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BANGKOK FOR USCIS

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SUBJECT: A/S Harty Addresses the Challenges of Intercountry Adoption
With Vietnam

1. (SBU) Summary: Assistant Secretary for Consular Affairs Maura Harty met on November 30 with GVN officials at the Ministries of Justice and Foreign Affairs, as well as the National Assembly, to discuss our serious concerns regarding the adoption program in Vietnam. Her discussions illustrated the challenges involved in ensuring a transparent and effective adoption process. Prospects for changes at MOJ's Department of Intercountry Adoptions (DIA) in the short term are dim, which puts our bilateral Memorandum of Agreement (MOA) on adoption in serious jeopardy. At the same time, the National Assembly and MFA indicated an intent to pursue serious legal reform, but not until 2009. We need to continue to engage and provide technical support for the drafting of new laws and Hague accession, while evaluating whether any program can function in the gap between the expiration of the current MOA and the implementation of new legislation. This could include a modified MOA limiting adoptions from Vietnam to the United States to the low-fraud categories of older children and those with special needs. End summary.

Meeting with DIA

2. (SBU) A/S Harty began the day by meeting Ministry of Justice Department of International Adoptions Director Vu Duc Long. A/S Harty expressed her serious concern and heartfelt disappointment that the promise of the MOA had failed to translate into a transparent adoption system that protects the children of Vietnam. Instead, she said, children have become a commodity in a system where corruption is rampant. A/S Harty stated that the MOA can be extended only if there were actions taken to punish those who violate Vietnamese law; a schedule of fees is published; and consular officers are allowed to verify information in adoption cases without hindrance by the GVN.

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3. (SBU) Long responded that the increase in the number of PAPs interested in adopting from Vietnam has put pressure on the adoption system to meet the growing demand from ASPs for more children. At the same time, he said that due to the "regrettable cases" reported by the Embassy, he has asked the provincial authorities to more closely review the paperwork connected with adoptions. He reiterated his past statements that consular verifications (i.e., field investigations) must be conducted in coordination with DIA to "ensure the safety of U.S. officials and to obtain more accurate statements."

4. (SBU) Long confirmed that the administrative weakness of the central government regarding adoption has precluded them from publishing a schedule of fees, and that this and other reforms will have to wait for the passage of a new law on adoptions. Long stated this law would probably be adopted in 2009, though he also admitted that the process of drafting the law has yet to begin.

5. (SBU) When asked by A/S Harty if any government official, ASP, or individual connected with adoption has ever faced judicial or administrative punishment in response to a complaint made by the U.S. or any other foreign government, Long replied that the cases raised by the United States did not involve a pattern of fraud, but rather misunderstandings about paperwork. A/S Harty responded forcefully that the Embassy has discovered clear patterns of child selling, emphasizing that this is something we cannot tolerate and that it highlights the need for independent consular verification. She concluded that fraud and corruption in the adoption of infants has become a major problem and that we are not making the progress we need to make. Therefore, she said, we must recognize that the MOA is in serious jeopardy at this point.

Meeting at MFA

6. (SBU) A/S Harty then meet at the Ministry of Foreign Affairs with Truong Xuan Thanh, Deputy Director General of Consular Affairs, and informed him of her discussions with DIA and her strong concerns about the lack of ability and will on the part of the GVN to regulate the adoption system. While acknowledging that DIA has the lead on this issue, A/S Harty encouraged MFA to play a more active role, given the importance of adoption in the bilateral relationship.

7. (SBU) Thanh agreed that adoption is a key bilateral issue, and stated that MFA is now taking a role in the process. He said that the problems of high demand for children, the competitive pressure created by the presence of over 60 ASPs in Vietnam, and the lack of a central authority have produced an unhealthy situation where children are sometimes treated as a commodity. He told A/S Harty that the current MOA has brought improvements, but that more needs to be done. This would include centralizing responsibility for

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regulating adoptions and finding a better system to control fees and

donations paid by PAPs and ASPs. Thanh mentioned that the GVN is exploring creating a central fund to receive and disburse adoption-related donations. Thanh also agreed that his ministry would encourage the timely passage of new legislation, agreeing with other Vietnamese officials that current problems cannot be effectively addressed until such legislation is passed and implemented.

Meeting with the National Assembly

8. (SBU) A/S Harty met with Nguyen Van Thuan, Chairman of the Law Committee of the National Assembly, and Ngo Duc Manh, Vice Chairman of the NA's Foreign Relations Committee, to discuss the prospect for legal reform of adoptions in Vietnam. She opened the discussions with a summary of the current problems regarding adoption and sought the committee chairs' support for a quick passage of a comprehensive adoption law. Noting that we had just completed the process of bringing our own laws into compliance with the Hague Convention, A/S Harty offered U.S. technical assistance in the drafting of Vietnam's new law.

9. (SBU) Thuan concurred that Vietnam needed new legislation to protect its children, and said that the NA hoped to pass such a law in 2009. While there is currently no draft of the law, the NA welcomed international assistance to ensure the law was compliant with the Hague Convention and international norms. Thuan stated that the GVN is currently fighting against corruption and cannot tolerate the type of wrongdoings the Embassy has uncovered. He expressed his hope that together we could empower the system for the sake of the children of Vietnam.

Meeting with the Deputy Minister of Justice

10. (SBU) A/S Harty concluded her bilateral meetings with a call on Deputy Minister of Justice Hoang The Lien, who supervises the work of DIA. She began by remarking on the frank discussions that had led to the 2005 MOA, and expressing sadness that the MOA had failed to live up to its promise and that the prospects for addressing these failings quickly through new legislation were poor. She voiced her "frustration, concern, and disappointment" over the lack of progress, but stressed that, although walking back from the MOA would be a shame, letting even one child be sold would be far worse. A/S Harty informed Lien that, as a result, we would need to find a new framework to serve as a bridge from the expiration of the current MOA until Vietnam is fully compliant with the Hague Convention.

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11. (SBU) Lien agreed that there had been "painful incidents" uncovered by U.S. consular officers, but stated that they were caused by a lack of experience on the part of DIA and provincial authorities. In response to the findings, the Minister had asked DIA to review the records of all provinces and ASPs to ensure that they are acting in accordance with the law. However, Lien also restated that the GVN could only support consular verification trips if they were announced in advance and officers were accompanied by local officials. He justified this on the grounds of security for Embassy staff, and also by noting that Vietnam had been a closed-door country for many years, and that at the local level officials might still obstruct foreign officials traveling without GVN escorts. Overall, Lien noted that the growing demand for children, pressure from ASPs, and the verification trips conducted by the Embassy had resulted in a situation where the adoption process in Vietnam was "out of control." He stated that if order could not be restored, adoptions would need to be suspended.

12. (SBU) Lien also noted that problems at the local level prevented the regulation of fees and donations. He stated that currently donations were not fixed; like Long, he claimed that GVN research had shown that "no country in the world" has a fixed level of donations documented in writing. Lien opined that any donations should be made via bank transfer, and expressed his view that some ASPs were "using cash illegally" for donations, and "making significant profits". (Note: post regularly receives reports of ASPs instructing PAs to bring thousands of dollars in cash for donations. DIA has never taken action against this practice, although they have stated on occasion that it is illegal. End note.) Lien added that the new law would create a transparently administered fund to which a fixed donation would have to be made. Unfortunately, he also said that individuals and ASPs would remain free to make "additional voluntary donations" directly to orphanages.

13. (SBU) Lien concluded by asking whether verification trips were conducted in other countries, as they indicated to him that the USG felt Vietnam was "doing a bad job" and that we "did not trust their

documents as a result of some recent mistakes." A/S Harty replied that we verify cases in every country, but we must recognize that the problems in Vietnam are not "mistakes." Rather they are signs of a serious problem that makes the current MOA untenable. She concluded by expressing her hope that for the sake of the children we can work towards an interim MOA which would limit adoptions to older children and those with special needs.

Comment

14. (SBU) A/S Harty's meetings, especially those with DIA and MOJ, underscore the dim prospects for reform in Vietnam's adoption system

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in the short term. Officials are clearly embarrassed by the information uncovered by our consular investigations, but would prefer to address this by preventing consular officers from doing their jobs rather than by addressing the core problems of corruption and child selling. At the same time, there is a clear realization that new legislation is needed, but that it will not be in place until 2009, at the earliest. This leaves us in an untenable position. We can not continue the current MOA under these conditions. Instead, we will need to work hard to support GVN efforts to draft new comprehensive legislation, while simultaneously developing a bridge adoption program that is restricted to the low-fraud categories of older children and those with special needs.
End Comment.

15. This message has been coordinated with Consulate General Ho Chi Minh City and cleared by A/S Harty.

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