

INTERNATIONAL CHILD ADOPTION
IN CAMBODIA

A SITUATION REPORT

May 2003

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1. Background information

In April 2003, The Royal Netherlands Embassy conducted a review of the situation of international adoption in Cambodia. The mission comprised consultations of over sixty well-informed individuals and professionals in Bangkok and Phnom Penh, as well as visits of orphanages in Cambodian provinces. The document contains also recommendations drawn from this review.

This report is considered timely, at a time indeed when a number of countries [still authorising adoption in Cambodia] are currently contemplating a suspension, as well as when drafts of major legal instruments relevant to adoption are to be reviewed very soon (notably the drafts of the Adoption Law, the Penal Code and the Civil Code).

2. General current situation

International adoption in Cambodia has repeatedly been the focus of much media coverage, and the subject of human rights investigations, prompting the Cambodian government to declare moratoriums on adoption. The last moratorium was lifted upon the issuance, in March 2001, of a sub-decree that was aimed at regularising adoption in the kingdom. Unfortunately, the latter did not change much of the situation and was obviously insufficient to stop an “industry” that is now well established and keeps growing up. Allegations of baby selling continue unabated. These reports followed by ad hoc investigations by concerned organisations and embassies, prompted a number of countries to decide the suspension of adoption in Cambodia, and notably the USA and France, the two main countries from the Demand side (see 3. *Other countries’ positions.* on page 11).

Cambodia would gravely suffer from countries’ decisions to suspend adoption given the tragic AIDS outbreak in the country. The latter is expected soon to swamp the social services and the traditional social system by a wave of tens of thousands of AIDS-caused orphans¹. International Adoption will be one of the possible ways to cope with this tide.

Allegations of baby selling and trafficking are *widespread*, but it is impossible to assess the exact magnitude of the problem. Given the type of crime, the socio-economic status and/or literacy level of the victims, as well as the weak existing referral system (to which these victims could turn to), only few cases reach the attention of human rights investigators²; but they seem to represent only the visible side of the iceberg. The mission did not conduct formal and thorough investigations per se, due to its a tight timetable and mandate.

The fact that thorough investigations – whenever they could be conducted – have often confirmed the allegations, seems to indicate indeed that the extent of the problem is important, and does require serious attention.

The lack of transparency in the system provides the necessary screen for corrupt practices to take place within ministries, but also for so-called “adoption facilitators” to exploit the adoption “market” for their sole profit.

¹ It is estimated that, in a near future, the AIDS epidemic will orphan some 140,000 children in Cambodia. Out of these, some 70,000 may be reintegrated in the extended families; a few more placed in institutions; but the rest may end up in the streets. There is therefore urgency on that matter.

² Birth parents who have been tricked by “adoption facilitators” to sell their child are most of the time from the lowest socio-economic stratum, with a very low level of literacy. They do not know their rights, and/or where to file a complaint. Finally, they may also be ashamed of having sold their baby and would not dare to confess it to anybody. All this makes referral to the proper authority difficult and leads to a very poor reporting level.

In other words, the current official adoption system in place (see *The current procedure in place:* p.4) has insufficient safeguards to prevent serious abuses, such as baby selling and baby trafficking, and to protect birth and adoptive parents.

Yet, Cambodia has all interests to improve its adoption system and see repeated reports of abuses in the kingdom disappear from the international media coverage.

Conclusion:

The current situation of international adoption in Cambodia can be qualified as extremely worrisome.

2.1. The current procedure in place:

1.1.1. The procedure as it is established officially, and ... as it is in reality:

The official procedure in place in Cambodia for International adoption is enshrined in a Sub-Decree n°29 dated 14 March 2001, that describes the main steps and the different ministries involved. The three institutions in the circuit are the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (MoSALVY), the Ministry of Foreign Affairs (MFA), and the Council of Ministers (CoM). The Ministry of Justice is not part of the procedure³

(see also the charts in annexes)

The official procedure and system in place	In reality, the risk is this to happen...
A child is orphaned as a result of his/her parents' death or of abandonment.	There is a growing number of orphans in Cambodia due notably to the AIDS outbreak, but in the Adoption circuit, reports have demonstrated that children are also bought (20-100 USD) by "adoption facilitators" from very poor parents.
The person who found the baby, reports to the next authority. The latter is due to investigate (and seek the parents) before to send him/her to the orphanage. He/She must write a report on the finding and subsequent investigation.	In case of a flawed adoption circuit, the "facilitator" brings the child to orphanage directly. Then to speed up the process the child's picture and a doctored history of the child is posted on the web to attract prospective parents.
The orphan is found and brought to the orphanage by hospital officials, police chief or Chief of village.	In the case of a trafficked baby, the latter arrives directly to the orphanage and "facilitator" or accomplice orphanage director "arranges" for the paperwork to be signed by the required local officials (mainly chiefs of village). Some private "centres for adoption", at the beginning of their business, have had also their first children transferred straight from State orphanages.
If after 3 months of intense investigation, and public announcement, there is still nobody to claim for the child, a <i>Certificate of abandonment</i> is issued with the official signing as a witness.	The investigation is most of the time very loosely conducted, if any. The public announcement is equally neglected or posted at some places where people can hardly see it. Naturally in cases of trafficking, both

³ At one stage, some prospective adoptive parents attempted to skip the MoSALVY and MFA by processing their adoption dossier through the courts of justice. This prompted an official reaction from the MFA expressed in a letter to all diplomatic missions (MFA/098 dated 20 Jan. 2003) clearly forbidding this involvement of the courts in the adoption process.

	procedures are either skipped or conducted in a way that renders them totally useless.
Officials provide and sign the required documents, such as the <i>birth certificates, certificates of abandonment, death certificates</i> of genuine orphans' parents.	In Cambodia, an average of only 22% of the children are registered at birth ⁴ . Amazingly enough, all babies for adoption dispose of a birth certificate. Official documents required for adoption are widely known to be doctored.
If the child is still at the orphanage after 3 months without any parents claiming for him, the director of the orphanage sends a letter to MoSALVY so that the child can be registered in the list of "adoptable" children.	In case of flawed adoption circuit, adoptive parents are already identified, the child's date of arrival at the orphanage is antedated by the director so that the child is immediately available for adoption upon arrival. Indeed, prospective parents are often sent the child's dossier by the "facilitator" <u>before</u> even the child is in the official MoSALVY list of orphans. Once adoptive parents have expressed interest ("hooked"), the facilitator will "arrange" with MoSALVY officials the immediate entry of the child in the list of "adoptable" children, and the "matching" of this child's dossier with these particular adoptive parents' dossier.
The MoSALVY has a list of all registered orphanages licensed for adoption.	This list is hardly available. The criteria for registration and licensing are not clear since there are currently no official <i>minimum standards</i> defined ⁵ . It reportedly all depends then on the under-the-table payment for a Centre to obtain its registration and license. There are also a number of unregistered places that keep babies until such a time where clients are identified. These undisclosed homes are "protected" against control and competition from other adoption agencies.
The MoSALVY monitors and inspects the orphanages on a regular basis (reportedly 3 times a year).	Monitoring and Inspection are reported to be very irregular, weak, and highly tainted by corrupt practices. Sub-standard institutions can then pass the mark if they pay substantially.
Adoptive parents prepare their dossier according to both their country's and Cambodia's requirements.	Occurrences where parents' dossiers are incomplete are frequent. The psychological and social assessments are not always conducted by qualified and properly licensed professionals. It has been noted frequently that parents that have had their dossier rejected elsewhere are taking another chance in Cambodia where the rules are known to be more easily bent.
The prospective adoptive parents send their dossier to their embassy (covering Cambodia, either in Bangkok or in Phnom Penh) so that the latter, after checking it, forwards it to the Cambodia MFA.	Many prospective parents in the past have bypassed their embassy and dealt directly with each ministry, and each desk officer involved. They may otherwise arrange to have that done by a local "adoption facilitator". The lack of time and the strong urge to get the child makes the "facilitator's intermediary" an interesting option to many parents.
The Ministry of Foreign Affairs checks that the adoptive parents' dossiers, forwarded by their embassy, is complete and in conformity with Cambodian regulations. If the dossier is deemed	Some officials may use the dossiers to establish their own "prioritisation". To review, for instance, the parents' revenues declaration helps to prioritise the "best children" to be matched. The revenue details of

4 Ministry of Health / UNICEF Health survey 2000. 22 % is an average, but discrepancies between provinces are huge (i.e Svay Rieng 54.2% while Kampong Speu 0.6%)

5 UNICEF is currently working with MoSALVY on the establishing of Minimum Standards of care and services for orphanages. Meanwhile, inspections -- whenever they do take place -- are done using a simple checklist.

incomplete it is sent back to the prospective parents' embassy.	the parents may also serve as a basis of calculation for the "unofficial fee" that will be requested from them/their facilitator.
The MoSALVY compiles a list of all "adoptable" children in the orphanages throughout the country, and matches each individual dossier with that of adoptive parents (coming from MFA).	The matching is done often upon the prioritisation system cited above. Moreover, some children are already "booked" from the very first day they arrived at the "orphanage". The matching is done at MoSALVY... with "facilitation"(see above).
MOSALVY gives to the parents the list and addresses of orphanages. Parents go to visit them, and choose a child by themselves. They come back with a letter of motivation, containing the names of the child and of the orphanage. The Adoption Bureau then writes a letter to the orphanage asking to prepare the dossier.	In reality, often parents know their prospective adopted child <u>before</u> even arriving in Cambodia, in breach of all regulations. The process can still be followed however just for the sake of having the paperwork done in order.
The Council of Ministers checks the whole dossier and authorises or not adoption (" <i>at the discretion of the Cambodian Government</i> [Prakas]").	There is no indication of what could be the criteria for acceptance or not, but as an adoptive mother puts it: " <i>the higher the informal fee, the faster the processing</i> ".
He whole adoption procedure should follow this official circuit as detailed in the sub-decree.	Some parents have tried to by-pass the procedure by registering adoption through the courts of justice. This prompted an official reaction from the MFA expressed in a letter to all diplomatic missions (MFA/098 dated 20 Jan. 2003) clearly forbidding this involvement of the courts of justice in the adoption process.
The whole administrative process at the ministries is officially, free of charge . Although <i>donation</i> is encouraged in the process [Prakas].	Parents spend reportedly between 5,000 and 20,000 USD in the whole process, although it is believed that the biggest chunk goes more to the "facilitators" than to ministry officials or orphanages.
No "Mediator" is allowed in the procedure ⁶ .	In practice numerous agents are acting as " adoption facilitators ", in very unequal manners: some are agency duly licensed by their foreign country to process adoption, some are registered as Cambodian NGOs, some are benevolent foreign staff processing adoption out of compassion, and some are acting as "free lance" for-profit "facilitators".

Attached in the annexes are illustrative Charts of the system:

Chart 1 details what are the various requirements both for Cambodia and the adoptive country for the different protagonists.

Chart 2 shows how this requirement is actually fulfilled (the reality)

Chart 3 displays the official flowchart of the procedure as stipulated in the adoption sub-decree.

Chart 4 shows some of the many loopholes the current adoption procedure suffers.

Chart 5 presents a "typical" flawed adoption procedure resulting from baby trafficking.

Conclusion:

The current procedure suffers numerous loopholes. It is tainted with much corrupt practices, and is consequently enforced very loosely. The draft *law on adoption* currently under preparation will reportedly transfer the whole process to the MoSALVY.

⁶ Ref. MFA letter No 1740, MFA-IC/CD dated 31 August 1999, as well as the Art. 10 of the Sub Decree "*Delivery of orphan baby or child shall not be allowed to any intermediary agent*".

The weakest link of the process is that of the reception of the child at the orphanage. The process is nothing else than a paperwork in which a few dollars to local officials will suffice to obtain fake *Certificates of Abandonment*, fake *Birth Certificate*, or else. The consequence of this flaw in this particular step of the process is immense for, this is where/when the orphan status of the child is determined. When this step is flawed the chances for “baby trafficking” and “baby selling” are extremely high.

What appears is that MoSALVY officials have diverted efforts to seek foster cares, in-country adoption and other alternatives to the processing of International Adoption. International Adoption has become the prime option considered for orphans. This is in flagrant breach with the *Convention on the Rights of the Child* ratified by Cambodia (see *Legal issues* below), and with the *Hague Convention*.

Moreover, studies have also showed that even in case of good local foster care, the shift from fostering to in-country adoption is extremely difficult, due to poor legal mechanism. International Adoption has also spoiled the “market” for local Cambodians who would also want to adopt⁷. Since competition already exists among foreign prospective parents, it is all the more difficult for local Cambodians to compete.

The “adoption facilitation” is currently totally unregulated and uncontrolled.

2.2. Current legal framework for adoption in Cambodia

Adoption has always been a common practice in the Cambodian culture, where, in case of death of one or both parents, the extended family or neighbours would take care of the child/children. There is however no formal system for intra-country adoption. Adoptions in Cambodia have been regulated only by a few articles (108-114) of the Law on Marriage and the Family (Section IV: Adoption)⁸

International Adoption was officially stopped in Cambodia in 1991, although the Government began to allow some adoptions again in 1997. In 2001, the Royal Government of Cambodia decided to further regulate “the Adoption of Orphan Baby or Child by a Foreigner” with Sub-decree N. 29 ANK/BK (March 2001). Nowadays, the Bureau of Adoption and all competent Ministries admit that this instrument is the only one currently applied in the adoption process. Yet, it has proven to be insufficient to ensure careful and responsible international adoption, and unable to control abuses.

A number of good developments are nevertheless currently taking place, that should soon provide significant improvement in the adoption legal framework, notably the drafting of three major legal instruments:

- The drafting of the **Adoption Law** by MoSALVY assisted by UNICEF, largely inspired by the “*Hague convention*” and the *Convention of the Right of the Child*.
- The drafting of the Cambodian **Civil Code** assisted by the Japanese Co-operation, and in which a number of articles refer specifically to adoption.

⁷ And there are reportedly many Cambodians who are willing to adopt children, according to well-informed sources.

⁸ NA of State of Cambodia, 17/07/989, 17th session of the first legislature.

- The drafting of the new **Penal Code** of Cambodia assisted by the French Co-operation, which contains articles on trafficking as well as other articles that can be invoked in case of flawed adoption.

In addition to this existing local framework and these legal instruments soon to come, there are also a number of **international treaties, conventions and protocols** which Cambodia has ratified, accessed or signed⁹, some having force of law, and that can also be invoked in cases of flawed adoption¹⁰:

Out of all the International Treaties already ratified by Cambodia, one is particularly relevant to adoption, the *UN Convention on the Rights of the Child*.

1.1.2. The United Nations Convention on the Rights of the Child

The Convention on the Rights of the Child was ratified by Cambodia on 15 October 1992 with no reservations. The Convention is legally binding for the signatory country.

The Convention was incorporated into the Constitution of the Kingdom of Cambodia (1993) both implicitly and explicitly. Under Art. 131 of the Kingdom of Cambodia Constitution, all laws and decisions by governmental bodies must strictly conform to the Constitution. Without a contrary ruling from the Constitutional Council, the Convention can therefore be considered part of the domestic law and the provisions enforceable in court.

The Convention includes standards for alternative placement of all children and mandatory measures for detection and reporting of incidents of neglect and abuse. It expresses the need to consider the best interest of the child and to allow child participation in decisions, which affect him or her.

Art. 21 of the Convention, stipulates that "***States Parties that recognize and/or permit the system of adoption shall ensure that the best interest of the child shall be the paramount consideration***" and they shall give certain guarantees. States Parties, which allow national (intra-country) and/or international (inter-country) adoption, must develop legislation that provides sufficient regulation of the procedures. Art. 21 (a) specifically requires that competent authorities authorize all adoptions. Investigations should be conducted to ensure that the child's best interests are adequately evaluated and the family of origin is willing to give genuine consent to the adoption. Children who are of age to give their opinion should also be consulted, and adoption should proceed only following their consent. Article 21 (b), (c), (d) state that inter-country adoptions may be considered as an alternative means of childcare under certain conditions, but should only be authorized when the child cannot be suitably placed in his or her country of origin. Article 21 (d) obligates States Parties to ensure that all appropriate measures are taken to *prevent "improper financial gain for any individual involved in the process"*.

The most appropriate treaty to fulfil the States Party' obligations for the Child's Rights Convention is the ***1993 Hague Convention on the Rights of Children and Co-operation in Respect of Inter-country Adoption*** (commonly called "***the Hague Convention***"), as the latter expands upon the rights included in Art. 21 of the Convention.

⁹ See list of these instruments in annexes (prepared by LICADHO).

¹⁰ Credit: the following part is largely extracted from a text prepared by Martina Cannetta, from CIAI Cambodia. CIAI is an Italian NGO originally created by a group of adoptive parents willing to promote good regulations of international adoption, so as to prevent abuses.

1.1.3. The Convention on the Rights of Children and Co-operation in Respect of Inter-country Adoption (29 May 1993) (The *Hague Convention*).

Cambodia has not yet ratified it.

It is therefore highly recommended the Royal Government of Cambodia to ratify and implement the Hague Convention since the principles inspiring the Convention are precisely those currently missing in Cambodia (notably, the defence of the *best interests of the child*, and the necessity to consider *Inter-country Adoption only as a last resort*).

Among other advantages, the Hague Convention would also render obligatory the establishing of a **Central Authority on Adoption** in the country, which equipped with the proper check and balances, would constitute a major breakthrough in the adoption system in Cambodia (see further below).

Conclusion on the legal framework:

- A strong law on adoption (rather than a sub-decree) should be passed soon to properly regulate adoption. The law should be largely inspired from the *Convention of Rights of the Child* and the “*Hague Convention*”. Prior to its finalisation, the draft law should be shared for comments, sufficiently in advance, to all interested and competent Civil Society groups.
- Cambodia should ratify the *Convention on the Rights of Children and Co-operation in Respect of Inter-country Adoption* (The “Hague Convention”) at the earliest possible date.
- Civil Society groups, interested and competent in adoption matters should be consulted to finalise the respective drafts of the Penal and Civil Codes, and the latter should be passed and enforced in due time.
- “Adoption Facilitation” should be clearly defined and regularised in the law.

2.3. The law enforcement issue.

While awaiting the appropriate *adoption law*, the adoption-related articles in the new Penal Code and the new Civil Code, there are still a number of difficulties and offences that could be prevented if at the very least the current legislation was enforced. Naturally, the preparation of these very laws will only make sense if they are likely to be enforced afterwards.

Yet, Law enforcement remains very weak, as it all depends on unmotivated and low-paid civil servants. The system is then reported to be frequently hampered by corrupt practices at all levels. The well-known pattern of “culture of impunity” in Cambodia is patent in this area too.

Long and thorough investigations by the LICADHO and by the US embassy special Task Force have confirmed this situation. Prosecution and trials of human trafficking cases have been widely tainted with corruption leading to the dropping of the charges. The few people nowadays behind bars for child trafficking or baby-selling are not believed to be the main masterminds.

The situation has led to sub-standard institutions processing adoptions without proper monitoring and control, and “adoption facilitators” operating with no proper competencies nor licensing, yet “instructing” Civil Servants on what to do with adoption dossiers. Good Law Enforcement should include orphanages registered and licensed for adoption only if *minimum standards* of cares and services are respected. If they are not, the defaulting institution should be sanctioned and/or

subsequently closed. To afford this policy, *minimum standards* should be defined as soon as possible, passed and adopted¹¹.

No “facilitator” should get involved in any adoption cases unless duly registered following a clear accreditation system based notably on competence and accountability. The current legislation with regard to “adoption facilitation” (sometime called “mediators” or “intermediary”) is to the least, “confusing” or to the most, totally unrespected. This leads to a current legal *no-man’s land* where everybody interprets “adoption facilitation” his/her own way. The new adoption law should clearly specify the role, if any, of the adoption facilitators, their selection criteria, and their mandate. Facilitators should be made accountable.

Genuine investigation should take place, as per the official procedure, to seek the true history of the child. Any forging of documents by officials should be sanctioned by disciplinary action and/or prosecution.

Conclusion:

Problems encountered in the field of adoption can as well be considered as just one of the many expressions of the lawlessness and “culture of impunity” in Cambodia.

Basic law enforcement in the adoption process would already greatly improve the situation. It would for instance most likely eliminate the occasional offenders and discourage potential new ones. Serious report of abuses should be systematically investigated, and if proven, followed by prosecutions and arrests. Trials and effectively enforced sentenced should take place under the tight scrutiny of concerned embassies.

2.4. Cost, payments and bribery.

Out of the sixty persons interviewed, none could ever assert what was the cost of an adoption in Cambodia. There is indeed no official tariff stated. In fact, adoptive parents do pay, sometime a lot, throughout the entire Cambodian adoption circuit, but the money disbursed is not accounted for.

Given this “informal” system, it is very difficult to assess the real cost of an adoption in Cambodia. This is all the more difficult that it varies with the adoptive parents’ revenues, the ministry official involved, the dossier’s status, the urgency... and each protagonist’s ethics.

As a rule of thumb, and as an adoptive parent puts it: “*the highest the bribe, the faster the process...*”

As a mere indication only, it appears from various reports that adoptive parents would pay:

- To MFA: between 2,000 to 4,000 USD (which is said to be send to “some funds for children”)
- To MoSALVY: at least a “*voluntary donation*” of a minimum of 500 USD that is supported by a bill (the only official bill reported¹²).
- To CoM: several hundreds USD?
- To adoption “facilitators”: the most difficult to assess, as this varies greatly pending on whether it is an official licensed facilitator, or a private for profit one. It also varies very much on the revenues

¹¹ MoSALVY and UNICEF are currently working on these *Minimum Standards*.

¹² It is actually not a “Receipt” per se, but an official “Thank You” letter specifying the amount donated.

of the adoptive parents (US parents are reported to be the most heavily charged, double of the French, for instance): it may range from 2,000 to 20,000 USD).

- To orphanage (“voluntary” donations): between 800 to 3,000 USD
- Another way to count is also by the desks. Excluding the cost of the facilitator, at ministry levels, parents have reported having to pass through some 16 steps (desks) in the adoption circuit, with reportedly an average of 100 USD paid at each desk.
- Translation and Legalisation of documents at MFA: approx. 150 USD (circa 19USD/doc)
- Legalisation of documents by embassy (varies by the embassies): approx. 12USD/doc (with bill)
- Medical examination at a private clinic (sometime with bills) 70 USD
- Laboratory tests (HIV, Hepatitis ABC) at Pasteur: 170 USD (with bill)
- To this, one has to add the travelling documents and tickets for the child, the visa-related expenses and the passport.

An approximate total ranges from between 5,000 USD to 20,000 USD.

Some facilitators have repeatedly explained to government officials that it would be normal to charge (a reasonable price) for the administrative paperwork required, but that this needed due receipt. To no avail. They were repeatedly answered by MoSALVY officials “*There is a law that forbids us taking any money which benefit is intended to children...*”¹³

Conclusions:

This lack of transparency and accountability is a constant problem throughout the government circuit of the adoption process.

With regards to donations: there is a growing trend by orphanages to consider adoption as one of the main source of funding. This is becoming an even more worrisome trend when some orphanages are turned into mainly “adoption centre”, living exclusively on adoptive parents’ donation. This puts openly children’s life and survival at stake. It seems indeed rather irresponsible to expose the lives of children to the uncertainties of irregular, hypothetical and unaccountable source of funds. The closing down of such “Adoption Centres” should be seriously considered.

Moreover, the fact that more and more genuine orphanages see adoption as a good source of funds for survival constitutes an incentive for International Adoption over any other local alternatives. It also promotes the market and – once removed the last moral hesitations - trafficking.

3. Other countries’ positions.

The RNE conducted a local consultation of the diplomatic missions (embassies and consulates) in Cambodia and Thailand. A general picture of the various countries’ positions is in the annexes.

There is no common position among the diplomatic missions, with some countries still processing adoption (Belgium, Italy, UK, Singapore), some processing *partially* (Canada, for instance, where only the Quebec province still processes adoption, while all other Canadian provinces have suspended adoption from Cambodia), others have suspended adoption until the system provides sufficient safeguards (US, Finland, France, Netherlands, Sweden, Switzerland), and some are currently

¹³ Although it is not really clear what these officials refer to here, one may consider that it relates to art. 21 (e) of the *Convention of the Rights of the Child* that stipulates that “*the placement does not result in improper financial gain for those involved in it*”.

contemplating a suspension (Germany, Spain). Finally, a last group of countries that have received no requests for adoption [never or long ago], and consequently have not had the need to formulate a position on adoption in Cambodia to date (Austria, Greece, Portugal).

Despite this apparent lack of unanimity, it appears that those countries usually proceeding the largest quantity of adoption dossiers -- and have subsequently most knowledge of the situation (they may even have investigated cases¹⁴) -- are precisely those countries that have suspended adoption (USA and France notably).

Given the current worrisome situation of adoption in Cambodia, and the involvement of adoptive parents as well as foreign “adoption-facilitators”, there is a need for a continued pro-active involvement of embassies in monitoring very tightly the process.

4. Recommendations

Despite the complexity of the problem, there are a number of recommendations that can be drawn up from this mission:

- The Kingdom of Cambodia should ratify the *1993 Hague Convention on the Rights of Children and Co-operation in Respect of Inter-country Adoption*.
- The drafts of the *Law on adoption, the Civil Code and the Penal Code* should be reviewed by all interested and competent professionals and Civil Society organisations, signed and enforced.
- As long as a proper institution with suitable checks and balances is not established, **Embassies should continue a tight monitoring of the situation** and address the government whenever issues arise in the adoption process involving their nationals.
- Much more emphasis should be put, both in the law and in the procedure, on the **identification of the birth mother**. More thorough investigation should be systematically conducted to ensure the **orphan status of a child**. Moreover, only eligible children should be proposed to parents for adoption by the “facilitation” agencies, and never before such eligibility has been duly proven.
- Given the very bad reputation the judiciary system suffers in Cambodia, suggestions that the adoption *administrative procedure* be re-placed by a *judiciary procedure* was discarded.
- A set of *minimum standards* of care and services should be established and used as criteria for licensing of orphanage, for adoption processing, and for inspection.
- In line with the *Convention for the Rights of the Child* and the *Hague Convention*, efforts should be made so that International Adoption is considered only **as the last resort** rather than the main stream option. More emphasis should be put by the MoSALVY on fostering, alternative cares, and in-country adoption¹⁵.

¹⁴ This is especially the case of the US with the establishment of a Task Force that thoroughly investigated some 200 dossiers of adoptions (see more in annexe).

¹⁵ Some interesting works are done by UNICEF/MoSALVY, and other promising related experiences by WVI, as well as by *Servants* could be good sources of inspiration for larger scale implementation and policy orientation.

- There should be a clear policy on “**adoption facilitators**” taking into account expertise and accountability.
- The establishing of a **Central Authority** (as required in the Hague Convention) is highly recommended. The latter would function both as a Resource Centre and a Clearinghouse (see *Special Recommendation* below).
- There should be a clear **definition of what an “orphan”** child is in Cambodia. According to the present Law, a child may be adopted even if he has parents, as long as they give their approval (sometimes forcibly or treacherously¹⁶).
- Adoptive parents should be made aware of the risk they run in getting involved in unlawful activities (such as the 2 to 3 years of jail for the “making and *the use* of counterfeit documents”, Ref. Penal Code).
- Finally, there should be a consistent record keeping of all adoption dossiers, including of the history of each child that should not be kept at the orphanage only.

1.1.4. Special recommendation: the creation of an adoption “clearinghouse” in Cambodia.

Asked on how to better control the adoption procedure, most interviewees came up with or supported the idea of the creation in Cambodia of a kind of special “clearinghouse” on adoption. The latter would indeed afford tackling with a number of difficulties encountered in the processing of adoption at a time. One of the key-point of the suggestion was to put this clearinghouse under the direct monitoring of both the RCG and foreign embassies involved in adoption in Cambodia, since it concerns both Cambodians (birth parents, baby, facilitators, officials) and foreign nationals (adoptive parents and facilitators). The Clearinghouse would be staffed with Cambodian and foreign expert staff who would process the adoption dossiers. They would conduct spot visits of orphanages, and investigate suspicious cases. They would be accountable to the RCG. The tariffs of all services by this Clearinghouse would be transparent, and receipt delivered on all services paid. Modalities will need further discussion.

5. Conclusion:

In conclusion, it appears clear from this work that International adoption in Cambodian is still deeply tainted with unlawful and corrupt practices and that it suffers from a general lack of transparency. Although no fixed amount of money has ever been raised by the interviewees, it has been widely reported (including by adoptive parents themselves) that the adoption process involves a lot of money, mostly unaccounted for. Adoption has therefore turned into such a profitable business for some individuals, that the risks for a foreign agency – including qualified government-licensed agencies -- to get unwillingly involved in baby selling and human trafficking are very high.

Servants has reportedly established a Community network through which some 400 orphans are now taken care. Ref. the “*UNICEF Case study of Fostering & Kinship Care*”, *Servants HALO Project*”

¹⁶ With regard to the Abandonment Status of the child, the current requirement is deemed inappropriate. In Cambodia, a letter of agreement by the parents or guardian – as there is no Registry Office – suffices to send a child for adoption. No further documentation nor level of control is requested. This leaves open the door to much abuses. Not to mention that parents – often illiterate – are barely informed, if at all, of the consequences of their signature on such a letter.

The current legal framework, official procedure, and law enforcement situation do not provide indeed the safeguards necessary to carry out international adoptions in manners that would protect the interests of the children, the biological parents, or the prospective adoptive parents.

Annexes

- Flow charts of the Adoption system in Cambodia
 - Chart 1. The requirement in the current Adoption Procedure
 - Chart 2. The Current Adoption Procedure in Cambodia – The Reality
 - Chart 3. The Current Adoption Procedure in Cambodia (official Flowchart)
 - Chart 4. Some of the loopholes in the current adoption procedure in Cambodia.
 - Chart 5. A “Typical” Flawed Adoption Procedure Resulting From Baby Trafficking.
- The USA position
- A deceived adoptive parent’s testimony and subsequent reaction
- List of persons interviewed for the purpose of this report
- Position of individual countries on adoption in Cambodia
- List of International Treaties signed by Cambodia