

Adoption from Viet Nam

Findings and
recommendations
of an assessment



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Abbreviations

AAB	Adoption Accredited Body
CAI	Commissione per le Adozioni Internazionali (Italian central authority)
CRC	Convention on the Rights of the Child
DOJ	Department of Justice (provincial level)
DOH	Department of Health (provincial level)
DOLISA	Department of Labour, Invalids and Social Affairs (provincial level)
ICA	Intercountry adoption
MOH	Ministry of Health
MOJ	Ministry of Justice
MOLISA	Ministry of Labour, Invalids and Social Affairs
MPS	Ministry of Public Security
SPC	Social Protection Centre
PAPs	Prospective Adoptive Parents
THC-93	The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption
UNCRC	United Nations Committee on the Rights of the Child
VND	Vietnamese Dong

This assessment was carried out by an independent team. Consequently, opinions and proposals in the present report do not necessarily reflect the policies and views of UNICEF or the Ministry of Justice of Viet Nam

Prefatory note

This assessment was carried out by Hervé Boéchat, Nigel Cantwell and Mia Dambach of International Social Service (ISS)¹. This independent assessment was commissioned by UNICEF Viet Nam and by the Department of Adoption of the Ministry of Justice (hereafter MOJ) of Viet Nam. The main aims of the exercise were, in summary, to:

- Identify and address problems in both the domestic and intercountry adoption processes, with a view to assisting Viet Nam in its preparations to accede to the 1993 Hague Convention on Intercountry Adoption (hereafter THC-93);
- Review the new draft law on adoption, and propose any amendments that may appear necessary to ensure compliance with international standards and good practice.

To this end, in addition to reviewing a wide range of pertinent documentation, the authors of the assessment undertook a visit to Viet Nam from 4 to 13 May 2009, during which they had discussions with relevant actors, notably Vietnamese governmental officials at central and provincial levels, representatives of foreign governments, NGOs and adoption agencies. Members of the team travelled to two Provinces (Bac Can and Vung Tau). They visited a number of facilities for children, in Ha Noi and in those Provinces. Throughout these various discussions and visits, the team was accompanied by officials from the Department of Adoption and UNICEF staff-members.

The preliminary report following this mission was submitted to UNICEF and the MOJ in June 2009. The Ministry, in turn, sent it for comment to the Vietnamese entities (central and provincial) with which the assessment team had met, as well as to those foreign embassies in Ha Noi that had been contacted. Meanwhile, ISS also conducted further research. The draft report was formally presented at a seminar organised by the MOJ in Ha Noi on 18th September 2009 and was the subject of full discussion there. In finalising our report, we have reviewed requests, suggestions and additional data made known during this consultation exercise.

In carrying out the first of our above-mentioned tasks, we gave priority emphasis to ICA in view of the main framework of the exercise, i.e. Hague accession. This priority is reflected in the present report. At the same time, as will be clear, we have

¹ ISS is an international non-governmental organisation that has consultative status with the United Nations Economic and Social Council (ECOSOC), as well as with UNICEF and other intergovernmental bodies. Hervé Boéchat is Director of the International Reference Centre for the Rights of Children Deprived of their Family (IRC), hosted by ISS. Nigel Cantwell is an International Consultant on Child Protection Policies. Mia Dambach is a Children's Rights Specialist at IRC.

also necessarily paid considerable attention to domestic adoption – and indeed to the wider child welfare and protection context – especially from the angle of its direct and indirect impacts on ICA.

As regards the draft Law on Adoption, we had numerous and very fruitful discussions with the drafting team. At the request of the MOJ, we already submitted during our mission to Ha Noi (on 12 May) a lengthy written appraisal on the draft then available. By September, this draft had been considerably revised by the drafting team, taking account of, *inter alia*, a number of our suggestions. Again at the Ministry’s request, we therefore submitted a further, substantial set of comments on the new draft (No. 5) on 25 September. By common accord with the Ministry, since the drafting process is still ongoing, our comments at different stages are not annexed to the present report.

It was agreed beforehand that the assessment process would take place in a forward-looking perspective. Thus, the aim was not to investigate allegations of past problems as such, but to take account of any concerns expressed about current or recent practices in order to seek ways of effectively resolving them in the future. It is in this spirit that issues of concern are necessarily mentioned and analysed in this report.

The assessment team also worked on the basis that responsibility for ensuring the proper operation of intercountry adoption, by the very nature of the practice, cannot fall to the country of origin alone, but also requires the full and active commitment of the competent authorities and adoption agencies of the receiving States concerned. It follows that this report addresses recommendations both to Viet Nam and to foreign governments and entities.

In undertaking this assessment, we attempted to focus on the issues most relevant to the adoption system in Viet Nam. Given its complex and dysfunctional nature and our limited resources, we were unable to address as many issues as we would have liked, such as the dual system in place at the time of the mission and applicable to the identified/non-identified child, the precise nature of domestic adoptions (including, for example, “de facto” or “actual” adoptions, full or partial adoption) and the question of trafficking of children.

Our assessment is systematically grounded in pertinent international standards, more especially the CRC and the Hague Convention. If we had a bias in conducting this exercise, that bias was solely in favour of the promotion and protection of the universally agreed human rights of children. We recognise that we were not always able to obtain the data we needed, nor were we able to travel the length and breadth of Viet Nam to garner information and consult with all concerned. Furthermore, within the constraints of our mandate, it was not always possible

to systematically verify and cross-check the mass of information received, but we have done our utmost to reflect what we believe to be “the reality”. We are particularly grateful to those who pointed out factual errors in our preliminary draft, and hope therefore that the present revised report is now as free as possible of these.

Finally, we are well aware that our report will not necessarily constitute palatable reading for those concerned with adoption, within and outside Viet Nam, whether they be State bodies, agencies or, to some extent, PAPs and Vietnamese children already adopted. As we submit this final report, however, the Vietnamese justice system (Nam Dinh Province People’s Court) has just convicted and sentenced 16 persons for having received bribes and falsified the documents of 266 Vietnamese babies between 2005 and 2008, to meet foreign demand for adoptees. This is not the first occasion on which Viet Nam has recognised this kind of problem and demonstrated resolve in tackling it. The facts of this case nonetheless constitute further timely evidence that the issues we raise must continue to be confronted – again, within and outside Viet Nam – if the intercountry adoption of Vietnamese children, with full respect for their rights, is to play the role for which it is destined according to international law.

Hervé Boéchat

Nigel Cantwell

Mia Dambach

Geneva, November 2009

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Summary of key observations

The level and nature of intercountry adoptions (ICA) from Viet Nam are essentially influenced by foreign demand. Thus, the availability of children who are “adoptable” abroad corresponds more to the existence of foreign prospective adopters than to the actual needs of “abandoned” and orphaned children. As a result, the overwhelming majority of adopted children are under 1 year of age, the age-group most sought by prospective adopters. Since only a relatively small and ever-decreasing number of other “countries of origin” are currently making children of this age “adoptable” abroad, foreign actors have proved willing to accept conditions put in place by Viet Nam for processing these adoptions. There is also considerable pressure from abroad for Viet Nam to continue as a “source” of very young children.

The circumstances under which babies become “adoptable” are invariably unclear and disturbing. Declarations of so-called “abandonment”, which is notoriously difficult to investigate, are intriguingly frequent, but with unexplained “peaks” and “troughs”. Procedures for verifying the child’s status and, inter alia, for ensuring free and informed consent to adoption are inadequate and inconsistent. Decision-making on the availability of a child for ICA as opposed to a domestic solution (including return to the biological family) seems to take no account of the subsidiary nature of adoption abroad, with little or no effort being made to establish the child’s real need for the latter or to identify in-country care opportunities.

The ICA procedure is influenced by a remarkably unhealthy relationship that can exist between agencies and specific residential facilities. It involves compulsory and sizeable financial contributions by agencies in the form of “humanitarian aid” to facilities that they themselves have identified as potential “partners” in ICA. The question of “aid” generally seems to be given far more importance than ensuring that ICA is resorted to as an exceptional measure on a case-by-case basis. Agencies compete with each other to secure children and tend to expect that children will be “indicated” to them for ICA processing according to the amount of humanitarian aid provided. Agencies are subject to little or no monitoring, and neither they nor the residential facilities they work with have any incentive to address or notify problems, since the way the system presently functions is to the advantage of both.

Governments and Central Authorities of “receiving countries” – collectively at least, and individually in many instances – have not effectively committed themselves to applying the basic principles of the THC-93, or the recommendations of the Special Commission on the treaty’s practical operation, in their dealings with Viet Nam. They have therefore been sending out mixed – and hence eminently unhelpful – messages on the acceptability of the current system. These frequently seem to respond more to pressures within their respective countries than to tackling identified problems. In most cases, embassies have virtually no knowledge of how their country’s agencies are operating, let alone being in a position to verify the compliance with international standards of adoptions to their country.

Viet Nam’s desire for rapid accession to the THC-93 constitutes a highly positive perspective. It will nonetheless require not only far-reaching legislative changes, which Viet Nam already envisages, but also a fundamental change in outlook, including in particular a total divorce between “humanitarian aid” or other financial contributions and the ICA of those of its children who may require this measure. The success of reform efforts will depend not only on Viet Nam itself but also on the willingness and ability of foreign actors other than agencies to provide active assistance, including in the development of preventive child welfare measures and of functioning child protection systems, based on a deinstitutionalisation strategy and the consequent expansion of alternative care options for vulnerable children.

1. THE ADOPTION OF VIETNAMESE CHILDREN IN CONTEXT

1.1. The international context of intercountry adoption today

Intercountry adoption is a global phenomenon with its own dynamic that transcends “national realities”. It is therefore vital to underline the fact that this assessment takes place at a time when, after quite consistent rises in the Eighties and Nineties, figures for annual ICA to major receiving countries seem to have peaked and then either stabilised or begun to decline since the early years of the 21st century, with the notable exception of Italy (see Table 1).

Table 1: Total number of intercountry adoptions worldwide to major receiving countries, 2001-2008 (peak years in bold)¹

	2001	2002	2003	2004	2005	2006	2007	2008
<i>USA*</i>	19'237	20'099	21'616	22'884	22'728	20'679	19'613	17'433
<i>Italy</i>	1'797	2'225	2'772	3'402	2'874	3'188	3'420	3'977
<i>France</i>	3'095	3'551	3'995	4'079	4'136	3'977	3'162	3'271
<i>Spain</i>	3'428	3'625	3'951	5'541	5'423	4'472	3'648	3'156
<i>Germany</i>	1'789	1'919	1'720	1'632	1'453	1'388	1'432	1'251
<i>Canada</i>	1'874	1'926	2'180	1'955	1'871	1'535	1'712	1'908
<i>Sweden</i>	1'044	1'107	1'046	1'109	1'083	879	800	793
<i>Netherlands</i>	1'122	1'130	1'154	1'307	1'185	816	782	767
<i>Denmark</i>	631	609	522	527	586	448	429	395
<i>Switzerland</i>	543	558	722	658	452	455	394	279
<i>Norway</i>	713	747	714	706	582	448	426	304
<i>Total</i>	34'730	36'938	39'670	43'142	41'921	38'285	35'818	33,534

In light of this international context, the stagnation or fall in numbers cannot be attributed to a lack of applicants in receiving countries – it is very clear that the number of approved prospective adoptive parents (hereafter PAPs) worldwide still far exceeds the number of effective adoptions – but to more and more permanent or temporary restrictions being placed on intercountry adoptions by countries of origin. For instance, many countries of origin are setting stricter rules for foreigners

¹ Sources: CIC (Canada), Department of Family Affairs (Denmark), Mission de l'Adoption Internationale (France), Commissione per le Adozioni Internazionali (Italy), Dutch Ministry of Justice (Netherlands), Bufdir (Norway), Ministerio de Trabajo y Asuntos Sociales (Spain), Swedish National Board of Intercountry Adoptions, MIA (Sweden), Autorité centrale fédérale en matière d'adoption internationale (Switzerland), Statistisches Bundesamt (Germany), US Department of State (USA).

* Fiscal years (from October of the preceding calendar year to September of the calendar year mentioned)

willing to adopt (health status, age, etc.), and, at the same time, are promoting domestic adoptions with certain success. In addition, an increasing number of countries have let it be known that fewer children require adoption abroad or that, in principle, the only children needing ICA would be older and/or “special needs” children².

All these elements are creating a situation where requests for adoption worldwide are largely outnumbering the number of children declared adoptable. As a result, receiving countries and adoption agencies are likely to increase efforts to identify countries from where, in particular, younger children might be adopted. This typical situation where “demand” exceeds “supply” almost inevitably leads to different forms of bad practices and abuses. In countries where the social protection system is not strong enough, families are put under pressure to consent to the adoption of their children. When such practices become too obvious, measures may be taken either by the concerned country of origin³, or further to the pressures of receiving countries⁴.

It is therefore vital to bear this overall context in mind when broaching the question of intercountry adoption regulation in a country such as Viet Nam.

1.2. Historical overview of adoption from Viet Nam

ICA from Viet Nam started developing in the Seventies, were very limited in the Eighties and restarted in the Nineties. The American war played an important role in triggering intercountry adoptions from Viet Nam, especially at the end of the conflict when a large scale adoption programme was launched.⁵ The graph below illustrates the evolution of intercountry adoption between Viet Nam and the USA from 1962 until 2001 (total: 7,093). If one adds the figures from 2002 to 2008, 10,011 children from Viet Nam have been adopted by American citizens alone over a period of 46 years.

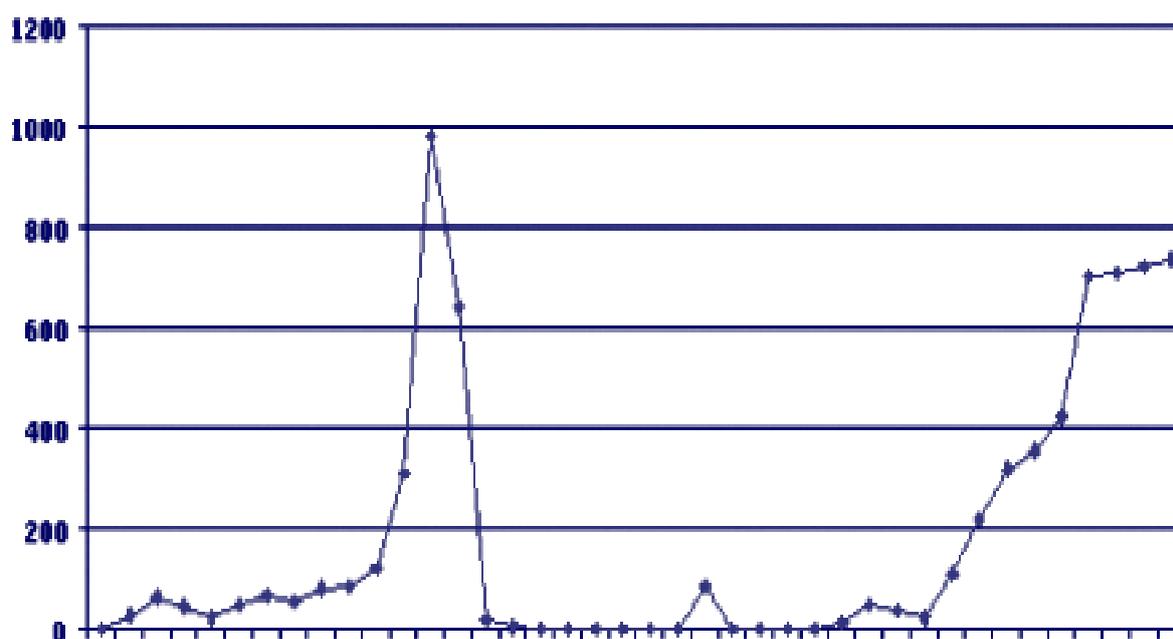
² “Special needs” children is the most accepted terminology that refers to children with disabilities, children in need of medical treatment, older children and children in sibling groups.

³ See case of Romania which banned intercountry adoption almost entirely.

⁴ See cases of Guatemala or Cambodia where significant reforms of the adoption system are being undertaken with the support of international organizations and receiving countries.

⁵ During “Operation Babylift” in April 1975, more than 3,000 Vietnamese children were moved from Viet Nam to be adopted in the USA, Canada, Australia and Europe. Research carried out afterwards shed light on the highly questionable conditions (lack of verification of child’s status, failure to ensure adequate documentation, etc.) under which many of these adoptions were carried out.

Graph 1: Adoptions from Viet Nam to the USA from 1962 to 2001⁶



As of the late Nineties, Viet Nam has continually ranked among the most popular countries of origin, with at least 10,000 children being adopted worldwide in the last decade. Statistics collected from various Central Authorities (see Table 2 below) show that adoptions from Viet Nam are significant and have generally been on the increase in recent years, with a naturally close relationship to when each country signed its bilateral agreement with Viet Nam.

Table 2: Adoptions from Viet Nam to the main receiving countries, 2002-2008

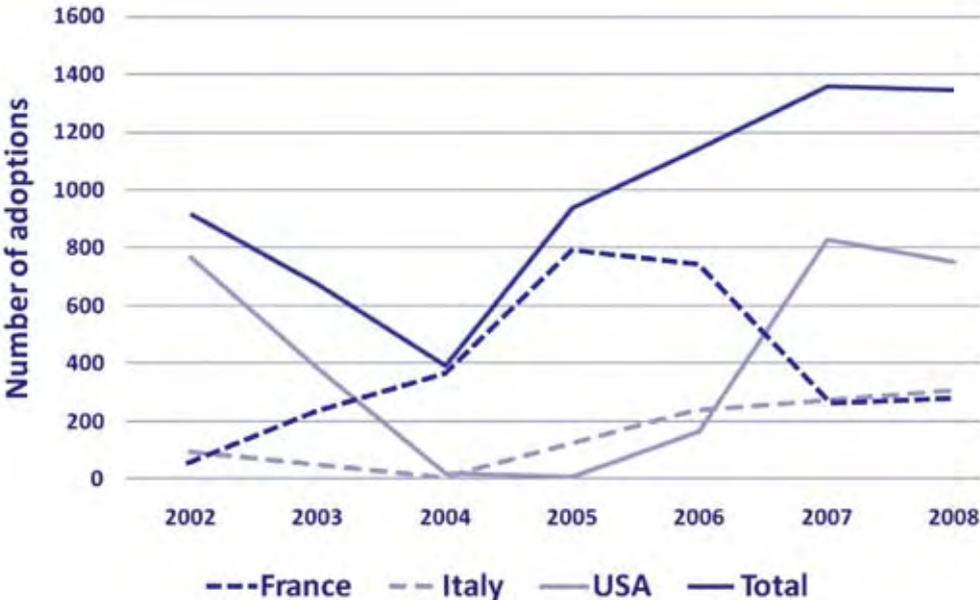
	2002	2003	2004	2005	2006	2007	2008	Total
<i>Canada</i>	84	45	6	5	34	54	45	189
<i>Denmark</i>	75	19	13	72	44	51	39	313
<i>France</i>	61	234	363	790	742	268	284	2742
<i>Ireland</i>	81	39	16	92	68	130	181	607
<i>Italy</i>	90	59	6	140	238	263	313	1109
<i>Sweden</i>	86	32	6	80	67	54	45	370
<i>Switzerland</i>	24	47	31	4	3	5	5	119
<i>USA</i>	766	382	21	7	163	828	751	2918
Total	1183	857	462	1190	1359	1648	1658	8357

⁶ The Evan B. Donaldson Adoption Institute: <http://www.adoptioninstitute.org/FactOverview/international.html>

On average, at least 1,000 Vietnamese children have been adopted in other countries each year, with well over 1,600 children in each of 2007 and 2008. It is expected that this number will decline for 2009, given in particular the non-renewal of bilateral agreements by the US, Irish and Swedish authorities, although large numbers of “pipeline” cases, under way at the time the suspensions took effect, have continued to be processed thereafter, particularly to the USA. Nevertheless in recent years Viet Nam has continued to be an attractive country of origin for countries such as Italy and France, being the fifth or sixth largest ‘source’ of adoptable children for each, and this seems likely still to be the case for 2009.

The following graph illustrates the evolution of the three main receiving countries over the last six years. It is worth noting that the number of adoptions to France in 2004-2006 seems to have “benefited” from the slowdown of the USA during that period⁷. However, the sudden and sharp reduction in adoptions to France in 2007, once the USA restarted their activities in earnest, is not a mirror-image of that phenomenon. It apparently stems more especially from two factors: the reorganization of the French ICA system carried out at that time; and the (very welcome) decision of the Vietnamese Authorities in 2006 to prohibit “independent” (non-agency) adoptions, which had constituted the great majority of adoptions to France until then. French agencies did not have the capacity to take on significantly more applicants in compensation.

Graph 2: Number of adoptions from Viet Nam to France, Italy and the USA, 2002-2008



⁷ The slowdown was due to the time for negotiations leading to the signature of the bilateral agreement. The same phenomenon is observed with other receiving countries.

In 2003, the Government of Viet Nam amended its adoption regulations, setting up a central Department of International Adoptions within its MOJ to approve adoptions and instituting a requirement for receiving countries to enter into bilateral agreements with Viet Nam. A bilateral agreement had in fact already been signed with France (2000), and others were then concluded with Denmark (2003), Italy (2003), Sweden (2004), Ireland (2004), Canada (2005), the Province of Québec (2005), the USA (2005), Switzerland (2005), and Spain (2009). Receiving countries in such agreements then authorised a certain number of adoption agencies to develop adoption activities with Viet Nam. In mid-2008, these numbered nearly 70.

In recent years, a number of countries have tried to assess the reliability of the adoption system in Viet Nam (notably the joint mission of Sweden and Denmark in 2008, the evaluation mission of the Australian General Prosecutor's Office in 2007, the investigation of about 300 adoption cases by the US Citizenship and Immigration Services⁸ in 2008). In addition, intercountry adoption is now high on the agendas of the diplomatic representations of the receiving countries concerned, as recent meetings attest.

Therefore, ICA is today a very sensitive issue for Viet Nam. On the one hand, several receiving countries are asking for an increase in the number of adoptions processed per year, but on the other hand, they raise strong concerns about the Vietnamese adoption system – with some reason.

We wish to emphasise here that the reform of an adoption system, in any country, cannot be successful if receiving states, foreign adoption agencies and PAPs do not take their share of responsibility. At the present time in Viet Nam, this is by no means sufficiently the case. As a result, **intercountry adoptions from Viet Nam are essentially demand-led**, particularly as regards the age of the adoptees. This fact is essential to understanding some of the main dysfunctions described in this report.

⁸ http://Viet.Nam.usembassy.gov/irreg_adoptions042508.html#top

2. MAIN AREAS OF CONCERN IN RELATION TO ALTERNATIVE CARE IN VIET NAM

This section examines the conditions under which children are separated from their parents and families, in order to understand the place of adoption as part of the wider child protection framework in Viet Nam.

2.1. Separation from their parent(s) and families

In 2007, MOLISA estimated over 2.6 million children in Viet Nam were living in ‘special’ circumstances, representing about nine percent of the total child population of 30.2 million¹. This number included 1.2 million children with disabilities; 168,000 orphans and children deprived of the care of their biological parents; 27,000 working children and 3,000 street children. MOLISA reported approximately over 14,000 children living in Government institutions.² Based on these figures, the proportion of children in institutions is relatively small, being less than 0.05% of the total child population. More information is not available to identify whether children of a specific gender, ethnic group, age or province are more prone to being separated and in need of alternative care.

2.1.1 Causes of separation

A comprehensive study on the root causes for separation does not exist, although we observed that poverty is often cited as the main reason for separation. The risk of separation is heightened when poverty is compounded by circumstances such as the discrimination faced by single mothers and the need to care for special needs children. The lack of prevention mechanisms within the legal framework and community creates an even greater risk.

The risk of separation is elevated among single mothers because they often lack the financial means to be the sole caregiver, and they may face discrimination within the community due to cultural tradition and religious views. In 2008, the Government cited the increase in divorces (i.e.: 9,715 cases in 2002 and 58,623 cases in 2005) as one of the main reasons why children have been separated and become street children.³ During the mission, we also encountered two single mothers who had relinquished their children for adoption. Due to their lack of capacity and single state, both women felt it impossible to care for the children, yet both remain in contact with the foreign adoptive parents.⁴

¹ According to Vietnamese law, the term “children” applies to those under 16 years of age.

² Information provided by UNICEF Viet Nam, 2009

³ Section on ‘separation from families’ in Vietnamese 3rd and 4th State Party Report 2008 to the UNCRC at 66

⁴ In response to such discrimination, the MOH and MOLISA are discussing the opportunity for establishing small group homes for babies as well mother and child units to provide counselling for mothers at risk.

When families living in poverty are faced with the responsibility of caring for a child who has HIV/AIDS and other special needs, there is a greater risk of abandonment or relinquishment. Parents are not prepared for the birth of children with special needs because hospitals are not adequately equipped. There is only one hospital in Viet Nam that provides birth screening to identify if a baby has serious health problems.⁵ The Directors of Social Protection Centres (in other words institutions, hereafter SPCs) confirmed that special needs children account for a significant proportion of those within institutions. Such children are not adoptable as their parents often continue to have contact with them but believe that their children will be better cared for in an institution.

In light of such risk factors, the lack of appropriate prevention policies also promotes separation. A well developed set of prevention policies does not exist in Viet Nam which is not surprising, given that the root causes of child abandonment, relinquishment and separation have not been comprehensively identified. **We observed that there is very little support available to mothers intending to abandon or relinquish their child in the community or in hospitals.** We are aware of one hospital in Ha Noi that provides counselling services. Most other provinces, such as Bac Can, do not provide such services.⁶

2.1.2. Forms of separation

An examination of the various forms of separation provides insight into how and why children may have a need of permanent family solution such as adoption. In this respect, we found certain conceptual problems when seeking to broach the issues of abandonment and relinquishment in the Vietnamese context. There is no internationally-accepted definition of these terms and their use indeed varies from country to country, sometimes according to whether or not the act is anonymous in nature, sometimes on the basis of whether or not a formal “surrender” document is signed.

From the Vietnamese perspective, abandoned children are firstly those who are found without any information about their origin. Those left by their mother/father/guardian in hospitals, SPCs, etc. are also seen as “abandoned” but fall under the narrower definition of children with identified families who have special difficulties and could not take care of them. These children are then sent to an SPC and could be proposed for domestic or ICA.⁷

While the Vietnamese definition of “abandonment” corresponds to our own, the second category comes close to our view of “relinquishment”. For us, relinquishment refers to the act of permanently surrendering the child to the initial

⁵ Interview at National Hospital for obstetrics and gynaecology, 7 May 2009

⁶ See Vietnamese 3rd and 4th State Party Report 2008 for a description of some prevention policies in place.

⁷ Definitions based on comments on the draft assessment report by Vietnamese authorities.

care of an individual, service or facility, with the presumption that arrangements will be made to ensure the child's continuing welfare, either by the initial carer or through, for example, adoption. To avoid any confusion, the definition of relinquishment should not include the term abandonment, as origins are known, as per the definition provided by the Vietnamese authorities.

The distinction is of the highest importance for this assessment in Viet Nam, given that such a large proportion of ICAs seem to concern "abandoned" children. Once a child is declared "abandoned", rather than relinquished by a known mother, it will be particularly difficult – in any country – to investigate further and verify his or her identity and status. Consequently, "abandoned" children can quickly become "adoptable" without there being any real knowledge of their background and the circumstances in which they were deprived of maternal care. Concern in this respect was vindicated by the facts divulged in the recent trial in Nam Dinh, as a result of which 16 persons were sentenced for their part in procuring 266 babies for adoption abroad through the falsification of documents, so that they showed the babies to be "abandoned".⁸

a) Abandonment

Despite articles 6 and 7 of the Law on Child Protection, Care and Education 2004, prohibiting the abandonment of children, it remains the main form of separation in Viet Nam. Whilst there are no comprehensive statistics on the number of abandoned children, the reasons for abandonment and their consequent care environment, various professionals were able to provide some insights. About 180-200 children with HIV/AIDS in Ho Chi Minh City and 30-40 children in Ha Noi are abandoned per year in hospitals.⁹ The leading hospital noted that some babies are abandoned if they are the third child, which is not compatible with the policy on limitation of family size.¹⁰ In 2008 more than 10,000 children in institutions were abandoned, accounting for by far the great majority of children living in this form of care.¹¹

If a child is abandoned on the street, at a pagoda, near a SPC, etc., ordinarily very few details are left. The absence of information surrounding the child's origins is an enormous obstacle for ensuring ethical adoptions in Viet Nam. **Given that a high proportion of abandoned children are adopted, it is essential that the verification process of the child's origins is well regulated** (see section 3.1.1). **Without a comprehensive verification process, children may be labelled abandoned when in fact their "abandonment" has been induced by third parties** (see section 2.1.3). According to the US investigation, researchers 'received multiple, credible reports from orphanage officials that facilitators are

⁸ <http://www.thanhniennews.com/society/?catid=3&newsid=52777>, 28 September 2009

⁹ Interview with MOH, 7 May 2009

¹⁰ Interview at National Hospital for obstetrics and gynaecology, 7 May 2009

¹¹ Interview with MOLISA, 6 May 2009

deliberately staging fraudulent desertions [abandonment] to conceal the identity of the birth parents'.¹²

b) Relinquishment

Available statistics show that relinquished children are particularly prone to being adopted internationally given that domestic PAPs are less likely to adopt this category of children for fear of the biological parent changing their mind. Thus, for example, relinquished children accounted for 14% (42 of 313) of children adopted to Italy in 2008.¹³

A clear difference must be made between mothers who relinquish their parental authority and those who ask the Government to care for their children in a SPC with the intention of continued contact. When parents relinquish their authority, they do not have a say in the future care of their children by the State. However, if the future care is to be provided permanently by another family, there should be an additional process to obtain their consent to have their child adopted, either domestically or abroad (see section 3.1.2).

The existing safeguards for mothers who are not relinquishing their authority would seem to be inadequate. The adoption of certain children from the Ruc community – as shown by the research carried out by Dr Peter Bille Larsen, a Geneva-based Danish anthropologist – dramatically illustrates how serious problems can arise.¹⁴ According to Dr Larsen's findings: "within the last few years, several families had accepted to temporarily place their children in a provincial nurturing centre, only to later discover their children had been sent abroad. One mother explained how she had become worried and gone to town to see her children, only to be informed that they were gone. Officials had apparently told her that the distance had been too far to tell her about the children being adopted." Despite the requirement (clause 4, no 44 Decree 68/2002) for written consent from the biological parents prior to the adoption process being launched, in practice this was allegedly overlooked, "thus allowing centre officials to have the children adopted without the consent of the parents. This occurred despite official letters from social authorities specifying the return of the children upon the improvement of living conditions back home."¹⁵

¹² http://Viet.Nam.usembassy.gov/irreg_adoptions042508.html#top

¹³ CAI Annual Report 2008 <http://www.commissioneadozioni.it/it/per-una-famiglia-adottiva/rapporto-statistico.aspx>

¹⁴ <http://vietnamnews.vnagency.com.vn/showarticle.php?num=01CAS150708>, <http://vietnamnews.vnagency.com.vn/showarticle.php?num=02COM160708>, accessed 14/10/08 and <http://english.vietnamnet.vn/politics/2008/08/800516/>, accessed 14/10/08

¹⁵ ISS Monthly Review 11-12/2008. Interview with Mr Larsen, 22 April 2009.

c) Orphanhood

According to information available in 2006, approximately 170,000 orphans could be described as being disadvantaged children, with 74.38% of them receiving some form of care from the State.¹⁶ Approximately 25% of the orphans can further be described as having lost both parents.¹⁷ Whilst the statistical years do not exactly correspond, it can be deduced that the great majority of orphans are cared for in non-residential environments given that in 2008 only approximately 5,000 children living in institutions were orphaned.¹⁸ Moreover it appears that fewer children being adopted are orphans. Of the 313 children adopted by Italy in 2008, for example, just six were orphaned (2%).¹⁹

d) Withdrawal of parental rights (abuse, neglect, exploitation)

The withdrawal of parent rights in cases of torture, maltreatment, humiliation, injuring or creating mental disorder to the child, is governed by article 17 of the Government's Decree No. 36/2005/NĐ-CP in 2005. We were informed by several interlocutors that this measure is quite rarely used, and that the number of such children adopted abroad is negligible.

e) Other situations

Other categories of children separated from their families include those living on the street²⁰ and those who are working away from their families, although the exact number is not known. The Director of one SPC stated that a small proportion of children living in the centre were previously living on the streets.²¹ All of them were above 8 years of age, mostly males and not legally adoptable because the SPC could not locate their biological parents to see whether they would be willing to provide the consent required for the adoption of their children.

2.1.3. Influence of adoption on separation of children from their families

This section attempts to grasp the relationship between the causes of separation, the various forms of separation and the adoption process. Abandonment is the main reason provided as to why a child is in need of alternative care and declared adoptable, as noted by several Embassy officials and Directors of SPCs. This is reflected in Italian statistics which show that in 2008, of the total 313 Vietnamese children adopted to that

¹⁶ Vietnamese 3rd and 4th State Party Report 2008 to the UNCRC, Annex 5 at 147

¹⁷ Situation Analysis of Institutional and Alternative Care Programs in Viet Nam, UNICEF Hanoi 2004 at 24

¹⁸ Interview with MOLISA, 6 May 2009

¹⁹ CAI Annual Report 2008 <http://www.commissioneadozioni.it/it/per-una-famiglia-adottiva/rapporto-statistico.aspx>

²⁰ In 2002, 19 753 children and in 2006, 6 321 children - based on Vietnamese 3rd and 4th State Party Report 2008 to the UNCRC at 119

²¹ Interview with Le Thi Trang Dai, Director of the SPC Vung Tau Children, 11 May 2009

country, no less than 258 were described as “abandoned” (84%).²²

It is of great concern that the label ‘abandonment’ appears to be passively accepted as a green light for an adoption, and does not seem to have been seriously questioned even though it constitutes the justification in practice for an apparently vast proportion of intercountry adoptions. Interlocutors in foreign embassies pointed out that each story of “abandonment” appears to be disquietingly similar (e.g.: the baby is left on the side of the road, in a field or near an institution) or ostensibly fabricated (e.g.: it is alleged to have occurred during a hot time of the year when the baby’s survival would have been severely jeopardised), and that this is one of their main concerns. The US investigation also provided several examples of situations where the declaration of abandonment was fraudulent.²³ Otherwise inexplicable “peaks” and “troughs” in the incidence of “abandonment” have also been described to us. The label ‘abandonment’ is undoubtedly relied upon far too heavily as an explanation for circumstances that are often suspect and ambiguous, which results in the adoption itself being problematic.

It seems that there may also be potential financial incentives for abandoning or relinquishing a child. The US investigation, for example, stated that ‘75% of birth parents who were interviewed by a consular officer (...) received payment from the orphanage. (...) Many of these families cited these payments as the primary reason for placing their child in an orphanage.’²⁴

The above situations raise serious doubts about the real circumstances of abandonment and tend to suggest strongly that the demand for adoptable babies contributes very substantially to the number of very young children declared “abandoned”²⁵.

2.2. Adoption and the alternative care system

2.2.1 Overview of the alternative care system²⁶

There are three types of alternative care for children deprived of their family in Viet Nam:

a) Family based care: The Government provides financial support to families and individuals who agree to care for orphaned and abandoned children (see the Prime Minister’s Decision No. 38/2004/QĐ-TTg) as well as to poor families (see the Government’s Decree No. 67/2007/ND-CP in 2007 on the Policy for supporting the

²² CAI Annual Report 2008

²³ http://Viet.Nam.usembassy.gov/irreg_adoptions042508.html#top

²⁴ http://Viet.Nam.usembassy.gov/irreg_adoptions042508.html#top

²⁵ See for example Nam Dinh Province case mentioned above.

²⁶ For a more comprehensive overview, please refer to Situation Analysis of Institutional and Alternative Care Programs in Viet Nam, UNICEF Hanoi 2004

beneficiaries of social protection). In 2006, more than 63,900 children were given subsidies as means of keeping them within the community.²⁷ SPCs also provide assistance to the community to care for their own children, on the basis of funding from foreign adoption agencies.²⁸ It is problematic that domestic PAPs are able to adopt children directly from families because such practices are unregulated.

b) Informal care and assistance solutions: Formal fostering as recognised and supported by the State does not exist. Some informal fostering among family members occurs. Small group homes exist in pilot form only.²⁹ Private and religious organisations also provide various forms of care such as shelters and other temporary accommodation. We were unable to verify whether adoptions from informal care situations are possible, let alone monitored.

c) Residential facilities: State-run SPCs (in other words institutions) are under the responsibility of MOLISA or MOH. A few are dedicated to only young children and those with special needs. Other institutions accommodate both children and elderly persons. MOLISA estimates that there are 20,000 children in both public and privately owned institutions, with approximately 14,000 children in the former. In 2008 among the children living in institutions, more than 10,000 children were abandoned, more than 5,000 were orphans and more than 2,000 were children with disabilities.³⁰ A precise picture of children living in these facilities in terms age, gender, ethnicity, or special needs and reasons is not available.

Children enter residential facilities depending on who is responsible for their care. In general when a child is abandoned, it is the provincial Department of Labour, Invalids and Social Affairs (hereafter DOLISA) who makes the decision of whether the child will be sent to a residential facility.³¹ In some provinces, when a child is abandoned s/he falls under the responsibility of the provincial Department of Justice (hereafter DOJ) and the People's Committee. In addition, it was observed that a variety of situations can result in a child being placed in residential care³², and although criteria governing admissions exist (Government Decree 67/2007/ND/CP), it appears that they are applied in a rather ad hoc manner. If a child is abandoned at a hospital, the provincial Department of Health (hereafter DOH) will make the decision about whether the child should stay in a hospital (e.g.:

²⁷ Vietnamese 3rd and 4th State Party Report 2008 to the UNCRC at 71

²⁸ One SPC in Hanoi assists 100 children in the community living with relatives by providing them with USD\$10 per month. The SPC in Vung Tau provides 500 children from poor families with education scholarships to encourage them to continue their learning. This Centre also sponsors 71 children within the community by providing a sponsorship of 2.4 million VND (USD\$ 135) per year.

²⁹ According to MOLISA there are only about 14 such group homes in the whole country at present.

³⁰ Interview with MOLISA, 6 May 2009

³¹ Interview with DOH and DOLISA, Vung Tau, 11 May 2009

³² The director of the SPC Vung Tau explained that children within her centre came from different districts, introduced by local authorities for a variety of reasons including that the child's parents had died or were in prison, or that the child was abandoned at a hospital (approximately 20 -30/year) or living on the street. Interview with Le Thi Trang Dai, Director of the SPC Vung Tau Children, 11 May 2009

underweight) or social protection care setting. In some provinces such as Hải Phòng, children abandoned at hospitals will remain there until they are four years old because the local SPCs do not have the necessary capacity. The MOH stated that providing ‘alternative care’ for children can be a big burden on the hospitals especially when no additional support is provided to them by the Government.³³

We observed that the Directors of such institutions have a lot of responsibility and power with respect to the adoption process given that the great majority of children are adopted from residential facilities (see section 3.4.4). We are concerned that, according to MOLISA, a monitoring system exists, but our impressions are that institutions are not regularly monitored. MOLISA stated that institutions are inspected only when there are already alleged problems.³⁴

2.2.2 The place of adoption within the alternative care system

As far as we understand, the same alternative care system is not equally applicable to all children. To begin with, since some of the SPCs have the authority to carry out adoptions, whereas others do not, the outcome for the child will not only depend on the reason for separation, such as abandonment, but will also depend on which institution s/he is placed in. Other factors that can affect whether a child adopted are physical appearance, health and/or age (see section 3.3). What makes this situation even more complex and uncertain for children is the autonomous behaviour of the different provinces and the presence or not of foreign adoption agencies. In sum, **whether a child is adopted is not based on a progressive and comprehensive child protection system where intercountry adoption is an option of last resort. The reasons for a child’s adoption are based on a combination of factors that change from one place to another.**

³³ Interview with MOH, 7 May 2009

³⁴ Interview with MOLISA, 6 May 2009.

3. MAIN AREAS OF CONCERN IN RELATION TO ADOPTION IN VIET NAM

3.1. Determining the need for, and legality of, the adoption of a child

3.1.1. Investigating the child's origins and status

In Viet Nam, an investigation into the child's origins is to be carried out prior to him/her being pronounced adoptable. A second verification process may occur after the matching process. The following description is based on ISS observations during the assessment.¹

Prior to a child being pronounced adoptable, it is important that there is clear information about his/her origin and status, especially for children who are declared “abandoned”. All the Embassies visited during the assessment mission mentioned weaknesses in the verification process of the child's origins, leading to doubts about the integrity of adoptions. Embassy officials stated that ‘there is a problem with the lack of transparency in the child's background’ and that ‘it is suspicious when the same stories of abandonment are repeated’.

Investigation procedure depends on place of abandonment

According to clause 45 Decree 68/2002/NĐ-CP, the DOJ is responsible for investigating the children's dossier. The clause states that if a child has an unclear origin or has other problems in his/her dossier which require a police investigation, the DOJ has to request that this takes place. In practice it appears that the investigation procedure depends on the place of abandonment.

In principle the MOJ has the overall responsibility for investigating the child's origins at the time of abandonment. In practice, the DOJ has the responsibility to investigate the origins of the child which is often carried out by various players including the local police and in some cases hospital staff. Each time a child is abandoned, ‘minutes of abandonment’ are prepared which include a statement from the person who found the child which is witnessed by a police officer, as well as a description of what was found with the child, such as belongings or a note. In addition to the minutes of abandonment, different investigation procedures exist depending on the place of abandonment and what details are left. We note that

¹The Vietnamese Authorities describe the investigation process as follows: Step 1: immediately after recording an abandoned child, the commune police must try to identify the child's origin. If a mother leaves her address, the police will have to verify the mother's desire to abandon her child. Step 2: If there are indications that child protection laws have been violated, or at the request of the provincial Justice Department, the provincial Police Department has to investigate the child's origin or re-investigate the mother's wish to abandon her child. The MPS states that commune police and authorized agencies have to record confirmation that a child is abandoned.

when details are left, they are usually unusable.²

If the child is abandoned at a SPC, in order to raise community awareness of the event, both the Centre and the People's Committee have to prepare a notice of abandonment. The Centre will have to publicise the details of the child and the abandonment three times in the mass media, such as newspapers and television. The People's Committee will have to publicise the same details outside their headquarters.

If a child is abandoned at a hospital, various practices exist. At one hospital, two letters will be sent or a phone call made to invite identifiable mothers to come back for their children.³ At this hospital staff sometimes attend addresses, left by the mothers, which can sometimes involve a trip to another region. If the mother is not identified, the hospital will ask police to undertake investigations. The hospital will also have to make an announcement that a child has been abandoned. In other provinces such as Bac Can, hospitals have no duties beside transferring the child to an institution. The lack of investigation efforts is concerning given that anonymous abandonment constitutes the greater proportion of abandonment in Bac Can province.⁴

If a child is abandoned on the road, at a pagoda or elsewhere, the MOJ and MPS stated that the local police are in charge of undertaking investigations about the child's origins.⁵ The National Hospital for obstetrics and gynaecology specified that the police will go to the community where the baby was found and undertake investigations about which pregnant girls may have recently given birth.⁶ However, police from the Bac Can and Vung Tau region rejected the view that they were responsible for such investigations. They stated that their mandate is limited to confirming that the child was abandoned at a particular time and date, with a statement from the person who found the child. The police in Vung Tau stated that, in exceptional cases where an address is left, they may carry out further investigations.

Despite the existence of the above-mentioned, **it seems in practice that the quality of investigation will depend on the different actors in charge in each province. It is our view that the lack of consistency among investigation procedures and lack of clarity about who is responsible for them creates a situation where there are insufficient guarantees that the child's origins will be adequately investigated.**

² Interview at National Hospital for obstetrics and gynaecology, 7 May 2009

³ The MOJ noted that it is difficult for police to collect information especially in the mountainous regions and due to a lack of resources. Interview with MOJ, 5 May 2009

⁴ Interview with Bac Can officials 6 May 2009

⁵ Interview with MOJ, 5 May 2009

⁶ Interview at National Hospital for obstetrics and gynaecology, 7 May 2009

Media announcement after abandonment

It appears that very few people have responded to media announcements made about children abandoned, and their actual and potential effectiveness is highly questionable.⁷ We were also told that practical obstacles exist to ensuring compliance with the requirement that an announcement be made three times during three consecutive days. The DOJ in Vung Tau noted, for example, that the local broadcasting authority approves only one such advertisement.⁸

Once the media announcements have been carried out, the child's dossier will be prepared, including information about their abandonment by the SPC. The DOJ in Vung Tau noted that they have a role in verifying the dossier contents before the child is pronounced adoptable and the details are sent to the MOJ. In some doubtful cases, such as when the minutes of abandonment are not logical, they can ask the police to undertake additional investigations.

We observed that the media announcements are a mere formality rather than an effective means of drawing the attention of the biological family or others to the abandoned child. The media announcements are not nationwide, are limited to a specific province and accessible only by persons who can and do read a newspaper or who have a television. Moreover, it does not appear that there is any surveillance of the quality of the announcements, let alone the existence of a competent body with the necessary authority to ensure a minimum standard. Media announcements are being used as a first administrative step towards having the child declared adoptable, given that once the announcements have been made, the child's dossier for adoption can be prepared by the SPC.

An investigation may occur after the child is pronounced adoptable and is matched with a family, as part of the verification process by the MOJ that the child's dossier is in order and compliant with the law. Unfortunately, the MOJ as the central authority does not have a well recognised mandate to undertake investigations,⁹ let alone one that can be reliably delegated at the provincial level. If staff within the MOJ identify an irregularity or find that information is missing, the MOJ will send a request to the DOJ to undertake a further investigation but cooperation in this respect varies across provinces.

The DOJ responses are often limited to three categories: the concern is true; the

⁷ Only one example was provided where an announcement was successful; a case where a mother committed suicide after giving birth because her boyfriend would not acknowledge the child. The grandmother of the child came to the hospital to identify the deceased mother. Interview with DOJ, Vung Tau, 11 May 2009.

⁸ Vung Tau People's Committee and DOJ report on Adoption processing provided during interview with the DOJ, Vung Tau, 11 May 2009

⁹ Very few Embassies have mandates to carry out their own investigations relating to the child's origins. Only the US Embassy had a mandate to carry out investigations.

concern is not true; or the concern is “not a matter of a national security”, without further details. The only option available to the MOJ to secure more cooperation from provincial actors is to delay processing the dossier of the child until the police provide more information.¹⁰ This situation means that the MOJ is reliant on a process that can be time consuming¹¹ and unreliable depending on the province. It also of concern that, in some cases, a response is provided within such a short time that the quality and veracity of information provided raises serious questions.¹²

3.1.2. Consent procedures

Article 4 THC-93 is very clear on the need to ensure that the person giving their consent is informed of the effects of the adoption, that it is free without inducement and, if necessary, is given only after receiving counselling. The conditions for consent are currently set out in article 71 The Marriage and Family Law (No 22/2000/QH10 of 9 June, 2000), which states that written consents are required from natural parents, guardians and adoptees aged nine years and older, is less demanding than the requirements of THC-93. Given the lack of rigour in the law about obtaining consent, poor practices are prevalent in Viet Nam, as is also recognised the 3rd and 4th Report to the UNCRC.

Responsibility for obtaining consent

We understand that consent is obtained at the local level by different entities according to the Province concerned. The MPS and DOJ stated that local police verify the parent’s consent to the adoption.¹³ However, interviews with the police in the Bac Can and Vung Tau provinces¹⁴ tend to show that in practice they do not have such a responsibility and that their role is limited to verifying the child’s origins (see section 3.1.1). Mayors of communities and Directors of SPCs were also mentioned as being responsible for obtaining consent for domestic adoptions.

In our view, it is unclear who is responsible for obtaining the consent. By allowing a multiplicity of practices, there is no measure in place to ensure that the consent will be obtained in a manner that is compliant with international standards.¹⁵

¹⁰ Interview with MOJ, 5 May 2009

¹¹ The MPS gave the example of the need to clarify the birth certificate of the child as a time consuming process. The local police must go to the exact place where the child was born and in some cases birth registration book .can be missing. Interview with MPS, 6 May 2009

¹² The Vietnamese Authorities have noted that in extreme cases, it can take a year or more for the provincial police to complete their investigations.

¹³ Interview with MPS, 6 May 2009 and interview with DOJ, Vung Tau, 11 May 2009

¹⁴ Interview with DOJ, Vung Tau, 11 May 2009. The Police in Vung Tau stated that they confirm the consent of biological parents or guardians after the matching using ‘secret methods’, declining to provide further details.

¹⁵ This section excludes how consent is obtained from the Director of the SPC as guardian of the child, which seems to be in order from a legal standpoint.

Qualification and independence of persons obtaining consent

Irrespective of who is responsible for obtaining the consent, the person or body must be adequately equipped. They must be able to clearly explain the very different consequences of full or simple adoption. This is especially pertinent in the Vietnamese context where traditionally only simple adoptions are prevalent in the community whereas, if the child is to be adopted internationally, there is the very strong possibility that the adoption will be converted into a full adoption (article 27 THC-93). They must also be able to explain the options available for alternative care for the child, among which adoption is only one option. Ideally they should also be able to provide counselling if necessary.

There was limited information available on specific practices. However the Director of the SPC in Vung Tau was able to describe her own practices, which included offering biological mothers some counselling and discussion of various options, but this did not include delineation between simple and full adoptions.¹⁶ It is important to note that we did not find evidence of any ‘overt’ intention on the part of the Directors of SPCs to take advantage of their position in obtaining consent. To the contrary, the Director of the SPC in Vung Tau appeared to take her role seriously and make significant efforts to find community options.¹⁷

3.1.3. Responsibility for pronouncing a child’s ‘adoptability’

The adoptability of a child should be determined from a psychological, medical, social and legal standpoint. An assessment of the first three will include an evaluation of the child’s capacity to bond, whether adoption is an appropriate solution for the child and identification of the necessary characteristics of a family to whom the child will be entrusted. An assessment of these three elements does not exist in Viet Nam and there appears to be no body responsible for such at present.

The MOJ is responsible for determining legal adoptability. This responsibility is delegated at the provincial level to the DOJ concerned who then compile a list of all children who are legally ‘adoptable’ based on information provided to them by the SPCs. In the Vung Tau province, the current list includes children mostly under 2 and 3 years (70-80%) and fewer who are over 5 years, with 1 child who is 14 years old. The majority of children have illnesses, including tuberculosis and heart problems, and 40 per cent of them have illnesses of a severe nature. The DOJ explained that the listing reflects the fact that ‘foreigners prefer smaller children.’¹⁸ **We are concerned that some Directors may perform their own,**

¹⁶ Interview with Le Thi Trang Dai, Director of the SPC Vung Tau Children, 11 May 2009

¹⁷ Interview with Le Thi Trang Dai, Director of the SPC Vung Tau Children, 11 May 2009

¹⁸ Interview with DOJ, Vung Tau, 11 May 2009 and Interview with Director of the SPC for disabled and abandoned children in Hanoi, 8 May 2009

prior selection of ‘adoptable’ children from among those who are legally adoptable, and exclude many such children who are older or have special needs.

3.2. Prioritising domestic adoption

3.2.1. Current procedures and practice

There are laws that allow for domestic adoptions such as Civil Code adopted on 28 May 1995, The Marriage and Family Law (No 22/2000/QH10 of 9 June, 2000) and the Law on Vietnamese Nationality (No. 7/1998/HQ of May 20, 1998). These laws, among others, aim to regulate domestic adoptions by identifying who can be adopted (article 68 Marriage and Family Law), the criteria for prospective adoptive parents (article 69 Marriage and Family Law) and consent (article 71 Marriage and Family Law) etc.

Despite the existence of these laws, domestic adoption practices are not well regulated, nor are they monitored. There are no Vietnamese adoption agencies licensed by the MOJ to facilitate the adoption process. There are no social workers working with Vietnamese families, neither is there post-adoption follow up. Domestic adoptions are also not well understood within the community as a protection measure for the child but rather viewed as meeting the needs of domestic PAPS.

It is of serious concern that domestic PAPS are permitted to adopt children despite not being appropriately evaluated and prepared. We recognise that many societies (including in Europe) have viewed adoption not only as a child protection measure but also as a means whereby the adopters themselves can also subsequently benefit (through being assured of care in later life, for example, or having a “descendent” to whom they can leave their possessions). Nonetheless, this total lack of screening, combined with the fact that domestic prospective adoptive parents are able to ‘choose’ the child they would like at a SPC – and even, it appears, directly from a hospital¹⁹ – is a clear cause for concern in Viet Nam as potentially jeopardising the rights of the child concerned. Certain interlocutors have also expressed preoccupations that the adoption of children by war veterans and martyrs may in some cases be motivated more especially by the receipt of subsidies from the government²⁰.

We are also worried that domestic adoptions are not necessarily viewed as an essentially permanent option, given the potential ease with which they can be terminated. Current legislation foresees three major justifications for termination:

¹⁹ Interview with MOH, 7 May 2009

²⁰ This last point will in principle be tackled in the new adoption law. The latest draft (No. 5) explicitly prohibits such abuses.

mutual agreement to do so; the child's violation of the adopters' life, health, human dignity or honour; and the child's maltreatment or persecution of the adopters, or destruction of their property.²¹ The interpretation of these terms in practice appears in some cases to be alarmingly broad. We were told, for example, that children may be returned to the SPCs for such trivial reasons as the child being unpleasant and unwilling to do their homework. We have expressed our concern that the current draft (No. 5) of the future Law on Adoption does not recognise what should be the very exceptional nature of any termination decision, since it effectively condones a second "rejection" of the child. We have also made known our concern that, in addition to reflecting the above-mentioned justifications in the Law on Family and Marriage, the draft allows for termination if the adopters "encounter unexpected incidents in terms of health, finance, family and social circumstances" that jeopardize their ability to sustain the adoption.

We are therefore apprehensive about the priority that appears to be given to the needs of domestic prospective adoptive parents over the best interests and other rights of the child, an approach that would seem to be reflected, moreover, in Article 40 of the Civil Code which creates a "right to adopt".

3.2.2. The promotion of domestic adoptions

MOJ and MOLISA explained that there is no active promotion of domestic adoptions by way of subsidies or advertisements because generally domestic adoptive parents are well off and have no need for assistance.²² We also did not observe any efforts by the Directors of SPCs to promote domestic adoptions. Their promotion is further hindered by the lack of information shared among various Provinces about 'adoptable' children and available domestic PAPs which could facilitate matching.²³ **This practice could easily be improved given that each DOJ has a list of 'adoptable children' which is sent to the MOJ.**

While the Holt agency has pointed out that it promotes domestic adoptions, and facilitated 27 of these (compared to 46 abroad) in 2008,²⁴ it appears that the Vietnamese Government itself has invested scant resources in developing domestic adoptions as an alternative care measure for children, as part of implementing its obligation to provide special protection for children deprived of their family within the country (article 20(1) CRC).

²¹ Law on Family and Marriage (2000), art.76.

²² Interview with MOLISA, 6 May 2009

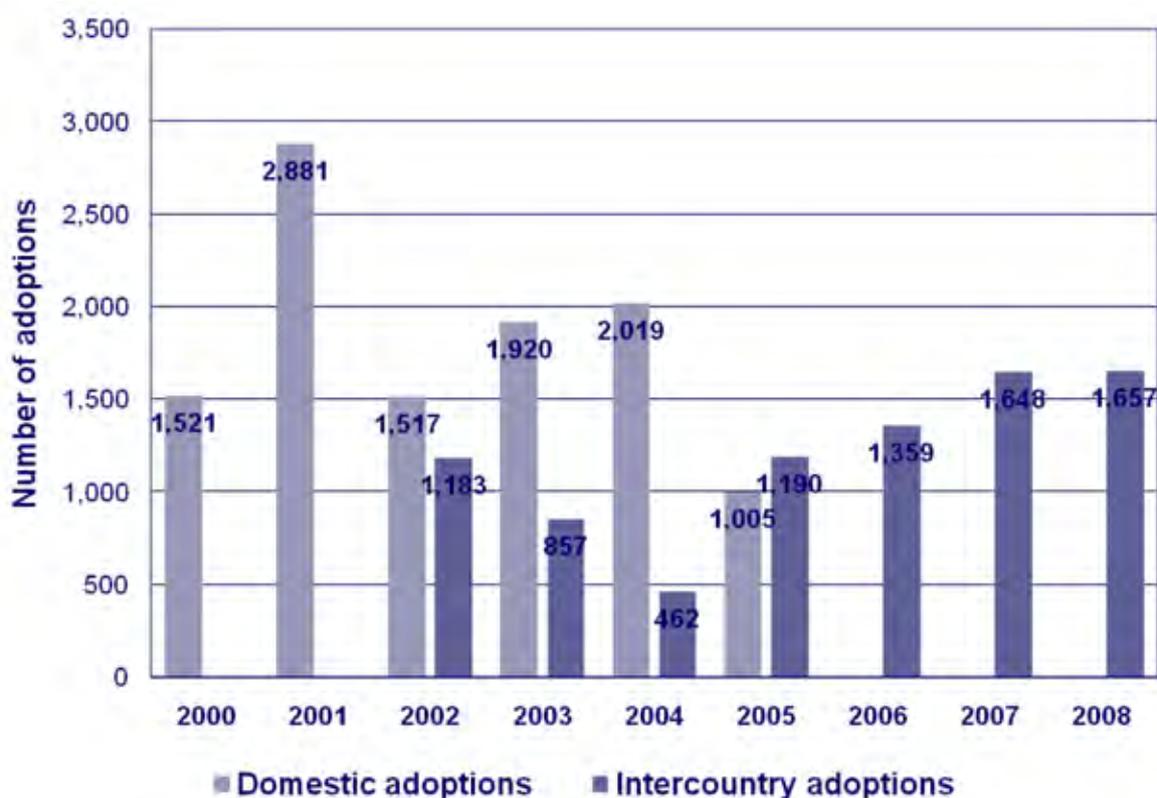
²³ The DOJ in Vung Tau stated that they keep a list of all 'adoptable children' but do not share this list with other provinces as this is not required by law. Interview with DOJ, Vung Tau, 11 May 2009

²⁴ Interview with Mr Ho Dang Hoa, Country Director, 11 May 2009.

3.2.3. Domestic adoptions and compliance with the ‘subsidiarity principle’

There is little data available about domestic adoptions in Viet Nam, let alone information about the categories of prospective adoptive parents, their number and their motivations. For the years 2000 to 2005²⁵, some statistics were available in the Vietnamese Government reports to the UNCRC. The MOJ also revealed that 17,000 domestic adoptions were registered at the People’s Committee level between 2003 and 2008.²⁶ The only figures on intercountry adoption available from 2006 to 2008 were provided by a number of foreign Central Adoption Authorities.

Graph 3: Domestic and intercountry adoption between 2000 – 2008



The principle of subsidiarity requires that ICA be considered only once all measures to maintain the child in his biological family have been exhausted and after taking into account other possibilities of the child’s suitable placement in the country of origin (including domestic adoption), having regard to his/her best interests as mentioned in Article 21 CRC. Given the sparse information available about domestic adoptions, it is difficult to conclude unequivocally whether or not this

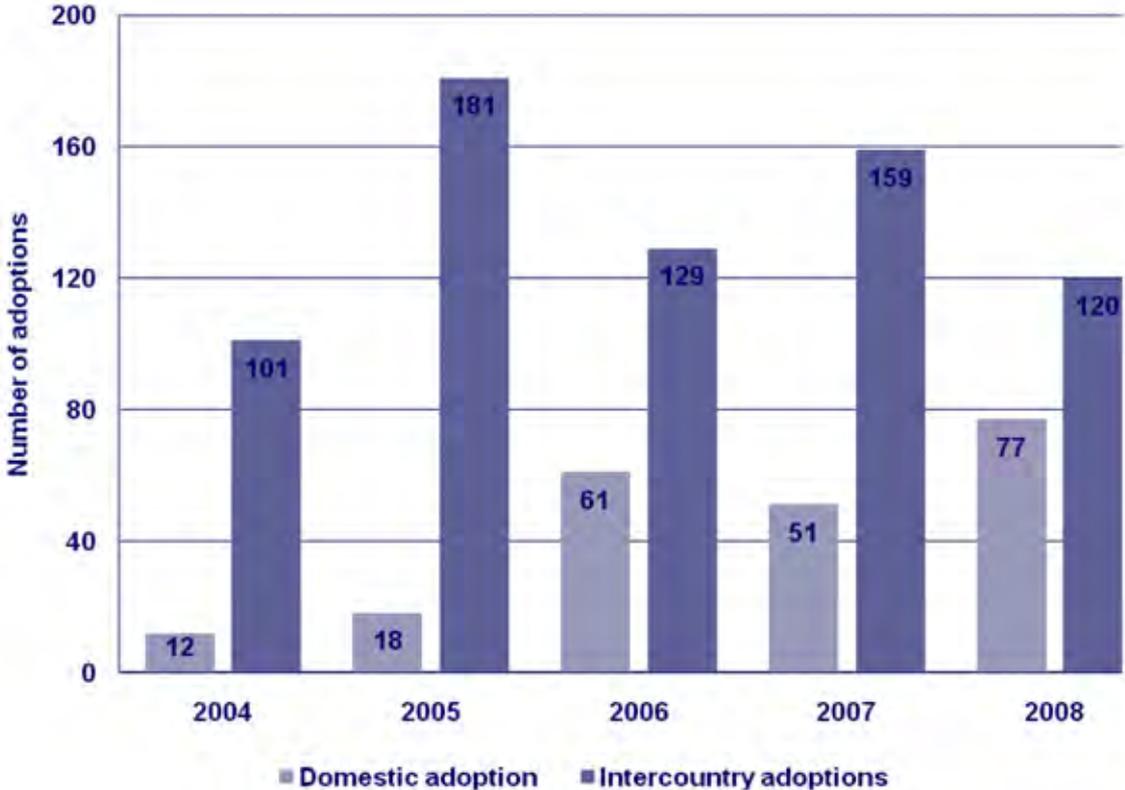
²⁵ 3rd and 4th State Party Report 2008 to the UNCRC, Annex 5 at 147 and [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5ee877c8e7b97e15c1256c3a00389d1a/\\$FILE/G0243074.doc](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/5ee877c8e7b97e15c1256c3a00389d1a/$FILE/G0243074.doc) (Report to the UNCRC in 2002)

²⁶ Interview with MOJ, 5 May 2009

principle is being respected in Viet Nam. However, **the fact that the vast majority of children adopted abroad are aged under one year – many just three or four months old – at the time of their adoption tends to demonstrate that, in their cases at least, only the most perfunctory (if any) attempts can have previously been made to identify a domestic solution, given the extraordinarily limited timeframe for doing so that these ages imply.**

It further seems to us that the place of domestic adoptions as one solution within the child protection framework in compliance with the principle of subsidiarity may vary considerably according to the institution and province concerned. The Director for the SPC for disabled and abandoned children in Ha Noi explained that domestic PAPs are not interested in adopting children from a centre with the title ‘disabled’, even though not all children have special needs.²⁷ In Ha Noi, the DOJ nonetheless stated that overall there were 251 domestic adoptions as opposed to 140 ICAs in 2008, whereas in Vung Tau, domestic adoptions are far less significant, as per the table below.²⁸

Graph 4: Vung Tau province: domestic and intercountry adoptions from Social Protection Centres, 2004 – 2008²⁹



²⁷ Interview with Director of the SPC for disabled and abandoned children in Hanoi, 8 May 2009
²⁸ Vung Tau People Committee, DOJ Report on Adoption processing given during Interview, 11 May 2009
²⁹ The Vietnamese Authorities point out that, since domestic adopters also identify children elsewhere than in SPCs, the domestic adoption figure in this graph does not reflect total numbers.

The lack of uniformity amongst provinces and institutions is problematic as children should have the equal opportunity to be adopted by a Vietnamese family irrespective of the province and institution they are living in. Moreover, while the MOJ informed us that 17,000 domestic adoptions were carried out between 2003 and 2008, we did not find during our short mission supporting elements for such numbers.³⁰

3.3. Matching

Matching centres on the identification of a prospective adoptive family whose capacities “match” the needs and characteristics of a specific child who has already been designated as “adoptable”. It is an essential step in the adoption process. A competent body in the receiving country or in the country of origin should undertake the final ‘match’ by identifying prospective adoptive parent(s) with whom the child’s placement is likely to correspond to his/her best interests. Currently there is no legislation that addresses the matching process in Viet Nam, although the proposed new adoption law does (see Annex 3).

3.3.1. Matching procedures in domestic adoptions

Legally, Vietnamese nationals or foreigners residing in Viet Nam for a period of more than 6 months are able to adopt a child under national laws. In practice, the responsibility for matching is not delegated to a competent body but it is rather left to the domestic PAP to select a child, a practice at variance with international standards. We are told that after making an appointment with the Director of the SPC with a view to adopting a child, PAPs choose a child based on the child’s visual features, age of the child and discussions with staff. Among other consequences of this procedure, domestic PAPs invariably exclude from their consideration children with HIV/AIDS or other medical conditions.

3.3.2. Matching procedures in intercountry adoptions

For intercountry adoptions, foreign PAPs are required to submit their dossiers to an adoption agency that is authorised to work in Viet Nam. These dossiers are also sent to the MOJ for verification. The dossiers of foreign PAPs forwarded to Directors of SPCs, however, apparently include only basic details such as name, age and nationality, along with PAPs’ preferences, and crucially do not comprise background reports on the PAPs. The Director of the SPC then identifies which children would meet the criteria of the foreign PAPs. One such Director said: ‘I will look at the criteria mentioned in the file (of prospective adoptive parents) and choose the child that best suits their list, giving priority to those willing to adopt children with disabilities.’

³⁰ This has also to be put in relation with the need for reliable collection of statistics, as detailed at point 6.2.2.b)

By leaving the “matching” responsibility to under-informed SPC Directors or with domestic PAPs, certain children are excluded from having the opportunity to be adopted, and the complete lack of professional matching involves considerable risks in terms of respect for the rights and interests of adopted children.

3.4. Decision-making on adoption

3.4.1 Decentralised system

Adoptions are mainly dealt by the provincial authorities, under the oversight of the Department of Adoptions at the central level for intercountry cases. While the legal framework provides for the conditions an adoption process should respect, their implementation is mainly under the responsibility of provincial actors (People’s Committee, DOJ, DoLISA, directors of institutions, mayors, police, etc.).

This creates great difficulties in trying to develop a uniform system applicable all over the country and to put in place a reliable control mechanism through a Central Authority that truly has “authority” country-wide, given that, *inter alia*: around 11,000 Chairpersons of People’s Committee at commune level are dealing with domestic adoptions;

out of 387 institutions in the country, 92 are currently allowed to recommend children for intercountry adoption;

foreign adoption agencies are free to prospect among the different child institutions in the 63 provinces to develop adoption activities, but there is no centralised system of information and control to dispatch them where real needs for ICA might exist. As a consequence, a single institution may have several cooperation agreements with different agencies, while in some other provinces there is no intercountry adoption at all³¹.

3.4.2 Lack of resources of Central Adoption Authority

The Department of Adoptions at the MOJ, as Viet Nam’s Central Adoption Authority, is comprised of 14 staff: a Director, two Deputy Directors, an accountant, an administrator and nine legal staff to deal with adoption files. The Department was initially responsible only for intercountry files, but as a result of a most welcome decision in late 2008, now also has an oversight role over domestic ones. Obviously, the staff are under a lot of pressure to process files, given that they have received up to 1,900 per year.³² Each staff member (excluding Directors)

³¹ See also Chapter 5 “The impact of foreign actors”

³² According to the DoA, the peak year to date was 2008, with 1,910 PAP dossiers received. Of these, some 700 dossiers of US citizens were in fact returned when the bilateral agreement with that country lapsed. It should

could therefore be expected to deal with some 200 dossiers per year. One Deputy Director stated that it is not compulsory to work on weekends but when they have a backlog of files, staff will do so. Given this current workload, the Agency spends most of its time processing dossiers and little time is left for monitoring activities.

As the Department of Adoptions is currently operating, it lacks the authority, recognition and resources to operate effectively as a Central Authority, let alone in accordance with the THC-93.

3.4.3 Fragmented responsibilities

As annex 2 shows, the adoption procedure is rather long and complicated. In addition, the bodies in charge may change from one province to another (especially the competencies of DOJ and DOLISA). While this may have positive features – potential “checks and balances” and decentralised authorities with a potentially significant (and justified) voice on solutions for children in their respective regions – lines of accountability are not always clear or efficient.

The large number of steps in fact creates a system where the different people in charge have a limited view of the adoption process. Their decisions move each dossier one step forward, but it is very rare that they will bring that movement to a stop in cases where this might be necessary (suspected bad practice, for example). We found several indications that the flow of dossiers is more akin to the mechanical fulfilment of the administrative procedures in place than to a real opportunity for those concerned to review and reconsider proposed decisions: unusually few cases are apparently questioned by the different authorities concerned, and then only because of the lack or inadequacy of a required document.

Equally worrying is the fact that the whole control system set up by law starts only from the moment the director of an institution declares that a child is in need of adoption. But of course, the main question lies with how abandonment and consent to adoption are dealt with (see sections 2.1 and 3.2).

As a consequence of these fragmented responsibilities, there is no uniform approach on dealing with a child’s dossier. Thus, one Embassy official expressed concern that the same forms are not used in each province and in some cases, additional documents are required. Not only does the lack of clear administrative procedures create a great deal of confusion, but also the reasons and objective justification for these disparate systems and requirements, from a child protection and children’s rights standpoint, still remain a complete mystery to us.

also be noted that this figure of 1,910 in no way represents the real level of applications. Thus, for example, while France is said to have submitted 278 dossiers in 2008 and 277 in the first 8 months of 2009 (DoA data), the French Embassy notes that there was a backlog of no less than 2,422 applications for Viet Nam still “on hold” in Paris at the *Agence Française d’Adoption* in 2008.

3.4.4 Directors of institutions

It clearly appears from the interviews that the main responsibilities and competencies for having a child enter the ICA process and matching with foreign PAPs lie in the hands of directors of institutions. As they receive very young “abandoned” children and the requests for adoption, they are the ones standing at the crossroads between “supply” and “demand”. In addition, humanitarian aid provided by foreign adoption agencies is directly provided to their institutions, making their power even greater.³³ In response to a question about how the director chooses between agencies (and which will be invited to organise ICA for given children), the Director of the SPC Vung Tau stated that there is competition between the five agencies that work with her Centre.³⁴ She chooses between agencies based on the financial support each provides, good working conditions of the agency, the regularity of progress reports and their commitment. She noted, for example, that the Italian Agency NAAA did not receive as many children as others because they did not provide reports to the Centre. The Director further responded to a question about how adoption agencies support community projects by stating ‘when I make a request, the agencies will respond,’ reflecting the degree of power that certain directors have.

There is a clear need for putting in place a stronger control mechanism over institutions and for better defining the role and responsibilities of their directors. In the brief report on ICA in Bac Can from 1997 to March 2009,³⁵ it was noted that ‘according to the Decree 68/2002/ND-CP, the provincial justice department has responsibilities for children’s files. However, in practice, children who are introduced for intercountry adoption come from institutions. [...] The institution is the direct receiver and care giver of the child, therefore there need to be regulations on institutions’ responsibilities for the accuracy of the child’s file’³⁶.

³³ It is important to note that institutions such as the one in Vung Tau also receive humanitarian aid from international organisations such as APER (France) and WWO (USA) which is spontaneous and is completely independent from adoption activities.

³⁴ Interview with Le Thi Trang Dai, Director of the SPC Vung Tau Children, 11 May 2009 in Vung Tau

³⁵ Report provided to ISS by DOJ, during visit to Bac Can Province, 6 May 2009

³⁶ One can also note that at the September 2009 trial on adoption fraud in Nam Dinh Province, the Director of the Social Protection Centre received the heaviest sentence.

4. CHARACTERISTICS OF VIETNAMESE CHILDREN ADOPTED ABROAD

The principal distinguishing feature of adoptions from Viet Nam is of course the particularly young age of the children involved.

4.1 Age of children adopted abroad

Unfortunately, most receiving countries do not provide up-front disaggregated data on the children adopted by their citizens.

To its great credit, Italy has been doing so systematically in recent years, however, and its statistics could hardly be more telling.¹ Thus, in 2008, a total of 313 children Vietnamese children were adopted to Italy, of whom no less than 251 (i.e. 80%) were under the age of 1 year. It can be noted that in that year Viet Nam was in sixth place among the countries from which Italians adopted.

Certain other major “countries of origin” have also had a reputation for allowing very young children to be adopted abroad, e.g. Cambodia and Ethiopia. However, the Italian figures for these two countries put this into stark perspective: again in 2008, of the 188 children adopted by Italians from Cambodia, just 47 (25%) were under 1 year old, and the equivalent figure for Ethiopia was only 45 out of 338 (i.e. 13%).

In fact, the only “significant” country of origin² that comes close to Viet Nam in terms of the low age of intercountry adoptees would seem to be China, whose ICA situation has of course been unique because of its “one-child-per-family” policy. Italy only began adoptions from China in 2009. Data already made available for the first semester³ show that the average age of the 20 Chinese adoptees to Italy in that period was 1.11 years,⁴ as compared to just 0.86 years for the 125 Vietnamese children adopted by Italians in that same period. Of special interest is the fact that the country with the next lowest average age of adoptees was Kazakhstan but with a far higher figure: no less than 2.61 years.

¹ CAI, 2009, see <http://new.commissioneadozioni.it/media/48288/dati&prosp%202008.pdf>

² “Significant” denotes, in this context, the Italian designation for countries from which 10 or more ICAs were completed in a year.

³ CAI, 2009, see <http://new.commissioneadozioni.it/media/54739/report%20cai%20i%20semestre%202009.pdf>

⁴ “Adoptive Families” states that the average age for children adopted from China to the USA is about 11 months, and also quotes data from the US Immigration and Naturalization Service according to which just 44% of Chinese adoptees to the USA in 2006 were aged less than a year, whereas the equivalent figure for Vietnamese adoptees was 57%. Another difference between China and Viet Nam lies in the age from which babies become adoptable, said to be at minimum 7 months for China. See: www.adoptivefamilies.com (accessed 25 Sept. 2009)

Thus, if the Italian figures are in any way indicative of the situation for other receiving countries, Viet Nam would seem to be, bluntly, almost “in a league of its own” at the present time as far as the adoption of babies is concerned.⁵ And this appears to be the case.

Indeed, an even more striking, picture of adoptions from Viet Nam emerges from figures provided for France.⁶ Of the 283 Vietnamese children adopted by French citizens in 2008, fully 244 (i.e. 86%) were aged below 1 year, and even more remarkably the majority (145) of these were less than 6 months old. While we do not have corresponding figures for French adoptions from other countries of origin,⁷ the Central Authority gives aggregate data for all adoptions to France in 2008 showing that “only” 21.8% concerned infants under 1 year.⁸ This means that, while Viet Nam accounted for just 9% of all adoptions to France in 2008, Vietnamese infants made up more than a third (34.2%) of the total number of adoptees to the country who were under the age of 1 year.

Statistics from Sweden indicate broadly the same reality. In 2008, 35 of the 45 adoptions of Vietnamese children to Sweden concerned infants in the 0-1 age-group, i.e. 78%, with five of the remaining ten being under 2 years old.⁹

This exceptionally significant skew towards infant adoptions from Viet Nam documented by France, Italy and Sweden was confirmed as a general phenomenon in statements made by many interlocutors during our mission. Thus, for example, “most” of the 180 Vietnamese children adopted by Irish citizens in 2008 were “under 9 months to a year”.¹⁰ The “majority” of adoptions to the US concerned children under 1 year, and “many” of these in 2007/2008 were babies aged 4 months.¹¹ In addition, details of adoptions facilitated by the sole Swiss agency authorised to work in Viet Nam show that the three most recent (the only ones on which information is given on the website) concerned a girl of 3 months, a boy of 4 months and a girl of 4 months.¹²

⁵ In previous years, Guatemala would have been in a very similar, and indeed undoubtedly even more extreme, situation. According to one report concerning the early years of this century, “unofficial statistics show that the average age of a child being placed in intercountry adoption [from Guatemala] is between 5 and 6 months.” [“The case of Guatemala: fostering children prior to adoption”, Kelley McCreery Bunkers, in *Early Childhood Matters*, No. 105, December 2005, Bernard Van Leer Foundation, The Hague] This fact was, precisely, deemed symptomatic of serious problems in Guatemala as regards to how and why babies were declared “internationally adoptable”, which led to the subsequent and, at the time of writing, on-going suspension of all adoptions from that country.

⁶ These figures were kindly made available by the French Embassy, Hanoi, May 2009. Regrettably, the French Central Authority (MAI) is one of those that does not automatically and actively put such details in the public domain for each country of origin.

⁷ For the reason explained in the preceding footnote.

⁸ Ministère des Affaires étrangères, http://www.diplomatie.gouv.fr/fr/IMG/pdf/STATS_ADOPTION_2008.pdf

⁹ Statistics from the Swedish Central Authority (MIA), email 18 September 2009.

¹⁰ Meeting at the Embassy of the Republic of Ireland, Hanoi, 8 May 2009.

¹¹ Meeting at the US Embassy, 11 May 2009.

¹² <http://www.helviet-adoption.ch/news.htm> accessed 21 May 2009. The Swiss Embassy in Hanoi confirms

A very few interlocutors were nonetheless a little more nuanced on this question. As regards Ha Noi itself, for example, were we given an estimate of 90% of foreign adoptees being aged between 8 and 24 months, and it was affirmed in this respect that 8 months were generally needed to complete the ICA process.¹³ In the context of this mission, we were not able to establish whether or not this situation, if verified, might be explained in part at least by specific procedures put in place at the level of Ha Noi and/or the possibility that the youngest children have tended to be adopted from rural provinces or those located relatively far from the capital. Anecdotally some Directors of SPCs stated that the process can be expedited in exceptional cases such as a child needing urgent medical assistance. We do note, however, that the Civil Status, Judicial Records and Nationality Vice-Chief in Ho Chi Minh City (HCMC), Mr Nguyen Quoc Thang, is quoted as saying that “the process will take about six months after all the required documents are submitted.”¹⁴

The Vietnamese Authorities have pointed out that no international standards prohibit the adoption of young babies or set any minimum age-level for ICA. **For our part, we would stress once more that the basic criterion for determining how young a child might be considered “adoptable” abroad is, clearly, the time it takes to follow all procedures faithfully and to implement conscientiously the ICA subsidiarity rule in each case.**

The reverse side of this “young babies” coin is of course that children with special needs (particularly older and/or with disabilities) are being singularly overlooked as potential beneficiaries of ICA. By definition, these children are “hard-to-place” (or at least *harder* to place), domestically or abroad, in all countries, and it is certain that intercountry adoption should never be envisaged as some kind of potentially miraculous solution to their care situation. At the same time, the relative ease with which, where necessary, local families could be found for “healthy” infants should mean that particular emphasis is to be placed on opportunities for children with special needs to be adopted abroad under desirable conditions.

4.2 Adoption of older children

The corollary of the vast proportion of Vietnamese adoptees being babies or, at best, toddlers is evidently that the adoption of older children by foreigners is rare. Italy, whose citizens are remarkable for their general willingness to adopt older children¹⁵, gives the figure of only 25 children above the age of 5 years out of

(email, 17 June 2009) that, in 2008, the five Vietnamese children adopted on an intercountry basis to Switzerland were all aged from 3 to 12 months, and for 2009 (up to June), three were in that age-group while two were above 1 year old.

¹³ Interview with Dept of Justice officials, Hanoi, 12 May 2009.

¹⁴ <http://www.thanhniennews.com/overseas/?catid=12&newsid=33244>, last updated 8 November 2007.

¹⁵ The average age for all foreign children adopted by Italians is 5.6 years, whereas for Vietnamese children adopted by Italians it is 1.4 years.

the total 313 adopted from Viet Nam in 2008, i.e. 8%. As for France, just nine Vietnamese children above 5 years were adopted in 2008, corresponding to 3.2% of total Vietnamese adoptions to France that year, while children in the over-5 age-group constituted 23% of total adoptions to France. Of the 45 children adopted to Sweden in 2008, not a single one was over the age of 5.¹⁶

Again, the data from these countries was borne out by other interlocutors. As regards Ireland, for example, it was said that “some” adoptees were “older”. All of the last 46 intercountry adoptions handled by Holt International Children’s Services concerned children under the age of five (and mostly 1 to 2 years).¹⁷ Indeed, during our mission, the only concrete indication of emphasis on the adoption of older children concerned Italian agency CIAI, which said it had organised just 9 adoptions in 6 years of activity in Viet Nam, all reportedly of children in the 5-7 years age-group.

4.3 Adoption of children with disabilities

The other main group of children with special needs comprises those with a disability. We were regrettably unable to secure any hard information regarding the extent to which these children are adopted abroad – or, indeed, domestically. The few indications we obtained during interviews lead us to believe, however, that Vietnamese children with disabilities are rarely adopted by foreign parents.

The only insights in this regard from representatives of receiving countries concerned Ireland – to the knowledge of the Embassy, none of the children adopted to Ireland in 2008 suffered from a disability¹⁸ – and France, which spoke of “occasional” cases.

Two interlocutors provided a slightly more positive picture, however, albeit on a relatively small scale. According to Holt, about a third of its 46 ICAs in 2008 concerned children with disabilities. For his part, the Director of a SPC for disabled and abandoned children in Ha Noi stated that, of the nine children adopted abroad in 2008 (8 to Denmark and 1 to the USA), three had a disability.¹⁹ We do not know the degree and type of disabilities in question, although many of the children at this SPC were deaf-and-dumb and this may indicate the disability of at least some. For its part, Swedish agency Adoptionscentrum indicates that four of the 25 children adopted through its services in 2008 had special needs. Moreover, at the SPC in Vung Tau, we were told that some children who were adopted had HIV/AIDS, some had Hepatitis B and C, whereas others suffered from a number of different disabilities.²⁰

¹⁶ Statistics from the Swedish Central Authority (MIA).

¹⁷ Interview with Mr Ho Dang Hoa, Country Director, Holt, 11 May 2009.

¹⁸ Irish agency Helping Hands, in contrast, has stated that more than 1 in 10 of its adoptees had “special needs”.

¹⁹ Interview, 8 May 2009.

²⁰ Interview with Ms Le Thi Hoang Yen, Deputy Director, Department of Adoption, 11 May 2009. Vung Tau

4.4 Adoption of children of minorities

While we are aware that children of minorities in Viet Nam have been and are being placed for adoption in a number of countries, and that certain concerns have been expressed over the manner in which some of them have been declared adoptable, we were not able to look closely at this question during this mission.

We understand that minorities generally live in relatively isolated rural areas, and constitute vulnerable populations who are not necessarily familiar with sophisticated procedures and concepts such as “full adoption”. It seems likely that special care should be taken when the adoption of a child from such groups may be envisaged.

That said, we were informed that the serious concerns communicated by Dr Peter Bille Larsen²¹ about the circumstances in which up to 13 children of the Ruc minority were adopted by American and Italian couples had been or were being investigated. It is worth noting that the Ruc are one of the smallest ethnic minority groups (200 to 300 people) in Viet Nam, so the removal of even a few children is all the more consequential.²² We understand that, as a result of the investigations, the Director of the American agency involved in processing the Ruc adoptions had been replaced.²³ During the mission, we were updated that the case was being looked into by the competent authorities in Rome.²⁴ We were later assured that investigations of the Italian cases involved had indeed been completed. It had been determined that fewer than five Ruc children had been adopted by Italian couples, and that the procedures “were in no way alarming, and were no different from those used in any other Vietnamese case.”²⁵

From our point of view, this clearly illustrates the fact that an adoption case may be perceived by receiving countries as “normal”, on the basis of the documents in their possession. However, as this report describes, it is the irregularities themselves that may give this impression of normality. While in-country procedures fall under the ultimate responsibility of the country of origin, receiving countries must take the utmost precautions as soon as suspicious information arises.

We therefore strongly urge the competent authorities of all receiving countries to establish whether children from minorities have been or are being adopted by their citizens, and to give special attention to the circumstances under which consent was or is given in those cases. In cases where the consent has not been secured

²¹ See Section 2.1.2 (b) on “Relinquishment” in the present report.

²² ISS/IRC monthly review 11-12/2008

²³ Meeting with Dr Larsen, 22 April 2009 and <http://www.brandeis.edu/investigate/gender/adoption/docs/Larsen-WilltheRucChildrenComeHome.pdf>

²⁴ Meeting at the Italian Embassy, Hanoi, 8 May 2009.

²⁵ Note from CAI, 26 October 2009.

appropriately, and it is in the best interests of the child, we encourage the competent authorities to consider re-integration policies given the right of the child to grow up in his/her biological family as espoused in article 7 UNCRC.

4.5 Meeting prospective adopters' expectations?

It is well-known, understandable, and therefore foreseeable, that the vast majority of foreign prospective adopters will, like domestic adopters, be seeking to adopt children of the youngest possible age.

Clearly the grossly disproportionate number of babies among total Vietnamese children adopted abroad reflects first and foremost the requests and demands of the prospective adopters. “95% of foreign adopters want a child under the age of 2” said the Director of the Ha Noi SPC. Given the statistics on adoption set out above, he might well have said “under the age of 1”. Indeed, it is interesting to note that, prior to the 2006 prohibition of “independent” (non-agency) adoptions in Viet Nam, over 60% of the children adopted by French citizens were under the age of 6 months – and 13% of those were actually aged less than 3 months.²⁶ Only one “under 3 months” adoption to France was recorded in 2008, in contrast. Equally clearly, as noted above in this report, the fact that so many babies of that age are not only declared adoptable but are supposedly not considered for adoption by Vietnamese families before being referred for ICA can only arouse concern.

As one interlocutor noted wryly, “Viet Nam has an extremely strong family culture. It is not in a state of conflict or disaster. Why would it need so many of its babies to be adopted abroad?”

In our view, there is little doubt – if any at all – that the particular availability of Vietnamese babies for ICA is essentially a function of the requirements of foreign adopters, and not of the needs of Vietnamese society and its children. One interlocutor noted, for example, that “When intercountry adoptions were at full strength, the orphanages were overflowing with ‘abandoned’ babies up for adoption. Since then, adoption numbers have fallen considerably, notably as a result of the US withdrawal, but that did not cause any sudden upsurge in the population of orphanages, which might have been expected to have to care for children who were suddenly not being adopted anymore.” Simply put, and analogous to certain other country situations studied,²⁷ the number of “abandonments” depends considerably on the extent to which there is a demand for the children concerned. As one interlocutor termed it: “If there were no intercountry adoptions, there would be fewer small children abandoned and fewer children in institutions.”

²⁶ French Embassy, Hanoi, May 2009

²⁷ This was the case, for example, in several CEE/CIS countries during the Nineties where, far from reducing the number of children in institutional care, “soaring” intercountry adoption figures actually seem to have stimulated a rise in institutional placements, from where children might be adopted. See, for example, UNICEF (2000) *A Decade of Transition*, Innocenti Research Centre, Florence, pp. 106-107

5. IMPACT OF FOREIGN ACTORS IN INTERCOUNTRY ADOPTION PRACTICES

5.1 Governments and Central Authorities of receiving countries

5.1.1. Developing intercountry adoption

In mid-2008, nine countries were receiving adopted children from Viet Nam: Canada, Denmark, France, Ireland, Italy, Spain, Sweden, Switzerland and USA. All are States Parties to the 1993 Hague Convention, with the exception of Ireland which is a signatory but currently on the way to ratification. It needs to be underlined from the start that all States Parties to the 1993 Hague Convention are enjoined, “as far as practicable, [to] apply the standards and safeguards of the Convention to the arrangements for intercountry adoption which they make in respect of non-Contracting States” – such as, of course, Viet Nam.¹

At that time, Spain had just entered into a bilateral agreement with Viet Nam, despite the various concerns that had previously been increasingly expressed, especially by the USA which made these public in April 2008. These concerns included:

“...evidence of child buying, including forged or altered documents, cash payment to birth mothers (for other than reasonable payments for necessary activities), coercion or deceit to induce the birth parent(s) to release children to an orphanage, and children being offered for intercountry adoption without the knowledge or consent of their birth parents.”²

Following inconclusive bilateral negotiations, the USA and Viet Nam decided not to renew their 2005 agreement, which therefore expired on 1 September 2008, without prejudice to coming to a new agreement once the necessary conditions are in place.

At the end of September 2008, the Danish and Swedish Central Authorities carried out their own joint investigatory mission to Viet Nam. The findings of this mission gave rise to two very different outcomes. Denmark decided its accredited agencies – DanAdopt and AC International Child Support – could continue working with the six orphanages with which they were already involved but that cooperation would not be expanded to others. Sweden, however, determined that “Viet Nam’s adoption legislation does not take sufficient account of the basic principles of intercountry adoption [and] the country’s administration of intercountry adoptions

¹ Report and Conclusions of the Special Commission on the Practical Operation of The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, 28 November-1 December 2000, Recommendation 11, reaffirmed at the Special Commission’s meetings in September 2005.

² <http://adoption.state.gov/news/VietNam.html> accessed 18 May 2009

is not sufficiently effective to enable adoption cooperation to continue.”³ It therefore terminated the bilateral agreement as of 1 May 2009, although it would probably seek to negotiate a new one if and when Viet Nam becomes a Hague country and provided, in particular, that agencies are no longer required to provide humanitarian aid.

For its part, Ireland decided that no new referrals of Vietnamese children would be entertained as of end May 2009, citing *inter alia* upcoming changes in its own law on adoption. The new law, once adopted, would in principle allow prospective adoptive parents to adopt only from countries which have ratified the Hague Convention – as Ireland intends to do – and “countries with which Ireland has a bilateral agreement which meets Hague standards.”⁴ At the same time, like Sweden, Ireland too expressed its desire to secure a new but far “stronger” bilateral agreement in due course.⁵

We also understand that Australia had considered seeking a bilateral agreement but a mission by its Attorney-General’s Department in late 2007 led to the conclusion that there were too few safeguards in place. As a result, Australia does not envisage proceeding towards any such agreement under present conditions. In contrast, France and Italy are pursuing their respective bilateral agreements even though both agree that certain issues need to be addressed to ensure more transparency.

In the case of France, there was some consternation about the real circumstances under which so many babies (constituting the great majority of Vietnamese adoptees to the country) were allegedly “abandoned” near or at “orphanages” or medical centers. Concern was also expressed over cases where there had ostensibly been attempts to circumvent prescribed procedures, as well as problems arising from the different procedures applied by each Province. In our discussions, no indication was given, however, that the seriousness of these problems might be such as to merit a potential suspension of ICAs from Viet Nam.⁶

On the one hand, Italy placed emphasis on improved cooperation to resolve problems, noting in that regard that its Central Authority (CAI) was intent on improving the system with a view to ensuring the best interests of each child. At the same time, reference was made to more issues needing to be resolved than was the case for France. Italy found that, like France, differing procedures from one province to another created difficulties. But our interlocutor also pinpointed, *inter alia*, the lack of transparency in both the justification for declaring a child

⁴ “Intercountry Adoption with Viet Nam”, Office of the Minister for Children, Dublin, 6 March 2009.

⁵ At the end of May 2009, the Irish Government in fact requested Viet Nam to consider coming to an interim agreement pending a new full agreement – cf. Statement by Barry Andrews TD, Minister for Children and Youth Affairs, on Viet Nam and intercountry adoption, 12 June 2009.

⁶ Interview with French Consulate, 7 May 2009.

“adoptable” and the “matching” process. Reference was also made to concerns over the payment of “humanitarian aid” directly to orphanages, sometimes “under pressure”. Nevertheless, Italy felt that “with sufficient control over contributions”, the special relationship between agencies and SPCs need not be questioned. It sees no problems with the ways its agencies are operating in general and, at the time of our interview, was not envisaging any special initiatives in relation to the restriction of ICAs from Viet Nam.⁷

Finally, it can be noted that Canada’s bilateral agreement is also on-going, though apparently in a rather low-key manner. Similarly, the Swiss agreement with Viet Nam remains in force, but only one small agency is accredited and the number of adoptions effected is extremely limited.

5.1.2. Coordination among “receiving countries”

The mixed signals sent to Viet Nam by the receiving countries not only constitute a practical problem for that country to respond appropriately but also demonstrate a disturbing lack of common vision on the part of States Parties to the Hague Convention. This is not new. Neighbouring Cambodia has experienced similar disarray, with the USA stopping ICA from there as of 2001, an increasing number of European countries following suit, one by one, over the succeeding years, and a current situation where, notably, France⁸ and Italy have been carrying out adoptions while the USA and others have maintained the moratorium. The reverse was seen in the case of Guatemala where, over time, all European receiving countries finally suspended adoptions from the country, with the USA being the very last to take that step. In Viet Nam, despite reportedly regular consultations among themselves and the existence of an Adoption Working Group that has been meeting with the MoJ, diametrically opposed views among receiving countries are put forward as to the appropriateness of pursuing or initiating agreements on ICA at the present time. This divergence would seem to reflect individual governments’ political stance towards ICA as much as – or perhaps more than – just an objective consideration of whether or not ICA can currently be carried out with adequate safeguards and in the best interests of the children concerned. That said, it is true that there is at least agreement among receiving countries on one point: that the first priority for Viet Nam is to take the necessary steps that would enable it to accede to THC-93. This common stand appears to have been forcefully expressed, *inter alia*, at a joint meeting of the US and concerned European ambassadors with the Vietnamese Authorities in Spring 2009.

Reactions to the diverse stances taken by the authorities of receiving countries

⁷ Interview with Italian Consulate, 8 May 2009

⁸ According to the French embassy in Hanoi, France in fact decided in November 2008 to stop recording new applications for Cambodia and to stop sending new PAP dossiers to this country.

have been equally varied. No official of a receiving country that is continuing to allow adoptions from Viet Nam voiced criticisms of those that are not, although one noted that the latter are motivated by different reasons in each case. In contrast, officials of countries that have halted these adoptions feel that continuation by others can only be put down to the authorities bowing too readily to internal pressures, and that some “have their heads in the sand”. There are urgent calls for receiving countries to coordinate their efforts more effectively.

In some quarters it is felt that the USA over-reacted – for example in its requirements for in-depth investigations – and that it had “generalised” its concerns on the basis of a small number of problem cases. A large majority of our interlocutors, however, expressed the belief that the USA’s findings reflected the reality and that its decision to stop adoptions was therefore logically inevitable.

Sweden’s stance came under concerted fire from the three Swedish agencies affected. They carried out a strong media campaign in their country denouncing the decision, and maintained that they had never encountered any problems in processing adoptions from Viet Nam. Interestingly, at the same time, it seems that the agencies nonetheless agreed that some orphanages were referring babies for ICA who were objectively too young.⁹

It cannot be expected, of course, that all “receiving countries” will always see eye-to-eye on the functioning of adoptions from a given country. That said, experience from Viet Nam once more demonstrates the urgent need for far greater efforts to develop common basic criteria on which a more coherent joint approach could be founded in the face of alleged or proven problems.

5.1.3 Bilateral agreements

In recent years, ICAs from Viet Nam have in principle taken place only within the framework of agreements negotiated with each “receiving country”. The fact that several of these have now essentially broken down (and in the case of Belgium, the agreement was never ratified on the Belgian side and consequently did not come into force) has both positive and negative implications.

On the positive front, it means that the “special relationship” created by such a bilateral agreement has not precluded certain countries taking a hard look at the operation of the agreement in practice and suspending that relationship as a result. Indeed, one of the concerns often expressed about the idea of bilateral agreements is that the privileged link they establish between the “receiving country” and the “country of origin” tends to militate against putting the agreement into question. It is therefore encouraging to note that in Viet Nam, in some instances at least, this concern has not materialised.

⁹ Meeting at the Swedish Embassy, 7 May 2009.

There are, however, at least three negative implications.

The first is that the conditions on which these agreements were based, and the safeguards they enshrined, were apparently inadequate and/or inappropriate. They formally consecrated procedures and practices that are at variance with the letter and spirit of the THC-93 – and again it should be re-emphasised here that Hague countries are urged to apply the principles of the Convention in dealings with non-Contracting States.

One concern in this respect is the humanitarian objective identified for adoption (e.g. article 2(1) French agreement, article 3(1) Swiss agreement, article 4 USA agreement). The priority given to humanitarian motivations for adoption is misplaced. The agreements should have reflected the fact that adoption is one of a series of child protection measures, not a humanitarian or charitable act, designed to secure a permanent family solution for the child deprived of his/her family, and which is in the child's best interests.

Another major concern identified in the bilateral agreements is the role of accredited adoption bodies (AABs), notably the need to support humanitarian projects linked to adoption (e.g. article 8(2) Swiss agreement, article 8(2) Italian agreement, article 7(3) Belgian agreement). The issue of fees, as per article 32 THC-93, is also not adequately addressed in any of the bilateral agreements to which we had access. Moreover, the bilateral agreements do not cover the issue of accreditation of agencies.¹⁰

Some bilateral agreements do not adequately address all the conditions stipulated in article 4 THC-93 such as the need to ensure that, where appropriate, children are able to provide their consent and that such consent is not induced by payments or compensation of any kind (e.g. see Swiss and USA agreements). Bilateral agreements also do not address the issue of matching and, with the exception of the Danish agreement, are silent on the fact that there should be no contact between PAPS and children prior to matching (article 29 THC-93). The bilateral agreements are also generally vague or inadequate regarding the need to respect the principle of subsidiarity, and notably as to what this would require in practice.

¹⁰ For example, the Italian bilateral agreement says nothing about the professional/ethical requirements that Viet Nam imposes for agencies working there, and simply emphasises the obligation to provide “humanitarian aid”, thus [§8.2.]: “In order to obtain authorisation from the Central Authority of the State of Origin, a Body [i.e. an adoption agency accredited by Italy] must conform to all the requirements of the national legislation of the State of Origin; have humanitarian programmes, projects for non-profit activities in the field of adoption, including financial aid for humanitarian purposes to the Child Welfare Institutions of the State of Origin.” [our translation]

he second negative implication is that the very existence of bilateral agreements in some ways circumvented the desirable aim of Viet Nam acceding to the Hague Convention. Not having undertaken the necessary and fundamental measures and reforms that would have enabled it to do so, Viet Nam was still able to cooperate on ICAs on the basis of these often inappropriate agreements and may therefore have been less motivated to move towards accession. Thus, for example, “[w]hen Sweden signed [the] agreement with Viet Nam on adoptions in 2004, pledges were made that the country would accede to the 1993 Hague Convention [...]. Since then, Viet Nam has postponed accession several times and has still [as at October 2008] not specified a definite date on which the country intends to accede.”¹¹ Indeed, it is only since the breakdown of the three bilateral agreements that Viet Nam has begun to demonstrate a more robust stance on accession and started to define targets in that regard.

Finally, the suspensions of the agreements have resulted in the need to deal with a substantial number of “pipeline” cases (those under way when the suspension took effect, and which are always a cause of major ethical and practical problems) that still have to be carried through under the contested procedures. For the US alone, these involve hundreds of children.

The possibility of drawing up bilateral agreements that improve the application of the Convention between countries involved in intercountry adoptions is foreseen in article 39 THC-93. Therefore, when bilateral agreements derogate from basic principles mentioned in that Convention, they can be qualified as insufficient, inadequate and contrary to international standards. Moreover, the real need for such agreements, and the appropriateness of their terms, is a long-standing subject of debate:

“Some concern was expressed about agreements which seemed to supplant rather than to supplement the Convention. It was emphasised that under Article 39, paragraph 2, Contracting States were entitled to enter into agreements with one or more other Contracting States ‘with a view to improving the application of the Convention in their mutual relations’. It was also stressed that these agreements may derogate only from the provisions of Articles 14-16 and 18-21, and that States which have concluded such agreements should transmit copies to the Depository of the Convention.”¹²

Arguably, Contracting States should take a similar stance when entering into agreements with non-Contracting States. Not only are we far from convinced that this approach has been respected in the past as regards agreements negotiated with Viet Nam, but we also fear that it may not be respected when and if new agreements

¹¹ Swedish Ministry of Health and Social Affairs, Press Release, 23 October 2008.

¹² Special Commission, 2000

are drawn up pending Viet Nam's planned accession. We also wonder what will become of those agreements once that accession takes place, especially if they are not in the strictest conformity with the provisions of the Hague Convention. We therefore suggest that any such agreements at least contain a clause foreseeing automatic termination as of the day that the Convention enters into force in Viet Nam¹³.

In sum, while it may be better overall for ICAs from a non-Hague country to be regulated by bilateral agreements than to take place within no formal framework at all, there is reason for scepticism as to certain of the motivations behind their conclusion, and a need for great attention to be paid to the Hague-compatibility of their content. In principle, such agreements should no longer be required once Viet Nam becomes a Contracting State.

5.1.4. Oversight of adoptions to their respective countries

It is clear from our discussions in Viet Nam that the competent authorities of “receiving countries” are generally failing to monitor adequately adoptions of children to their respective countries.

Three main issues are a stake: oversight of the operation of bilateral agreements; monitoring of agency activities; and verification of the status of individual children to be adopted. All three areas would be covered most effectively by officials on the spot, but embassies seem to have neither the resources, human or other, nor the mandate to take on such responsibilities, with the notable exception of the USA as regards verification of “orphan status”. While other diplomatic representations are able to take more or less interest in what is going on, their possibilities for direct intervention are described as limited. In particular, we are given to understand that they do not carry out field investigations, generally have rare contact with “their” agencies, and in most cases simply transfer necessary documentation to their capitals for decision-making on individual adoption cases. Any investigations therefore have to be carried out by delegations from their capitals, and because of the cost involved, these are naturally very rare.

Equally, Central Authorities in “receiving countries” cannot be counted on to play a direct supervisory role, given their distance from the field and, again, the lack of resources available. While they should have a general overview of the situation, their tasks anyway do not include day-to-day monitoring in the “countries of origin”.

When Central Authorities of the “receiving countries” and the “country of origin” concerned cooperate within the framework of the Hague Convention, this lack

¹³ For the time being, not all the agreements contain this kind of provision.

of involvement would normally not be problematic. In the case of a country such as Viet Nam, however, where the current system is not in compliance with the Convention, it does pose difficulties. Indeed, the Department of Adoptions expressed its interest, during our interviews with embassy officials in the course of the mission, in envisaging “joint investigations” when potential or actual problems arise. The response from foreign officials tended to be guarded: they did not discount the idea to the extent that laws and regulations in their respective countries would permit such activity, but they felt that once Viet Nam accedes to the Hague Convention, this would anyway become the sole responsibility of its competent authorities.

Realistically, there appear to be few prospects, materially and in terms of mandate, for upgrading oversight at the present time. **We nonetheless strongly suggest that, at the very least, embassies maintain regular contacts with agencies from their respective countries as a potential contribution to combating the *laissez-faire* attitude that prevails.**

5.2 Adoption Agencies

5.2.1. Accreditation and monitoring

In mid-2008, a total of 68 agencies were authorised to work on ICA in Viet Nam: Canada (3), France (7 plus 2 pending), Italy (8), Denmark (2), Ireland (1), Spain (1, plus 3 pending), Sweden (3, plus 1 pending), Switzerland (1) and USA (42). Since then, with the suspensions set in place by Ireland, Sweden and the USA, the number effectively processing new ICAs has dropped by about two-thirds, now standing at well under 30.

Authorisation is, formally, largely dependent on the opinion of the Ministry of Public Security (MPS) and of the People’s Committee in the province(s) where the agency is seeking to operate. They review initial applications made by agencies and forward their comments to the MOJ. The MPS evaluation consists principally of verifying the status of the agency’s chief representative in Viet Nam and that of the agency in the country of its headquarters. In this latter respect, proof is required regarding: the agency’s recognition as a non-profit organisation; permission for the agency to operate in Viet Nam; humanitarian projects to be implemented in specified localities in Viet Nam; evidence that the agency has been in operation for at least 5 years; and acceptability of the agency’s last two annual financial reports. In other words, rather than setting its own criteria, Viet Nam has relied considerably on authorisations to operate delivered by the agency’s home country.

During our mission, we had understood that no applicant agencies had been refused initial authorisation to work in Viet Nam, but the Ministry of Public Security has

since informed us that certain adoption agencies from France, Italy and the USA in fact saw their applications refused from the start. It also seems to be extremely rare that the Authorities suspend the on-going operations of any agency of their own accord.¹⁴

In the opinion of one foreign official interviewed, “Viet Nam has been a victim of the agencies.” Although we find that there is truth in this statement from several standpoints, the responsibility for this state of affairs cannot always be laid uniquely at the agencies’ door, at least collectively.

The first way in which Viet Nam fell “victim” was, of course, the sheer number of these bodies that were permitted to operate. Not only is it well-nigh impossible to monitor the activities of so many (especially without the active assistance of the embassies concerned – see above), but also it tends to create a climate of competitiveness among them that is anything but desirable for the ethical functioning of ICA. Certain agencies themselves agreed that there has been virtually no information exchange, concertation or coordination – whether this be between agencies from the same country (and let alone in general) or between agencies working with the same “orphanage” or in the same Province.

Poor quality control from the start seems to have exacerbated the effects of this unfortunate reality. Thus, it is disturbing to note that, of the 42 US adoption agencies that were operational in Viet Nam and authorised by the Vietnamese Authorities,¹⁵ no less than seven (i.e. 1 in 6) are among the 16 whose Hague accreditation has to date been denied in the USA,¹⁶ which suggests that there is some risk that they were not operating wholly in accordance with acceptable standards:

- AFH – Adoptions From the Heart – denied May 2008
- AI – Adopt International – denied May 2008
- CAI – Commonwealth Adoptions International – denied May 2008
- CHI – Children’s House International – denied May 2008
- Florida Home Studies and Adoptions – denied May 2008
- PLAN – Plan Loving Adoptions Now – denied June 2008
- WAS – Worldwide Adoption Services – denied June 2008

¹⁴ The Ministry of Public Security lists World Child International (WCI) and Casi Foundation for Children, two US agencies, as having been the subject of official suspensions. WCI’s authorisation was later reinstated but Casi Foundation remained blocked. There are also instances where the Central Authority of the agency’s own country has withdrawn permission, e.g. the Swedish Central Authority, MIA, withdrew the licence of one of its agencies working in Viet Nam in 2007.

¹⁵ Document distributed by DIA/MoJ at conference in Quang Binh Province, 27 June 2008; see also <http://VietNam.usembassy.gov/conadoptedvisa.html>

¹⁶ US State Dept. <http://adoption.state.gov/hague/accreditation/deniedagencies.html>, monitored constantly.

At least one other US agency operating in Viet Nam – Los Niños International Adoption Center – has completely ceased activity in the meantime, explaining that it was “extremely difficult to meet our clients’ adoption goals now that [post-Hague] the rules governing new applicants have become so stringent.”¹⁷

Since Viet Nam is not a Hague country, denial of Hague accreditation (which is in no way equivalent to a general prohibition of operation) in the USA would not have prevented these agencies from continuing to work there today had the US agreement with Viet Nam been renewed, unless Viet Nam had itself taken the initiative to prohibit them.¹⁸ Indeed, the finalisation of “pipeline” cases still involves certain of those agencies: for example, the day before our interview with the Dept. of Justice for Ha Noi Province, the latter had processed its last two outstanding US cases – twins – through PLAN, whose Hague accreditation was denied.¹⁹ **In such instances, oversight clearly needs to be strengthened considerably.**

Viet Nam also “fell victim” because of the way in which agencies have been obliged to initiate their activities in the country, i.e. the first step is for an agency to identify a SPC with which, potentially, there would be mutual willingness for cooperation on intercountry adoption. How this contact is made often seems to be somewhat shrouded in mystery.²⁰ What is known, however, is that it is only later in the process – in our understanding, after meetings have taken place with DOLISA, the Dept. of Justice and the People’s Committee concerned, and after the agency has submitted its “humanitarian assistance” project – that the agency’s “reputation” is investigated. Thus, it is on the basis of an initiative of an agency, rather than of the competent authorities, that plans for cooperation are envisaged, and the agency apparently has every opportunity to advance significantly the chances of its acceptance (through negotiations with the Centre and the size of its projected financial contribution, for example) before its overall “reputation” is subjected to any scrutiny.

5.2.2. Influence over intercountry adoption policies

Agencies also try collectively to influence policy in relation to ICA from Viet Nam. As noted earlier in this report, for example, the Swedish agencies waged a very public campaign against their Government’s decision to suspend its bilateral agreement with the country.

¹⁷ Rosana N Erichsen, Executive Director. “Los Niños” was dissolved on 31 March 2009, apparently pursuant to Hague and other conditions. Its website is no longer accessible. It operated in several countries in addition to Viet Nam.

¹⁸ The Ministry of Public Security nonetheless claims that US adoption agencies denied permission to operate under the terms of the Hague Convention would not be authorised to process adoptions from Viet Nam.

¹⁹ Interview with Dept of Justice officials, Hanoi, 12 May 2009.

²⁰ Asked to comment on how agencies enter into contact with ‘orphanages’, one foreign embassy official replied quite simply and disquietingly: ‘We don’t know.’

As another example in this regard, we are somewhat concerned about the privately-funded initiative recently undertaken by the Joint Council on International Children's Services (JCICS) in the USA²¹ to host a 10-day trip for eight Vietnamese government officials, 24 March-2 April 2009.²² According to JCICS, the trip was intended:

“to provide a forum for discussion on the Hague Convention and an interim adoption agreement between the U.S. and Viet Nam. Joint Council and the delegation sought educational opportunities regarding U.S. child welfare and child protection systems. Demonstrating both the need and the success of intercountry adoption through meetings with adoptive families was also a key element of the trip. [...] Overall, the delegation's trip was a resounding success and a first step to any agreement between the U.S. and Viet Nam regarding intercountry adoptions and the subsequent implementation of the Hague Convention by Viet Nam. Joint Council urges all Members of Congress to support the timely development and implementation of an interim adoption agreement between the U.S. and Viet Nam...”²³

We fail to see, *inter alia* and in particular, how such an exercise might in any way serve to “demonstrate the need” for intercountry adoption from Viet Nam. We also question how it might constitute a sound basis for Congress to support an “interim adoption agreement” until and unless a number of serious concerns set out in official US documents have been addressed by all concerned.

5.2.3 The influence of money

Finally, Viet Nam has been a “victim” of financial arrangements involving agencies. Financial issues are usually at the very core of malfunctioning intercountry adoption systems, hence the need to examine the situation in some depth in this report, which we do in the following section.

5.3. Financial questions

Vietnamese officials readily acknowledged to us during our mission that some of the current problems in intercountry adoption stem, directly or indirectly, from the systems and regulations now in place regarding financial issues and arrangements with agencies.

²¹ JCICS is an advocacy collective representing ‘over 200 organizations who work in fifty-one countries around the globe and support over 75% of all children adopted internationally by U.S. citizens’: <http://www.jcics.org/History.htm>, accessed 25 May 2009. It can be noted that four of the seven agencies that were working in Viet Nam but were denied Hague accreditation – Adoptions From the Heart, Adopt International, Children's House International and PLAN – are among JCICS members: http://www.jcics.org/Membership_Directory.htm#Listing accessed 25 May 2009.

²² A DoA official informed us that it was only after reading our provisional report that the Vietnamese Authorities became aware that this study-trip was privately-funded, and intimated that they may not have taken part had they realised this beforehand.

²³ JCICS, communiqué dated 6 May 2009 http://www.jcics.org/Viet_Nam.htm accessed 25 May 2009.

Because the present Vietnamese system requires agencies to provide “humanitarian aid” in addition to the fees they charge prospective parents for their adoption services proper, it is often very difficult to determine a clear breakdown of the way that monies paid to an agency are used. Neither the agencies themselves nor any Central Authority (including that of Viet Nam) spontaneously provide an itemised justification of the sums involved.

In the following analysis, we attempt to deal with these financial questions as logically as possible under two separate headings – “costs and fees” and “humanitarian aid requirements”. As will become clear, however, this is not a distinction that agencies seem inclined to favour when presenting the amounts they charge. **The lack of transparency in this regard on the part of agencies and Central Authorities alike is a subject of major concern to us and, for those still operating in Viet Nam under the existing regulations, demands immediate action.**

5.3.1. Costs and fees

We understand that the official fees charged for the adoption process in Viet Nam amount to no more than a few hundred USD\$. Mr Dao from the Department of Adoption states that just two administrative fees are charged by the Vietnamese Authorities for processing adoption cases: one, at central level, is a “document filing fee” of USD\$ 60, to be transferred to the bank account of the Department of Adoption of the MOJ; the other is an “adoption registration fee” of USD\$ 120, charged by the provincial Department of Justice (DOJ) concerned.²⁴ This corresponds fully with a statement by the Civil Status, Judicial Records and Nationality Vice-Chief in HCMC, Mr Nguyen Quoc Thang, who has noted that, in total, “the fees for an adoption case were VND 3 million (USD\$187).”²⁵

It is remarkable that “fees” that have been, or are being, charged by adoption agencies purely for in-country services are – when they are actually specified – generally more than 50 times that amount.²⁶ Thus, “local procedures” budgeted by French agencies vary between €7,503 (Oeuvre de l’Adoption-Comité de Marseille) and €8,950 (Médecins du Monde), i.e. from approximately USD\$ 10,400 to USD\$ 12,400. Italian agency CIFA puts “foreign costs” at €7,260 (approx. USD\$ 10,000). The “program fee” quoted by US agency Mandala was USD\$12,600, and the “international program fee” applied by Children’s Hope International was \$11,467-\$11,667.

²⁴ Communication between Mr Dao, Senior Legal Expert, Dpt. of Adoption and UNICEF Viet Nam, 8 June 2009

²⁵ <http://www.thanhniennnews.com/overseas/?catid=12&newsid=33244> , last updated 8 November 2007.

²⁶ Agencies usually divide their fees into two categories: ‘agency fees’ designed to cover their administrative costs in the receiving country where they are headquartered, plus what are variously labelled ‘programme’, ‘international’, ‘foreign’, ‘local’ or ‘in-country’ fees/costs that are in principle to be disbursed for services and necessary procedures in the child’s country of origin, excluding items such as travel and board and lodging. Unfortunately, most agencies only give an overall fee estimate up-front. And yet others fail to give up-front any financial details whatsoever.

While agency in-country fees of course include the cost of a number of local services over and above the fees officially charged by Viet Nam, much of the enormous difference between the two amounts is explained by the fact that a very substantial proportion of what are often described simply as “fees” are not “fees” at all, but are in fact allocated to “humanitarian aid”.

One of the many cases (see below) in point is the Irish agency Helping Hands, which was set up in May 2006 specifically – and with its core costs in Ireland covered by public funds – to manage all adoptions of Vietnamese children to Ireland when the bilateral agreement between the two countries came into force. In June 2008, Helping Hands wrote to the Irish Adoption Board (IAB) stating simply that “we have been advised by the Vietnamese Authorities that there has been an increase of USD\$ 1,000 in the adoption fee effective immediately. The adoption fee in Viet Nam is now USD\$ 11,100.”²⁷ The IAB posted the letter, as was, on its website.

We were intrigued by the content of this letter and so contacted Helping Hands. As a result of numerous subsequent exchanges with them, we were able to review *inter alia* a number of general concerns that we had regarding the way in which agencies are working, or are required to work, in Viet Nam. Below, we detail a number of issues resulting from these exchanges that would seem to be illustrative of the overall Vietnamese adoption context.

In fact, as Helping Hands very readily informed us, no less than USD\$ 9,000 (i.e. over 80%) of the total USD\$ 11,100 that it had termed as an in-country “fee” in 2008, concerned “humanitarian aid”.²⁸ The remaining USD\$ 2,100 – i.e. the “real” fee – covered:

“admin costs i.e. translations and notarizing of applicants’ dossier, translation and notarizing of applicants’ updated documents, translation of child’s dossier, filing/processing fee, transport of applicants to social care centre for visits and transport for the Giving and Receiving Ceremony, child’s medical pre proposed placement, transport of child and carer to hospital for medical, child’s passport, courier of child’s medical report, transferring of documents within Viet Nam.”²⁹

²⁸ Phone-call with Helping Hands, 27 May 2009, confirmed by the CEO of the IAB, email 2 June 2009.

²⁹ Attachment to email from the CEO of the Irish Adoption Board, 2 June 2009.

Given that the official fees actually charged by Viet Nam are less than USD\$ 200 (see above), it did not surprise us to learn that the USD\$ 1,000 “increase in the adoption fee advised by the Vietnamese Authorities” was in reality not to the fee as such, but to the “humanitarian aid” component of the total cost that PAPs would bear in an adoption procedure from Viet Nam. In our view, this important distinction should have been made in the information letter sent to the IAB, which is the equivalent of Ireland’s “pre-Hague” Central Authority.³⁰

As noted above, this specific instance is clearly by no means unique. We generally found it difficult to secure full understanding regarding the determination and disbursement of agency “fees”. Thus, as another example, Swiss agency Helviet also kindly provided a breakdown of its in-country fees. In addition to very modest sums to cover the costs of its representative (USD\$ 300) and interpreter (USD\$ 150) in Viet Nam, there is an amount of USD\$ 5,500 comprising “subsistence costs for the child [to be adopted], the carer, medical costs, costs for submission of dossier, official documents, administrative costs, humanitarian donation for the care of children who remain at the orphanage” – the comment of Helviet in this respect being that “the major part of that amount corresponds to the donation”.

The amalgam of “aid” charges and “fees” would no doubt also explain the fact that quoted “in-country fees” for Viet Nam are frequently substantially higher than those charged by the same agencies for organizing ICA from other countries, even though official Vietnamese fees are so low. Thus, for example

Médecins du Monde (in-country fees)	
Viet Nam	€8,950
Russia	from €2,215 to €365 according to region
Madagascar	€3,110
Ecuador	€7,308
Colombia	€3,645
China	€4,647
Bulgaria	€4,446
Brazil	€3,293
Albania	€2,174

Oeuvre de l’Adoption-Comité de Marseille (in country fees)¹	
Viet Nam	€7,503
India	€3,390
Nepal	€5,740
China	€4,269

We have nonetheless found instances where fees charged for Viet Nam are less than those, by the same agency, for certain other countries of origin. Italian agency CIFA, for example, gives its in-country fees as €12,600 for Kazakhstan, €10,800 for Russia, and €7,260 for Viet Nam. Kazakhstan and Russia are indeed among

³⁰ Helping Hands nonetheless confirms that “during the process of registration, all aspects of the fee/humanitarian aid and reimbursement for reasonable and proper expenses are discussed with applicants.” (Helping Hands, Report 14/09/09)

the major countries of origin where costs tend to be particularly high, for different reasons.³¹

The Special Commission on the practical operation of the Hague Convention has demonstrated much concern about costs and fees, and has taken a clear stance in this regard:³²

“125. The Special Commission reaffirmed Recommendations Nos 7-9 of the Special Commission of November / December 2000 concerning costs which stated:

“Prospective adopters should be provided in advance with an itemised list of the costs and expenses likely to arise from the adoption process itself. Authorities and agencies in the receiving State and the State of origin should co-operate in ensuring that this information is made available. Information concerning the costs and expenses and fees charged for the provision of intercountry adoption services by different agencies should be made available to the public. Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made.”

During the Special Commission 2005, it was also established that

“169. There was general support for the principle that achieving transparency in costs and fees would be a significant step towards preventing improper financial gain. The problem is that when costs and fees are unregulated there is potential for abuse.”³³

In the light of the present situation and of the Special Commission’s clear statements, it seems vital that far greater transparency over “fees” be instituted immediately by foreign agencies operating in Viet Nam, and that the Central Authorities of “receiving countries” concerned require their accredited agencies to conform fully with this requirement.

5.3.2. ‘Humanitarian aid’ requirements

From the start of our mission, it was made very clear to us that the issue of humanitarian assistance to be provided and/or funded by agencies undertaking ICA from Viet Nam is something that the country’s Authorities have considered to be of the utmost importance.

³¹ See: <http://www.cifaong.it/adozioni.php?wot=sdCosti> (updated on 23 April 2009, accessed 25 May 2009).

³² Final Report, Special Commission 2005 at p.34. See http://www.hcch.net/upload/wop/adop2005_rpt-e.pdf

³³ Final Report of the Special Commission 2005 at page 42. See http://www.hcch.net/upload/wop/adop2005_rpt-e.pdf

Thus, to be permitted to work in Viet Nam, agencies have been obliged to present and execute approved “humanitarian” aid and technical assistance projects in favour of the facilities with which they work, and this for the whole duration of their presence. Some have also voluntarily contributed to projects in the surrounding community. A small number deemed to have failed in meeting these obligations are said to have been issued with warnings.

The provision of “humanitarian aid” in general (i.e. not only in relation to Viet Nam) is something that many agencies are more than happy to envisage – several, especially in the USA and Italy, take care to mention on their websites the cooperation of this kind that they undertake in the countries of origin where they work, to demonstrate *inter alia* that they are not simply looking for children who can be adopted abroad but are also supporting those “left behind”. For some, it is even a question of “good practice”: thus, Holt has a long-standing tradition of supporting community-based preventive work, child welfare services and the “orphanages” with which it has worked, as well as facilitating intercountry adoptions, and this vision is naturally applied in Viet Nam as well.³⁴ It is also our understanding that Holt, like several other US agencies, wants to continue providing assistance in order to maintain a presence in Viet Nam pending the eventual expected resumption of adoptions.³⁵

Governmental attitudes to ‘Humanitarian aid’

Certain governments, such as France and Italy, have also taken pro-active measures to enable “humanitarian aid” to accompany their country’s activities in favour of ICA.

For France, this has translated notably into the provision of a relatively modest “child protection” aid package together with the appointment of a “volunteer for intercountry adoption” attached for two years to the French Embassy in selected countries of origin, of which Viet Nam is one. This “volunteer” initiative was launched – in July 2008 – in the context of a pro-active governmental programme to promote intercountry adoption for French couples.³⁶ The role of the volunteers was described at the outset as “a kind of French Peace Corps to support our plan for relaunching international adoption. Young French people will be trained and sent abroad to facilitate adoption by French families.”³⁷ In the event, the role of

³⁴ Interview with Mr Ho Dang Hoa, Country Director, Holt, 11 May 2009. Accordingly, in addition to its 46 intercountry adoptions in 2008, Holt reports that it facilitated 27 domestic adoptions and 26 birth-family reunifications, as well as preventing the displacement of 42 children into public care.

³⁵ Dillon, for example, is doing this through Orphan Care International.

³⁶ http://www.diplomatie.gouv.fr/fr/actions-france_830/adoption-internationale_2605/actualites_3230/2008_19704/volontaires-adoption-internationale-28.07.08_64931.html

³⁷ Interview [our translation] with Mme Rama Yade, then Secretary of State for Human Rights, in the French daily *Aujourd’hui en France* (Paris, 28 July 2008), available on the website of the French Ministry of Foreign and European Affairs: http://www.diplomatie.gouv.fr/fr/actions-france_830/adoption-internationale_2605/

the first such volunteer, who began working in Cambodia in September 2008, was somewhat readjusted, notably in the face of the international community's serious concerns over the unashamedly "pro-ICA" goals of this function. Since then, the real objectives of these volunteers in general nonetheless remain unclear. On the one hand, the original goals of the initiative have apparently not been modified.³⁸ On the other, a certain official discourse now seeks to dilute the "intercountry adoption" component of the functions of these "volunteers for intercountry adoption".³⁹ Whatever the case, during our visit the Vietnamese Authorities appeared to welcome this initiative as "representing a great effort on France's part for developing intercountry adoption."⁴⁰ Regrettably, it was not deemed useful that we meet the newly appointed volunteer to the French Embassy in Ha Noi, who had arrived just days before. It would have been helpful to learn how she herself perceived the precise mission with which she had been entrusted by Paris.⁴¹ At this juncture, therefore, we can only urge and trust that the lessons rapidly learned from the Cambodian experience are effectively reflected in the on-the-spot operations of the French volunteer in Viet Nam – and, indeed, elsewhere.

According to a former President of the Italian Central Authority (CAI), "it is an open secret that foreign Authorities solicit humanitarian aid contributions from agencies that work on adoptions",⁴² and Italy therefore decided several years ago that its CAI should take on its own humanitarian assistance role in this respect. It does so by bringing together the activities of authorised agencies working in the various foreign countries and, largely from its own budget, financing specific projects presented by those agencies. For example, in the context of its bilateral agreement, CAI has proposed to help its Vietnamese counterpart to develop a registry of children in public care as an instrument for monitoring the condition of the children hosted in institutions and the national and international adoption procedures that may have been put into operation..

actualites_3230/2008_19704/volontaires-pour-adoption-internationale-28.07.08_64873.html

³⁸ http://www.diplomatie.gouv.fr/fr/actions-france_830/adoption-internationale_2605/actualites_3230/adoption-internationale-huit-jeunes-volontaires-sur-depart-19.01.09_70105.html. See also http://www.lexpress.fr/actualite/societe/volontaires-internationaux-un-regard-neuf-sur-l-adoption_735175.html

³⁹ http://www.diplomatie.gouv.fr/fr/actions-france_830/adoption-internationale_2605/actualites_3230/cambodge-mai-2009_73580.html and http://www.diplomatie.gouv.fr/fr/actions-france_830/adoption-internationale_2605/actualites_3230/2009_19707/rama-yade-nous-ne-voulons-pas-donner-faux-espoirs-19.01.09_70129.html

⁴⁰ Comment by Dpt. of Adoption official during our joint meeting with French Embassy, Hanoi, 7 May 2009.

⁴¹ The French Embassy informed us that, since the volunteer was still receiving induction training and had not yet been introduced to the Vietnamese Authorities or representatives of the international community, it was not appropriate that we interview her.

⁴² Ms Melita Cavallo, ex-President of the Italian Central Authority (CAI), in her presentation entitled "Humanitarian aid and children placed outside their family of origin and not proposed for adoption?", at the colloquium "Intercountry Adoption Today", organised by the Agence Française de l'Adoption, 7-8 November 2007, Paris [our translations]. N.B. CAI has notified that it presently rejects the substance of this statement, however [Note from CAI, 13 October 2009].

Overall, however, the provision of humanitarian aid as a condition for undertaking intercountry adoptions from a given country arouses far more concerns than it does support.

On the governmental level, Sweden has taken the clearest stand by banning its agencies, by law, from providing such assistance in places where they were working, and deems that, in Viet Nam, “contributions to orphanages are a special problem.”⁴³ Ireland wants a “total separation” between financing and intercountry adoption activities.⁴⁴ The USA has cited direct financing of SPCs by agencies as being one of its major concerns.⁴⁵ One country that chose not to seek a bilateral agreement on adoptions also noted that the obligation to finance these Centres – and the potentially undesirable ramifications thereof – was an important element in its decision: it too demands complete separation between financial aid and ICA before envisaging an agreement with Viet Nam.

Lack of transparency

Among non-governmental bodies, too, there are serious doubts about this approach. These range from the rejection of a system whereby the amount of money contributed could influence the number of adoptions that the agency can organize (see below), to concerns about the way the contributions are allegedly used (e.g. for purchasing cars). The Vietnamese Authorities have themselves expressed the “need to know how effective the contributions are.”⁴⁶

In addition, there seems to be a variety of ways in which contributions have been transferred to the beneficiaries to date, some of which are causes for concern. Several interlocutors referred to the widespread existence of cash payments, or “envelopes”, from agencies to residential facilities, whose origins and use cannot be monitored. Irish agency Helping Hands notes that its humanitarian aid has been transferred to the local province as per the bilateral agreement, but that “how these funds are transmitted, distributed and ultimately accounted for is a matter for the Vietnamese Authorities [and] we were concerned that we could not account for how this money was spent.”⁴⁷ The agency nonetheless affirms that “real changes have resulted [from aid contributions] on the ground in Viet Nam [...] in a small window of time.”⁴⁸

⁴³ Meeting at the Swedish Embassy, 7 May 2009.

⁴⁴ Meeting at the Irish Embassy, 8 May 2009.

⁴⁵ Meeting at the US Embassy, 11 May 2009

⁴⁶ Remark made during our meeting with the Ministry of Justice and the team drafting the new adoption law, 5 May 2009.

⁴⁷ Letter from Helping Hands, 5 October 2009.

⁴⁸ *Ibid.*

As regards the increase in its aid package (see under 5.3.1. above) Helping Hands also informed us that this “was at the request of the Vietnamese Provincial Authorities [and] due, in part, to the decrease in the value of the dollar and in order to maintain the level of humanitarian aid.”⁴⁹ The “request” was apparently made only orally, at a meeting with the Provincial Authorities in May 2008.⁵⁰ It must be noted that, while the falling value of the US Dollar vis-à-vis the Dong was cited as a reason for the increase, in fact during the year preceding May 2008, the value of the US Dollar actually rose slightly against the Dong. We are not clear what other justifications for the increase may have been given, nor are we certain to what extent the “request” might be construed rather as a requirement. **But whatever the case, the fact that this kind of arrangement can – or maybe even “must” – be both proposed and accepted without any justification or agreement in writing is in our view unacceptable, given its total contradiction with the principle of transparency supposed to govern ICA activities.**

At this stage, therefore, we can only remain concerned about the exact circumstances surrounding this substantial mid-programme hike in the “aid” requirement, ostensibly at the initiative of the Provincial Authorities in question. Helping Hands itself points out that there were no provisions in the bilateral agreement to cover possible increases in humanitarian aid, or the monitoring of its use, and hopes that such lacunae would be addressed in any future agreement.⁵¹

In Bac Can Province, the DOJ also asks for more transparency regarding “humanitarian support”, underlining the “need to issue regulations related to the openness, transparency of the intercountry adoption agencies in order to effectively manage humanitarian support and avoid opportunists. [...] Humanitarian support from international intercountry adoption agencies in cash should be transferred through a bank account. Thus it can ensure that funding will be spent by the institutions on its objectives and effectiveness. At the same time, we can monitor the implementation of projects to which the adoption agency has committed itself with the institution.”⁵²

Aid for what?

We are also disturbed by the preponderance of “humanitarian projects” supporting and developing institutions as opposed to other child protection objectives.. The problem is well-illustrated by the experience of Italy (which once again demonstrates admirable transparency in making relevant data available and thereby enabling us to analyse this issue in greater depth than is the case for other countries).

⁴⁹ Helping Hands, Report 14/09/09

⁵⁰ Letter from Helping Hands, 5 October 2009.

⁵¹ *Ibid.*

⁵² “Brief report on intercountry adoption in Bac Can from 1997 to March 2009”, Director of DoJ

Under its system whereby the Central Authority registers all “humanitarian” projects proposed by Italian agencies in the context of their intercountry adoption activities, and then proceeds to finance those approved, Italy supported 207 projects in 36 countries for a total of €4m. in the period 2001-2007.⁵³ In most of those countries (21), just one project was sponsored. In only three countries did the number of projects reach double figures: 26 in Brazil, 42 in Ethiopia and, the highest, 48 in Viet Nam.

The projects fall under five categories: prevention of abandonment, health programmes, training of social and health workers, education and vocational training, and assistance to institutions.

Review of the distribution of these project categories in practice reveals a potentially disturbing finding in relation to Viet Nam. Whereas only 11% of the projects in Brazil (3 out of 26) and 14% in Ethiopia (6 out of 42) were assistance projects to institutions, they constituted nearly half of all projects in Viet Nam (21 out of 48).

In other words, an unusual and disproportionate amount of Italian contributions in Viet Nam would seem to be devoted to supporting institutions, which does not tally with the systematic demands of the UN Committee on the Rights of the Child for all countries to move as quickly as possible towards a deinstitutionalised child care system, on the basis of the tenor of CRC Art. 20. Since it is widely agreed that long-term institutional placements are generally not adequate substitutes for living in a family, support for institutions inevitably has the secondary and implicit effect of promoting adoption. Those contributions are therefore tending, in sum, to reinforce the *status quo* and the continuation of relatively large-scale adoptions abroad of Vietnamese babies and children. They should rather be directed, in our view, to preventive measures and developing alternative care options (including via training) that will facilitate the necessarily gradual process of deinstitutionalisation.

Project support to institutions is of course ostensibly required of adoption agencies from all countries, with similar ramifications. The following examples of support by US agencies are among the many that raise serious concerns.

In some cases they have been supporting the most basic day-to-day functioning of “orphanages” (for example purchasing formula for infants and meals for older children, HIV medication, salaries for physical therapists, lunches for handicapped students),⁵⁴ presumably meaning that the facility is virtually dependent in many

⁵³ Ms Melita Cavallo, ex-President of the Italian Central Authority (CAI), in her presentation entitled “Humanitarian aid and children placed outside their family of origin and not proposed for adoption?”, at the colloquium “Intercountry Adoption Today”, organised by the Agence Française de l’Adoption, 7-8 November 2007, Paris.

⁵⁴ Children’s Hope International (one of the agencies initially denied Hague accreditation in the US) <http://www.>

fundamental respects on agency contributions which, sooner or later, would result in the expectation that babies and children be made available to the agency with a view to adoption abroad.

In other cases, they have contributed to the development of the facility. Thus, for example, Wasatch International Adoptions states that it “has provided assistance in repairing the physical facilities of the orphanage in Phu Tho. Further plans are to upgrade the buildings and purchase additional land adjacent to the buildings so the orphanage director can expand the facilities and install a play yard for the children.”⁵⁵

The linkage between aid levels and adoption numbers

Some interlocutors (more especially certain Vietnamese officials and agency representatives) maintained that there was no relationship between the level of “humanitarian aid” provided and “expectations” regarding the number of children who would be referred to an agency for intercountry adoption. The Dept. of Justice in Ha Noi, for example, affirmed that “the amount of money provided does not correspond to the number of intercountry adoptions that may be undertaken.”⁵⁶ To illustrate this, the example of Holt was put forward: according to the DOJ, Holt contributed USD\$ 60,000 per year to humanitarian projects in Ha Noi but had “only” processed two intercountry adoptions annually from there.⁵⁷

Interestingly, the disassociation between aid and referrals was also claimed in a very different way. Thus, CIFA, an Italian agency, expressed disappointment that, despite having provided what it considered to be very significant humanitarian aid, it had been frequently “overlooked” when it came to the allocation of children for adoption.⁵⁸ In other words, the expectation was undeniably – and somewhat logically, no doubt – that the higher the level of aid, the higher the number of adoption referrals that would be entrusted to the agency in question.

CIFA also stated that Italian couples support the SPC from which they adopt their child.⁵⁹ In contrast, Irish agency Helping Hands says that “there is no link between the number of adoptions and the amount of humanitarian aid associated with the individual project [...] nor is there ever any request or guarantee sought from a social care centre or provincial government on the number of children to be made

adoptvietnam.org/adoptionagencydirectory/childrenshopeadoptionagency.htm

⁵⁵ <http://www.adoptvietnam.org/adoptionagencydirectory/wasatchadoptionagency.htm>

⁵⁶ Meeting with the Dept. of Justice in Hanoi, 12 May 2009.

⁵⁷ Holt might be considered in some ways a special case, however, given the wide mandate it has taken upon itself, according to which adoption is only one of a wide range of “children’s services” that it supports and undertakes.

⁵⁸ Interview, Hanoi, 11 May 2009.

⁵⁹ Interview, Hanoi, 11 May 2009.

available for adoption arising from the humanitarian aid payment.”⁶⁰ Helping Hands nonetheless agrees that, in its case at least, there is a direct linkage between the overall amount of aid provided and the number of adoption referrals, given that the monies it transfers are composed in their entirety of the “aid” component paid by PAPs.

Indeed, the vast majority of those we met (particularly, but not only, foreign officials and agencies) unhesitatingly indicated that such a relationship very clearly exists. Based on all the information available to us, we have no doubt whatsoever that this is the case in general, although there may be a limited number of exceptions. Overall, we find no evidence that denial of such a linkage could be a credible stance.

The need to abolish ‘aid’ requirements

The Special Commission reviewing the practical operation of the THC-93 has paid particular attention to the question of aid and contributions to “countries of origin” within the context of ICA. Its two main concerns are that child protection services and facilities must not become dependent on such outside aid (which would be an incentive to continue or develop ICA regardless of real need) and that no linkage between aid levels and referrals for ICA be created. Thus:

“Receiving countries are encouraged to support efforts in countries of origin to improve national child protection services, including programmes for the prevention of abandonment. However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or **creates a dependency on income deriving from intercountry adoption**. In addition, decisions concerning the placement of children for intercountry adoption should not be influenced by levels of payment or contribution. **These should have no bearing on the possibility of a child being made available**, nor on the age, health or any characteristic of the child to be adopted.”⁶¹ [our emphasis]

We can note at this point that the first draft of the new Law on Adoption, on which the Vietnamese Authorities asked us to comment in depth, contained provisions for the establishment of a centrally-managed fund to which agencies would have to contribute. The idea behind creating this central fund was to avoid agency assistance being limited to those facilities that are allowed to cooperate on intercountry adoptions (which number just a quarter of the total): the fund could make financial help available to any facility, according to determined needs. Contributions could also be used for other “child protection” purposes. Not

⁶⁰ Helping Hands, Report 14/09/09

⁶¹ Report and Conclusions of the Special Commission on the Practical Operation of THC-93, 28 November-1 December 2000, Recommendation 10.

surprisingly, we strongly advocated for removal of this provision, and were most encouraged to see that the latest version of the draft (No. 5) no longer mentions it. This latest draft does, however, contain references to certain “contributions” that agencies would be required to make. We have similarly advised the Authorities that this too – and indeed any possible requirement of agencies other than the provision of professional and ethical adoption services – should without question be eliminated from the foreseen legislation.

In our experience, it is extremely difficult, if not impossible, to ensure that contributions of any kind from adoption agencies do not run the risk of violating or compromising the principles set out by the Special Commission. This is of course all the more so when the assistance in question focuses on a specific facility with which the agency has a special relationship and from where it processes the intercountry adoption of children, as is still the case in Viet Nam at present.

It is very strongly our view, therefore, that any such assistance should as a general rule be provided only in the context of official multilateral or bilateral cooperation agreements, or by non-governmental organisations having no links whatsoever with intercountry adoption. The implication of this is two-fold in the current Vietnamese context.

On the one hand, the authorities of “receiving countries”, as well as concerned intergovernmental organisations, should seek to incorporate or enhance their support for child protection services within their overall development cooperation agreements, making certain that the projects in question are fully consistent with the pertinent orientations and obligations set out in the CRC, as well as with the recommendations of the UN Committee on the Rights of the Child.⁶²

On the other, Viet Nam should cease to make any requirements whatsoever of foreign adoption agencies as regards financial contributions for child protection – whatever their declared object and destination – and should rather request equivalent assistance within the framework of the above-mentioned development cooperation agreements. Its requirements of adoption agencies should relate simply to the professional and ethical standards that the proper facilitation of intercountry adoptions demands.

⁶² Notably in its report of the Day of General Discussion on Children without Parental Care, 2005.

6. LEGISLATIVE ISSUES

6.1. Proposal regarding agency regulations

See Annex 3

6.2. Accession to, and implementation of, the Hague Convention

6.2.1. *Timetable for accession vis-à-vis legislative reform*

At the time our assessment mission, Viet Nam stated its intention of having the THC-93 in force on January 2010 and the new law on adoption approved for January 2011. Experience in other countries shows that ratifying the Hague Convention before having in place a new national legal framework may cause serious practical difficulties. First of all, on-going cases started before 2010 and cases opened in 2010 will have to be completed under the current legislation, while the Hague Convention will already be in force. Does this mean that, in practice, no case will be processed under the Hague regulations during the year 2010? Or is it foreseen to have two different procedures at the same time?

In addition, the implementation of the Hague Convention will require some preparation and training of the concerned professionals in charge of adoption. By-laws may also be necessary to clarify the new adoption process and to detail some specific issues (responsibilities of the Central Authority, agency regulations, etc.).

For all these reasons, we propose that Viet Nam suspends intercountry adoptions for the necessary period during the year 2010 that will enable it to ensure optimal implementation of the Hague Convention and prepare for the entry into force of the new Law on Adoption in 2011.

6.2.2. *Role and responsibilities of the Central Authority under the Hague Convention*

A Central Authority is clearly the major body in the adoption framework designed by the Hague Convention. The treaty provides for the basic competencies and responsibilities a Central Authority has to take on, but further tasks have to be borne by it. The general activities and related measures are described in detail in the Guide to good practice published by the Hague Conference¹.

The list below is limited to some crucial questions the Central Authority will have to consider before starting its activities.

¹ The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice available at http://www.hcch.net/index_en?act=conventions.publications&dtid=3&cid=69 in English and French.

a) Monitoring

A Central Authority under the terms of the Hague Convention has to ensure that all intercountry adoptions to other Hague countries take place in compliance with the spirit and letter of the provisions of that treaty. To be able to fulfill this obligation effectively, the Central Authority needs to be able to make certain first and foremost that:

- all children who are adopted abroad have been validly determined as needing intercountry adoption – i.e. that: they are legally adoptable; no suitable care solution, including family reintegration and adoption, is available in Viet Nam, according to the “subsidiarity principle”; and adoption abroad is in their best interests, and
- all procedures leading to the determination of their “internationally adoptable” status have been respected and carried out without manipulation and without financial or other gain for any party concerned.

This in turn requires, in particular, that the Central Authority has oversight and awareness of the adoption system as a whole (domestic and intercountry). It also needs to be certain of the justification of children coming into public care and/or being registered for adoption.

This monitoring role is not facilitated by the fact that responsibilities and decision-making in the child protection sphere, and notably as regards alternative care, are distributed among a number of central and local (province and municipality) executive actors (see point 3.4.3.).

ICA cannot be separated from the other child protection measures, especially from national adoption. It is essential that coordination among the different services is promoted, exchanges of information are fluid and priorities are decided in the framework of a general child protection policy.

States should guarantee expedient permanency planning for each child deprived of his/her parents and incorporate concretely intercountry adoption within a comprehensive child and family welfare policy. This pre-supposes coherent legislation, complementary procedures and coordinated competences. Such policy has to include support to families in difficult situations, prevention of separation of children from their family, reintegration of children in care into their family of origin wherever possible, kinship care, domestic adoption and, in principle as more temporary measures, foster and residential care. As article 7(1) says, the Convention obliges the Central Authority to “promote co-ordination amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.”

The provincial authorities themselves are asking for more guidelines on ICA activities².

b) Collection of statistics

For Viet Nam as a country of origin, data collection should allow for periodically evaluating the needs of the children who require an adoptive family as well as identifying which ones will face difficulties finding a family within the country. Once this information is identified, the Vietnamese Government should define the profile and estimate the number of prospective adoptive parents it requires. To do so, the Central Authority needs to have certain basic information at its disposal and should take all steps, including if necessary seeking statutory powers, to obtain relevant data from the provinces for analysis and should make the results publicly available.

The collection and analysis of statistics should cover:

- the number of children abandoned, relinquished (temporarily or permanently) or removed from parental care by the competent authorities;
- the total number of children entering institutions, care facilities or foster care, either temporarily or permanently;
- the number of children declared “adoptable”, domestically and internationally;
- the number of national adoptions;
- the number of intercountry adoptions and the countries concerned; and
- the number of children placed in foster care (if applicable).

Data should be disaggregated by, at a minimum, the child’s age, gender, medical status, family status (including whether or not in a sibling group) and location (province/municipality).

We wish to emphasise the fact that, as a future State Party to the Hague Convention, Viet Nam not only retains every right to determine the countries to which it is willing to allow its children to be adopted, but also to decide whether or not its children in general need recourse to intercountry adoption. Under the Hague Convention, countries are not designated as “States of origin” or “receiving States” in general, but only as regards the situation of an individual child. Thus, thanks to a reliable data collection system, Viet Nam should be in a position to have a clear idea of its needs for adoption (including special needs children) and to decide with how many receiving countries (and related adoption agencies) to cooperate.

d) Adoption agencies

We take it for granted – and applaud the fact – that Viet Nam will continue not to allow “independent” or “private” adoptions by foreigners, meaning that foreign

² Meeting with the authorities in Bac Can province, 06/05/2009

PAPs will be obliged to arrange their adoption through an agency that is recognised in both their own country and Viet Nam. Among other things, this greatly facilitates monitoring and supervision of adoption activities, as well as better guaranteeing the preparation of PAPs, the provision of post-adoption support services and the due submission of follow-up reports. Requirements regarding all these aspects should be included in the accreditation agreement to be formally accepted by each agency concerned.

A suggested list of major criteria that should be taken into account when accrediting such agencies, and when regularly reviewing their accreditation, is given in Annex 3.

It is of the utmost importance that the number of accredited agencies be kept to a minimum. Obviously, not every agency accredited in its home country and applying for accreditation in Viet Nam should be accepted, even if it meets the criteria. Too large a number in relation to the number of children likely to need intercountry adoption (and who are likely to be adopted) can create a climate of competition among the agencies for the limited number of children “available” and/or lead to them advocating for more children to be freed for adoption. Such a situation must clearly be avoided at all costs.

The Central Authority should regularly access the websites of accredited agencies to check that the information they are giving on adopting from Viet Nam is up-to-date and reflects the reality of the situation in terms of the country’s needs in this sphere, and that non-accredited agencies are not professing to have an adoption programme in Viet Nam.

e) Certificate of conformity

According to article 23 of the Hague Convention, a “certificate of conformity with convention requirements” must be issued after the adoption is finalised. It should be issued promptly, and the adoptive parents should receive the original certificate, and a copy should be sent to the Central Authorities of both countries”.

Issuing this certificate is important as it allows for immediate recognition in the receiving country of the adoption pronounced in the country of origin, and so gives greater protection to the adopted child (acquisition of nationality, eligibility to social insurance). A model form for the certificate of conformity³ is proposed by the Hague Conference but is not mandatory. Viet Nam may choose the manner in which the Central Authority will certify conformity with the Convention.

³ The form is available on the Hague Conference website at www.hcch.net

7. MAIN RECOMMENDATIONS

The following recommendations should be read against the background of our report as a whole and, in particular, the “Summary of key observations” set out at the beginning of this report. Some are addressed to the Vietnamese Authorities; others are directed to the main foreign actors concerned. They are additional to our proposals regarding the new draft legislation on adoption and draft regulations on foreign agencies.

The recommendations presented here are essentially designed both to respond to our findings as regards the present situation of ICA from Viet Nam and to take account of Viet Nam’s planned accession to the 1993 Hague Convention.

We respectfully submit these recommendations on the basis that, in our view, they not only correspond to necessary measures but are also both “do-able” (realistic) and verifiable (measurable).

7.1. For the consideration of the Vietnamese Authorities

- **Division of responsibilities amongst Government bodies and establishment of a referral system**

Standards have to be identified at the national level to determine who is responsible for the various parts of the adoption process. A uniform system should apply in every province, which would include standard forms, competencies of public bodies, costs, etc.

- **Data collection**

A proper system of data collection on children in need of adoption (domestic and intercountry) has to be put in place and managed by the Central Authority.

- **Abandonment**

The Vietnamese Government should undertake an assessment of the root causes of child abandonment, relinquishment and separation of the child from his/her family. The causes should then be addressed by effective policies that include, inter alia, family strengthening services, training for dealing with special needs children, support for single mothers, family counselling, opportunities for employment, income generation and where required, social assistance.

- **Relinquishment**

When a mother relinquishes a child permanently, this should be in writing. A separate statement should be made about whether she gives her consent for

the child to be adopted. When a mother asks the Government to care for her child but wishes to have continued contact, a clear statement to this effect should be made. Such statements should be made in front of one or more independent witnesses. The mother's effective respect for this arrangement should be monitored so that appropriate steps to ensure the child's best interests – beginning with a determination of the mother's situation – can be taken if she fails to maintain such contact over time.

- **Consent**

There should be a clear regulation or policy on who is responsible for obtaining consent and under which conditions. This regulation or policy should set out minimum qualifications for the person obtaining the consent. It should also provide for the obligation to ensure that the consequences of such consent are fully understood, that consent is given freely and that no influence or persuasion is brought to bear regarding the decision. A clear separation must be made between the body in charge of receiving the consent – from our observations DOLISA may be well placed to undertake this responsibility – and the one proposing the child for adoption.

- **Adoptability**

The body responsible for pronouncing a child's adoptability must base this decision on psychological, medical, social and legal criteria. Professionals within such a body should be equipped for making such an assessment. Children should not be excluded from being declared adoptable based on the preferences of PAPs. Children with special needs should have access to adoption. The pronouncement of adoptability should always be before the matching process occurs.

- **Domestic adoption**

The Vietnamese Government should establish a system to register domestic PAPs throughout the country, with information as to their capacities. This registry will not only facilitate the matching process but will be an indicator of the magnitude of ICA needed in Viet Nam.

- **Matching**

Matching should be done by an interdisciplinary team of professionals tasked with actively matching adoptable children with prospective adoptive parents, on the basis of the prospective adoptive parents' and children's dossiers. For matching of domestic adoptions, the motivations, capacities and resources of PAPs should be properly evaluated by a professional team. A child can only be matched to the PAP based on the elements of the evaluation, which is valid also for ICA. In addition, for the latter, a specific focus should be

on addressing the needs of children whose adoption would not be otherwise possible in Viet Nam.

- **Institutions**

A professional “gate-keeping” process should be set in place to ensure that children are placed in institutions only when this option is both necessary and appropriate. Institutions should not have any decision-making responsibilities as to adoptability or in the adoption process, but should be consulted in the matching process with regards to the children’s needs.

- **Fees**

The fees charged by official entities in Viet Nam throughout the adoption process should be clearly itemised, regulated, and placed in the public domain.

- **Humanitarian Aid**

The daily operating costs of institutions should not rely on donations. Financial assistance required to improve child welfare and protection services, including those related to adoption and child care provision, should be requested only in the framework of intergovernmental and governmental (bilateral) aid agreements, or invited in the context of programmes put forward by NGOs that are neither directly nor indirectly involved in intercountry adoption. It is vital that adoption agencies not be required or permitted to make such contributions.

- **Agencies**

The Vietnamese Authorities must develop their own criteria for the accreditation of adoption agencies that go beyond purely administrative considerations. They must accept that responsibility for monitoring how these agencies operate in the country, and thus for decisions as to their re-accreditation, lies essentially with Viet Nam.

- **Ensuring compliance with standards**

The Vietnamese Central Authority should be effectively mandated to oversee general compliance with adoption regulations and standards on the part of all actors, both national and foreign. To this end and among other things, it should be able to initiate inspections and investigations, or to commission them from competent services.

7.2. For the consideration of foreign authorities

- **Foreign Governments, their embassies and Central Authorities should pay special attention to co-ordinating and harmonising their approach to ICA from Viet Nam**, by upgrading consultation among themselves and, where necessary, requesting advice and guidance from the Permanent Bureau of The Hague Conference, UNICEF, and/or other recognised entities.
- **Competent authorities in the “receiving countries” must comply with the enjoinder that they apply Hague principles in their cooperation with non-Hague countries such as Viet Nam**, and must ensure that their individual and joint positions are in conformity with the letter and spirit of the 1993 Hague Convention and the CRC.
- **Governments and Central Authorities must refrain from undertaking any initiatives designed to promote ICA as such**, recognising that it must always be conceived as an exceptional measure and only for children whose care cannot be assured suitably within Viet Nam.
- **Embassies and Central Authorities of “receiving countries” should enhance their contacts and cooperation with the Vietnamese Central Authority with a view to determining the number and characteristics of children requiring ICA**. They should make this information available to adoption agencies from their respective countries, which should in turn relay it to PAPs in order to ensure that the latter have realistic expectations.
- **With very few exceptions, Central Authorities of “receiving countries” must ensure substantial and urgent improvements regarding the timely and up-front provision of data on ICAs**. Such data must be sufficiently disaggregated (sex, age at adoption, status at adoption, place from where adopted, etc.) as to enable indications of potential risk to be identified. They must be presented in a way that enables trends to be observed, and without delay so that any necessary reaction to such trends can be implemented effectively.
- **Foreign authorities should examine how they might play a more active role in monitoring the actions of adoption agencies from their respective countries**, as well as in the timely investigation of any alleged malpractice, possibly through joint initiatives with the competent authorities of Viet Nam or on the basis of other forms of cooperation and coordination with the latter.

- **Foreign Governments should determine how they might provide additional aid to compensate for the recommended abolition of the current humanitarian aid requirement made of agencies in Viet Nam,** and should ensure that the purpose and use of such aid correspond to internationally accepted standards and obligations regarding child protection and alternative care.

7.3. For the consideration of adoption agencies

- As a matter of good practice, adoption agencies working in Viet Nam should **refuse to process ICA for babies** whose age at referral makes it improbable that sufficient efforts have been carried out to identify appropriate in-country care solutions for them.
- At the very least, agencies from a given “receiving country” as well as all agencies, regardless of their country, that are working with a given institution, should **coordinate their current and planned activities** and should exchange information and concerns among themselves on a regular basis.
- Agencies should recall their obligation to **make publicly and spontaneously available a detailed breakdown of their costs and fees,** and in particular should differentiate clearly between administrative costs charged by the Vietnamese Authorities for processing an ICA, fees for their own adoption services, and donations/humanitarian aid that they will disburse or transmit for programmes to benefit children who are not adopted.

7.4. For the consideration of intergovernmental bodies

- **UNICEF**
 - UNICEF should assist the Vietnamese Government to undertake an **assessment of the root causes of child abandonment, relinquishment and separation of the child from his/her family,** with particular emphasis on determining the extent to which ICA opportunities may have contributed to “abandonment”, especially of babies.
 - With a view to promoting the progressive deinstitutionalisation and development of alternatives to institutionalisation in Viet Nam, UNICEF should assist the Vietnamese Government to **develop other domestic alternative care settings** that are culturally appropriate and based on the best interests and other rights of the child, such as foster families, cluster foster groups, respite care and social houses that provide care during the day.
 - UNICEF should consider favorably any request from the Vietnamese

authorities regarding special training for those responsible for carrying out intercountry adoption according to the principles of the Hague Convention.

▪ **The Hague Conference on Private International Law**

- It would seem desirable, if possible, that the Permanent Bureau takes a stronger stand in response to the need for the timely compilation and publication of ICA data by Contracting States, in line with the observations of the Special Commission (2005) which underlined the importance for States Parties to submit detailed annual statistics to the Permanent Bureau using forms that had been developed for this purpose.
- The Permanent Bureau should strive to secure additional resources that would enable it to play a more pro-active role in encouraging States to accede to the 1993 Convention, assisting in preparations for such States to do so, and monitoring issues and problems relating to the implementation of the Convention.
- With particular regard to Viet Nam, the Permanent Bureau should make every possible effort to provide technical assistance to the country's authorities once a formal decision to proceed towards accession has been made.
- The next meeting of the Special Commission, foreseen in 2010, should devote part of its work to a renewed examination of the obligations of Contracting States when organizing adoptions from non-Hague countries, and in that context should consider making a stronger and more detailed statement on the question.
- The Special Commission should also consider practical steps to ensure that "receiving countries" might agree on a more homogenous approach regarding the acceptability or not of ICA practice in any given "country of origin".

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ANNEX 1: PERSONS MET

Philippe **Alech**, Deputy Consul, Embassy of France

Naira **Avetisyan**, Children with disabilities specialist, UNICEF Viet Nam

Emmanuel **Boulestreau**, Conseillère adjointe de Coopération et d'Action culturelle, Embassy of France

Maeve **Collins**, Ambassador, Embassy of Ireland

Dang Minh Dao, Senior Legal Expert, Department of Adoption, Ministry of Justice

Jean **Dupraz**, Deputy Representative, UNICEF Viet Nam

Ho Dang **Hoa**, Country Director, Holt

Simone **Landini**, Deputy Head of Mission, Embassy of Italy

Le Anh Tuan, Vice Director, National Hospital of Gynaecology and Obstetric

Le Hong Loan, Section Chief - Child Protection, UNICEF Viet Nam

Le Thi Hoang Yen, Deputy Director, Department of Adoption, Ministry of Justice

Le Thi Tran Dai, Director, Centre for Social Protection of Vung Tau Children

Nina **Lissvik**, Second Secretary, Embassy of Sweden

Donald G **Mattingley**, Consular Officer, US Embassy

Jesper **Morch**, Representative, UNICEF Viet Nam

Nguyen Thanh Ha, Legal Expert, Department of Adoption, Ministry of Justice

Nguyen Thi Ha, Child Protection Specialist, UNICEF Viet Nam

Nguyen Trong An, Pediatrician, Deputy Director, Senior Expert in Planning and Nutrition, Ministry of Labour, Invalids and Social Affairs

Nguyen Van Binh, Director, Department of Adoption, Ministry of Justice

Nguyen Van Hoi, Chief of Social Work Section, Social Protection Bureau, Ministry of Labour, Invalids and Social Affairs

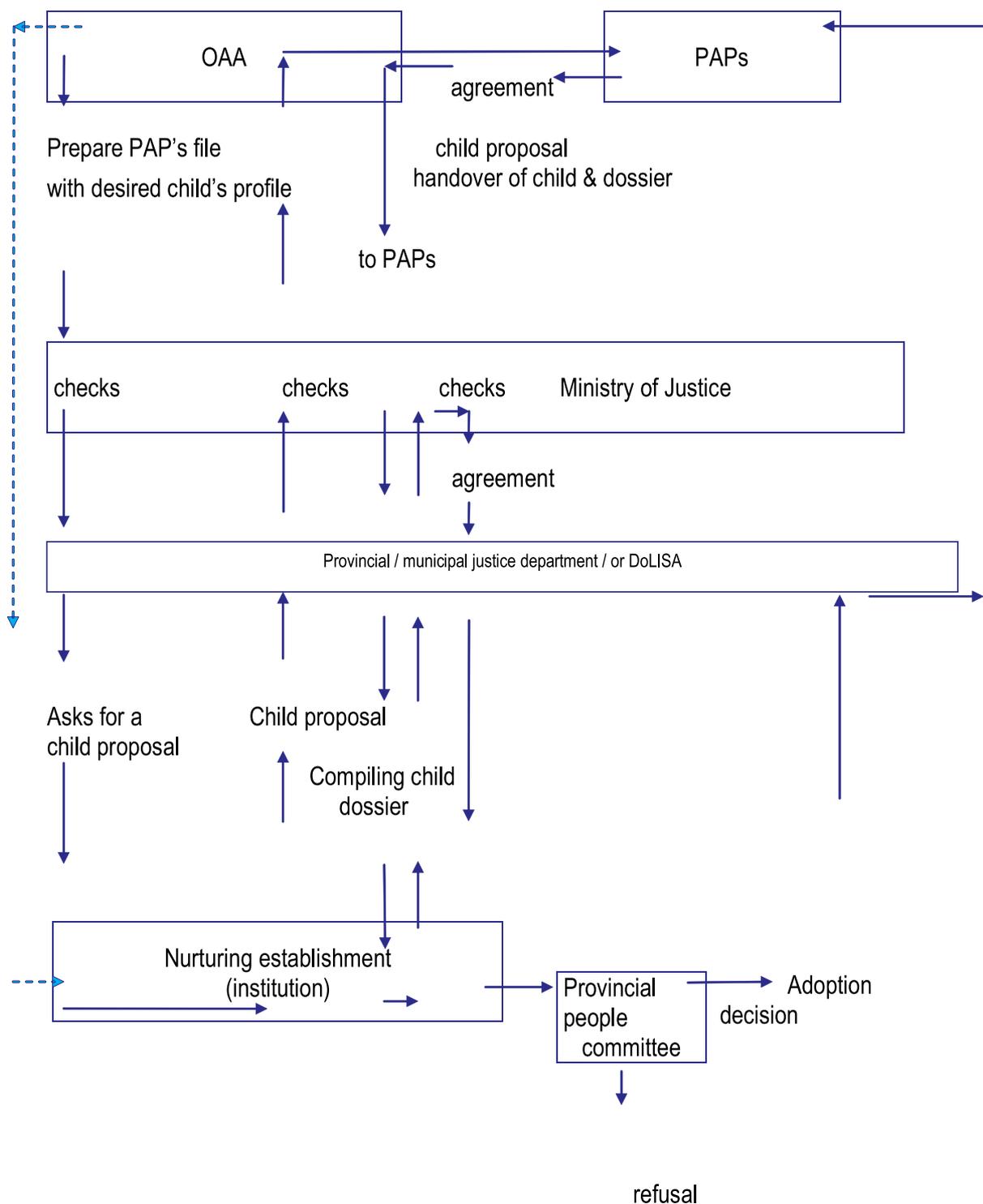
Nguyen Xuan Lap, Deputy Director, Social Protection Bureau, Ministry of Labour, Invalids and Social Affairs

Bob **Patterson**, Deputy Head of Mission, Embassy of Ireland

Diane M.**Swales**, Regional Adviser- Child Protection, UNICEF Regional Office, Thailand

Tran Van Nam, Senior Police Officer, Department of Justice (Vung Tau Province)

ANNEX 2: INTERCOUNTRY ADOPTION PROCEDURE FOR NON IDENTIFIED CHILD



ANNEX 3: PROPOSAL FOR REGULATIONS ON THE FOREIGN ADOPTION AGENCIES IN THE REPUBLIC OF VIET NAM, PREPARED BY INTERNATIONAL SOCIAL SERVICE

Chapter 1: General principles

Article 1 Scope

These regulations provide for the accreditation, procedure, competencies and surveillance of foreign adoption agencies active in the Socialist Republic of Viet Nam.

The content of the Law on adoption is reserved.

Article 2 Best interests of the child

2.1. Any activities carried out by foreign adoption agencies must be governed by the best interests and other rights of the child, as stipulated in the Convention on the Rights of the Child.

2.2. The authority responsible for surveillance takes into account the general circumstances surrounding an adoption procedure and takes all necessary actions to prevent any abuses and protect the children.

Article 3 Definitions

3.1. Foreign adoption agencies are governmental or non-governmental bodies whose activities related to intercountry adoption are duly authorized by the country where they have their head office.

3.2. The Central Authority for adoption within the MOJ acts as the authority responsible for the surveillance for foreign adoption agencies.

3.3. Intercountry adoption refers to the adoption of a child habitually resident in Viet Nam (“the State of origin”) who has been, is being, or is to be moved to another State (“the receiving State”) after his or her adoption in Viet Nam.

Chapter 2: Procedure for accreditation

Article 4 Conditions

4.1. A foreign adoption agency wishing to develop intercountry adoption activities in Viet Nam must meet all of the following conditions:

a) Have a legal address in the territory of a receiving State, member of the Hague

Convention of May 29, 1993, on the children protection and cooperation in the matter of intercountry adoption or on the territory of a State which is not a member of the Hague Convention, but has signed a bi-lateral co-operation agreement in the matter of international adoption with the Republic of Viet Nam;

- b) Be a legal non-profit entity, legally established in the receiving State;
- c) Be duly authorised to develop activities in the field of adoption by the competent authority in the receiving State;
- d) Be composed of competent staff, which includes a multidisciplinary team with social workers and professionals with legal training;
- e) Have a good knowledge of the Vietnamese legal system and international standards governing adoption and of Vietnamese culture and society.

Article 5 Documents

5.1. When submitting an application for accreditation, foreign adoption accredited bodies shall submit the following documents to the Authority of surveillance:

- a) The necessary documents establishing that all the conditions of article 4 are met;
- b) A formal request for accreditation duly motivated;
- c) Statutory documents;
- d) General activity report;
- e) Audited accounting documents for the past 3 years;
- f) List of staff and their curriculum vitae.

5.2. Two persons shall be duly authorized to represent the foreign adoption agency during the procedure for authorization and for the development of adoption activities in Viet Nam. One of the two can be of Vietnamese nationality. Their personal file shall contain:

- a) Curriculum vitae;
- b) Copy of identification card;
- c) No-conviction certificate;
- d) Authorization to represent the organization;
- e) Two photographs.

5.3. When the foreign adoption agency has adoption programs for special needs children, it shall provide a document outlining the specificities of this program which includes a description of the competencies of the staff in charge, how prospective adoptive parents are prepared and the follow up measures put in place.

5.4. All the documents must be submitted in Vietnamese or English.

5.5. If necessary, the Authority responsible for surveillance can ask for additional documents or contact the competent authorities of the receiving State.

Article 6 Procedure

6.1. After reception of the complete file of the foreign adoption agency, the Authority responsible for surveillance will check its content within two months.

6.2. If the documents meet all the legal requirements, the Authority responsible for surveillance will invite the foreign adoption agency to Ha Noi for an interview.

6.3. The Authority responsible for surveillance will issue its decision within three months after the interview.

Article 7 Decision

7.1. When taking its decision about authorizing a foreign adoption agency to undertake activities in Viet Nam, the Authority responsible for surveillance shall first consider the general context of adoption prevailing in Viet Nam at that time, and evaluate the need for an additional foreign adoption agency.

7.2. Special attention will be given to foreign adoption agencies having adoption programs for special needs children.

7.3. The authorization decision will specifically mention any conditions regarding where, and in cooperation with which entities, the foreign adoption agency is allowed to work.

7.4. The authorization is valid for 2 years.

7.5. The decision of the Authority of surveillance to refuse an authorization can be challenged within [*number of days according to Vietnamese administrative procedure*] days at [*competent Vietnamese authority*].

7.6. The Authority responsible for surveillance can withdraw the authorization at any time if the foreign adoption agency does not respect the Vietnamese law.

Article 8 Renewal of authorization

8.1. One month before its expiration, the foreign adoption agency can ask for the renewal of its authorization.

8.2. The request should include the following:

- a) Formal request for renewal
- b) Report of activities about the past year with the corresponding accounting documents
- c) All relevant information about changes in the organization, its activities, staff, etc.

8.3. In deciding about the renewal the Authority of surveillance will take due account of the articles 7.1 and 7.2. above.

8.4. Articles 7.3., 7.4. and 7.5. also apply to the renewal decision.

Chapter 3: Rights and obligations of foreign adoption agencies

Article 9 Prospective adoptive parents' file

9.1. The foreign adoption agency can introduce the prospective adoptive parents' file to the Central Agency for adoption in Viet Nam, according to the regulations of the receiving States. The file shall meet the requirements of the Law on adoption.

9.2. The adoption procedure is then regulated by the Vietnamese law on adoption. Foreign adoption agencies have no right to intervene at any stage of the procedure itself, unless it is foreseen by the Law or if the Central Agency asks for it.

Article 10 Activities in Viet Nam

10.1. Foreign adoption agencies activities in Viet Nam in relation to intercountry adoption include accompanying:

- a) Prospective adoptive parents in Viet Nam and supporting them with the practical aspects of their trip (accommodation, transport, translation, etc.);
- b) Prospective adoptive parents at the different administrative steps of the adoption procedure and providing them with the necessary support;
- c) Prospective adoptive parents when meeting the child and providing them with the necessary support;

10.2. The foreign adoption agency is not allowed to legally represent the prospective adoptive parents.

Article 11 Representative and national staff

11.1. When the foreign adoption agency has a permanent representative in Viet Nam, the agency is legally responsible for the actions of the latter.

11.2. When the foreign adoption agency has national staff in Viet Nam, the working relationships are governed by the labor regulations of Viet Nam.

Article 12 Obligations

13.1. Unless otherwise foreseen by the receiving State's regulations, the foreign adoption agency is responsible for:

- a) Registering the child at the Embassy of Viet Nam in the receiving State;
- b) Making sure that the adoption is registered with the relevant authority of the receiving State;
- c) Producing and transmitting follow up reports in accordance with article 55 of the Law on adoption;
- d) Supporting the adoptive family in preserving the cultural Vietnamese heritage of the child;
- e) Producing an annual report of activities with the corresponding accounting documents, addressed to the Authority responsible for surveillance.

Chapter 4: Fees

Article 13 In-country fees payable by adopters

14.1. For their activities in Viet Nam, foreign adoption agencies can charge:

- a) Daily wages for local staff, corresponding to Vietnamese standards;
- b) Effective costs like transports, accommodation, etc.;
- c) Reimbursement of administrative fees.

14.2. A detailed breakdown of the fees charged for each procedure shall be kept by the organization, signed by the prospective adoptive parents and enclosed with the annual activity report.

14.3. Any other fee charged in the adoption procedure is strictly forbidden and may be subject to prosecution.