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Adoption as a child protection measure in the Republic of Armenia:

Assessment report

Content

Prefatory note 5

1. Introduction 6

1.1. The 2015 report in perspective 6

1.2. Child protection overview 7

1.3. General observations about social services system and their consequences on child placement 8

a) General considerations about the Armenian child protection system 8

b) Recourse to residential care and influence of the Diaspora 9

c) Support to biological families 10

d) Foster care 11

e) Guardianship 11

2. Procedures and circumstances surrounding deprivation of parental rights 12

3. Procedures and circumstances surrounding consent to adoption by biological parents 15

4. How do children become “adoptable”? 18

4.1. The legal status of the child 18

4.2. The concept of “adoptability” 18

4.3. Children with special needs 19

5. Statistics 22

5.1. Comparing domestic and intercountry adoption figures 23

5.2. Notes on adoption data 24

6. Domestic adoption 26

6.1. Stigma associated with adoption 26

6.2. An insufficiently child-centred approach in the adoption process 26

6.3. Inadequate criteria for PAP assessment 26

6.4. The absence of preparation of prospective adopters 27

6.5. The Matching 27

6.6. Probationary period for cohabitation 28

6.7. Judicial decision 28

6.8. No post-adoption services or checks 29

7. Intercountry adoption 30

7.1. Bias of domestic procedure affecting intercountry adoption 30

a) Possibility of preliminary contacts between biological families and prospective adoptive parents 30

b) Matching 30

7.2. From the receiving countries' perspective 31
7.3. Adoption Accredited bodies 32
a) Prohibition of adoption accredited bodies 32
b) Information posted by adoption accredited bodies 32
7.4. Financial questions 34
8. Proposals for reform communicated by Armenian interlocutors 36
8.1. Set up a national database of adoptable children 36
8.2. Increase the minimum time on the register for children adoptable nationally 36
8.3. Increase the duration of validity of the authorisation issued to domestic prospective adopters 37
8.4. Prioritise domestic prospective adopters according to their date of authorisation 37
8.5. Strengthen the follow-up of intercountry adoptions 38
9. Our proposals for necessary reforms 39
9.1. Proposals concerning adoption in general 39
9.2. Proposals concerning domestic adoption issues 39
9.3. Proposals concerning Intercountry adoption issues 40

List of abbreviations:

Adoption Act:	Decision on approving the procedure for adoption and the procedure for registration in diplomatic representations and consular offices of the republic of Armenia of children, who are citizens of the republic of Armenia, adopted by foreign citizens, stateless persons and citizens of the republic of Armenia residing outside the republic of Armenia; on making a supplement to the decision of the government of the republic of Armenia no. 1919-n of 28 November 2002 and on repealing several decisions of the government of the republic of Armenia
CPU:	Child Protection Unit
GTC:	Guardianship and Trusteeship Commission
GGP1:	The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice No. 1
1993 Hague Convention:	Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption

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Prefatory note

This assessment was carried out by Hervé Boéchat and Nigel Cantwell of International Social Service (ISS)[1], with the valuable assistance of national consultant Anna Mnatsakanyan. This independent assessment was commissioned by UNICEF Armenia and by the Ministry of Justice of Armenia. The main aims of the exercise were, in summary, to:

- review and assess the domestic and inter-country adoption situation in Armenia and develop a package of recommendations for the government and all involved parties with the goal of improving the implementation procedure;
- assess the existing structures, legislation, bylaws and key procedures, including the monitoring mechanism relevant for domestic and inter-country adoption;
- look into the implementation of adoption, particularly into the selection of adoptable children and into the selection criteria for prospective adoptive parents, as well as into the coordination between ministries and residential care institutions.

To this end, in addition to reviewing a wide range of pertinent documentation, the authors of the assessment undertook a visit to Armenia from 24 to 28 November 2014, during which they had discussions with relevant actors, notably Armenian governmental officials at central and provincial levels, representatives of foreign governments, directors of institutions for children, etc.
As regards the legislation, a preliminary report was already submitted by the end of December 2014.

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 Armenia and to foreign governments and entities.

Hervé Boéchat
Nigel Cantwell
Geneva, February 2015

[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.

1. Introduction

1.1. The 2015 report in perspective

The Authorities of Armenia have been seeking to improve the country's alternative care and adoption systems for many years. Indeed, already in 1998, the then Ministry of Social Security requested assistance in these fields, resulting in a first mission by International Social Service (ISS) in conjunction with UNICEF.[2] Among the specific concerns addressed at that time was the need to support family-based alternative care provision, to promote national adoption, and to improve the domestic and intercountry adoption systems "to ensure that the best interests of the child are met", including the issue of Armenia's possible accession to the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* (hereafter: "1993 Hague Convention").

Since that 1998 report, of course, the situation has evolved on a number of fronts, not least in that Armenia became a Contracting State to 1993 Hague Convention in 2007. As stated by UNICEF's Country Office in Armenia, "Armenia has made considerable progress in improving the lives of children through the adoption and amendment of appropriate legislation and the implementation of reforms in the health, education and child welfare". Armenia ratified important international documents, including Convention on the Rights of the Child in 1992 and its two Optional Protocols to the CRC in 2005.

That said, certain developments have in fact been surprising, such as the apparently substantial reduction in domestic adoptions, despite the stated objective of increasing their number. At the same time, many observations made in 1998 still seem to hold true, notwithstanding accession to the Hague Convention. These include clear concerns about the lack of a child focus in both domestic and intercountry adoption procedures (as exemplified by the active role of prospective adopters in "selecting" their child) and the disturbingly limited input from qualified social workers at all stages of the alternative care and adoption processes.

Recognising the limited time available to us for fact-finding, we have attempted to gain initial understanding of the factors that have held back progress. This report will indicate a number of areas where we feel that necessary changes to the current and long-standing system have, deliberately or not, been sidelined by concerned actors in Armenia and/or ignored by foreign protagonists. As a result, we are bound to doubt that the "best interests of the child" in relation to adoption have been the "paramount consideration"[3] of many of the actors involved, either in the past or today.

Another kind of problem that seems to persist, and that has impacted on our assessment, is the fundamental one of accessing reliable and concordant information in Armenia. The 1998 mission already noted, for example, that "it was extremely difficult for the delegation to obtain information about the number of adoptions which occur in Armenia each year. Different figures were offered by various government officials."[4] As will be seen at various points in the present report, there were significant discrepancies in the data and information we received from different sources on a number of key issues, and time constraints meant that we were not always able to resolve them.

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[2] See UNICEF & ISS (1998) "Armenia: report of a mission to assist in developing a family-based policy for children who are not cared for by their family or at risk of abandonment".
[3] Cf. CRC Art 21.
[4] UNICEF & ISS (1998) *supra*, p. 12.

Any review of adoption systems necessarily takes into account all aspects of the overall provision of alternative care for children, and in previous similar assessments we have devoted substantial space to this question. While we have certainly looked at this and borne it in mind in developing our conclusions, in this report we do not go into detail about alternative care in general since this is the subject of a separate consultancy in the framework of the USAID-supported child-care and protection reform process now being launched. We see our findings and recommendations, moreover, as being mutually supportive of the key thrusts and elements of the draft roadmap proposed by the consultant in question, as it stood at the time of writing.[5] Implementation of such a roadmap will undoubtedly contribute to facilitating best practice not only in alternative care as such but also in the appropriate determination of adoptability and any subsequent adoption procedure.

1.2. Child protection overview

Armenia's estimated population in 2012 amounted to 2,969,100 inhabitants, of whom 731,500 were under the age of 18 years and 215,300 were under the age of five years[6]. As stated by UNICEF in the country, '[p]overty continues to be the major cause of exclusion of children, particularly those living in rural areas, from social services. Despite noticeable progress in reducing poverty rate in Armenia, 41.9 per cent of children under 5 are considered to be poor and 8 per cent are extremely poor'[7].

Based on 2014 figures, there were 3,630 children in institutional care. There were 2,819 children with disabilities in public institutional care, while 682children were living in boarding schools supported by the government, 18 were in foster care. In 2013, 47 children were adopted, either domestically or internationally." [8]

A UNICEF report on costing alternative care services, in 2009, identified eight state-run orphanages and four non-state-run orphanages in Armenia. State orphanages included two baby homes, one of which was a specialised home for children with disabilities aged 0-6, one orphanage for older children with disabilities, two orphanages for children aged 0-18 (and older), and three orphanages for school-age children (6-18)9. The circumstances and quality of the care provided in orphanages in Armenia has been under strong criticism, as reflected in a report prepared by the British Embassy in Armenia and the Ombudsman's Office. Indeed, there have been reports of beatings, abuses and exploitation. In addition, the physical infrastructure requires considerable repairs, as it is in poor condition[10].

A specific and unique feature of residential care in Armenia appears to be the existence of state-run night care centres. "They came into existence in September 2007, when the program of discharging children from boarding schools entered into the operational phase. As a result of the program, 17

[5] Email communication with the consultant concerned, Ms Natia Partskhaladze, 5 January 2015.
[6] UNICEF, Information by country: Armenia, Statistics, http://www.unicef.org/infobycountry/armenia_statistics.html (consulted on 12 November 2014).
[7] UNICEF Armenia, http://www.unicef.org/armenia/overview.html (consulted on 12 November 2014).
[8] Statistical Yearbook of Armenia, 2013/2014; UNICEF Report, Rapid assessment of residential child care institutions under the Ministry of Labour and Social Issues of the Republic of Armenia, 2014; Ministry of Labour and Social Issues, http://www.mlsa.am/home/index.php?menu_id=110&child_id=128&code_id=200
[9] UNICEF Armenia, Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services, July 2010, p. 14, http://www.unicef.org/armenia/Costing_Residential_Care_Institutions_in_Armenia_report_eng.pdf.
[10] CRIN, Orphanages are in deplorable condition, claims new report, https://www.crin.org/en/library/news-archive/armenia-orphanages-are-deplorable-condition-claims-new-report.

boarding schools ceased to exist in this capacity and were transformed into ordinary schools, closed down or re-profiled. A screening of all children in the institutions selected for discharging has shown that, for many of the children in specialized boarding schools, the only developmental problem that they had was that of poverty and social neglect. After the discharging, boarding schools of the general type ceased to exist, and only boarding schools for children with special needs still remain in smaller numbers. Immediately after the discharging of boarding schools, the number of children in night care centers reached 950. In 2009, that number came down to 710."[11]

1.3. General observations about social services system and their consequences on child placement

As mentioned above, this report is focusing on adoption related issues, and is not analyzing the Armenian child protection system as such. However, during our various meetings in Armenia, we came across a number of aspects of this system that are of direct and significant relevance to adoption. In addition, considering the subsidiary nature of adoption, it is important to stress the factors that are directly influencing its implementation.

a) General considerations about the Armenian child protection system

According to various sources, the system in place still suffers from several lacunae. In 2003, UNICEF noted that 'the Government of Armenia developed and endorsed a National Plan of Action for the Protection of Children's Rights for 2004-2015 as a follow up to the pledge made at the UN General Assembly's Special Session on Children in 2002. (…). However, despite these developments and the presence of political will, the implementation of laws still remains a problem as few working mechanisms have been established and resources, both human and financial, have been insufficient to translate provisions of laws into results for children'[12]. Later on, SOS Children's Villages International recognised the efforts of the Government of Armenia in developing an institutional framework to respond to child protection issues. Indeed, "[i]n 2011, the government, with the support of UNICEF, introduced a new model to integrate social services in line with the Council of Europe Guidelines on the reform of social services. It is planned that the Territorial Offices of Social Services will be integrated into the system and given specific responsibilities in relation to children's rights and protection. Some of our observations are very much related to these questions, in particular:

- ***Responsibilities and coordination among official actors:*** We have been concerned about the apparently low level of coordination and sharing of responsibilities among relevant actors, especially GTCs and CPUs. In part, this seems to be the result of an unclear or somewhat illogical division of responsibilities among those actors, as well as lack of motivation and means to liaise with partners.
- ***Inadequate involvement of social workers:*** In general, tasks that should normally be undertaken by qualified social workers interacting with the persons concerned appear to be carried out in a purely administrative manner or, in some cases, not at all. This affects the

[11] UNICEF Armenia, Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services, July 2010, p. 14, http://www.unicef.org/armenia/Costing_Residential_Care_Institutions_in_Armenia_report_eng.pdf.
[12] UNICEF Armenia, http://www.unicef.org/armenia/overview.html (consulted on 12 November 2014).

appropriateness of decision-making on a wide range of key issues, particularly through the consequent lack of thorough assessments (social reports) in relation to, for example, the placement of children in residential institutions, adoptability, the fitness of national applicants to adopt, the matching process and post-adoption support domestically (this is discussed in more detail below).

- ***The need for "qualified case managers":*** the two points above also underline the necessity to put in place a system where the child (and his/her file) is properly followed by a qualified case manager, able to identify the needs of the child in care and to prepare a plan for his/her life, in short/mid and long term. A system where the child's dossier goes from one service to another without follow up and supervision is contrary to the basic principles governing the protection of children.

b) Recourse to residential care and influence of the Diaspora

According to UNICEF's report on costing alternative care services "residential care services have been inherited from the former Soviet Union and have existed for many years. Although their share in the total amount of services provided to children in need of government protection in Armenia is gradually going down, it still remains high. Some of the alternative services mentioned above have been developed in Armenia only recently. They are not available on the national scale yet, and cover only selected locations"[13]. SOS Children's Villages International adds that "the Family Code and the Law on the Rights of a Child both emphasise that family-based care options, such as adoption, kinship care and foster care should be the first choice and only where these options are not available should institutional care options be considered. However, in practice, clearly defined mechanisms and measures to ensure this do not exist. Residential care remains the main alternative care option.[14]"

Understandably, the Armenian Diaspora has always been sensitive to the fate of children in its home country. As is often the case in such circumstances, several foundations and NGOs collected funds with the aim to address the needs of disadvantaged Armenian children. From the specific perspective of this report, however, this well-intended movement has also had unfortunate consequences. As related by the online newspaper "The Armenian Weekly"[15]: "*The diaspora has consistently supported orphanages and institutions in Armenia—often moved by the memory of orphaned genocide survivors, and the more recent earthquake in Armenia that left many children parentless. The word 'orphans' resonates very well with Diasporan Armenians. They start to immediately feel associated with that cause, and become ready to donate money […]. Some institutions have been turned into highly comfortable well-equipped and furnished premises owing to funds from private Diasporan Armenians as well as diaspora-based organizations, funds, and associations. This, in turn, attracted many vulnerable families and seduced them into placing their children in institutions that provide, as they erroneously believe, the best for their children.*"

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[13] UNICEF Armenia, Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services, July 2010, http://www.unicef.org/armenia/Costing_Residential_Care_Institutions_in_Armenia_report_eng.pdf.

[14] SOS Children's Villages International, A snapshot of alternative care arrangements in Armenia, 2012, p. 6, http://www.sos-childrensvillages.org/getmedia/115e06b4-6e58-4e1b-ba9d-ae75a482d674/Alt-Care-Armenia-EN.pdf?ext=.pdf.

[15] "Ending the Era of Orphanages in Armenia", by Nanore Barsoumian on August 15, 2012 Special Reports http://armenianweekly.com/2012/08/15/ending-the-era-of-orphanages-in-armenia/

This concern was also addressed by UNICEF, which in late 2014 issued s terms of reference for a "Consultancy on Enhancing Diaspora and Migrants Assistance to the Development of Armenian Children"[16]. In describing the assignment, UNICEF confirms *that "very often, diaspora organizations and individuals, with noble motivations behind, support institutional care organizations (orphanages) instead of supporting family based services which don't prevent family separation. Assistance can range from basic gestures of in-kind donations and individual cash transfers to family to more organized approaches through fundraisers and the establishment of diaspora NGOs".*

- ***Improve and develop communication towards Armenian communities*:** Placing children in institutions is indirectly supported by a "social tradition" inherited from history, and by misguided donations from abroad. Efforts are still needed to better explain to the Armenian population in-country and abroad that institutions are not the right option for children.

c) Support to biological families

As for the background of children living in institution, a recent report states thathalf of institutionalised children have both parents (51,8 %); 22,3% of them have one parent and only 4,2% are left without parental care"[17]. It is interesting to note that the percentage of children under age three among all children placed in institutions in the country is among the lowest (under 2%) of all CEE/CIS countries[18].

A programme of support to biological families was first introduced by the NGO Aravot in Lori Marz when the downsizing of boarding schools became operational. 'The NGO did a survey of all the children who lived in the five boarding schools (1,021 children) and their families, and selected 200 families that had potential for reintegrating with their children. For each of the families, a more in-depth survey was conducted in order to determine how the family could be helped to take back its child or children from the boarding school. Based on this second survey, 40 families were selected. The number of families selected for providing assistance depended on the amount of funding provided from the state budget for this purpose. Another 10 families were included into the program during the year in order to prevent family disintegration. Every year since 2006, 50 families leave the program and 50 new families are selected for inclusion into the program. Assistance to biological families under this program is provided for the first year only. 200 children have passed through this program in four years (50 children every year). The program is funded from the state budget'[19]. However, we were also told that while children are leaving the residential care institutions, an equivalent number of new children are being placed into residential care.

- ***Necessity to expand family support programs:*** the efficacy of the project described above demonstrates that child abandonment/placement can be successfully addressed by providing

[16] "Consultancy on Enhancing Diaspora and Migrants Assistance to the Development of Armenian Children", http://un.am/en/vacancy/35, consulted on December 22, 2014.
[17] UNICEF Report, Rapid assessment of residential child care institutions under the Ministry of Labour and Social Issues of the Republic of Armenia, 2014.
[18] UNICEF, Children under the age of three in formal care in Eastern Europe and Central Asia: A rights-based regional situation analysis, 2012, p. 20, https://www.crin.org/docs/UNICEF_Report_Children_Under_3_FINAL.pdf.
[19] UNICEF Armenia, Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services, July 2010, p. 16,

targeted support to vulnerable families. National policy should take inspiration from this experience to expand good practices to the whole country.

d) Foster care

While the foster care option and definition are found in article 137 of the Family Code, foster care is not widespread in Armenia, and is often perceived as tantamount to adoption. It is almost always long-term (i.e. lasts for years or until a child turns 18 rather than a temporary arrangement)[20]. According to Save the Children, "as of December 2012 there were around 15 'active' foster families in the country, although there are Government commitments to support 25 foster families". It also states that "the Foster Family Service programme also involved payments to foster families – this was clear to foster parents from the outset"[21]. At the time of the report undertaken by UNICEF on costing alternative care services,"the size of the remuneration of foster families has (…) been increased from $2,000 to $2,800 per child a year (on average). This increase does not create a considerable burden on the state budget due to the small number of foster families, but it may become an obstacle if in the future the Government decides to expand the program and increase the number of children in foster families significantly. In this case, the cost of raising a child in a foster family becomes comparable to the cost of residential care in an institution. Lack of increase in the number of foster families is a policy decision. According to unofficial sources, the waiting list of those who wish to become foster parents numbers in the hundreds[22]".

- ***Evaluate how to expand the foster Family programme*:** As placing a child in a foster family is recognized as a suitable placement, this option should be duly integrated in Armenian national policies, and benefit from the necessary support. Particular attention should be paid to the recruitment, selection, training and follow up (support and supervision/monitoring) of the foster families authorized to care for children in their homes.

e) Guardianship

Around 500 children a year come under the care of legal guardians[23]. Unlike foster parents, guardians in Armenia are not entitled to any remuneration or child support allowance. Guardians are usually relatives of the child.

Article 134 of the Family Code states that "custody or trusteeship is established with regard to the children who are deprived of parental care with the purpose of keeping, rearing and educating children, as well as protection of their rights and interests". According to Save the Children, "guardianship is more common than foster care. Although it is not effectively regulated, perceptions

[20] Center for Educational Research and Consulting and Save the Children, Development Perspectives of Foster Care in Armenia: Research Results Analysis, 2013, p. 2,

[21] All of the foster parents interviewed for this study mentioned that they initially received less money – AMD 50,000–60,000 (USD 123– 148), but now they receive over AMD 85,000 (USD 210) per child per month. The programme initially stipulated that every family should receive Armenian drams equivalent to USD 140 for one child. This increased in 2008 when the state took over, linked to national budget funding stipulations for state childcare institutions" Op.cit, pp. 3 and 7,

[22] UNICEF Armenia, Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services, July 2010, p. 16.

[23] Center for Educational Research and Consulting and Save the Children, Development Perspectives of Foster Care in Armenia: Research Results Analysis, 2013, p. 2,

about the strength of the guardianship system are one barrier to the expansion of foster care"[24]. Guardianship is a formally established form of kinship care. "In Armenia, a guardian is not required to pass any tests or go through training. Guardianship is not subject to any formal supervision. If the parents of a child were deprived of parental rights, the consent of the next of kin to take the child into his or her custody is usually enough to place the child into the care of the guardian"[25].

- ***Guardianship has to be better framed*:** the fact that guardianship is well accepted and developed within Armenian society is a positive sign, as it contributes to keeping children within families instead of placing them in institutions. However, the legal status of a child under guardianship, the rights and obligations of the guardian should be the subject of an official decision (administrative or judicial). Proper follow up has to be put in place to ensure that the well-being of the child is respected. It should be envisaged to introduce in the law a system of supervision and reporting between guardians and guardianship authority.

1.4. Preliminary conclusions

Several factors have direct or indirect influence on the way Armenia addresses the needs of vulnerable families and children without parental care. Again, it is not the aim of this report to address all of them but it is of the utmost importance that these elements (and others not mentioned here) are taken into consideration when tackling the root causes of child placement, child abandonment, and subsequently, child adoption.

Furthermore, some of the abovementioned points do have an influence on the way adoption is processed for the time being. For instance, the lack of coordination among the different actors (in particular between GTCs and CPUs) results in situations where domestic adoptions are dealt only by the CPU, whereas GTC is supposed to be the authority in charge of the child's dossier.

Similarly, the low level of "social work" prevents offering vulnerable families proper support and advice, evaluating adequately prospective adoptive families, and ensuring that adoption will be in the best interests of the child, etc.

2. Procedures and circumstances surrounding deprivation of parental rights

According to article 60 of the Family code: *"1. Deprivation of parental rights is realized by judicial procedure. 2. The cases on deprivation of parental rights are considered on the basis of application by one of the parents (lawful representatives), as well as the departments and organizations (departments of custody and guardianship, organizations for orphans etc.), who bear the obligations of the protection*

[24] Op.cit., p. 2, https://www.crin.org/docs/Armenia%20Foster%20Care%20Study%20-%20FINAL.pdf.
[25] UNICEF Armenia, Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services, July 2010, p. 16, http://www.unicef.org/armenia/Costing_Residential_Care_Institutions_in_Armenia_report_eng.pdf.

of the rights of children. 3. The cases on deprivation of parental rights are considered with obligatory presence of the departments of custody and guardianship".

Based on our observations, it appears that the deprivation of parental rights is not always clearly understood, either by parents or representatives of various institutions. For instance, when a mother abandons a child at an orphanage, the question of the child's status is not obvious. Similarly, a child's birth maybe registered at the hospital, however, if the mother has not presented her passport for identification, she will not receive any official documents, and as a consequence, the child will not get any birth certificate[26]. If the child's health status allows, he/she will then be entrusted to an institution and will fall under the guardianship of the head (director) of the latter. According to the director of one visited orphanage, 90% of the children are coming straight from maternities, although this would not seem to correspond to the very small percentage of children under three in institutional care given in the UNICEF report[27].

While we understand that this kind of situation may be rare, and does not necessarily reflect general practice, its very existence illustrates the fact that the procedure should be better framed. Indeed, it should be mandatory to investigate in any case the social situation of the mothers concerned, to offer them alternatives to abandonment, and to support them psychologically, socially and financially when appropriate. The roles assigned to medical staff at this stage are clearly of fundamental importance, as are the types of skills imparted to them and their attitudes towards potentially abandoning mothers, enabling them to respond appropriately in such situations. Lastly, we can note that the US Consulate confirmed that "relinquishment remains a major cause of concern".

GGP1 explains[28] that "relinquishment refers to a parent's decision to forego or surrender rights and responsibilities in respect of a child, or to offer consent to the adoption of a child. Some States include provisions for consent or relinquishment in their laws and regulations in order to avoid the negative consequences of abandonment, such as the absence of family and social information on the child. The absence of relinquishment provisions may result in a lack of opportunities for families to be counselled before making their decision and to ensure that their decision was not coerced. As a matter of good practice, laws and procedures should provide for and publicise:

- services for families in crisis, including family preservation services;
- arrangements for temporary care;
- counselling services to families of origin and, where a family cannot remain intact, counselling on the effects of giving consent to an adoption.

The laws and procedures must also clearly state who determines that the consent has been freely given and has not been induced by compensation".

- ***Deprivation of parental rights procedure must be based in every case on a social report about the situation of parents and the circumstances of the case. This needs to be prepared by a competent body. Article 60 should be more precise in this regard.***
- ***Biological parents (and children, extended family) have the right to express their opinion in the procedure.***

[26] See for instance : ' What the future holds for the orphans', 168 Hours, 22.09.2005, http://archive.168.am/en/articles/562-pr

[27] UNICEF, Children under the age of three in formal care in Eastern Europe and Central Asia: A rights-based regional situation analysis, 2012, p.20

[28] The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice, p.72; available at: http://www.hcch.net/index_en.php?act=publications.details&pid=4388&dtid=3

- ***When the law refers to "The departments and organizations (departments of custody and guardianship, organizations for orphans etc.)", it should be more specific to determine clear responsibilities of each actor involved.***
- ***Temporary deprivation (different from restriction of article 63) might be foreseen by the law (in case of medical treatment, imprisonment, etc.). This option might also avoid creating confusing cases like article 62/4 (restoration versus adoption).***
- ***There should be some "coordination" between deprivation procedures, relinquishment and child protection measures (kinship placement, foster care, adoption, etc.)***

3. Procedures and circumstances surrounding consent to adoption by biological parents

According to the law (Family Code, arts. 118 – 122), the written consent of the child's parents is necessary for child adoption. There are different legal possibilities to express the parents' consent: it should be presented in an application verified by a notary procedure or by the head of the organization where a child deprived of parental care is accommodated. The consent may also be expressed directly during the consideration of the adoption case in court.

Consent for child adoption may be given only after the birth of a child. The law stipulates that parental consent is not required in the following cases: they are unknown or the court has recognized them missing; the court has recognized them incapable; the court has deprived them of parental rights; they have not lived with the child for more than a year for reasons recognized by court as unjustifiable and have failed to care for the child. Parents may withdraw their consent and reclaim the child during the one-month period between the court verdict on adoption and its entry into force, in application of the general rule governing the applicability of court decisions, though this reportedly does not happen in practice.

The possibility to express consent to adoption to different actors is not only a risk factor for both parents and child, but also illustrates the absence of social support and professional advice that are vital at this particular moment. Indeed, one can hardly imagine that a notary will have the necessary training and resources to provide parents with any social counselling when obtaining their consent.

As concerns to the rights and responsibilities of heads of organisation in this regards, the process whereby parents or mother give their consent to adoption remain unclear. As far as we have understood, a mother fills in administrative papers establishing her identity and the identity of the child, and leaves him/her in the care of the director.

At court, it appears that the judge will rarely ask for a social report about the biological family when dealing with an adoption decision.

In addition, the verification of the parents' consent also falls under the responsibility of the police, who check how the consent was given and under which conditions. While in some cases this procedure proved to be efficient (some cases were identified where money was involved), police should be more of an external support to the social services rather than being in charge of the process itself.

In sum, we have not been able to identify a precise moment in the process of giving consent where parents would be listened to, supported and counselled.

As stated in the Guide to Good Practices n°1[29], "the requirement to obtain proper consents to the adoption is a key feature of the Convention in the fight against the abduction, sale and traffic in children. This means:

[29] The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice, p.34; available at: http://www.hcch.net/index_en.php?act=publications.details&pid=4388&dtid=3
States are encouraged to use the Model Form for the Statement of Consent which was approved by the Special Commission of 1994, and was published in March 1995 in the Report of the Special Commission, Annex B.49

- obtaining consents from the legal custodian or guardian of the child (the person, institution or authority referred to in Art. 4 c)(1));
- ensuring that the person giving the consent understands the effect or consequences of their decision;
- ensuring the consents were given freely, and not induced or improperly obtained by financial or other reward;
- ensuring that a new birth mother does not give her consent until some time after the birth of her child;
- ensuring the consent of the child is obtained, when necessary."

According to good practice, the mother and father should be given an opportunity to bond with the child and to have time for reflection after the child's birth. During this period and, indeed, during the pregnancy itself, it is very important to provide the parents with psychosocial and/or financial support to reduce the risks of abandonment and, in case this nonetheless happens, to help them to distance themselves from their child with dignity.
Consent should be based on access to all relevant information: the social and legal professionals should inform the parents and ensure that they properly grasp the consequences of adoption that will be either domestic or possibly inter-country, and that they fully understand the implications for the child, for themselves and for the future of their legal ties and their social and personal relationship with the child. It is necessary to learn about any wishes they may have regarding a substitute family so as to respect them to the extent possible and if they correspond to the best interests of the child.
Consent must be freely given, without pressure intended to make the child adoptable when it is not in his/her best interests. The social services should help the parents and point them in the right direction to envisage alternatives to adoption for their child when keeping or reuniting the child with the family still seems possible; they should also help them to envisage adoption if permanent reunification of the child with the family does not seem feasible.

- ***The consent to adoption should be formalized, subject to a specific decision, and properly prepared, assessed and supported by professional counselling.***[30]

We also identified certain particularities that deserve comment:

- When a child is living in the care of a guardian or with a foster family, article 120 says that the consent of the latter is required, but the law does not specify if the consent of the biological parents is required as well, or if any consideration is to be given to the opinion of the child's siblings or members of the extended family.
- According to law (article 121), the consent of a child above 10 is necessary for his/her adoption. If, before the submission of an adoption application, a child has lived in the prospective adopters' family and considers them as parents, adoption may be undertaken without the child's consent[31]. However, the fact that the child lives with the prospective adoptive family cannot be taken *per se*

[30] A model form is available in Annex 7 of this Guide and on the Hague Conference website: < www.hcch.net > under Intercountry Adoption Section / The Convention / Recommended Forms.
[31] While the official translation of the law uses the word "consent", we were informed that the original Armenian term corresponds more to "opinion"; the ramifications of each interpretation are, of course, very different.

as a guarantee of that child's wellbeing and the preservation of his/her rights. The child's opinion should be ascertained in any case (when the age allows). Indeed how can it be shown that the child, of an age to give "consent", considers the prospective adopters as parents if he/she is not asked in some way to consent to the adoption?

- Article 122 refers to the written consent of a spouse, which is necessary for a child's adoption by the other spouse, if the child is not being adopted by both spouses. We have difficulties in understanding the reasons or circumstances where, within a married couple, only one wants to adopt a child, even if this is not with the consent of the other spouse. Such a situation may put the child in a very difficult situation (conflict of loyalty), but also raises questions with regards to legal responsibility, family name, obligations of parents etc.

- The possibility of an agreement between birth parents and prospective adopters foreseen by article 118 should be limited to situations of intra familial adoption for two reasons. First, as developed below, matching a child with an adoptive family is a professional matter and cannot be left to the decision of the biological family. Second, as stated in line with the principle set out in the GGP1: "States of origin are required to ensure that an adoption may only take place when the required consents to the adoption on the part of the responsible person, institution, or authority have not been obtained by improper means. Improper inducement may be present if any form of compensation or payment is used to influence or bring about the decision to relinquish a child for adoption. Determining how to prevent inducements is imperative. It is good practice to have a consent procedure which involves both counselling and independent interviewing of persons whose consent is required. It should be noted that States of origin bear the direct responsibility for ensuring that the appropriate consents have been obtained, and obtained without improper behaviour. Receiving States also bear responsibility for the actions of their accredited bodies or approved (non-accredited) persons and their agents in such matters".[32]

- ***The process of collecting parental consent should be clarified and strengthened: it should be processed in a uniform fashion, prepared and supervised by social services and finalised by a formal decision.***
- ***The issue of the period during which consent may be withdrawn should be dealt with as part of the possible reform of this procedure. In other words, if the procedure to express consent to adoption is improved, there should be no need for an additional period to withdraw it.***
- ***Because of the risk of manipulation, the possibility of an agreement between birth parents and prospective adopters is not considered as a good practice, except in intra-familial cases. The law should be amended accordingly, for both domestic and intercountry adoptions.***

[32] The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice, p.35; available at: http://www.hcch.net/index_en.php?act=publications.details&pid=4388&dtid=3

4. How do children become "adoptable"?

4.1. The legal status of the child

Once a child enters an institution, it is essential that his/her legal status is clarified as soon as possible. Indeed, according to the information received from different quarters, it is not always very easy to know who is exactly responsible for the child, from a legal point of view.
For some interlocutors, as soon as the child is under the care of an institution, the director becomes automatically responsible for him or her. But for some others, the biological parents do keep their parental rights over the child, as long as no legal decision intervenes. This confusion has in turn consequences on the adoptability of the child, as in some cases, one would argue that he/she is not adoptable due to the absence of formal relinquishment, when in reality, this could be a way to put domestic adoption aside in favour of ICA.

4.2. The concept of "adoptability"

There is no specific definition of the concept of "adoptability" in Armenian legislation. Indeed, article 111 of the Law includes adoption among other options, by saying that "children deprived of parental care are subject to giving for rearing to a family (adoption) (…)"; article 112, whose title is "children subject to adoption" only stipulates that "adoption is allowed only with regards to children and proceedings from their interests, keeping the requirements of paragraph 2, provision 1, article 111 of the given Code, as well as taking into consideration the possibilities of complete physical, mental, spiritual and moral development of children".

In our understanding, adoption is somehow seen as a child placement measure "among others", depending on the interest of potential prospective adoptive parents, whether Armenian nationals or foreigners. One could even go further, by saying that a child may be considered adoptable as soon as he/she is declared "without parental care", as no other specific procedure or criteria seem to be foreseen for determining adoptability.
According to a press article[33], the child's adoptability is often not clear. As noted previously, most children in institutions indeed have at least one parent, who may still intend to maintain contact with the child. In addition, the length of the process of assessment and declaration of adoptability of children leaves them in legal limbo.

It is important to recall here that adoptability is to be determined on the basis of the psycho- medico-social report on the child and the family of origin, prepared to establish a life plan for the child. If the conclusions of such a report are that adoption is the most desirable life plan the child, he/she is henceforth considered adoptable from a psycho-medico-social standpoint.
The report should be as thorough as possible since the future of the child, the biological family and the prospective substitute family depends upon it. It is essential to reach a diagnosis of the mental, physical, emotional and relational "health" of the child that is as comprehensive and accurate as

[33] ' What the future holds for the orphans', 168 Hours, 22.09.2005, http://archive.168.am/en/articles/562-pr

possible and not to gloss over any issues. On the basis of these four aspects, it is necessary to assess not only the resources (strengths) but also the limitations (weaknesses) of the child. On the basis of this diagnosis, professionals will be able to determine:

1. if adoption is the appropriate solution for the child,
2. what are the characteristics and aptitudes that the family to whom the child will be entrusted will need.

According to international standards[34], "before an adoption may take place, it must be established by the competent authorities of the State of origin that the child is adoptable. Article 16 HC stipulates that the matching of child and family is to be done only if the Central Authority is satisfied that the child is adoptable. The adoptability of a child is determined according to the law and procedures of the State of origin. It is important that the legal criteria as well as medical, psychological and social aspects of adoptability, which may be relevant, are addressed in implementing legislation and procedures. For example, to establish the child's adoptability, it should be made clear which particular procedures, such as a determination of abandonment or evidence of permanency planning, need to be satisfied before a child may be declared adoptable.
As a matter of good practice, the State of origin should declare in its implementing measures which authority is competent under Article 4 a) to establish that a child is adoptable, as well as the criteria for making that decision. The child's psycho-social adoptability is determined by the conclusion that it is impossible for the birth family to care for the child, and by the assessment that the child will benefit from a family environment. This is supplemented by his / her legal adoptability, which forms the basis for severance of the filiation links with birth parents, in the ways specified by the law of the State".

The absence of preparation of children to their adoption should also be discussed. For the child, adoption will represent a severance from his or her family, foster family, friends, familiar faces at the institution, etc. To avoid a brutal separation, the child should be prepared to be adopted. This step is all the more important in the cases of older children, so that the child can embrace the proposed adoption project and so that possible family and social adaptation difficulties can be addressed beforehand.

- ***Adoption should be viewed as a child protection measure to be considered alongside a range of other alternative care options, all of which have to be evaluated properly to ground the adoption option.***
- ***The adoptability of the child must be subject to a specific decision and based on a proper evaluation of its appropriateness. It should allow for identifying the necessary capacities that a potential adoptive family should demonstrate in order to adopt the child concerned.***
- ***Preparation of children to their adoption should be introduced in the practice of the professionals in charge.***

4.3. Children with special needs

[34] Guide to good practices n°1, Hague permanent bureau, p.81
http://www.hcch.net/index_en.php?act=text.display&tid=45

According to the 2010 UNICEF report, "[t]here are two types of special boarding schools for children with disabilities in Armenia: schools that are subordinate to the Ministry of Education and Science and are financed from the state budget and schools that are subordinate to local administrations (marzpeteran), and are financed out of state budgets through marzpetaran allocations. All local special boarding schools except one are for children with learning disabilities. Special boarding schools subordinate to the Ministry of Education and Science (1,442 children in 12 schools in 2009) include one school for children with anti-social behavior, one school for children with hearing impairments, a school for children with visual impairments, and a school for children with speech impairments, etc. Local special boarding schools (1,222 children in 13 schools in 2009) are not specialized for particular deficiencies (with one exception) and have a higher probability of housing children whose main problem is poverty and social neglect than the ones subordinate to the Ministry of Education"[35].

In addition, "medical-social rehabilitation centers provide treatment and complex health rehabilitation to children with special medical needs, which prevents the placement of such children into specialized orphanages and special schools. Currently, there are eight such centers in Armenia, five of which are state-run".[36]

Given the context and the "adoption focus" of this report, we will not dwell here on the need for support for families to continue caring for a child with a disability, and for a strategy to deinstitutionalise alternative care provision for these children when parental care cannot be envisaged despite that support.

Promoting the domestic adoption of children with disabilities, and of those with other special needs, is invariably a challenging objective, and the situation in Armenia is surely no exception.

According to MoLSI, the number of children with disabilities in special orphanages is indeed rising, but few are adopted.[37] In that same vein, the director of one orphanage noted that most of the children at the facility who were declared "adoptable" were those with disabilities but that, from memory, only 4 had been adopted within Armenia in the past 33 years.[38]

What constitutes a "disability" and its perception as a significant "special need" obviously varies according to the society concerned and to its circumstances. As pointed out by one orphanage director,[39] for example, speech problems are readily classified as a special need even though many will in principle be easily treatable where appropriate resources can be made available. This director and other interlocutors noted that improved information to prospective adopters as to the true degree and nature of a child's "disability" might already facilitate the latter's adoption.

In addition, much concern was expressed about inadequacies in the way that disability is assessed, registered and dealt with, more especially in terms of the ease with which children considered to have a disability will then find themselves in residential care. Thus, for example, we understand that in many

[35] UNICEF Armenia, Towards Alternative Child Care Services in Armenia: Costing Residential Care Institutions and Community Based Services, July 2010, p. 14, http://www.unicef.org/armenia/Costing_Residential_Care_Institutions_in_Armenia_report_eng.pdf.
[36] Op.cit., p. 15,
[37] Interview, 24 November 2014
[38] Interview, 25 November 2014
[39] Interview, 26 November 2014

parts of the country there is a lack of specialists and that consequently initial assessments – at birth or in the ensuing period – may not be undertaken in an appropriate manner. The subsequent administrative registration of the child as having a disability may therefore not be grounded in fully reliable information. Parents will often feel that they have little choice but to request the child's placement. It was also pointed out that there is no "double-check" of the child's medical status on his/her arrival at the residential facility,[40] which may result among other things in unwarranted registration for intercountry adoption.

Indeed, at present there is general agreement that children classified as having a "disability" are invariably foreseen for intercountry adoption: the US consulate estimated that "only 1 or 2 healthy children" had been adopted into that country from Armenia since 2010,[41] and the Central Registry Office went so far as to say in general terms that "no children in good health" are notified for intercountry adoption.[42] However, **intercountry adoption cannot be seen as a panacea** for the challenge of securing appropriate care for children with disabilities, and even less so for the effective deinstitutionalisation of alternative care placements of these children. This will first and foremost require sustained efforts in Armenia to change attitudes as well as to support families in looking after their children[43].

[40] Civil Registry Office, interview 24 November 2014.
[41] Interview, 25 November 2014
[42] Interview, 24 November 2014
[43] The ISS project "Children with disabilities in Institutional Care" aims at assisting the governments of the countries in need for help on this topic, so as to respect the fundamental right that has each child to grow up in a suitable environment. In collaboration with Child Protection Authorities in partner countries, ISS helps professionals caring for children with disabilities in institution to better understand and take into consideration the needs of children with disabilities to improve daily care; promotes and encourages a systematic evaluation of children with disabilities in institutional care; encourages and accompanies competent authorities to develop alternatives to institutional care for the children with disabilities, etc. For more information see: http://www.iss-ssi.org/index.php/en/what-we-do-en/projects/cwd-en

5. Statistics

As in many countries, it is always difficult to get accurate figures regarding alternative care and adoption. In addition, it may be tricky to use them comparatively when sources and periods are not similar. However, statistics do offer meaningful insight on the evolution of these issues, and remain important when discussing child protection issues.

Table 1: General child protection figures: Armenia 2008-2013[44]

	Children in orphanages	Number of children adopted from orphanages	Children returned to relatives	Children with disabilities in orphanages
2008	1'253	118	52	402
2009	1'224	72	41	425
2010	1'240	77	83	425
2011	1'115	74	56	466
2012	877	56	85	461
2013	927	50	53	475

Table 2: Number of intercountry adoptions from Armenia, data from receiving countries[45]

Receiving Country	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003	Total
Belgium	0	0	0	N/A	0	0	0	0	0	2	N/A	**2**
Canada	2	0	0	0	4	3	9	0	0	10	12	**40**
France	15	14	18	15	9*	22	16	12	N/A	16	16	**>153**
Germany	N/A	N/A	2	7	5	4	1	8	5	9	N/A	**41**
Italy	16	20	20	23	24	32	24	12	0	0	0	**171**
Netherlands	N/A	N/A	N/A	N/A	1	0	0	0	0	N/A	0	**1**
Spain	N/A	N/A	N/A	N/A	2	0	1	0	0	N/A	N/A	**3**
Sweden	0	0	0	0	0	1	0	0	0	0	0	**1**
Switzerland	0	0	0	1	N/A	0	0	0	0	0	0	**1**
USA	12	19	22	18	20	29	32	46	20	31	40	**289**
Total	**45**	**53**	**62**	**64**	**65**	**91**	**83**	**78**	**>25**	**68**	**68**	**702**

* This figure (9) for 2009 was communicated by the French Central Authority by email on 24 February 2015, although the original figure announced for this year had been 15. The Central Authority was regrettably unable to provide a figure for 2005.

[44] Source: National Statistical Service of RA, http://www.armstat.am

[45] Sources: www.aican.org ; www.hcch.nl; ISS Monthly review, October 2014; respective Central Authorities.

5.1. Comparing domestic and intercountry adoption figures

Table 3: The number of registered applicants for adoption by nationality and the number of adopted children by nationality of adopters, 2008-2013

	2008	2009	2010	2011	2012	2013
Citizens of the RoA	79	71	93	108	76	98
Children adopted by citizens of the RoA	52	47	73	62	37	21
Foreign citizens	123	120	105	92	203	143
Children adopted by foreign citizens*	96	58	66	59	41	34
Total registered	202	191	198	200	279	241
Total adopted	148	105	139	121	78	55

* All figures in this table are those provided by the Armenian Authorities at the time of our visit. However, with regard in particular to "children adopted by foreign citizens", we note that some figures do not correspond with statistics submitted by Armenia to the Hague Conference on Private International Law, wherein the figure for 2009 was 68 (as opposed to 58)[46] and, for 2013, 46 instead of 34.[47] See also our comments in section 5.2 below.

Table 54: Comparison between the number of children adopted from orphanages with the number of domestic plus intercountry adoptions

	2008	2009	2010	2011	2012	2013
1. Number of adopted children from orphanages	118	72	77	74	56	50
2. Children adopted by the citizens of the RoA + Children adopted by foreign citizens	52 +96 = 148	47 +58 = 105	73 +66 = 139	62 +59 = 121	37 +41 = 78	21 +34 = 55
Difference 2. – 1.	30	33	62	47	22	5

[46] http://www.hcch.net/upload/wop/adop2010pd05_am.pdf
[47] http://www.hcch.net/upload/stat33am2013.pdf

Proportion of adoptions not processed from orphanages	25%	31%	44%	39%	28%	10%

5.2. Notes on adoption data

There are frequently discrepancies between data provided respectively by receiving countries and by countries of origin year-on-year. This is often due to factors such as different accounting periods (US data concern Financial Years which run from October to September, for example, not the calendar year) and delays in registration, recording or finalisation of adoption in the receiving country. Consequently, these differences tend to "level out" over time: for instance, in the case of Armenia, receiving countries report a total of 91 adoptions for 2008 whereas Armenia quotes 96 (+5), while the corresponding figures for 2011 are 62 and 59 (-3).

As noted already in our Introduction (1.1 above), however, the problem of accessing definitive data from Armenia itself has been unusually significant in the context of our fact-finding for this report. This first and foremost makes it difficult to draw conclusions on the basis of the information available. Thus, if we rely on the data set out in Table 3 above, the total figure for intercountry adoptions between 2008 and 2013 would be 354 according to Armenia, as compared to the total of 380 reported by receiving countries during that period (Table 2). Such a difference would certainly indicate potential problems deserving comment. However, if account is taken of the higher figures for 2008 and 2013 communicated by Armenia to the Hague Conference (see note under Table 3 above), the additional 22 bring the total to 376, meaning the difference (4) with receiving country data becomes insignificant. We do not know, however, which of those figures are accurate.

There are many other adoption-related areas where conflicting data have prevented us from drawing reliable conclusions on which to base firm recommendations.

Regarding the important issue of the implication of the Armenian diaspora in adoptions, for instance, it is almost impossible to grasp the reality. On the one hand, the 1998 report states that "for the most part, only ethnic Armenians are permitted to bring Armenian children into adoptive homes abroad",[48] and a very recent expert mission tends to confirm that this is still the case, noting that intercountry adopters today are "mainly (though not exclusively) those with an Armenian cultural background, from mainly three countries (USA, France, Italy)." [49] In complete contrast, we were told by representatives of two of those three receiving countries[50] that such adoptions in fact accounted for, respectively, 20% and "very few" of the total that they have handled in recent times, while at the same time a government source estimated that adoptions to the diaspora currently make up 50% of the total.[51]

Another example of contradictory findings concerns the vital question of the characteristics of Armenian children being adopted domestically and abroad. The assertion in the Jastrow report that "most 'sought-after' children tend to be adopted domestically within a couple of months of birth" is in

[48] UNICEF & ISS (1998) *supra*, p. 13.
[49] Mission report in the context of EU-Twinning Project AM 11/ENP-PCA/JH/08by Dr. Serge-Daniel Jastrow, 23-28 June 2014.
[50] USA and France.
[51] Ministry of Justice, interview 24 November 2014.

stark contrast to the information we were consistently given that Armenians were reluctant to adopt children under the age of 6 months[52] or even 1 year[53] due in good part to prospective adopters' fears that health problems might only emerge during that period. This reluctance was invoked, moreover, to explain why babies under 1 year old were being placed for adoption abroad despite the obligation, since 2005, that they be on the register of children who are adoptable only in-country for at least 3 months. In that same vein, for example, we were told that four of the six intercountry adoptions to Italy in 2013 involved 1-year-olds (the two other children were aged 5 and 14).[54]

Table 4 also tends to show that a significant proportion of children adopted (both domestic and Intercountry) did not involve children in orphanages. Of course, intra-family adoptions may well explain part of that difference, but the situation is unclear. Those cases must anyway be scrutinised thoroughly to ensure that adoptions are not falling under what the GGP1 describes as "improper inducement"[55]

With conflicting and incomplete data such as these, trying to determine the realities of adoption from Armenia today – and thus to develop effective policy and practice recommendations – is obviously a major challenge.

[52] Interview at *Yerevan Children's Home Orphanage* , 25 November 2014
[53] Interview at Vanadzor orphanage, 26 November 2014.
[54] Italian Embassy, interview 27 November 2014.
[55] GGP1, p.35

6. Domestic adoption

Generally speaking, the information we received depicts a situation where the number of Armenians interested in adoption or willing to adopt is quite significant, but applicants face difficulties in going through the adoption procedure. The reasons behind this phenomenon are not wholly clear to us, but our impression is that it is difficult for ordinary people to understand how the system is functioning, where to find the relevant information and, more specifically, how to "access" adoptable children.
On a general level, several interlocutors explained to us that the current domestic adoption system suffers from dysfunctions, which are detrimental not only to applicants for adoption, but also to children who cannot benefit from national care and protection measures.

6.1. Stigma associated with adoption

Our understanding is that the act of adoption continues to be frequently cloaked in secrecy because of the stigma attached to it in Armenian society. This is not unusual, but it signals the need to take a more pro-active approach to public awareness about the potential benefits of the practice for many children who cannot live with their families. While there is an element of "shame" associated with adoption, it will be difficult to attract more applicants and thus to promote domestic adoption.

6.2. An insufficiently child-centred approach in the adoption process

As mentioned at various points in this report, the approach to the child protection measure of adoption often seems to focus more on the needs and desires of adults than on meeting the needs of each child. We understand that there may be certain specificities of Armenian society that explain this, and we are of course conscious that making adoption attractive to potential applicants in the Armenian context may be seen to justify a focus on prospective adopters (e.g. their involvement in "selecting" a child). However, it was also noted by one interlocutor that some 25% of domestic adoptions end in failure, a partial explanation for which may well lie precisely in the relative lack of attention paid to identifying and responding to the specific needs of the child.

6.3. Inadequate criteria for PAP assessment

Article 116 of the Family code regulates the conditions to be fulfilled by the candidates to adoption, completed by article 7 of the Adoption Act. These regulations raise the following comments:

- The title of article 116 reads as "the persons who have the right to adopt". It is important to change this wording, as there is no "right to adopt". Even if the title has no legal force, it gives a biased understanding of the meaning of adoption, which is a child protection measure and not a answer to prospective adoptive parents wishes. The wording should be changed to "persons eligible to adopt".

- There is a long list of formal conditions (especially the production of different papers) to be fulfilled by the candidates, but little is said about the "home study". A stronger emphasis should be put on this

essential element of the procedure. Indeed, a family that wishes to adopt, should be recognized beforehand as able to protect and care for a child in need of adoption on a long term basis. . It is important to make a psycho-medico-social study of the applicants to become adopters, bearing in mind the interests of the child (although as yet unidentified) as a matter of priority.

- The content of the "home study" should be clarified. This report should be the fullest possible portrait of the prospective adoptive parents and their environment. The need for it and its content are stipulated in article 15 of The Hague Convention, which requires the following information: identity of the applicants, legal capacity and suitability for adoption, personal and family situation, medical information, social environment, motives that inspire them, ability to undertake an inter-country adoption, children they would be in a condition to take into care.

6.4. The absence of preparation of prospective adopters

The importance of preparation is widely accepted, with certain countries making it mandatory, and other countries strongly recommending it. An ethical preparation should encourage the PAPs to adjust their abilities to the needs of the children or to renounce the adoption if they are unable to do so. Finally, this key moment during the adoption process is when PAPs can reflect on the future difficulties and challenges that they will have to overcome in their family life with the adopted child (revelation of the adoption, adolescence, cultural issues, researching the child's origins, and so on). In this regard, preparation can help the PAPs become aware of these challenges and will provide them with the tools they need to one day deal with these challenges.
Preparing the PAPs is an essential step in the adoption process and, accordingly, must be made mandatory. Professionals must prepare and supervise content, which should be updated regularly, and its cost must remain reasonable for the participants.

6.5. The Matching

In Armenia, parents can give consent for their child's adoption by a certain person or without mentioning a certain person. In addition, registered citizens of the Republic of Armenia, citizens of the Republic of Armenia residing abroad and foreigners willing to adopt may get acquainted with the personal files of the children to select a child with the preferred criteria.
Based on written inquiries, the Ministry forwards within three working days, the information on children subject to adoption to the Commission and to other competent authorities.
If the registered person willing to adopt selects a child subject to adoption, the staff of the local authorities or the Central Authority are to notify the MLSA of this and, if no other person has expressed willingness to adopt the selected child, organises a meeting between the child subject to adoption and the prospective adopters. If more than one citizen of the Republic of Armenia willing to adopt has expressed willingness to adopt the same child, their meetings with the child are to be organised according to the sequence of their applications.
As mentioned above, the determination that the child is adoptable should be made before prospective adopters are matched with the child. GGP1 recognizes that "while this may seem obvious and is often

included in a State adoption law, the system may actually function in the reverse. Some States may have systems that allow prospective adoptive parents to learn about children who are available. For adoption prior to a child being declared adoptable and sometimes even prior to consents being signed. While such actions may be done with good intentions, or because of funding or operational constraints, the practice may give rise to abuse and is contrary to Convention procedure".

Matching should never take place on the basis of a choice made by prospective adoptive parents from a group of children, and this for two main reasons. First, it is proven that such a choice never guarantees the success of adoption; it is based upon certain external physical features or on a first impression that does not reflect the chances of the child's bonding and family integration. Second, matching should take place before a meeting in person between the child and the applicants is arranged.
Matching is a responsibility that must be assumed by the team of professionals dedicated to the protection of children (particularly psychologists and social workers, with the support of a legal expert to ensure compliance with the law). It occurs on the basis of the files: the child's file and those of the different applicant families for adoption, from whom one family will be chosen.

6.6. Probationary period for cohabitation

When matching is completed and the chosen family has consented to adopt the child, a probationary period of variable duration may be required before making a decision regarding the adoption. This period generally lasts one month, but may go as long as one year in certain countries. In this regard, the stay should be realistic and feasible for the adopters, being they nationals of foreigners.
These initial moments of cohabitation are not to be considered a test for the adopters, but rather, an opportunity to get to know the child in an environment that he or she is familiar with, and with the support of local professionals who know the child. Although the benefit of this period is indisputable and it must be respected, it is important to understand its raison d'être and its true objective. This period serves to foster the progressive creation of affective bonds and to prevent adoption failures as much as possible. Its purpose is not to allow the prospective adopters to renounce the child when it expires.
When the probationary period ends in failure, it is imperative that the child is given psycho-emotional support, especially in situations where the cohabitation period lasted a number of months during which time ties were created. Finally, in situations where the PAPs reject the child, they are not to be given another child at that time. It is in everyone's best interests that a new assessment be conducted.

6.7. Judicial decision

The final adoption order is the subject of a judicial decision, whereas prior to the 2005 Family Code it was entirely in the hands of the head of the GTC concerned. In itself, this was a very positive step forward, but in practice at present it would seem to offer few, if any, real safeguards.

The main problem lies in the fact that the judge bases his/her decision only on the documentation made available, and has no interaction with, for example, the prospective adopters or other interested parties (including the child). In addition, the documents in question are essentially administrative in nature; given the lack of qualified front-line social workers in the statutory services, there are rarely any substantive assessments to inform the decision. One experienced judge opined that refusal of an order at the judicial stage is therefore to all intents and purposes unknown.[56]

A further possible problem, already alluded to in Section 3 above, stems from the application of a Rule of General Procedure to adoption decisions, whereby the latter come into force only one month after they are pronounced, meaning inter alia that the child's status in essentially in limbo during that period. There is no justification for this from a child-centred perspective: according to the 1993 Hague Convention, all issues concerning adoptability, consent, best interests of the child and fitness of the prospective adopters must be dealt with prior to the final decision. We understand that in practice, this delay has so far not been used – to any significant degree, at least – to institute a review of the verdict, but the potential for doing so unwarrantedly exists in law and is a further illustration of the latter's non-compliance with Hague standards.

6.8. No post-adoption services or checks

We have not been able to identify regulations or practice regarding post adoption services or follow-up. It is generally accepted that post-adoption follow-up is an important measure for the success of an intercountry adoption. The countries of origin attach great importance to it and require it be carried out in the receiving countries. It is reasonable to consider that if the State requires this service for intercountry adoptions, it should also do so for domestic adoptions. It should be borne in mind that risks of dysfunction and of failure also exist in this context.

Post-adoption services constitute the last link in the chain of professional and multidisciplinary services that are indispensable for guaranteeing that the global adoption process succeeds in the best interests of the child and out of respect for all interested parties. The existence of this chain of services constitutes probably one of the best tools in the prevention of adoption failure.

[56] Interview, 27 November 2014.

7. Intercountry adoption

7.1. Bias of domestic procedure affecting intercountry adoption

In light of various interviews, we have realised that the general approach to intercountry adoption suffers from the same misconceptions as domestic adoption. In particular, several interlocutors see intercountry as "a moral duty" vis-à-vis the applicants: "If there are children, we have to give them". While such quotes may seem purely anecdotal, they illustrate the same bias that sees adoption as an answer to the prospective adopters' wishes, and not as a child protection measure.
Thus, we would encourage the Armenian authorities to support the organisation of training seminars and attendance at international conferences for the staff of the different services in charge of adoption, as a way to benefit from knowledge of good practices and state-of-the-art information.

a) Possibility of preliminary contacts between biological families and prospective adoptive parents

As mentioned above, these contacts are not prohibited by law. On the contrary, the family code makes them possible (article 116). This practice is contrary to the 1993 Hague Convention, as underlined by the GGP1: "To prevent inappropriate or illegal practices before matching, article 29 clearly prohibits any contact between the prospective adoptive parents and any person whose consent might be influenced, intentionally or otherwise, by the adoptive parents. The only exceptions to this rule are for cases of in-family adoptions, where the parties obviously know each other, or if the competent authority sets some conditions for contact and those conditions are complied with. The power to set conditions for contact should be used sparingly. Article 29 does not prohibit the exchange of information about the prospective adoptive parents and the adoptable child that is necessary for all the parties to reach the final decision on the placement of the child that is in his or her best interests"[57].

b) Matching

The same remarks about matching in domestic adoption also apply here. The fact that the Inter-Agency Panel is in charge of allowing the matching does not give more guarantees in terms of ensuring a proper matching based on psycho-social criteria. The members of the panel are elected to represent different State bodies,[58] not to compose a multi-disciplinary professional team.
The matching is mainly based on a *self-selection* by prospective adoptive parents, which is contrary to international good practices, as demonstrated above.

The fact that prospective adoptive parents receive a list of adoptable children from which to make their choice is particularly worrying. First, as explained above, matching should be the responsibility of a team of professionals, and not left to the choice of the adopters. Second, children proposed for intercountry adoption are said to be suffering from different medical problems. Prospective adopters may well find it difficult to understand the kind of problems involved and their implications for caring for the child.

[57] The Implementation and Operation of the 1993 Intercountry Adoption Convention: Guide to Good Practice, p.34; available at: http://www.hcch.net/index_en.php?act=publications.details&pid=4388&dtid=3
[58] Ministry of Justice (Chair), MFA, MoLSI, Territorial Administration, Civil Registry and Police.

Furthermore, we were disturbed by certain information (that we were unable to verify fully) that some prospective adopters have also been offered access to a second listing, of children with only minor medical problems, if they were hesitant about selecting a child from the initial listing. We are unclear as to the circumstances in which any such offers might be made.
This point can nonetheless be seen in relation to the observations made by consular staff of the Embassies, who said that most adopted children for whom they have delivered visas present minor and curable medical problems.

7.2. From the receiving countries' perspective

According to the available statistics, while a limited number of Armenian children are said to be adopted in Iran and Russia, the main receiving countries are the United States, Italy and France, all three of which are all Parties to the 1993 Hague Convention.

As demonstrated above, the Hague treaty is far from being implemented in Armenia, and many loopholes and questionable practices are still current, some of them being particularly crucial. However, it is disturbing that receiving countries themselves do not apply the international standards either. This is particularly true for article 8 (improper financial gain – see below) and article 17 (approval of matching proposal, agreement on the continuation of the procedure).

It is not clear to us why the Hague standards are not applied by receiving countries adopting in Armenia. They are often well aware of the issues: at least one of them knows, for example, that questionable and un-monitored intermediaries are involved in-country; at least one knows that prospective adopters are being asked to pay inexplicably high "fees"; at least one knows that the selection and matching processes flout those set out in the 1993 Hague Convention.[59] Is this inaction because of inadequate preparation and training of consular staff? Have receiving countries formally reviewed the procedures and determined nonetheless that they offer sufficient guarantees, and thus, do not impede the application of the treaty?[60] Or does this just reflect a laissez-faire policy?

Whatever the case, it is of great concern when receiving countries Parties to the 1993 Hague Convention simply ignore its content when processing intercountry adoption. This is very dangerous as it weakens dramatically respect for, and impact of, a treaty which is specifically designed to protect the persons involved in an intercountry adoption procedure.

[59] This became clear from our talks with the respective diplomatic representations.
[60] If they have serious doubts, article 33 of the 1993 Hague Convention should apply: "A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken".

7.3. Adoption Accredited bodies

a) Prohibition of adoption accredited bodies

The absence of clear intercountry adoption procedures, the insufficient transparency of the process and the weak control of the receiving countries have also consequences on the activities of adoption accredited bodies.

As a principle, and according to article 115 of the law on adoption, activities of adoption agencies are forbidden in Armenia, as are services provided by professional facilitators or attorneys. Prospective adoptive parents resident abroad have to go through a "lawful representative", to whom they or their agency have granted power of attorney, to carry out the process on their behalf (or, in principle, they may do so personally and directly). In practice, however, and of the very greatest concern, such "lawful representatives" act exactly like "facilitators" and, in addition, work without any form of authorization, regulation, supervision or monitoring by the competent authorities. As summarized by the US State Department: "Armenian law does not authorize professional facilitators, adoption agencies, or attorneys to provide adoption services in Armenia; it allows prospective adoptive parents and adoption service providers to grant a power of attorney to an individual to handle most aspects of the adoption process on their behalf. These individuals can only provide limited legal services and complete the process in Armenia through direct contact with the Ministry of Justice."

Experience in other countries of origin clearly demonstrates that the implication of "unsupervised" individuals in the adoption procedure is one of the main sources of bad practice and abuses. The financial implications of their activities are, by their very nature, unknown, but clearly represent a considerable share of the amount that foreign agencies charge prospective adopters (see below).

However, we wonder if Armenia is in the process of reconsidering its decision to ban intermediary agencies. Indeed, according to the French Central Authority website[61], the French adoption accredited body *Médecins du Monde* was authorised by Armenia in May 2014, although the detailed operational ramifications of this decision are not yet clear. That said, all new French applicants must go through the accredited body as of this date.

It is encouraging to note that the Ministry of Justice seems to be favorable to a revision of the regulations governing the activities of foreign adoption accredited bodies.

b) Information posted by adoption accredited bodies

A review of the internet websites of adoption agencies with "adoption programs" in Armenia reveals that:

1°) The information provided on those websites is not accurate: details about procedure in Armenia differ from one adoption agency to another, some agencies do not explicitly describe every step of procedure, the timeframe for the whole adoption process is described differently, some agencies mention 2 trips for the prospective adopters and others 3 trips in total, and the duration of trips varies, some websites state the Prime Minister's office as the Central Adoption Authority etc.

[61] Communiqué relatif à l'accréditation de l'OAA français MÉDECINS DU MONDE auprès de la République d'Arménie (06.06.2014) ; http://www.diplomatie.gouv.fr/fr/adopter-a-l-etranger/comment-adopter-a-l-etranger/les-fiches-pays-de-l-adoption/fiches-pays-adoption/article/adopter-en-armenie

2°) Adoption agencies use local intermediaries to support and accompany their clients in Armenia (this puts into question the reasons why Armenia decided to ban intermediary activities but allows for a system that circumvents the ban easily); the implication of local persons/partners of the adoption agencies is generally unclear (who are they, what is their role, what is their relation to the agency, etc.)
3°) Particularly worrying, as such and in terms of their possible ramifications, are the financial aspects: the composition/breakdown of adoption fees is invariably unclear and/or information is not given upfront (not shown on website). Adoption costs (when available on websites) range from €25.000 for Italian adoption agencies to between US$30.500 and 50.000 for US adoption agencies.

Examples of information provided by adoption agencies:

	Children	No. of Trips	Fees
Adopt Abroad		3	**US$ 38'000 to 45'000** clients are charged US$ 1.200 for "gifts and gratuities" and the facilitator fee constitutes US$ 19,000 (as of 2011)
Carolina Adoption Services	Adoptable Children: 5 and older, sibling groups, special needs of any age. Proposes photo listing of Armenian children awaiting adoption	2	**US$ 32'500 to 50'000** Professional services: **US$** 7.000; Aid & Development: **US$** 500; International Service Fee: **US$** 12.000 to 26.000; donation **US$** 1.000; in-country expenses: **US$** 12.000 to 15.500$
Hopscotch Adoptions, Inc	older than 14 months rarely proposed, except with special needs; children with minor to non-correctable special needs	1-2	**US$ 30'540** for facilitation services in Armenia. Until 2007, Armenian "attorneys" were paid about **US$** 10,500 per child.
Associazione Arcobaleno Onlus		2	
Famiglia insieme Onlus			**25'000 Euros** (Procedural fees and services of partners in Armenia)
Associazione nazionale pubbliche assistenze			**25'000 Euros** in Armenia Included also: official translations and authentications of dossiers € 2.300 translator and local partner € 2.200 child's maintenance € 1.500 office support €1 4.000 services for institution abroad € 5.000 additional assistance services

7.4. Financial questions

It has long been a subject of concern – in Armenia as elsewhere – that financial transactions in the context of intercountry adoption have not been transparent or subject to adequate scrutiny.

Considering that the average monthly gross salary in Armenia in 2013 was about 160,000 drams (around US$390)[62], the amount requested by foreign agencies for in-country costs appears to be vastly disproportionate, whatever the services provided may be.

As noted above, fees charged for services of partners in Armenia range between US$10,000 and 20,000 dollars, and sometimes more. No breakdowns of these amounts are provided by the agencies on their website. This is all the more disturbing in that the ban on the direct operation of adoption agencies in Armenia was supposedly in good part a response to profiteering. According to one press report from January 2006, "the bulk of foreign adoptions were until then arranged by local facilitators that charged hefty fees for their services, reportedly between $9,000 and $13,000 per child. The sums are suspiciously high given the much lower cost of relevant paperwork in Armenia."[63] In other words, the rules may have changed but the sums of money involved have not. In this report, we are not in a position to elaborate on possible reasons or responsibilities for that regrettable state of affairs, but in our view it reflects **key problems that Armenia and receiving countries have to tackle, now and urgently, if they are to proclaim with any credibility at all that intercountry adoption takes place with the best interests of the child as "the paramount consideration".**

The little information that agencies provide is in fact hardly less worrying than what they choose not to disclose. Thus, according to one media source dated 27 April 2011,[64] a contract proposed by Hopscotch in 2007 noted that its fee included, in 2007, almost US$ 5,000 for *"gifts to foreign service providers and government functionaries performing ministerial tasks as an offer of thanks for prompt service."*

In addition, some mention a "donation" or "services for institutions abroad". However, it is well known today that influx of money to institutions and orphanages has very detrimental effects, especially since it squarely counteracts efforts in the context of a deinstitutionalization strategy. It supports the continued existence of such facilities, creates a system of dependency on donations to keep the institution running or, even worse, underpins a system that might actively procure children for intercountry adoption, as they become a source of revenue.

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[65] :
"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

[62] Armenia banks information, available at: http://www.armbanks.am/en/2014/02/26/72065
[63] "Armenia child adoptions largely unaffected by stricter rules", RFE/RL, 12 January 2006.
[64] http://www.azatutyun.am/content/article/16794730.html
[65] Final Report, Special Commission 2005 at p.34. See http://www.hcch.net/upload/wop/adop2005_rpt-e.pdf

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[66]:

"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."

In the light of the present situation, of the Special Commission's clear statements and of the "Note on the financial aspects of intercountry adoption[67]", it seems vital that far greater transparency over "fees" be instituted immediately by foreign agencies operating in Armenia, and that the Central Authorities of "receiving countries" concerned require their accredited agencies to conform fully to this requirement.

[66] Final Report of the Special Commission 2005 at p.42. See http://www.hcch.net/upload/wop/adop2005_rpt-e.pdf

[67] Expert Group on the Financial Aspects of Intercountry Adoption: "Note on the financial aspects of intercountry adoption"; available at http://www.hcch.net/upload/wop/note33fa2015_en.pdf

8. Proposals for reform communicated by Armenian interlocutors

The following are the main proposals for reform that were presented to us during our mission, together with our recommendation on each.

8.1. Set up a national database of adoptable children

Many interlocutors mentioned the need to set up a national computerised database of children adoptable domestically and internationally as a means of not only improving efficiency but also, in particular, avoiding any manipulation of adoption decisions. In general, we understand, the idea would be to enable prospective adopters to access the database in order to pre-select children for whom they feel able and willing to care.

While the idea of a database as such has its positive points in terms of the potential improvement of case management and matching, we certainly do not recommend that it be accessed by prospective adopters for the purpose of choosing a child. This would inter alia reinforce the current undue focus of the adoption process on prospective adopters rather than on the children concerned, and would also minimise the vital role to be played by professional matching.

We further do not believe that it would impact greatly on perceived problems of "manipulation" since it would tackle neither the reasons for which a child is entered on the database nor the possible influences that might be brought to bear on or by prospective parents.

Our conclusion is that such a database, if set up, should be available only to professionals directly concerned with matching children with the most suitable prospective adopters.

8.2. Increase the minimum time on the register for children adoptable nationally

Several interlocutors also proposed that the mandatory time a child spends on the register for domestic adoption before being considered for intercountry adoption, which currently stands at 3 months, should be increased to 6 months. The dual objective would be to promote domestic adoption and thus to reduce reliance on intercountry placements.

We understand that a similar proposal for a 6-month period was already made in 2005 but this was reportedly not accepted at the time because it was deemed to constitute a disadvantage for children with disabilities, for whom domestic adoption was a very unlikely prospect.

During our advisory missions in other countries, we have often been asked about the most appropriate timeframe during which a child should be considered exclusively for domestic adoption. The problem in fact is not so much the timeframe itself but, far more, what efforts are and can be actively made by the competent services to secure suitable prospective adopters in the country during whatever period is decided. Thus, it is pointless and contrary to the best interests of the child if – as has been the case in certain countries – the period becomes little more than an arbitrary postponement of possible intercountry adoption because pro-active and systematic efforts to find an appropriate in-country solution are inadequate or unrealistic.

In this respect, it was also suggested that simultaneously there should be efforts to "improve access" of prospective domestic adopters to adoptable children: depending on what this might involve, and in line with our comment above concerning the database, we urge great caution about taking any approach tailored more to prospective adopters than to the children concerned.

As regards the above-mentioned concern as to how the longer period might impact on children with disabilities, there is indeed a dilemma in contexts such as that of Armenia, where domestic adoption of children with special needs is currently very rare. Three factors need to be taken into account. First, to what extent can enhanced efforts viably be foreseen to secure the in-country adoption of these children during an additional 3-month period? Second, to what extent would making an exception to the 6-month rule for children with disabilities constitute a form of discrimination by denying them the greatest possible chance of adoption in-country? Third, in light of experience in other countries, if such an exception was to be made, what is the risk of children being unwarrantedly declared as having a disability simply in order to fast-track them into intercountry adoption? These are questions that can only be answered by those responsible in Armenia.

Our conclusion on the question of increasing time to be spent on the domestic adoption register, therefore, is that it is justified and potentially beneficial inasmuch as enhanced efforts can genuinely be made to identify suitable adopters in-country. At the same time, it will be necessary to examine closely whether that increase would be desirable and useful for children with disabilities, and what the possible ramifications of excluding them from that rule might be.

8.3. Increase the duration of validity of the authorisation issued to domestic prospective adopters

Several interlocutors mentioned the rationale for prolonging the validity of authorisations to adopt delivered to prospective domestic adopters from 1 year to 18 months. **On the principle, we see no problem with this: in our view the validity could even extend to two years, on condition that prospective adopters are obligated to notify any change in their family, health or financial status (and that this is checked before they adopt) and that an appropriate, professional matching process is established.**

8.4. Prioritise domestic prospective adopters according to their date of authorisation

It was proposed that priority be given to prospective domestic adopters according to the time that has passed since the date of their authorisation. It was suggested that this would avoid frustration and disappointment and would therefore serve, directly and indirectly, to promote interest in adoption within the country.

We are unconvinced by this argument. The aim of adoption is to find the most suitable family for a child, and this is not achieved by prioritising applicants on anything other than their suitability. Such prioritisation would once again reflect an "adopter-centred" rather than a "child-centred" approach to the measure.

8.5. Strengthen the follow-up of intercountry adoptions

Several interlocutors expressed the view that more systematic follow-up of intercountry adoptions was required to ensure that they corresponded to the child's best interests and were not a cover for illicit activities.

It is fully recognised that countries of origin have a legitimate interest in the welfare of their children adopted abroad. At the same time, the spirit of the 1993 Hague Convention is one of "mutual confidence which provides the framework for cooperation under the Convention",[68] and post-adoption monitoring and support are essentially the responsibility of the competent services of the receiving country.

However, experience demonstrates that diplomatic representations in receiving countries are not well-placed to undertake a proper follow up of adopted children. Not only do they lack appropriate staff, but on a legal and diplomatic side, diplomatic representations have very limited powers to intervene in any matter in their host country. In any case, the adopted child, once the adoption is pronounced and recognised (which is automatic between Hague Contracting States), falls under the responsibility of the Receiving State, as any other child living on its territory. If the country of origin wants to receive more information about "its" children, it has to go through the mechanisms foreseen by the Hague Convention, meaning exchange of information between central authorities.

In fact, the increased implication of countries of origin at the post-adoption stage has never been known to resolve problems, all the less so when the problems in question stem from lacunae at any phase of the adoption process itself (from the pronouncement of adoptability through to the granting of the adoption order), which is invariably the case.

We therefore see no role for strengthening Armenia's follow-up of intercountry adoptions in improving the adoption system itself.

[68] Conclusions and Recommendations of the second meeting of the Special Commission on the practical operation of the 1993 Hague Convention, 2005, para 18.

9. Our proposals for necessary reforms

As noted in the first chapter of this report, we are not focusing here on questions of alternative care for children, whether from the standpoint of preventive or provision, despite their obvious relevance to our subject, given the separate "child care and protection reform" initiative currently being developed.
That said, we would emphasise two points in particular that will in principle be important aspects of that exercise and that are similarly significant for improving the adoption system:

- There is an urgent need to review very carefully **the way that alternative care provision is funded** – from central or local government funds, from local, national or foreign sources, including the Armenian diaspora. It is our view that, under present conditions, the financing of alternative care undoubtedly tends to favour the continuing reliance on institutional placements, and this in turn is more likely to contribute to adoption being seen as the most appropriate outcome than would be the case for children in family-based alternative care settings.
- It is vital that **the implication of qualified social workers** be rapidly enhanced so that alternative care and adoption decisions can be based on individually-determined requirements rather than mainly on the general application of administrative criteria. It is our understanding that social workers in the statutory services (reportedly some 4,000) are largely employed to carry out administrative tasks, whereas those seeking to work on the front line have to find employment with NGOs. Unless this situation changes radically, we cannot see how adoption measures, as an integral part of the overall child protection system, can respond appropriately to the best interests of each child concerned.

9.1. Proposals concerning adoption in general

- Widen the criteria for assessing a child's **adoptability** to include not only legal status but also psycho-social factors. Provide for an **enhanced front-line role for social workers** in assessments of the child and determination of the capacities of prospective adopters that the child's proper care would require.
- Ensure that such comprehensive assessments of the child and of the prospective adopters are made available in a timely manner to **the judge responsible for issuing the adoption order.**
- Clarify the **roles, responsibilities and coordination requirements** of all entities involved at all stages of the adoption process.
- To ensure optimal transparency, clarify and disseminate information on the exact process, requirements and costs for adopting a child.
- Support the **exchange of good practices** with other countries of origin.

9.2. Proposals concerning domestic adoption issues

- Ensure the thorough **assessment of domestic applicants** to adopt by qualified social workers, on the basis of established criteria that cover psycho-social and other relevant issues.
- Increase the duration of the validity of prospective adopters' **authorisation** to 18 months or two years, subject to verifying that the basic information on which it was is based has not changed significantly since its issuance.

- Establish a procedure whereby social workers and other concerned professionals (e.g. medics, psychologists) undertake a **preliminary matching process** based on the needs of the child and the assessed capacities of prospective adopters to meet those needs appropriately. At the same time, prohibit selection of a child by the prospective adopters but enable them to spend monitored time with the pre-matched child to determine whether or not **bonding** takes place.
- The introduction of a **probationary period** for cohabitation should be considered in the reform of the legal framework governing adoption. It must be of reasonable length, professionally supervised and logistically facilitated (accommodations, travel, and so on).

9.3. Proposals concerning Intercountry adoption issues

We would emphasise from the start that ensuring compliance with Hague standards and procedures is a **joint responsibility** of the Armenian Authorities and the competent authorities of the receiving countries concerned.

On the Armenian side:

- While the motivation for prohibiting, by law, adoption agencies from operating in the country may be well-intentioned, in practice it has set in place **a system that is in no way compatible** with the 1993 Hague Convention and creates far more problems than it might resolve. It is urgent that the law be revised to ensure either the direct and effective implication of the Armenian Central Authority throughout the entire intercountry adoption procedure or to provide for the due authorisation of selected agencies with clear duties and responsibilities.
- It is vital that a **professional matching** procedure be established, ensuring a child-focused approach rather than one centred on prospective adopters. It must rely on comprehensive and reliable social work assessment reports regarding both the child and the prospective adopters. This too is required for compliance with Hague standards.
- Attention should be given to responding to problems highlighted in the Note on the **Financial Aspects** of Intercountry Adoption issued by the Permanent Bureau of the Hague Conference, in particular as regards fees charged by any actor involved at any stage, and donations made or requested, in the context of an intercountry adoption procedure.
- Attention should similarly be given to identifying the specific stages and procedures, whether or not foreseen by the law or other regulations, where the current system can leave room for **undue influence to be exerted during the adoption process.** These stages and procedures involve particularly, but not exclusively, priority that may be afforded to certain prospective adopters as well as the extent to which they may be able to secure the allocation of a child who, in their view, corresponds best to their desires. Once identified, these stages and procedures must be eliminated or modified in consequence.

On the part of receiving countries concerned:

- Receiving countries concerned should, if they have not done so, conduct their own **review of intercountry adoption procedures in Armenia** to determine if they see grounds for requesting the country's competent authorities to rectify one or more of these, in accordance with Art 33 of the 1993 Hague Convention. The procedures in question might include in particular, but by no means exclusively, the matching process, control over financial arrangements, and the authorisation of persons and entities involved in the adoption process in Armenia.

- Should they deem any initiatives in those regards to be necessary, receiving countries concerned should make available to Armenia all possible **assistance and cooperation** to facilitate effective revision of the procedures and implementation thereof.
- In any case, receiving countries concerned should make every effort to **keep track of the actions** of their respective country's agencies and individuals involved in intercountry adoption from Armenia, with a view to ensuring, from their side, compliance with obligations under the 1993 Hague Convention and the CRC. This should include regular checks on the veracity and transparency of information posted on agency websites, with consideration given to withdrawal of accreditation or other sanctions or requirements in cases where that information is manifestly inappropriate.
- Receiving countries concerned should foresee that the question of intercountry adoption practices figures on the agenda of **coordination meetings**.

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