

Children's Right to Identity in Viet Nam

Factsheet submitted to the UN Committee on the Rights of the Child

Session 90 Session (16 May 2022 - 03 Jun 2022)/State periodic report CRC/C/VNM/5-6

1 Creation of identity

- The right to birth registration and acquisition of nationality is recognised in the [Law on Protection, Care and Education of Children](#) (art. 11) and regulated by the [Law on Children](#), [Law on Civil status](#), [Decree on Guidelines for Law on Civil Status](#), the Decree on Civil Status Registration, the Prime Minister's Directive 24 of 2007, the [Law on Family and Marriage](#).
- Since at least 2014, the birth registration rate in Vietnam has been as high as 96,1%¹. However, UNHCR has expressed its concern in the past that "in practice children in the Northern mountainous areas and in the Central Highlands, as well as street children in urban areas [...] are still often unable to have their birth registered"².
- Children in street situations may still be registered after the legal period for registration of 60 days from birth has elapsed³. However, practical impediments have been reported⁴: (i) the fee payment (art. 11(2) of the Law on Civil Status), despite members of poor households should be exempted according to the same article and a fee should never be imposed for late registration (Prime Minister's Directive 24 of 2007); (ii) the request for bribe payments from birth registration officials; and (iii) the requirement to present an official proof of address.
- Although abandonment of children is prohibited (art. 7 of [Law on Protection, Care and Education of Children](#) and [Law on Children](#)), local media notes cases of abandonment of newborns by young mothers are increasing alarmingly, especially in remote areas and metropolises. Between 2015-2019, 25 children were abandoned in Hai Phong City and "around 40,000 abandoned babies were collected and buried by "Bao Ve Su Song" (Life Protection) organization under Tan Long Parish"⁵. Availability of official data is very weak, according to UNICEF⁶.
- Abandoned children or children with an unidentified father and/or mother are entitled to birth registration (art. 16, [Law on Civil status](#)). The procedure is in art. 14 and 15 of the [Decree on Guidelines for Law on Civil Status](#): "If there are not substantial grounds to determine the child's date of birth or place of birth, the date on which he/she is found abandoned shall be considered as the day and month of birth; the year of birth shall be determined according to the child's body condition; place of birth is where the child is found abandoned; native place is determined according to place of birth; and nationality is Vietnamese. The section of child's parents and race in the birth certificate and vital records shall be left blank and the phrase "abandoned child" shall be specified in the vital records" (art. 14(3)). This law may lead to inaccurate and missing information about the child's identity such as date of birth.
- As for children with unidentified parents, the phrase "children with unidentified parents" shall be specified in the vital records" (art. 15(5) [Decree on Guidelines for Law on Civil Status](#)). It does not seem that regulations to systematically record efforts

to proactively locate the child's parent(s) exist, for example by police. This is important in explaining why there are missing elements of a child's identity (i.e. efforts to restore identity).

- Authorities will post a notice of abandonment publicly at its municipal headquarters within 7 consecutive days (art. 14(2) [Decree on Guidelines for Law on Civil Status](#)) in order to try to identify the parents. However, in practice the efficiency of such notices is questionable given that the headquarters are not easily accessible and, in some cases, the birth parent(s) are illiterate.
- Although surrogacy was prohibited in 2003, altruistic surrogacy has been legal among close relatives since 2015 (arts. 94- 100 of the [Law on Family and Marriage](#)⁷ and art.6 of the [Law on Children](#).
- Only anonymous donors are allowed which impedes the child's right to identity, even if "characteristics of donors, particularly their race, shall be clearly indicated" (art. 3(4) [Decree on giving birth through in vitro fertilization and conditions for altruistic gestational surrogacy](#)).
- According to local media, although the rule is that the sperm or the eggs of one donor can only be used for one person, it "is difficult to enforce because one person can donate at many places without being detected" and "many couples opt for the black market to [obtain] sperm"⁸. This situation can lead to the creation of multiple siblings without their knowledge and affects their right to identity in family relations.
- Children born from surrogacy are registered at birth as in art. 16 of the [Decree on Guidelines for Law on Civil Status](#): "The child's parents sections shall be filled out according to the information of intended parents" (Article 94 of the Law on Family and Marriage). It does not appear that there is an obligation to record the details of the surrogate mother and/or any possible gamete use.
- Despite the Law on Vietnamese Nationality having protections, UNHCR reported that, as of December 2017 and according to the Government of Viet Nam, "the number of registered stateless persons and persons of undetermined nationality increased to 29,522 from 11,000 at the end of 2016"⁹ and also noted that Viet Nam led "a project of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) on 'promoting inclusion and on 'promoting inclusion and sustainable development in building the ASEAN Community through ensuring the recognition of the legal identity of all women and children in ASEAN'. The project aim[ed] at contributing to the enhancement of the ACWC's capacity in areas of legal identity, including through birth registration, issuing documentation and establishing nationality, and to promote the implementation of the relevant provisions in the CEDAW and CRC"¹⁰.

Potential consideration(s)

- What is Viet Nam doing to improve birth registration in remote/rural areas and for street children?
- Which measures are being implemented to address unlawful gamete donation and to prevent anonymous donations?
- What is the State doing to preserve information concerning the identity of the birth mother in cases of surrogacy?



2

Modification of identity

•The total number of children without parental care, destitute or abandoned children is estimated at around 170,000 (UNICEF)¹¹. Many of these children may be declared adoptable and as such, their original identity is modified. Children in need of intercountry adoption are “abandoned children, orphans, children with biological parents or relatives who are unable to take care of them, disabled children and children with serious diseases” (2019 HCCH [Country profile](#)). The Law on Adoption (art. 6(1) [Decree No. 24/2019/ND-CP](#)), states that nurturing centers are responsible for assessing the child’s adoptability, which may be problematic due to their conflict of interest in having children unduly declared adoptable, given the potential of incoming donations and contributions. Given this problem, children’s identities may be unnecessarily modified.

Potential consideration(s)

•What monitoring measures are in place to ensure that children are not unduly declared adoptable?

3

Falsification of identity

• Article 13 of the [Adoption Law](#) prohibits “taking advantage of the adoption to gain profit, to conduct labor and sexual abuse and exploitation of the child and child trafficking; producing fraudulent documents to proceed with adoption; taking advantage of adoption to breach laws and policies on population and family planning”. The concurrence of any of these prohibitions “shall cause a termination of adoption” and “individuals/organisations shall be, depending on their acts of violation, subjected to administrative or criminal penalty” (2019 HCCH [Country profile](#)). Despite these laws, media have reported several cases of child trafficking resulted in illicit adoptions¹² and forced prostitutions. It is not clear how the authorities have implemented the sanctions in these cases.

•According to art.6(4) of the [Law on Children](#), it is prohibited to “organize, support, incite or force the child to engage in child marriage” which results in an illegal modification of their identity. As reported by the Organized Crime and Corruption Reporting Project, gender imbalance in China “continues to fuel a market for brides among China’s abundance of single men, with tens of thousands of women and girls lured from Vietnam and other Southeast Asian nations over the past decade by traffickers promising lucrative jobs” and border closure due to Covid-19 “has hindered efforts to help victims escape slavery and sexual exploitation”¹³.

•Local media reports the existence of cases of illegal commercial surrogacy rings¹⁴, which can result on sale of children and illicit modification of identity.

Potential consideration(s)

•What monitoring and sanction measures has Viet Nam put in place to avoid the sale of children and their identities?

4

Preservation of identity and access to origins

•According to article 33 of the [Law on Children](#), “Children are entitled to access to information in a sufficient, timely and appropriate manner. They have the right to retrieve and obtain information in all forms as regulated by the law and engage in social activities in conformity with their age level, maturity level, demands and capacity.”

•Individuals can request a copy of the birth registration entry to the civil status registration agency either on their own behalf or through a representative (Art. 63 [Law on Civil status](#)), and have these copies certified (art. 62 [Law on Civil status](#)).

•Article 11(1) of the [Adoption Law](#), determines the right of adopted persons to know their origins and states that “nobody is allowed to obstruct an adopted person from knowing his/her origin”. Article 11(2) adds: “[t]he State encourages and creates conditions for adopted persons being Vietnamese living abroad to visit their native places”. The Department of Adoption, Ministry of Justice is responsible for preserving information concerning the adopted child’s origins, which is permanently stored and can be accessed by the adoptee and/or his/her representative(s) “under appropriate guidance” (2019 HCCH [Country profile](#)). The natural parents or guardians shall compile dossiers containing the birth certificate of persons introduced for adoption who currently live with their families and nurturing centers shall compile dossiers of children introduced for adoption who currently live in such centers (art. 18(2) [Adoption Law](#)).

•“The donation and receipt of sperm, eggs and embryos shall be encoded and entered into a database” (art. 23(1) [Decree on giving birth through in vitro fertilization and conditions for altruistic gestational surrogacy](#)).

Potential consideration(s)

• Despite vast legal protections, it is not clear what resources are available for adoptees to effectively search for their origins and whether statistics are available for successful searches.

•What services are provided to adopted children and children born through surrogacy searching for their origins?

5

Restoration of identity

•Article 26 of the the [Decree on Guidelines for Law on Civil Status](#) determines the procedure for obtaining a birth re-registration where the applicant’s birth was registered before 1 January 2016 (the date that the [Law on Civil status](#) came into effect) but the original birth certificate is no longer kept.

•According to art. 36 of the [Law on Children](#), “stateless children residing in the territory of Vietnam and refugee



children are protected and entitled to receive humanitarian assistance and search for their parents and families as regulated by the law of Vietnam and the international agreements to which the Socialist Republic of Vietnam is a signatory”.

- As stated by the UN Trust Fund for Victims of Human Trafficking “temporary centers for trafficking returnee women and girls only provide health services, psychological counselling, and legal assistance for one month”¹⁵.
- Children such as those belonging to the Rục ethnic minority who were taken away from their families and adopted “without appropriate conditions and informed consent of their parents”, whose number could not yet be estimated, are still living apart from their families and lacking information about their origins¹⁶.

Potential consideration(s)

- What measures are Viet Nam implementing to ensure reintegration of trafficked children, child brides or street children into their families of origin?
- What is Viet Nam doing to cooperate with receiving countries in locating and restoring child’s identity in intercountry adoptions and potentially international surrogacy arrangements, especially where there are illicit practices?

¹ UNICEF Data Warehouse. (n.d.). UNICEF DATA.

https://data.unicef.org/resources/data_explorer/unicef_f/?ag=UNICEF&df=GLOBAL_DATAFLOW&ver=1.0&dq=VNM.PT_CHLD_YOT4_REG.&startPeriod=1970&endPeriod=2020

² United Nations High Commissioner for Refugees. (2014). *Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: Socialist Republic of Viet Nam*. <https://www.refworld.org/pdfid/51c946514.pdf>

³ Consortium for Street Children. (2019, April 11). *The Legal Atlas for Street Children*. https://www.streetchildren.org/legal-atlas/map/vietnam/legal-identity/can-a-child-obtain-retroactive-or-replacement-birth-registration-documents/#_ftn9

⁴ *Ibidem*

⁵ Nguyen, L. (2020, September 14). *A harrowing phenomenon: More young mothers abandon their offspring*. VnExpress International.

<https://e.vnexpress.net/news/life/trend/a-harrowing-phenomenon-more-young-mothers-abandon-their-offspring-4156329.html>

⁶ IPS Correspondents. (2008, May 23). *VIETNAM: Infant Abandonment Worse Than Adoption Fraud?* Inter Press Service.

<http://www.ipsnews.net/2008/05/vietnam-infant-abandonment-worse-than-adoption-fraud/>

⁷ Hibino Y. (2019). Non-commercial surrogacy among close relatives in Vietnam: policy and ethical implications. *Human fertility* (Cambridge, England), 22(4), 273–276. <https://doi.org/10.1080/14647273.2018.1461936> and Hibino, Y. (2015).

Implications of the legalization of non-commercial surrogacy for local kinship and motherhood in Vietnamese society. *Reproductive BioMedicine Online*, 30(2), 113–114. <https://doi.org/10.1016/j.rbmo.2014.10.015>

⁸ Nguyen, H. (2019, August 29). *Couples struggle to get sperm donations*.

VnExpress International. <https://e.vnexpress.net/news/life/trend/couples-struggle-to-get-sperm-donations-3967906.html>

⁹ UN High Commissioner for Refugees (UNHCR). (2018). UNHCR Submission on Viet Nam: 32nd UPR session. <https://www.refworld.org/docid/5c52c6777.html>

¹⁰ *Ibidem*

¹¹ *Children in Viet Nam*. (n.d.). UNICEF. <https://www.unicef.org/vietnam/children-viet-nam>

¹² Hays, J. (n.d.). *ADOPTIONS IN VIETNAM, PROBLEMS WITH THE TRADE AND CHILD SMUGGLING*. Facts and Details. http://factsanddetails.com/southeast-asia/Vietnam/sub5_9c/entry-3392.html; The Schuster Institute for Investigative Journalism. (n.d.). *News Reports, Vietnam | Adoption | Gender & Justice Project*. The Schuster Institute for Investigative Journalism - Brandeis University. <https://www.brandeis.edu/investigate/adoption/vietnam-news.html>

¹³ Neal, W. (2020, March 18). *Corona Stalls Rescue of Vietnam’s Trafficked Brides*. Organized Crime and Corruption Reporting Project.

<https://www.occrp.org/en/daily/11850-corona-stalls-rescue-of-vietnam-s-trafficked-brides>

¹⁴ Cuong, M. (2019, August 16). *Surrogacy ring busted in northern Vietnam*.

VnExpress International. <https://e.vnexpress.net/news/news/surrogacy-ring-busted-in-northern-vietnam-3968055.html>

¹⁵ United Nations Trust Fund for Victims of Human Trafficking. (2018). *From victim to survivor A second chance at life*. United Nations Office on Drugs and Crime (UNODC), p. 29. https://www.unodc.org/documents/human-trafficking/Publication/UNVTF_Brochure_Achievements_Web.pdf

¹⁶ Larsen, P. B. (2008). *Will the Vietnamese Rục children come home? “case closed” or is there hope?* Brandeis University.

<https://www.brandeis.edu/investigate/adoption/docs/LarsenWilltheRucChildrenComeHome.pdf>

