread. This may have to do with which States the cooperation refers to. The States of origin seeking bilateral agreements are located in different parts of the world and have different reasons for their request.

MIA sees that there are potential advantages with bilateral agreements insofar as the adoption process can be clarified and streamlined. Closer cooperation

[26] SOSFS 2008:8

and improved information exchange between authorities in the receiving country and country of origin can be other positive effects. There is also the possibility that the rights of the child can be strengthened through agreements. Adoptions that come about as a result of bilateral agreements can benefit children who are in need of alternative placement in the form of intercountry adoption, when the alternative is that these children would not otherwise have had the opportunity to live in a family. Furthermore, an agreement discussion can provide opportunities for Sweden as a receiving country to set demands that strengthen the rights of the child. This may relate to the preparation of the child and issues that make it easier for the child to trace his/her origin. MIA has not received any information to indicate that issues of this type have been included in agreements in practice, or been up for discussion. However, this should not prevent Sweden from inserting such issues in a possible agreement discussion.

Alternatively, MIA sees that there are also disadvantages to bilateral agreements. There is a real risk of bilateral agreements cementing a partnership between countries. This may result in a country of origin experiencing pressure to put up children for adoption. If this risks resulting in biological parents not receiving the support they would otherwise have gotten in order to be able to keep their children, or that the principle of subsidiarity[27] is not taken seriously enough in the country of origin, a principle which is very clearly expressed in both the CRC and the Hague Convention, this entails risks for the rights of the child and the biological parents. In situations where very young children are subject to intercountry adoption, MIA finds it reasonable to question whether there has been sufficient time to investigate the child's background and the possibilities of national adoption. It can be very difficult for a country of origin to escape that role. If the purpose of agreements is purely to meet “the demand for children” in the receiving countries, this is very serious. According to MIA's assessment, this represents a clear threat to the rights of the child as well as its biological parents' rights.

One of the primary objectives of the 1993 Hague Convention is to strengthen the rights of the child in the intercountry adoption process. MIA's position is that it is important not to undermine the Hague Convention, which has been widely accepted and represents an international standard in the field of adoption. On the contrary, joint efforts should be made to maintain the Convention's standing and improve its application. This is best achieved through multilateral cooperation and information exchange. The States that have not yet done so should be encouraged to accede to the Convention, once they have adapted their legislation and administrative system to it. It is, according to MIA, preferable to bilateral arrangements. If the Convention receives even wider support than is presently the case, this means that even more countries undertake to pursue adoption activities with the same standards and based on the child rights perspective expressed in the Convention. Such a development should be encouraged.

Many actors have pointed out that bilateral agreements with non-Hague countries pertaining to how adoptions shall be carried out ultimately represent a certain measure of security. That being said, MIA is very doubtful as to whether one can achieve sufficient security through a bilateral agreement.

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[27] The subsidiarity principle states that children who cannot be cared for by their biological family should be given a suitable family in their country of origin. Only if this is not possible should intercountry adoption be considered.

When a country of origin that has not acceded to the Hague Convention wishes to conclude a bilateral agreement, it is important to find out the reason why the country does not instead accede to the Convention. Is it because its legislation and administration fall short of the fundamental principles of the Convention? Is there something in the Convention that the country is negative towards and does not want to adhere to? From an international point of view, there is a risk that States that are not party to the Hague Convention will fail to accede if they can instead cooperate within the framework of bilateral agreements adapted to the conditions in their own country. However, there is a danger that the agreements do not assure the child, the biological parents and adoptive parents the same protection as the provisions of the Hague Convention. There is also a risk that such agreements will not be comprehensive or detailed enough to cover all the prerequisites for the adoption procedure to meet the required standard. According to MIA, there is a considerable danger of the Hague Convention's functionality being undermined if Sweden and other receiving countries conclude such bilateral agreements. Sweden should not be part of such a development.

MIA thus shares the apprehensions that have been expressed regarding the disadvantages of entering into agreements with non-Hague countries. Agreements with non-Hague countries may expose the child and his/her rights to risk. It is only if very strong reasons exist that agreements with non-Hague countries should be considered. In this event, an agreement should then correspond to the fundamental principles of the Hague Convention in order to ensure an adoption procedure of equal standard and similar to the Hague Convention. Sweden and other receiving countries that have acceded to the Hague Convention have an ethical obligation to ensure children from non-Hague countries the same legal protection as children from Hague countries. This is in line with the recommendation of the 2000 Special Commission in The Hague to apply the same standards and safeguards to adoptions from both Hague countries and non-Hague countries. MIA views it as inappropriate to conclude an agreement that does not correspond to, or indeed works against, these principles, for example, by including requirements of financial assistance to the State of origin.

However, when it comes to bilateral agreements with countries of origin that have acceded to the Hague Convention, the situation may be different. The Hague Convention provides a basic framework of minimum standards. This means that it may need to be filled out with more specified content. In most cases it is sufficient and appropriate for this to be regulated in agreements between the Swedish adoption organisations and their foreign partners with regard to how the practical mediation work should be done. In other cases, MIA believes that bilateral agreements should be able to be considered in order to improve the application of the Convention (cf. Article 39.2). It is then important not to derogate from any provisions other than those stated (Articles 14–16 and 18–21), and only for the purpose of improvement. MIA is furthermore of the opinion that agreements with Hague countries, with regard to matters not regulated by the Convention, could be considered provided that the basic objectives of the Convention are respected.

In a situation where a State of origin that is party to the Hague Convention wants an agreement with the same content as the Convention, the question that should be asked is how such an agreement improves the application of the Convention in the mutual relations between Sweden and the other country. Some issues, where agreements are requested, are regulated in the legislation of the country of origin or the receiving country. In such a situation, it should

instead be a matter of providing information about each respective country's legislation etc. MIA has on several occasions given verbal and written information to countries of origin about the adoption operations in Sweden and the responsibilities of the Swedish authorities and adoption organisations. This has led to the countries concerned being satisfied with the information they have received and in their adoption cooperation subsequently relinquishing their request to enter into bilateral agreements with Sweden. MIA has also always insisted that the countries of origin are entitled to decide independently which, or how many (if any at all), receiving countries and adoption organisations they wish to collaborate with. This also applies to states that have not acceded to the Hague Convention.

If a bilateral agreement shall be considered in relation to a State of origin, regardless of whether it has acceded to the Hague Convention or not, it is the opinion of MIA that an overall assessment shall be made, taking into consideration all circumstances in the adoption cooperation with the country in question. Therefore, an individual assessment must be made. The primary focus must always be on the consequences for the child and the rights of the child from different aspects. The purpose of adoptions is for children to have parents, not for parents to have children.

The starting point for considering entering into agreements should therefore be for children who cannot be matched with parents in their own country to be able to find parents in the receiving State. Agreements must never be concluded in order to meet “the demand for children” in the receiving States. There are also several other questions that are relevant in a situation where a bilateral agreement is being considered. One such question can be the child's right and possibility to have a say in the adoption process, and to be given the possibility of preparing for an adoption in the best manner possible. Another question is the possibility for children to more easily trace their origin in the future. It is naturally also important to consider whether an agreement can have consequences for children in general in the country of origin you are conducting discussions with, but also for the children in a future receiving country if there are special commitments. When it comes to the contents of some agreement proposals, certain requirements regarding post-adoption reports may be so extensive that they mean a conflict with the rights of the child. Regarding the risk of the child's privacy being breached, the European Convention for the Protection of Human Rights and Fundamental Freedoms should be taken into consideration.

The Swedish adoption organisations have stated that a bilateral agreement occasionally may be a prerequisite for an organisation to be able to work at all in certain countries of origin. However, for an agreement to even be considered, the country of origin must have a legally secure adoption process, It should correspond to the requirements stipulated in Section 6 a of the Intercountry Adoption Intermediation Act, for a Swedish adoption organisation to be authorised to work with international adoption mediation from the country in question. If a country of origin tries to compensate fundamental deficiencies through an agreement, there is a risk of legally insecure adoptions. In these situations, bilateral agreements are unsuitable.

It can be expected that only states from which a Swedish adoption organisation is already mediating adoptions, or wishes to initiate an adoption collaboration with, raises the question of entering into a bilateral agreements. The organisation in question can then be expected to contribute data for a decision in the agreement matter. It is less probable that a state with which no

Swedish adoption organisation is collaborating will come directly to Sweden with a wish to enter into a bilateral agreement. If Sweden is to even consider such a request it should first be clarified whether there is any interest from a Swedish adoption organisation to start mediating adoptions from this country. With the process in place in Sweden it is the adoption organisations, not MIA, that takes initiatives to choose the countries from which they wish to mediate international adoptions.

In the case of bilateral agreements with countries of origin, MIA generally encourages consultation with other receiving countries in order for all parties to base their work on the same ethical standards, to the greatest extent possible. If many States adopt a similar position when it comes to the suitability of agreements in general, or on specific issues, this can lead to the Hague Convention's status being maintained and an increase in the number of States acceding to the Convention. Otherwise there is a risk of the functionality of the Convention as well as the ethical standard regarding international adoptions being impaired, which would have consequences from an international and a Swedish perspective.

An agreement concluded by the Government with a country of origin which has acceded to the Hague Convention is an agreement under Article 39.2 of the Hague Convention. Depending on the content of the agreement, legislative measures may also be necessary, which require parliamentary involvement. For MIA to be able to conclude international agreements, it must be authorised to do so by the Government. There is no such general authorisation in MIA's instruction; instead, a special government decision must be made in each individual case.

A bilateral agreement with international (as opposed to civil law) content, concluded by MIA or another Swedish authority authorised by the Government, with a State of origin that has also acceded to the Hague Convention is thus an agreement under Article 39.2.

The authority to conclude agreements with states not acceded to the Hague Convention is the same as just described. The Government, or MIA (or other authority) with the Government's authorisation, therefore concludes these types of agreements.

According to MIA's understanding, it would be most appropriate if any agreements with States of origin that have not acceded to the Hague Convention should be concluded at the government level, as such agreements call for a far more extensive regulation than agreements with Hague States. In reality, a regulation as comprehensive as that of the Hague Convention is required. As far as Sweden is concerned, such agreements would concern several authorities' areas of responsibility.

Any agreements with States that have acceded to the Hague Convention should be significantly smaller in scope, and cover certain specific issues only, as in this case the Convention functions as a basis for the adoption cooperation. Negotiations on agreements would usually be handled mainly between the two States' central authorities. However, the involvement of other authorities could also be required if it concerns issues in their areas of responsibility. The National Board of Health and Welfare is an example of one such authority. For these reasons, there may be cause to consider the appropriateness of having any agreements with States of origin that have

acceded to the Hague Convention concluded by MIA, as the Central Authority in Sweden, following authorisation from the Government.

However, one complication is that MIA is the authority that authorises the Swedish adoption organisations to mediate adoptions from a particular country and, where appropriate, revokes said accreditation. MIA also supervises the organisations' operations with adoption mediation. The question is then whether it is appropriate for MIA to also negotiate and possibly conclude an agreement with a country of origin.

According to MIA's assessment, an agreement concluded by MIA does not prevent MIA from making an independent assessment of whether the conditions for, or revocation of, accreditation are met. These decisions may need to be taken regardless of whether there are ongoing discussions regarding the agreement. A decision by MIA to refuse or revoke accreditation can be appealed by the concerned adoption organisation to the Administrative Court. The fact that there is a bilateral agreement does not mean that a Swedish adoption organisation is obligated to mediate adoptions from the country in question.

MIA's summary assessment is that the most appropriate course of action would be to have any agreements with States of origin that have acceded to the Hague Convention concluded by MIA, as the Central Authority in Sweden, following authorisation from the Government. However, if the agreement only covers issues that fall under the responsibility of another authority, this authority should conclude the agreement, following authorisation by the Government and in close consultation with MIA.

The adoption organisations have stated that they consider it important for Sweden to be prepared to conclude bilateral agreements. They have stated that they have felt the international competition and want the state to support them by concluding bilateral agreements. This can be crucial to whether a Swedish organisation is able to mediate adoptions from a certain country. They also consider it important for the agreement conclusion process not to take too long.

However, agreement negotiations demand time and resources regardless of whether the government, MIA or another authority is the agreement party. Political assessments need to be made regarding the appropriateness of concluding a bilateral agreement on intercountry adoption with a given country. The contents of the agreement need to be analysed, particularly as regards the impact on the rights of the child. Trips to the country in question may be required in connection with agreement discussions, for the purpose of follow-up, or during any amendments to or termination of the agreement. Visits to Sweden by representatives from the country of origin will likely happen. Consultation with other receiving States should also take place.

When it becomes time to commence negotiations, consideration must be given to the measures that may be needed at the national level in Sweden, such as legislation, in order to implement the agreement. However, it is difficult to imagine that Swedish legislation would be adapted for the sole reason of concluding an agreement with a single country of origin. In such situations, the most prudent thing is probably not to conclude an agreement with the country in question.

If an agreement is concluded on a government level it can be experienced as sensitive if MIA revokes a applicable authorisation or rejects an accreditation application due to problems in the adoption operations. Prior to a decision being made, discussions should normally have been held with the country in question in order to reach a solution; however, depending on the circumstances, MIA sometimes needs to make decision on short notice. MIA is autonomous in its exercise of authority, but MIA's decision may have consequences in relation to the country in question. The Government may then also need to take a stance on whether the agreement should be terminated.

If, in a similar situation, it is instead MIA that has entered into the bilateral agreement, the consequences may perhaps be less severe. When there is no bilateral agreement whatsoever with the country concerned, a decision where MIA revokes an existing accreditation or does not grant an accreditation application may possibly be perceived as less negative.

When a contract is terminated, there may be a number of pending adoption cases. As a result, difficult ethical problems may arise regarding how and if these cases are to be finalised. These issues may be difficult to regulate as early as when the agreement is concluded and may instead be solved in connection with the termination of the agreement. Diplomatic problems may also arise in such a situation, depending on the States' stance on the cancellation of the adoption cooperation. This can impact the children and their prospective adoptive parents.

A question that must be decided on when a bilateral agreement is being considered is whether it shall be mutual. This means whether both Sweden and the other country can be both receiving country and country of origin, i.e. whether the agreement shall include international adoption of children regardless of which of the two contracting party States is the child's country of residence. This type of agreement is likely less common.

Furthermore, periods for notice of termination must be regulated. Since the circumstances surrounding international adoptions can change relatively quickly, it is appropriate not to have very long periods for notice of termination. Several of the agreements MIA has read has a three month notice period.

If an agreement is concluded with a country that has not acceded to the Hague Convention, it may be appropriate to regulate the terms of the agreement if the country was later to accede to the Convention. On most occasions it would be most suitable for the agreement to terminated.

The labour and cost involved in agreement discussions can vary significantly depending on the circumstances of the individual case, which is why it is not possible to specify the cost of entering into and maintaining a bilateral agreement. Nor is it possible to estimate in advance the number of agreement negotiations involved or the scheduling of such negotiations.

During periods when agreement negotiations are underway, extensive work may be required by MIA staff. In such situations, which can arise at relatively short notice and which are not always possible to predict, MIA may require additional financial resources for extra staff. Otherwise, other tasks may need to be deprioritised, which can impact other areas of MIA's operations. The work effort involved in analysing agreement proposals and any agreement

negotiations may have to be weighed against the international adoption collaboration as a whole within the framework of the Hague collaboration. Agreement negotiations therefore affect MIA's budget.

Depending on the issues that the States of origin wish to regulate, there may also be costs for commitments made by Sweden.