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THE RIGHT TO ADOPTION OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN VIET NAM

Reality and Recommendations



Ha Noi, September 2015

This report was made for the United Nations Development Programme in Viet Nam.

The Research Team consists of lawyers and members of NHQuang&Associates law firm, namely:

- Mr. Nguyen Hung Quang – Team Leader
- Mr. Nguyen Tien Lap – Chief Advisor
- Ms. Nguyen Thuy Duong – Team Member
- Ms. Nguyen Ngoc Ha – Team Member
- Ms. Tran Ngoc Khanh Linh – Team Member
- Mr. Do Hoang Phuc – Team Member
- Ms. Nham Thi Thanh Huyen – Team Member
- Ms. Pham Thi Thanh Luyen – Team Member

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Project Officers: Le Nam Huong, Lieu Anh Vu, UNDP Viet Nam

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ABBREVIATIONS

| | |
|---------------------|---|
| Civil Code | Civil Code No. 33/2005/QH11 of the National Assembly of the Socialist Republic of Viet Nam which was passed on 14 June 2005 |
| “Come-out” | Disclosing (to other people’s knowledge) about one’s sexual orientation and gender identity |
| CSAGA | Center for Studies and Applied Sciences in Gender - Family - Women and Adolescents |
| ICCPR | International Covenant on Civil and Political Rights 1966 |
| ICESCR | International Covenant on Economic, Social, and Cultural Rights 1966 |
| ICS | Information Connection and Sharing Center |
| iSEE | Institute for Studies of Society, Economics and Environment |
| LGBT | Abbreviations of “Lesbian, Gay, Bisexual, and Transgender” |
| Gender Equality Law | The Law on Gender Equality No. 73/2006/QH11 of the National Assembly of the Socialist Republic of Viet Nam which was passed on 29 November 2006. |
| Children Law | The Law on Child Protection, Caring, and Education No. 25/2004/QH11 of the National Assembly of the Socialist Republic of Viet Nam which was passed on 15 June 2004 |
| Family Law | The Law on Marriage and Family No. 52/2014/QH13 of the National Assembly of the Socialist Republic of Viet Nam which was passed on 19 June 2014 |
| Adoption Law | Law on Adoption No. 52/2010/QH12 of the National Assembly of the Socialist Republic of Viet Nam which was passed on 17 June 2014 |
| NGO | Non-Governmental Organizations |
| PC | People’s Committee |
| UDHR | Universal Declaration of Human Rights 1948 |
| UNDP | United Nations Development Programme |
| USAID | United States Agency of International Development |

DEFINITION OF TERMS

| Term | Definition |
|--------------------|---|
| Gender | Socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women ¹ . |
| Sex | Biological and physiological characteristics that define men and women. |
| Gender Identity | An individual's internal sense of being a man or a woman, or neither of them. Since gender identity is internal, one's gender identity is not necessarily visible to others. ² |
| Sexual Orientation | An enduring sexual, emotional or romantic attraction of a person to others. Categories of sexual orientation <i>typically</i> include attraction to people of one's own sex (homosexuality), attraction to people of a different sex (heterosexuality), and attraction to people of both sexes (bisexuality). |
| LGBT | Commonly used acronyms for lesbian, gay, bisexual and transgender. |
| Homosexuality | An enduring emotional, romantic, or sexual attraction primarily or exclusively to people of the same gender. People who are heterosexual often identify as "gay" or "lesbian". |
| Heterosexuality | An enduring emotional, romantic, or sexual attraction primarily or exclusively to people of the opposite gender. People who are heterosexual often identify as "straight." |
| Bisexuality | An enduring emotional, romantic, or sexual attraction primarily or exclusively to people of both genders. |
| Transgender | An umbrella term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth. Not all transgender people can or will undergo hormone replacement therapy or sex reassignment surgery. |
| Transsexual | A term for people who have permanently changed – or seek to change – their bodies through medical interventions to acquire the physical characteristics of the opposite sex. |
| MTF | Abbreviation of the term "male to female", which means a person who was assigned male at birth, but identifies and lives as a woman. ³ They may prefer to be called <i>transgender women</i> , or just <i>women</i> . |
| FTM | Abbreviation of the term "female to male", which means a person who was assigned female at birth, but identifies and lives as a man. They may prefer to be called <i>transgender men</i> , or just <i>men</i> . |
| Intersex | A general term used for a general term used for a variety of conditions in which a person is born with a reproductive sexual anatomy that doesn't seem to fit the typical definitions of female or male. ⁴ |

¹ <http://www.whatintgenderwhatsgenderen/>

² http://transequality.org/Resources/TransTerminology_2014.pdf

³ http://transequality.org/Resources/TransTerminology_2014.pdf

⁴ http://www.isna.org/faq/what_is_intersex

| | |
|--------------------------------|--|
| Come-out | refers to the personal process of accepting and disclosing one's gender and sexuality to others. |
| Sex Reassignment Surgery (SRS) | Refers to doctor-supervised surgical interventions, and is only one small part of transition. Altering one's birth sex is not a one-step procedure; it is a complex process that occurs over a long period of time. Transition includes some or all of the following personal, medical, and legal steps: telling one's family, friends, and co-workers; using a different name and new pronouns; dressing differently; changing one's name and/or sex on legal documents; hormone therapy; and possibly (though not always) one or more types of surgery. ⁵ |
| Guardianship | Guardianship is a task whereby an individual or organization (hereinafter referred collectively to as guardian) is required by law or appointed to take care of and protect legitimate rights and interests of a minor or a person who has lost his/her civil act capacity (hereinafter referred collectively to as ward). ⁶ |
| Representation | Representation is the act of a person (hereinafter referred to as the representative) to establish and perform a civil transaction in the name and interests of another person (hereinafter referred to as the represented person) within the scope of representation. ⁷ |
| Guardian | An individual or organization stipulated by laws or nominated to take care and protect legitimate rights and interests of juveniles, persons losing their civil act capacity. |
| Ward | A person subject to the guardianship by the guardian. Wards include: (a) Minors who have lost their mothers and fathers, whose parents are unidentifiable, or whose parents have both lost their civil act capacity or have had their capacity for civil acts restricted, whose parents have had their parental rights restricted by the Court, or whose parents are still alive but have no conditions to take care of and to educate such minors, and if their parents so request; (b) Persons who have lost their civil act capacity. ⁸ |
| Representative | A person acting in the name and for the interests of another person to conduct transactions within the scope of representation authorization ⁹ . A representative can be a legal or an authorized representative. |

⁵ <http://www.glaad.org/reference/transgender>

⁶ Civil Code, Article 58, clause 1

⁷ Civil Code, Article 139

⁸ Civil Code, Article 58, clause 2

⁹ Jurisprudence Dictionary, Encyclopedia Publishing House, Pg. 515



CHAPTER 1: INTRODUCTION

1.1 Background

In Viet Nam, lesbian, gay, bisexual and transgender (LGBT) people regularly face discrimination and stigma. In a study with 3,000 gay men¹⁰ and 40 lesbian women, 95% of the respondents reported they had experienced discrimination and stigma in various forms¹¹. Discrimination and stigma against LGBT people are based on their sexual orientation and gender identity, in several forms within society, at work and even within the family.

In recent years, the rights of LGBT people have been more widely addressed in Viet Nam. Besides advocating for marriage rights for same-sex couples, community groups and Vietnamese civil society organizations working for gender and sexual diversity are paying increasing attention to LGBT people's right to adopt children. Moreover, in the context of the recently revised Law on Marriage and Family and on-going revision of the Civil Code, civil society organizations have been presented with more opportunities to advocate for the recognition of gender and sexual minorities' right to adoption in Viet Nam.

National Assembly discussions on the revised Law on Marriage and Family examined recognition of marriage between two people of the same sex, a continuation of the ban and a lifting of the ban with mechanisms to accommodate issues arising from cohabitation between two people of the same sex, such as common assets or children (if any)¹². In practice, Decree No.110/2013/ND-CP providing administrative sanctions in the areas of judicial support and administration, civil judgment enforcement, marriage and family, enterprise and cooperative bankruptcies eliminated administrative sanctions on the act of marriage between people of the same sex. In addition, the provision banning marriage between people of the same sex was omitted from the new Law on Marriage and Family and is considered a fundamental step forwards to protect the rights of same-sex attracted people.

As mentioned earlier, in a cohabitative same-sex relationship there are two main issues couples must address, (i) division of assets jointly acquired during cohabitation and (ii) joint adoption of children. The former issue can be dealt with through agreement between two partners and in

¹⁰ IS EE, Preliminary online survey results: *Socio-economic Characteristics of Men Who Have Sex with Men in Viet Nam*, 2009

¹¹ IS EE, *Living in a Heterosexual Society: Stories of 40 Women Who Love Women, Relationship with Family* (Vietnamese), 2010

¹² Online Draft, the NA Standing committee considering same-sex marriage, http://duthaoonline.quochovietnam.vn/DuThaoLisT/TT_TINLAPPHAP/View_Detail.aspx?ItemID=1436; Evaluation committee of the Law on Marriage and Family of Ministry of Justice, Evaluation report of rejection the Law amending a number of articles of the Law on Marriage and Family 2013.

accordance with the Civil Code, while the latter can be addressed in accordance with regulations of laws on adoption (Law on Adoption) and child caring.

Regarding joint adoption by same-sex couples, several comprehensive studies have been conducted globally by individuals and organizations specializing in psychology, marriage and family as well as LGBT organizations, child protection groups and human rights institutes¹³. However in Viet Nam, studies on rights related to gender and sexual diversity have only focused on marriage equality, same-sex cohabitation, discrimination and stigma on the basis of sexual orientation and gender identity as well as the sex reassignment of transgender and intersex people. No specific study has been undertaken on the impact of an individual's sexual orientation or gender identity on their right to foster children as well as on discrimination in adoption based on the adopter's sexual orientation or gender identity. As a result, this created challenges and also opportunities for the Research Team to conduct this study on LGBT people's right to adopt. From a rights-based approach¹⁴, this study also examines issues regarding children's rights, gender equality and rights implementation to paint a broad overview of sexual orientation, gender identity and related rights of children in the area of child fostering in Viet Nam.

With such a purpose, the Research Team targeted the following objectives:

- i) To clarify gaps and unconsolidated points in Viet Nam's legal system relating to sexual orientation, gender identity and children's rights in adoption from the perspective of rights protection
- ii) To review the demand for adoption and related issues of LGBT people in Viet Nam
- iii) To understand the perspectives and attitudes of LGBT people as well as wider society towards the legal recognition of the right to adoption for same-sex couples and transgender people and their partners
- iv) To recommend advocacy activities towards amending the Law on Adoption and related laws to recognize the right of adoption for same-sex couples and transgender people and their partners.

¹³ See some further studies such as Gary J. Gates, M.V. Lee Badgett, Kate Chambers, Jennifer Macomber, *Adoption and Foster Care by Gay and Lesbian Parents in the United States 2007*; Charlotte J. Patterson, *Lesbian and Gay Parenting 2005*; Mark Regnerus, *How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study 2012* and some others.

¹⁴ UNDP in Viet Nam, *Human rights-based approach*, http://www.un.org.vn/vi/component/docman/doc_details/115-a-human-rights-based-approach-to-work-with-tim?Itemid=266

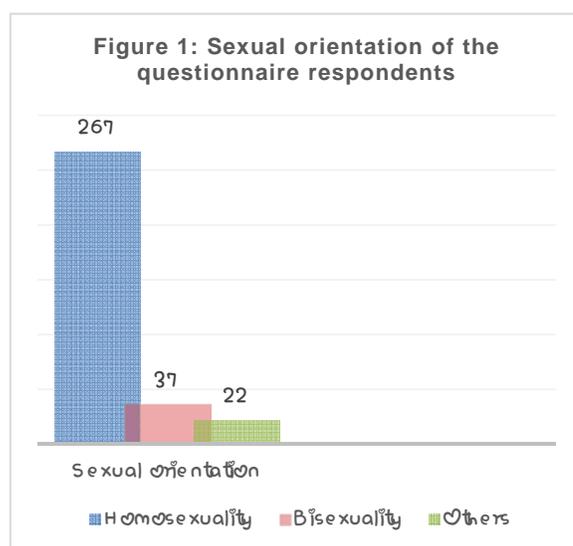
1.2 Methodology

a. Desk review:

To understand the context and create a baseline for the study, the Research Team reviewed the following legal documents and materials:

- ① International treaties, Vietnamese policies and legal regulations in relation to sexual orientation, gender identity and the rights of children in the areas of marriage, family and adoption
- ② Study reports and articles by domestic and foreign scholars in relation to sexual orientation, gender identity and the rights of children in the areas of family and marriage.

b. In-depth (direct) interview with questionnaires:



A preliminary survey was conducted with organizations working on LGBT rights to identify the geographical scope of the study with Ha Noi, Ho Chi Minh City and Can Tho selected. These cities have more LGBT groups than other parts of the country, with greater diversity in terms of living standards and personal development of individuals.

There were 111 direct interviews, encompassing 22 lesbian women, 39 gay men, four bisexual persons, 14 transgender persons and 32 people who were respondents' parents, grandparents, uncles, aunts, brothers, sisters or cousins. By area, interviews were conducted

with 27 homosexual or bisexual, as well as two transgender persons and 10 relatives in Ha Noi, along with 33 homosexual or bisexual as well as, two transgender persons and 16 relatives in Ho Chi Minh City. In Can Tho, 13 homosexual or bisexual as well as two transgender persons and six relatives were interviewed.

Participants were generally young (more than 80% were aged 18-30 years, with the remainder older than 30). Most LGBT participants work in the private sector with diverse occupations, with the majority (34 persons) in non-manufacturing (manager, engineer, interpreter, office clerk) and professional jobs (lawyer, doctor, architect, reporter, accountant, auditor). Among the remainder, 22 earned a living from handicrafts, small businesses or were students. A few young people were unemployed or yet to have a stable job.

c. Online questionnaire survey conducted on internet:

Contents of the quantitative questionnaire were published on www.khaosattuphap.net, a separate electronic information portal developed based on the professional online survey site platform (www.surveymonkey.com). The data collected were processed and reviewed by SPSS and Excel.

After eliminating unqualified or incomplete questionnaires, the Research Team selected 377 completed questionnaires from various places in the country for further processing. Of them, 49 were completed by relatives of persons of diverse gender and sexuality. Thirty-one were transgender

women, six were transgender men, 86 did not identify as men nor women, and 205 persons were cisgender. In terms of sexual orientation, 142 identified themselves as gay men, 125 as lesbian women, 37 were bisexual and 22 had other sexual orientations.

75.5% LGBT participants who answered the quantitative questionnaire were aged 18-25 years, 18.4% were 25-29 years old and the remainder more than 30 years (See Figure 2).

d. Group discussion:

In order to further understand the thoughts, attitudes and behavior of LGBT people individually as well as members of a minority in each selected city, the Research Team conducted two group discussions per city, each with 10 participants. The participants were selected from LGBT people the interviews (in Ha Noi) or from the LGBT community (in Can Tho and Ho Chi Minh City). Of the 79 persons participating in group discussions, there were 10 transgender persons from Ho Chi Minh City and two transgender persons from each from Ha Noi and Can Tho. While respecting different opinions and focusing on practical situations, the Research Team collected useful and diverse information from six group discussions held in the three selected cities.

e. Typical case study:

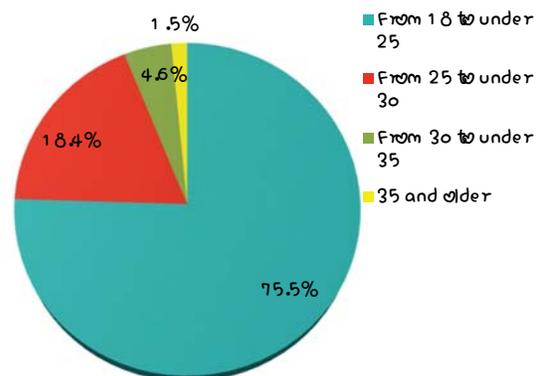
With the objective to better understand the lives of couples already with or about to have a child (including adopted and biological children), the Research Team made case studies of five couples in Ha Noi, Ho Chi Minh City and Can Tho. Of the couples two were lesbian, two gay and the other comprised of a bisexual woman and a transgender man. Three couples had their own biological or adopted children, while two others were preparing to register for adoption or give birth by scientific methods. It should be noted that approaches to couples in Ho Chi Minh City and Can Tho were better received than in Ha Noi. In the three cities, the Research Team also contacted other couples who declined to participate and meet out of fear of being disclosed and other negative impacts to their lives, especially on their children.

f. In-depth interviews with experts in relevant fields:

In addition to direct interviews with LGBT people and their relatives, the Research Team interviewed 30 experts from Vietnamese State agencies, civil society organizations working for LGBT people's rights, law lecturers, lawyers, journalists, representatives of commune/ward communes, institutions caring for and raising children and Department of Justice officials in the three cities. The interviewed experts included:

(i) Eleven representatives of State agencies, including the Committee on Culture, Education, Adolescents, and Children of the National Assembly, Department of Civil – Economic Laws, Bureau of Adoption, and Institute of Legal Science under the Ministry of Justice in Ha Noi; Ho Chi Minh City Department of Justice and four commune people's committees in Ha Noi and Ho Chi Minh City

Figure 2: Age structure of respondents



(ii) Four lecturers from law education institutions, including Ha Noi Law University, Legal Department of Ha Noi National University, Legal Department of Can Tho University and Ho Chi Minh City Law University

(iii) Five representatives of social organizations by LGBT people for their rights

(iv) Two representatives from child care and raising institutions in Ha Noi

(v) Four lawyers from Ho Chi Minh City Bar Association and Ha Noi Bar Association

(vi) Four journalists.

This structure of interviewed subjects, which provided diversified and useful opinions, allowed the Research Team to gain a better understanding of issues surrounding LGBT people's right to adopt and assisted it in the analysis and recommendations found in this report.



CHAPTER 2: OVERVIEW OF APPLICABLE LAWS

With a rights-based approach, the Research Team scanned international treaties to which Viet Nam is a party to as well as local legal provisions on sexual orientation, gender identity and children's rights regarding adoption to clarify existing shortcomings.

2.1 Overview of international treaties on sexual orientation, gender identity and children's rights from a rights protection perspective in marriage, family and child adoption

2.1.1 Sexual orientation and gender identity in international treaties

By employing a rights-based approach to study the issue of equality and no discrimination against adoption applicants on the basis of sexual orientation and gender identity, the Research Team analyzed provisions on fundamental human rights recognized in international conventions as well as related rights in the field of marriage, family and child adoption.

Human rights are rights inherent to all human beings regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language or any other characteristics. All natural persons are equally entitled to human rights without discrimination. These rights are all interrelated, interdependent and indivisible¹⁵.

In particular, the Research Team focused on two fundamental human rights prevalent in international treaties, equality and non-discrimination, that are also a cross-cutting principle in international human rights law.

Non-discrimination principle: The non-discrimination principle is one of the basic principles of human rights addressed in international instruments, such as Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).

The non-discrimination principle first emerged in the UDHR. In particular, Article 1 of the UDHR states: "All human beings are born free and equal in dignity and rights". Article 2 of the UDHR provides: "Everyone is entitled to all the rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

This principle is repeated and solidified in Article 2 of the ICCPR and Article 2 of the ICESCR. Accordingly each State Party, including Viet Nam as a signatory, undertakes to respect and ensure the rights recognized in ICCPR and ICESCR to all individuals within its territory and subject to its

¹⁵ <http://www.unhcr.org/en/issues/Pages/WhatAreHumanRights.aspx>

jurisdiction, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

UDHR, ICCPR and ICESCR all include lists of prohibited grounds for discrimination in their provisions of non-discrimination guarantees. These lists do not explicitly include “sexual orientation” or “gender identity”, but they all conclude with the words “other status.” The use of the phrase “other status” shows that the lists were intended to be open-ended and illustrative¹⁶. In other words, the grounds of discrimination including sexual orientation and gender identity are not yet explicitly listed.

In 1994, in the case of *Nicholas Toonen v. Australia*, the Human Rights Committee commented that the criminalization of homosexual acts by adults violated the principles of protection for anti-stigma in the ICCPR. Especially, the Human Rights Committee states that: “*The reference to “sex” in Article 2, paragraph 1 and Article 26 ICCPR is to be interpreted as including sexual orientation*”¹⁷.

In General Comment No.20, paragraph 32, the Committee on Economic, Social and Cultural Rights of the UN states that the guarantee of non-discrimination in the ICESCR already includes sexual orientation: “*Other status” as recognized in Article 2, paragraph 2 includes sexual orientation. States Parties should ensure that a person’s sexual orientation is not a barrier to realizing Covenant rights (...). In addition, gender identity is recognized as among the prohibited grounds of discrimination. For example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace*”.

Equality principle: In parallel with the non-discrimination principle is that of equality. As Article 7 of the UDHR regulates: “*All are equal before the law and are entitled without any discrimination to equal protection of the law.*” The ICCPR reaffirms this principle in Article 26, and also clearly states: “*In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”.

Based on the two fundamental principles of “non-discrimination” and “equality” in international human rights law, it can be said that all people regardless of sexual orientation and gender identity should enjoy full human rights in all aspects of life, including the right to marry, found a family, rear children and adopt a child.

The right to marry and found a family: To study the relationship between sexual orientation and gender identity and the right to child rearing, it is important to first address the right to marriage and found a family for same-sex couples as well as for transgender people and their partners, as this is the foundation for implementation of related rights, including that of child rearing. The right to marry and found a family as well as the right to equality in marriage is first mentioned in Article 16 of the UDHR. Accordingly, men and women of full age have the right to marry and found a family without limitation in terms of race, nationality or religion. In addition Clause 3, Article 16 states: “*The family is the natural and fundamental group unit of society and is entitled to protection by society and the State*”. These UDHR provisions are re-affirmed and specified in Article 23 of the ICCPR and Article 10 of the ICESCR.

¹⁶ *Born Free and Equal on Sexual Orientation and Gender Identity*, UN Office of the High Commissioner, 2012, page 40.

¹⁷ *Nicholas Toonen v. Australia*, Human Rights Committee, Communication No. 4881/92, U.N. Doc C.C.P.R. C.50/D.4881/92, in 8.7.

According to the Human Rights Committee, "The concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition"¹⁸. Besides, in the view of the UN Child Rights Committee, a family also needs to be considered based on "family structures arising from various cultural patterns and emerging familial relationships"¹⁹. Therefore in learning about child adoption rights, it is necessary to study the right to marry and found a family based on differences of such rights.

Right to child rearing: Article 9, of the UN Convention on the Rights of the Child 1989 (CRC), prescribes: "1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence." Concurrently, Clause 4, Article 18 of the ICCPR specifies: "States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions". Accordingly, parents shall have the right to rear and live with their children. Parents shall only be separated from their children when the separation is required by national law and procedures applied in such national law.

Right to adoption: Clause 1, Article 21 of the CRC provides that States Parties that recognize and/or permit a system of adoption shall ensure the best interests of the child are the paramount consideration and are obligated to ensure this. CRC provisions do not differentiate the right to child adoption based on parent(s)'s sexual orientation or gender identity. Accordingly, all people are entitled to adopt a child when they comply with the national law on adoption procedures, regardless of their sexual orientation or gender identity. In the field of inter-country adoption, the LaHaye Convention 1993 on protection of children and co-operation in respect of inter-country adoption has no limitation imposed on the basis of sexual orientation and gender identity²⁰.

Through analyzing provisions in international treaties, the Research Team found the right to found a family, get married, raise and adopt children are recognized and protected by international laws. Also, human rights in all spheres of life are interrelated and interdependent, as the improvement to one right facilitates the advancement of others. Likewise, the deprivation of one right adversely affects the others²¹. Placed in relation to human rights in general, especially non-discrimination and equality rights, the rights of LGBT people in marriage and family, child rearing and adoption are recognized and protected as with other human rights in any aspect of life.

Sub-conclusion for 2.1.1 – Sexual orientation and gender identity in international treaties

 The right to non-discrimination and equality are not only human rights, but also cross-cutting principles of international human right laws. All people, regardless of their sexual orientation or gender identity, in the capacity as humans before the law, have full human

¹⁸ ICCPR General Comment No. 19: (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, Human Rights Committee, UN Doc. HR IGENA Rev 2 (1990), in 2.

¹⁹ "Report on the Fifth Session", Committee on the Rights of the Child, UN Doc. CRC EC 24, Annex V.

²⁰ LaHaye 1993 Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, Article 4.

²¹ <http://www.ohchr.org/en/issues/Pages/WhatAreHumanRights.aspx>

rights in all aspects of life, including the right to marry, found a family, to child rearing and adoption.

 The CRC does not differentiate the right to adopt a child based on sexual orientation and gender identity of adoption applicants. Accordingly, anyone is entitled to adopt a child upon complying with national legal provisions on adoption procedures. In the field of inter-country adoption, the LaHaye Convention 1993 on protection of children and co-operation has no limitations regarding sexual orientation and gender identity.

2.1.2 Children's rights in international treaties

The rights of children are mentioned specifically in the CRC, LaHaye Convention 1993 on protection of children and co-operation in respect to inter-country adoption, Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) and other conventions. Furthermore, protection of children's rights is also tenant of human rights protection. Therefore, in addition to particular child-only provisions, children also fully enjoy human rights as recognized by the UDHR, ICCPR, and ICESCR (see 2.1.1 on principles of non-discrimination and equality).

Of the international treaties on protection of child rights, the CRC is the most comprehensive international legal instrument as it covers all aspects of child rights and clearly identifies obligations of countries to guarantee such rights and the relationship between child and human rights.

Approaching the issue of LGBT people's adoption from the principle of protection and best interests of the child, the Research Team analyzed child rights in relation to birth registration, non-discrimination, protection, care and education. Through the review of provisions in legal documents, the Research Team found that such fundamental child rights are recognized in numerous international treaties, in particular:

The right to non-discrimination: Article 24 of the ICCPR regulates special protection of children in addition to rights generally protected by the ICCPR due children's physical and mental vulnerabilities. Article 24 of the ICCPR recognizes the rights of every child to non-discrimination: *"Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State"*.

To further clarify ICCPR's Article 24, General Comment No.17 of the Human Rights Committee on the rights of the child clearly states: *"Article 24 of the International Covenant on Civil and Political Rights recognizes the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor. Consequently, the implementation of this provision entails the adoption of special measures to protect children, in addition to the measures that States are required to take under Article 2 to ensure that everyone enjoys the rights provided for in the Covenant."* Provisions in Article 24 of the ICCPR are reaffirmed and concretized in many CRC regulations, typically in Articles 2, 3 and 4:

"1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members." (Article 2, CRC)

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." (Article 3, CRC)

Article 4, of the CRC regulates the obligations of States Parties in undertaking all appropriate legislative and administrative measures and others to implement rights recognized by the CRC.

The right to be adopted: According to the CRC, a child by any reason having no parents shall have the right to have a family and be adopted under lawful form²². States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration. In addition, the CRC also prevents the abduction of, sale of or traffic in children for any purpose or in any form²³.

Besides, the right to be cared and brought up; the right to birth registration; the right not to be separated from the child's parents; the right to access to health care services; the right to education, the right to be protected from sexual abuse are also protected and recognized by the CRC²⁴.

The two core principles emphasized in international treaties relating to the protection of child rights are "non-discrimination against every child" and "for the best interests of the child". Furthermore, "for the best interests of the child" is of paramount consideration in all actions or decisions concerning the child, both in the community and as an individual. With these core principles, international laws recognize and protect child rights without discrimination based on sexual orientation or gender identity of a child's parents.

Sub-conclusion for 2.1.2 – Child rights in international treaties

-  Studies on the rights of the child must include a full study of human rights, particularly those focused on children.
-  The rights to non-discrimination, to be adopted and other child rights have been recognized by various international treaties to which Viet Nam is a State Party.
-  Two core principles emphasized under international treaties relating to child rights protection are "non-discrimination against children" and "for the best interests of the child".
-  International laws recognize and protect child rights without discrimination based on the sexual orientation or gender identity of a child's parents.

²² CRC, Articles 20 and 21

²³ CRC, Article 35

²⁴ CRC, Article 3, clause 2, Articles 19, 24, 27 and 34.

2.2 Overview of Vietnamese legal provisions on sexual orientation, gender identity and child rights from a rights protection perspective in marriage, family and child adoption

2.2.1 Sexual orientation and gender identity under the Vietnamese legal system

Recent research by UNDP and USAID, published in 2014, on the legal and social environment for LGBT individuals and civil society²⁵ revealed that stigma and discrimination exist in the field of marriage and family as well as child adoption. This led the Research Team to review Vietnamese legal provisions to examine shortcomings in legal provisions on sexual orientation and gender identity from a human rights-based approach in the country's current social context²⁶. The following key points emerged from the review of sexual orientation and gender identity with regard to child rearing and adoption.

a. Principle of equality without discrimination

As with international regulations, Vietnamese law recognizes the principle of non-discrimination and equality. Article 16, Constitution of the Socialist Republic of Viet Nam 2013 ("Constitution 2013") provides: "All people are equal before [the] law. No one is subject to discriminatory treatment in political, civil, economic, cultural or social life". The Research Team found no specific regulation on the rights or limitations applied separately to people of diverse gender and sexuality in Viet Nam.

b. Right to get married or found a family

While the UDHR and ICCPR do not have particular regulations on discrimination of human rights - including the right to marry based on sexual orientation or gender identity, they differentiate between "the right to marry" and "the right to found a family" and consider "the family as the natural and fundamental group unit of society and is entitled to protection by society and the State"²⁷. The Civil Code of Viet Nam does not stipulate the right to found a family, while "family" is understood by the Law on Marriage and Family as "a group of persons closely bound together by marriage, blood ties or rearing relations"²⁸. With this definition, there are three ways to form a family relation: (i) marriage (get married), (ii) blood ties (giving birth to a child) and (iii) rearing relations (adoption).

Regarding marriage, the laws of Viet Nam have yet to recognize marriage between people of the same sex²⁹. Pursuant to the Gender Equality Law, "sex" is understood as biological differences between males and females, which must be shown on an individual's personal identification card or his/her citizen identity card. It seems apparent that legal provisions have equated sex and gender, construed as differences in terms of roles and social relations between males and females³⁰. It could also be surmised that the Gender Equality Law does not take into account the element of sexual orientation or gender identity of individuals registering for marriage, but only the "sex" registered

²⁵ Research Project "Being LGBT in Asia: Viet Nam national report: A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society, UNDP, USAID

²⁶ Human rights-based approach method is also mentioned in several UNDP documents. See further: <http://www.un.org.vn/ComponentContentDetails/115-a-human-rights-based-approach-to-ukit.html?Itemid=266>

²⁷ UNHR (Article 16), ICPC (Article 23)

²⁸ Law on Marriage and Family, Article 8, clause 1 o

²⁹ Law on Marriage and Family, Article 8, clause 2.

³⁰ Common UNDP terms and expressions

on personal identification papers. In other words, people of diverse gender and sexuality can still register for marriage provided the personal identification papers of a couple are of different genders.

As regards giving birth or adopting a child, regulations do not discriminate based on individuals' sexual orientation and gender identity in having a child by natural birth or adoption. However, couples cannot together adopt the same child if they are not husband and wife (having a legal marital relationship). Similar to marriage, in birth or adoption procedures, such as birth registration, parent identification or adoption registration, the sex of the child's parent is always identified based on personal identification papers.

It should be noted that at the time of this report, Vietnamese law has no recognition of transgender people or gender identity, but only recognize the right to sex-reassignment of intersex people³¹. Besides, the laws specially and strictly forbid sex transmittance for persons who are deemed to have typical male or female sexual organ³².

Transgender people are those whose gender identity does not match their sex assigned at birth, which does not fall under the terms and conditions for gender reassignment in the current Decree 88. Therefore, transgender people are not permitted to undergo sex re-assignment surgery nor can they change their gender marker on personal identification papers. Consequently, their wish to marry partners of the same sex assigned at birth is not recognized or protected by law.

c. The right to adoption

The Research Team's review of child adoption regulations showed that applicable laws do not allow two persons not in a lawful marital relationship, including same-sex couples, to adopt the same child³³.

However, people of diverse gender and sexuality are entitled to adopt children individually if they satisfy conditions for adoption as stipulated by law. Accordingly, an adopter must not only satisfy health, economic standing and accommodation conditions to ensure the care, rearing and education of the adopted child, but also meet other requirements regarding his/her family record such as having good ethics and a full civil act capacity³⁴ (those 18 years and above have full civil capacity). These conditions do not relate to gender identity or sexual orientation of any potential adopter. However, there is no specific guideline on criterion to consider the application dossier for adoption registration that "the adopter must meet health, economic standing and accommodation conditions to ensure the care, rearing and education of the adopted child". This has led to inconsistent application in localities and questions the subjectiveness of authorities responsible for providing permission for adoption (See Annex II - Administrative procedures relating to the implementation of the rights of children and LGBT people).

Sub-conclusion for 2.2.1 – Sexual orientation and gender identity under the Vietnamese legal system

³¹ Decree No 88/2008/ND-CP, Articles 5 and 6

³² Decree No 88/2008/ND-CP, Article 4, clause 1

³³ Law on Child Adoption, Article 8, clause 3.

³⁴ Law on Child Adoption, Article 14.

Children have the right to be represented by their parents or have a guardian to protect their legitimate rights and interests in accordance with the Civil Code and the Law on Child Protection, Care and Education³⁸. The Research Team's examination of children's rights in relation to rights of children living with same-sex couples found that laws do not have different regulations on children having a father and mother, and those having two fathers or two mothers. However, the review of specific regulations on legal representatives and guardians of children detected **a difference** in implementation of this right for children in these two groups. In particular:

Firstly, pursuant to the Civil Code³⁹, parents (including biological and adoptive ones) are the legal representative of their child, while provisions on the guardian only apply to a child who is minor and has lost both its mother and father, whose parents are unidentifiable whose parents have lost their civil act capacity, have lost their civil act capacity, have had their civil act capacity restricted or whose parents do not have the conditions to take care of and educate the minor. Notably, in case where the child is under protection of a government institution, **the automatic guardian** of the child as stipulated by law⁴⁰ shall not be anyone except relatives, including a grandfather, grandmother, siblings, uncle or aunt of the child.

Accordingly if a child brought up by a lesbian couple, with one being the biological mother who is not qualified to care and bring up the child, "the second mother" cannot become the automatic guardian of her child. This means the rights and interests of the child shall not be guaranteed if the person who regularly nurtures and cares for him/her is not his/her lawful guardian. Legally, the female cohabitant may register to be the adoptive mother of the child under the Adoption Law. However, this solution faces certain shortcomings such as when the child is adopted the mother's rights as his/her biological mother will be restricted unless otherwise agreed or if a lesbian couple stops cohabiting, the biological mother may possibly lose the right to rear her child as she has transferred such rights to the adoptive mother, even if there is already an agreement between the two mothers to raise the child. Research also showed that provisions on guardianship of the Civil Code are based on traditional concepts which appreciate kinship rather than caring and rearing relationships (for the child who needs a guardian). Meanwhile, the right of the child's biological mother to appoint a child guardian is still a legal issue yet to be regulated.

Secondly, if a child has no automatic guardian, he/she has the right to have an **appointed guardian** to provide care and protect his/her legitimate rights and interests. Pursuant to Vietnamese law, the procedure for appointing a guardian will be conducted when:

- The child has lost both his/her mother and father or the child's parents have both lost their civil act capacity or do not have conditions to bring up and take care of the child
- The child has no biological relative to fully meet the requirements to be a automatic guardian.

The procedures to appoint a guardian shall be carried out by the People's Committee of the commune, ward or township where the child resides⁴¹. Vietnamese laws do not make any differentiation based on sexual orientation and gender identity in performing guardian registration

³⁸ Civil Code, Articles 141 and 58, Children Law, Article 31

³⁹ Civil Code, Article 58, Clause 2, point A and Article 141, Clause 1

⁴⁰ Civil Code, Article 61.

⁴¹ Civil Code, Article 63

procedures. Registration is undertaken after a person is appointed guardian and is only granted when a guardian recognition decision follows submission of guardian registration dossiers and agencies find he/she is qualified to be a guardian. (See Annex II – Administrative procedures relating to implementation of the rights of children and and the rights to diverse gender and sexuality).

However, in the regulation on conditions that a guardian “must be a person with good ethical qualities, satisfaction of necessary conditions to ensure the performance of guardianship”, specific criteria for “good ethical qualities” or “necessary conditions” are not given. The settlement of guardian registration for a child depends on the views of State authorities and officials during application processing. Therefore, registration for guardianship through submission of a written guardian appointment and consideration of eligibility to be a guardian may cause difficulties in the implementation of guardianship registration⁴². With such provision, a transgender individual applying for guardian registration may struggle for approval if the official receiving the application dossiers personally thinks transgenders cannot meet conditions regarding “ethical quality” or do not have full conditions to care, rear and educate a child. On the other hand, gay men, lesbian women and bisexual people may face less difficulty if they do not disclose their sexual orientation during guardian registration.

Sub-conclusion for 2.2.2 – Children’s rights under the Vietnamese legal system

-  Applicable laws of Viet Nam recognize the principle of non-discrimination against children.
-  Children’s right to be adopted is recognized by law.
-  Differences were found in implementation of the right to have a guardian between children having one father and mother and those with two fathers or two mothers.
-  Regulations on guardian conditions are still highly subjective and may lead to inconsistencies in procedure implementation.

⁴² Decree No.58, Article 30.



CHAPTER 3: DESIRE FOR CHILD ADOPTION

3.1. Demand for cohabitation, child rearing and adoption

3.1.1 Demand for cohabitation and getting married

a. Demand for cohabitation

According to 61 gay and lesbian, four bisexual and 14 transgender people who participated in direct interviews and group discussions, living with their lover or partner was an important need. Of them, 75 reported having such a need. Others had no demand for cohabitation as they would find it too restrictive, encounter family resistance or had not found a suitable lover or partner.

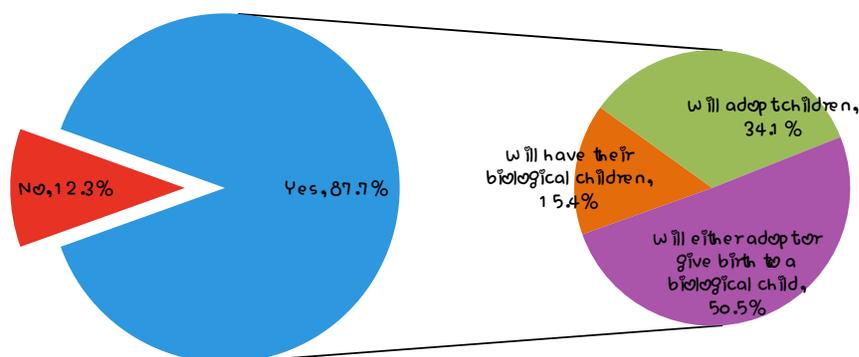
b. Demand for getting married and having a public wedding

Among the 75 LGBT people with a demand to live with their lover or partner, 64 wanted to get married, 10 did not want, and one declined to give an opinion. At present, Vietnamese laws do not forbid same-sex or transgender couples from organizing public weddings and 43 out of 64 interviewees who desired marriage wanted one with the best wishes of their family and friends. The 21 remaining people had no desire for a wedding due to obstacles from their family, local authorities or community stigma. Some individuals also shared that a wedding would be irrelevant if laws did not permit marriage, while there was fear a public wedding would affect their jobs.

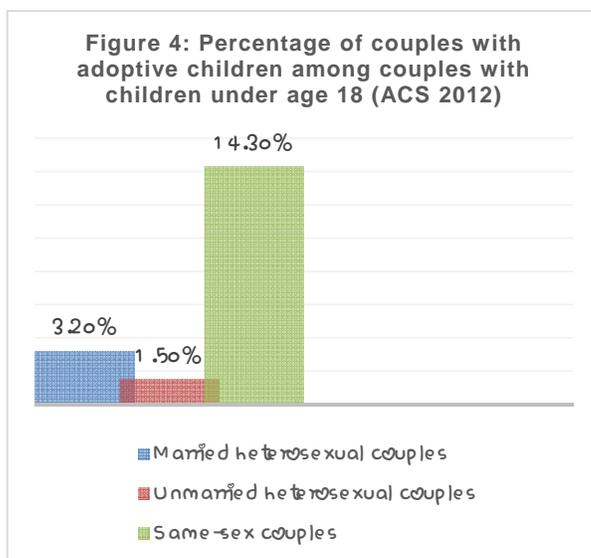
3.1.2 Demand to have and foster a child

The demand to raise children was among the real demands expressed by LGBT people in this survey. According to the online survey results regarding intentions or plans for a baby, 87.7% of participants intended or planned for a baby, while 12.3% did not (Please see Figure 3). Among respondents choosing not to have a baby, the main reasons included “no demand for a child yet” (51.3%) and “economic and material conditions currently unsuitable to have a baby” (28.2%). Especially, 7.7% were afraid the child would be disadvantaged in the future. (Please refer to *Box II: Some controversies about the influence of sexual orientation and gender identity over capacity to be parents and development of children* in section 3.2.2(c)). Similar to the online survey results, when the Research Team conducted direct interviews on the demand for nurturing children, 68 of 79 participants reported that having a child was an essential past, present or future demand. In group discussions in three survey areas, most participants confirmed that having a child was an essential demand for couples and individuals, notwithstanding their sexual orientation or gender equality.

Figure 3: Percentage of respondents intending or planning to have a child



Of those who shared an intention or plan via the online survey to have a child, 15.4% wished to have their own biological child, 34.1% wanted to adopt a child and 50.5% would be content with either a biological or adoptive child (Please see Figure 3). This rate is similar to the direct interview results, with 21 wanting an adoptive child, 14 a biological baby and 33 happy with a biological or adoptive child. This trend also matches survey results in other countries. According to the American Community Survey 2012⁴³, the rate of same-sex couples (married and unmarried) adopting children was 4.5-fold higher than heterosexual spouses and 10-fold higher than unmarried heterosexual couples (Please see Figure 4).



Although having a child was a demand for most interviewees, when asked about plans for a child, among 59 direct interviewees not living with their lover or partner, only 12 revealed a plan to have/adopt a child in the next three years. Nine planned to register for adoption, two wished to have a child by scientific methods and the remainder (gay) intended to have a baby with a person of a different sex to “conceal from the family”. The major reason why they did not plan for a child in the coming three years was their economic and material conditions were unsuitable and they did not want a child yet. It should also be

noted, that most direct interviewees are young (under 30 years old), thus having a baby is seen as something for the future and not necessarily in “the next three years”.

LGBT people’s method to have a child depended on several objective and subjective elements. According to group discussions, most choosing to have a biological child were lesbian and bisexual women as their biological gender, or that of their lover, allowed for pregnancy. Group discussions

⁴³Abbie E. Goldberg, Nnette K. Gartrell, Gary Gates, Research Report on LGB-parent families, 2014, p.9.11.

with gay men revealed most did not want to have “direct relations” with women and would elect to have a child by scientific methods or apply to adopt a child. Gay men were also aware of the large financial cost associated with having a child by scientific means and this method was also difficult in the context of Vietnamese law only recognizing altruistic gestational surrogacy for a husband and wife who could satisfy the conditions prescribed by law⁴⁴. From group discussions, the Research Team found that financial obstacles were a common concern for participants selecting scientific methods as a way to receive a child.

Some participants shared they wanted to rear a child during a certain period of time, such as until adulthood. However, requests to change the child’s personal identity documents or creating legal binding inheritance agreements were potential legal risks in fostering a child. Of note, child foster care is already recognized in several countries such as the United States of America, Belgium and United Kingdom⁴⁵.

Case study IV⁴⁶:

S. and P. (a gay couple) want to foster a child from a family with difficult living conditions in their kinship, as it would be easier for them to make an agreement with the child’s family and convenient to perform procedures for adoption.

Case study V⁴⁷:

T.A (bisexual woman) – H. (female to male) prefer to have a baby by artificial or in-vitro fertilization as opposed to a more direct method. Nevertheless, the former two methods are problematic due to limited sperm supplies in Viet Nam. Moreover, the financial cost is also burdensome as they only have a total income of around VND10 million per month.

⁴⁴ Law on Marriage and Family 2014 (taking effect 01/01/2015), Article 95 – conditions for altruistic gestational surrogacy

1. Altruistic gestational surrogacy shall be based on the voluntariness of involved parties and established in writing.
2. Husband and wife have the right to ask for a person’s gestational surrogacy when they fully meet the following conditions:

a) The wife is certified by a competent health organization as unable to carry a pregnancy and give birth even with assisted reproductive technology
b) The couple has no common child
c) The couple has received health, legal and psychological counseling.

⁴⁵ Maja Lakija, Foster care model in Europe: results of conducted survey, 2010; <https://www.gov.uk/foster-care/types-of-foster-care>

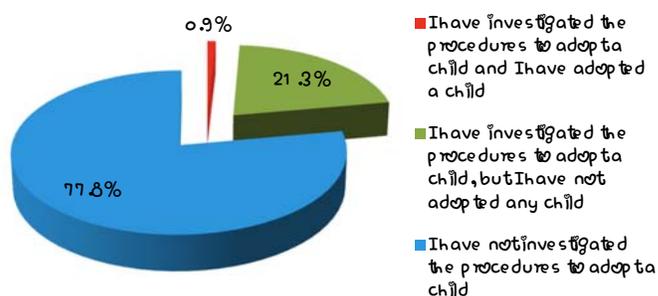
⁴⁶ See Annex III – Case Study IV

⁴⁷ See Annex III, Case Study V.

3.1.3 Level of proactiveness to study adoption procedures

To study the level of proactiveness amongst LGBT people to foster children, participants were asked whether they had learnt of adoption procedures. Accordingly, only 0.9% of respondents to the online survey confirmed they had “ever learned about procedures to adopt a child and have adopted a child”, while 21.3% had “studied adoption procedures, but not adopted a child” (Please see Figure 5).

Figure 5: Preparedness of respondents to adopt a child



This finding seems to be contrary to the high rate of those wishing to have a child (Please see Figure 3).. According to direct interviewees, many confirmed a wish to have children and a family, yet they were unaware how to register for adoption.

According to some relatives of LGBT people, studying legal procedures involving civil status and adoptive children was difficult and complex for the general public. People demand to enjoy fundamental rights, but they have not

been positive in studying legal ways to protect such rights⁴⁸.

To evaluate LGBT people’s level of understanding of adoption procedures and basic legal knowledge, the Research Team examined their practical understanding of conditions and procedures for adopting children.

a. Understanding conditions for adopters

Pursuant to Article 14 of the Adoption Law 2010, adopters must meet the following conditions:

- Have full civil act capacity
- Be at least 20 years or older than the adopted person⁴⁹
- Have health, financial and accommodation conditions to assure the ability to care, nurture and educate the adopted child
- Have good ethical qualities
- Not be subject to circumstances forbidden to adopt children⁵⁰.

⁴⁸ See Justice Index Assessment of Distributive Justice and Equality from a Citizen-based survey in 2012, July 2013, UNDP, Viet Nam Lawyers’ Association and CECODES

⁴⁹ Not applied to cases of step-father adopting his wife’s child, step-mother adopting her husband’s child or consanguineal aunt, cousin adopting her/his niece or nephew

⁵⁰ Adoption Law, Article 14, Clause 2 –The following persons may not adopt a child:

- a) Have some of parental rights over a minor child restricted
- b) Currently serving an administrative handling decision at an educational institution or medical treatment establishment
- c) Currently imprisoned

The regulations apply to all people irrespective of sexual orientation or gender identity. In practice, some local people’s committees at commune or ward levels could not make a distinction in terms of sexual orientation or gender identity when conducting procedures to certify adoption, but followed the legal provisions. However, some interviewees thought people’s committee officials of communes or wards often discriminated on the basis of sexual orientation or gender identity when considering adoption applications. The reason usually given for refusal was often the result of a subjective opinion from the official in charge unfavourable towards LGBT people, with no evidence for such reasoning⁵¹. Such prejudice and bias have hindered LGBT people’s right to adopt children, leading to misunderstandings of legal regulations by some officials at communal agencies as well as proposed adopters.

The Research Team questioned LGBT people on conditions for adoption (see Table 1). LGBT people were found to desire equal treatment with heterosexual people regarding adoption conditions, including “Completing a psychology test for parents”.

| Table 1. Requirements to adopt a child | For LGBT people | For non-LGBT people |
|--|-----------------|---------------------|
| Having full civil capacity being from full 18 years old and having no decision declaring loss of civil capacity act by the court | 93.1 % | 70.8% |
| Being 20 years or more older than the adopted person | 65.3% | 58.3% |
| Having health, financial and accommodation conditions for assuring the care for and nurture and education of the adopted child. | 94.4% | 72.2% |
| Having good ethical qualities | 91.7% | 69.4% |
| Completing a psychology test for parents | 83.3% | 62.5% |
| Other conditions | 5.6% | 2.8% |

b. Understanding adoption documents

This study also assessed LGBT people’s level of legal understanding and proactiveness to adopt a child through examining their understanding of adoption documents as well as desire for administrative procedure reform and components of administrative documents.

Adoption documents stipulated in Article 17 of the Adoption Law 2010 include:

- A written request for adoption
- A copy of the passport or identity card or a valid substitute paper

d) Have a criminal record of commission of any of the following crimes: intentionally infringing upon another’s life, health, dignity and honor; maltreating or persecuting one’s grandparents, parents, spouse, children, grandchildren or care taker; enticing or compelling a minor to violate the law or harboring a minor violator; trafficking in fraudulently swapping or appropriating children, which has not been remitted yet

⁵¹ Interview with an official in charge of judicial, family records of a people’s committee in a ward in Ha Noi, 4 June 2014.

- Judicial record sheet
- Written certification of marital status of the adoptor
- A health certificate granted by a district or higher-level health agency. Written certification of family circumstances, housing and economic conditions granted by the commune-level People's Committee where the adopter permanently resides.

Although most participants had little experience of adoption registration, the survey results revealed they could answer questions on document components applied to LGBT people (see Table 2). They also expressed a desire that compulsory requirements for components of adoption documents be applied equally without discrimination on the basis of sexual orientation or gender identity of the adopters.

| Table 2. Percentage of LGBT people studying the following documents | LGBT people | Non-LGBT people |
|--|-------------|-----------------|
| Application for child adoption | 91.7% | 68.1% |
| Copy of passport or personal identity card | 86.1% | 66.7% |
| Criminal record | 79.2% | 61.1% |
| Document certifying marital status | 59.7% | 61.1% |
| Health examination record | 81.9% | 62.5% |
| Psychological test form | 69.4% | 51.4% |
| Document certifying family situation, residential status, and economical conditions issued by the People's committee of the commune in which the applicant resides | 87.5% | 65.3% |
| Written agreement of the applicant's family | 66.7% | 52.8% |
| Deeds of the child introduced to be adopted (prepared by the natural parents, guardians, or fostering center) | 76.4% | 54.2% |
| Other documents | 1.4% | 1.4% |

Sub-conclusion for 3.1 – Demand for cohabitation, raising children and adoption

🏳️‍🌈 Having and rearing children is a demand from couples and individuals, regardless of sexual orientation or gender identity. However, several elements affect LGBT people's decisions to have biological or adoptive child. Moreover, LGBT people aside from awareness or administrative procedures, financial conditions also have large impacts on young people's decisions to cohabit, raise or adopt children.

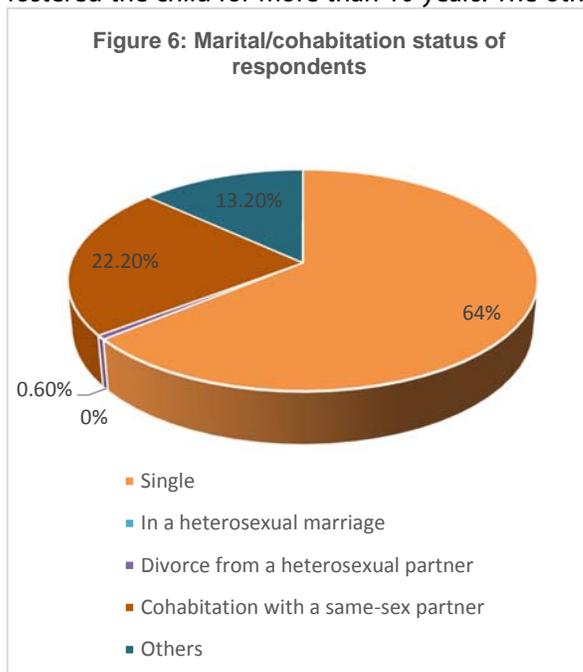
🏳️‍🌈 Adopting children is more favoured by gay men and bisexual males than lesbian women and bisexual females. However, the level of proactiveness in approaching and studying adoption-related legal regulations is limited.

3.2. Practice of cohabitation, raising children and adoption

3.2.1 Marriage and family status

Some studies have identified the situation and demand for married and setting up families by LGBT people in Viet Nam. In the online survey conducted by the Research Team, most respondents were single, not married or not living with a lover/partner (64.0%), while 22.2% of respondents lived with their lover/partner (Figure 6). Compared to the age range of survey participants (Figure 2) with approximately 90% being 30 years old and below, LGBT people's desire to cohabit and have a family was relatively pretty high, despite many potential obstacles.

Out of 328 online interviewees, only two people had a biological child and two others an adopted child, with one already having registered the adoption with local State authorities and fostered the child for more than 10 years. The other person had fostered the child on his/her own



will without official registration for more than one year. Similarly among 79 in-depth interviews, only three persons had biological children and three others adopted children. However direct discussions revealed these three had not registered their adoptions with competent State authorities and did not have certificates of adoption registration.

The online survey results with relatives of LGBT people were similar to the results of the survey conducted with LGBT participants. According to the respondents, 66% of LGBT people were single and 21.3% lived with their lover or partner. The number of LGBT people with a biological or adoptive child reported by their relatives was very few with only one case each of a biological child and adoptive child.

Typical case studies:

Among five case studies from couples selected for interviews by the Research Team in Ha Noi, Ho Chi Minh City and Can Tho, two were lesbian, two were gay couples and one formed between a bisexual woman and a transgender. Three couples had their own biological or adoptive child, two others were preparing to register for adoption or to give birth by scientific methods. Through the study of typical cases, couples usually had three opinions on when they would have a child in practice: (i) to have a baby with a partner of a different sex (if marital status is involved, they will be granted with the right to raise the child after divorce), (ii) to adopt a child (registered or unregistered) and (iii) to give birth to a baby by scientific methods (only applied to individuals with the registered sex on personal identification card namely "Female")⁵².

⁵² Pursuant to Decree No.12/2003/ND-CP of the Government dated 12 February 2003 on giving birth by scientific methods, only infertile married couples and single women are entitled to give birth by reproduction-supporting techniques as designed by specialised doctors. It means that single men are not permitted to birth by maternal supporting technique. In cases where a gay man wishes to have a baby and intends to supply his sperm to a single woman to give birth by scientific method, it is defined as surrogacy, forbidden in accordance with Clause 1, Article 6 of the Decree. In this case, the baby born will be determined as the child of the single woman making birth by

Case study I⁵³:

When H. came to a hospital to visit a friend three years ago, he saw an abandoned baby boy who continuously cried despite the intensive care of doctors in the hospital until he saw H. This strong connection and a feeling of fate convinced H. to adopt the baby. At the time of adoption, he had just broken up with his boyfriend, so he discussed the adoption with his parents and before making the decision himself.

Case study III⁵⁴:

Ms. Y. and Ms. H. knew each other through meetings with friends in Ha Noi. First just friends, they gradually fell in love. At that time Ms. H. had a husband and a child, but she no longer had any feelings for her husband. Finding real love with Ms. Y., Ms. H. decided to divorce her husband. After divorcing, Ms. H. moved to Ho Chi Minh City to live with Ms. Y., before Ms. H's family sent her 3-year-old child to Ho Chi Minh City to live with her and Ms. Y.

3.2.2 Advantages and challenges in cohabitation and child rearing

Advantages and difficulties often accompany cohabitation between same-sex or

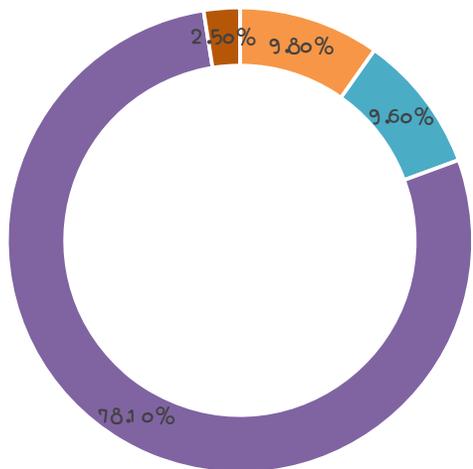
transgenders and their partners. Of 98.8% of interview participants, 78.1% said they met difficulties in rearing children, but they could be overcome. Of note, 2.5% reported that difficulties forced them to send children to others for nurturing (Please see Figure 7).

Most respondents said the biggest difficulty encountered by LGBT people in bringing up a child originated from prejudice of community or society (80.1%) and the applicable legal regulations (79.7%) limiting them from nurturing children. Moreover, family and obstructive acts by local State authorities are also factors that cause difficulties (Please see Figure 8).

Overall, the realities of caring for and nurturing a child are a common concern for LGBT people. Typically, there is discrimination of rights based on sexual orientation and gender identity in rearing babies (provisions of labour and social insurance laws applied to women bringing up children less than 12 months old as

opposed to men, parents entitled to leave to care of sick children). Some participants even expressed

Figure 7: Difficulties experienced by LGBT people raising children



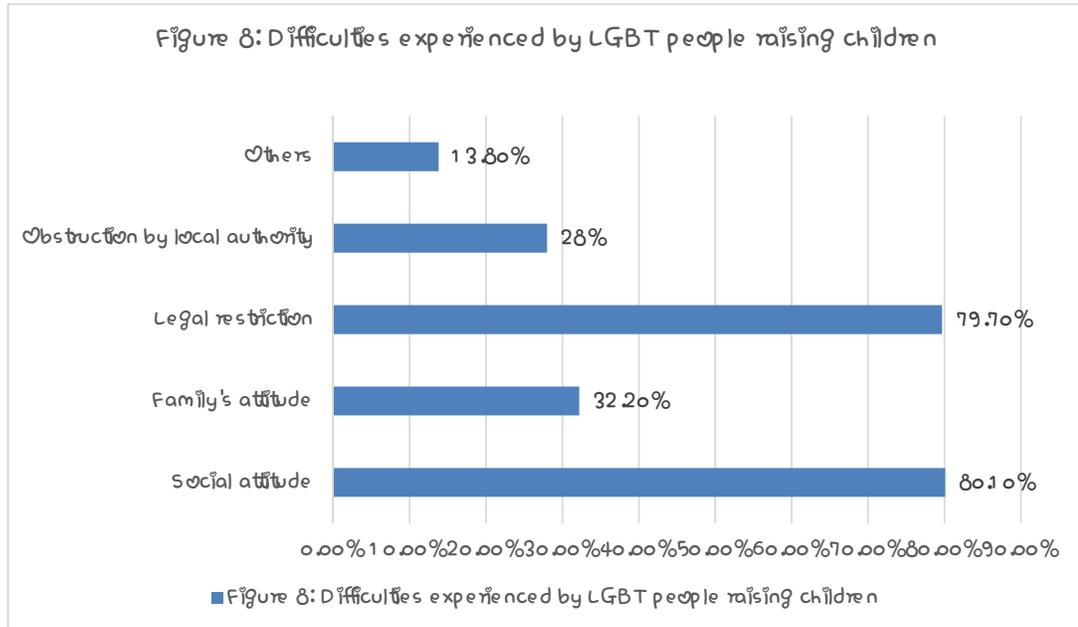
- Don't know
- No difficulties
- Difficulties can be overcome
- Difficulties leading to separation of children

scientific method, not the child of the gay man donating sperm in accordance with Article 20 of the Decree. This article also specifies that a child born by reproduction-supporting techniques shall not be entitled to claim the rights to inheritance and/or be nurtured from the sperm donor.

⁵³ See Annex III, Case Study I

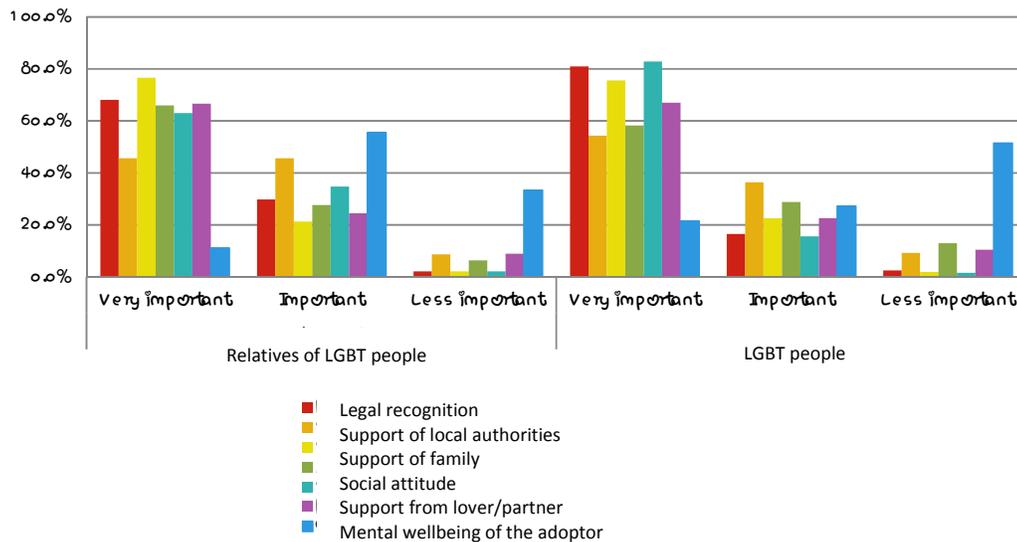
⁵⁴ See Annex III, Case Study III

fear that children may be psychologically impacted upon by living with parents who have a different sexual orientation or gender identity than the majority.



Such factors as recognition by laws, support of local authorities, support from families, community and society attitudes, support from lover/partner and personal psychology have crucial impacts on LGBT people’s adoption. Most confirmed “recognition of gender and sexuality diversity” and “family’s support” as important factors impacting on adoption (Please see Figure 9).

Figure 9: Factors impacting on LGBT people’s adoption according to LGBT people and their relatives



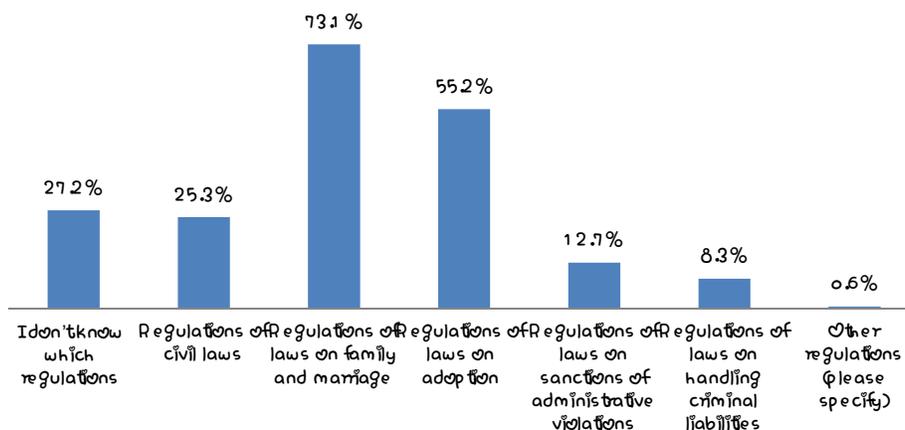
Those interviewed, (LGBT people, their relatives, State officials and researchers) expressed different points of views towards recognition of the right to child rearing regardless of sexual orientation or gender identity. While some thought permitting children to live with same-sex couples could affect their development, kinship relations and worship duties, others thought children and human rights were paramount. Some parents of LGBT people wanted their children to raise offspring and enjoy life without limitation of rights, while others LGBT people expressed a longing for supportive community and family attitudes as well as legal support for people regardless of sexual orientation and gender identity to nurture children.

a. Recognition by law:

According to the online survey, 97.5% of LGBT people respondents affirmed the importance of laws to achieve adoption, not differentiating between the sexual orientation and gender identity of adopters (Please see Figure 9). Moreover, they also shared that laws played an “important” role in nurturing a child and ensuring its rights, including differentiation based on sexual orientation and gender identity of adopters. Ensuring a child’s rights even if the father and mother no longer live together and enhancing parents’ responsibilities to their children are two reasons for LGBT people’s high appreciation of the laws’ role in non-discrimination based on sexual orientation and gender identity in child rearing and adoption. However, only four respondents said current applicable laws created “favourable conditions” for child rearing, including adoption.

Interview participants also shared that current legal viewpoints in Viet Nam may affect their right to raise children. Regarding the online survey, legal regulations on marriage and family as well as adoption are seen as restricting child rearing on the basis of differences in sexual orientation and gender identity (Please see Figure 10).

Figure 10: Regulations in Viet Nam restricting LGBT people’s right to raise children



Some respondents said applicable laws “obstruct” or “cause difficulties” because regulations do not permit two persons not in a lawful marital relationship to adopt the same child. In general, adoption procedures were also seen as too complicated for adopters, both Vietnamese and foreigners. The Research Team also found that besides complicated legal regulations and procedures as well as Vietnamese society’s lack of acceptance towards different sexual orientation and gender identity, respondents displayed a lack of knowledge about relevant legal regulations.

Only one online questionnaire respondent conducted adoption registration procedures with a local State agency. The respondent revealed that current adoption procedures had not created favourable conditions for individual adopters with a different gender to the one stated on a birth certificate as well as same-sex couples. Furthermore, parents of the same sex could experience difficulties in performing civil status registration for the adoptive child (in terms of birth certificate, family record).

Also, one online survey respondent fostered a child without registration. He did so out of fear authorities would not accept the application due to his disclosed sexual orientation. He also met difficulties in attempting to register civil status for the adoptive child.

Upon scanning adoption procedure regulations, the Research Team found some shortcomings that have created difficulties not only with regards to sexual orientation and gender identity, but also in undertaking administrative procedures to adopt a child (please see our analysis in Box I).

Box 1: Legal regulations on adoption procedures from Adoption Law and Decree 19/2011/ND-CP needing further clarity

1. Difficulties in identifying conditions for fostering

The Adoption Law provides that adopters must have suitable health, financial and accommodation conditions to assure the care, nurturing and education of the adopted child as well as have good ethical qualities⁵⁵. However, there is no document to guide or provide evaluation criteria for each condition, leading to different interpretations and applications of this provision in each locality. For example regarding financial status, in one province adopters are only required to provide evidence of employment, but in other provinces local authorities require a certain income level⁵⁶.

Unclear regulations on conditions for adopting children lead to difficulties in determining when communal People's Committees receive full valid documents, even though the Adoption Law states the duration for handling adoption applications is 30 days from the date where the communal People's Committee receives full valid documents and the duration for interviewing relevant people is 10 days from the date of receiving full valid documents⁵⁷.

2. Unclear regulations on “validity” of adoption application documents

The regulations on conditions for getting adoption as stipulated in the Adoption Law and current guiding documents can be divided into two kinds of conditions:

- (i) Subjective conditions: Having health, financial and accommodation conditions and assuring the care, nurturing and education of the adopted child and having good ethical qualities⁵⁸
- (ii) Fixed conditions: Having full civil act capacity, being at least 20 years older than the person to be adopted, not having restricted parental rights over a minor/child, not serving an administrative sanction at an educational institution or medical treatment establishment, not serving an imprisonment penalty, not having a criminal record of commission of any of the crimes: intentionally infringing upon another's life, health, dignity and honor; maltreating or persecuting one's grandparents, parents, spouse, children, grandchildren or caretaker; enticing or compelling a minor to violate the law or harbouring a minor violator; trafficking and fraudulently swapping or appropriating children, which has not been remitted yet⁵⁹.

With regard to the fixed condition group, after reviewing application documents, the relevant judicial official can identify if “the documents are invalid” and return the documents. However for the group of subjective conditions, it is hard to determine the “validity” of the documents as analyzed in section 1 of this box. If the adopter fails to meet one condition in this group, will judicial staff return the documents for “invalidity” reasons or are the documents “valid” and the process to collect opinions from relevant people shall still proceed?

During in-depth interviews and group discussions in Ha Noi, Ho Chi Minh City and Can Tho, participants recounted several examples of adoptions being registered, but the approval decision delayed or left in limbo. One participant has waited two years, but has yet to obtain the certificate of

⁵⁵ Adoption Law, Article 14, Clause 1, points c and d

⁵⁶ Ministry of Justice, Summary Report of three years implementation of the Adoption Law and two years implementation of LaHague Convention No.33 on child protection and cooperation in the field of international adoption, page 18

⁵⁷ Adoption Law, Articles 19 and 20

⁵⁸ Adoption Law, Article 14, Clause 1, points c and d

⁵⁹ Adoption Law, Article 14, Clause 1, points a, b and Clause 2.

adoption registration. Moreover, a lack of clarity on adopting conditions with such subjective requirements as “having good ethical qualities” and “having health, financial and accommodation conditions and assuring the care, and nurturing and education of the adopted child” and an adopter not “having physiological problems” also cause difficulties for adoption applicants to undertake required procedures once their sexual orientation and gender identity are disclosed.

b. Attitudes of local authorities:

Support from local authorities plays an important role in the adoption process (Please see Figure 9). Some 48 interviewees (61%) believed local authorities played a “very important” or “important” role, as such agencies directly conduct procedures for adoption registration and evaluate adopters as well as administrative procedures relating to children, such as birth registration, civil status and health insurance. Several respondents were unable to assess the degree of discrimination, if at all, from local authorities on the basis of sexual orientation and gender identity in child rearing and adoption as they had limited or no experience of such interactions. There were also cases of successful adoptions of children, but these LGBT people applied as single parents. Of the 79 persons interviewed, 30 said local authorities were unhelpful or even obstructed child rearing or adoption processes on the basis of sexual orientation and gender identity. This includes the request for additional paperwork relating to adoption conditions and rejection of the application in one case.

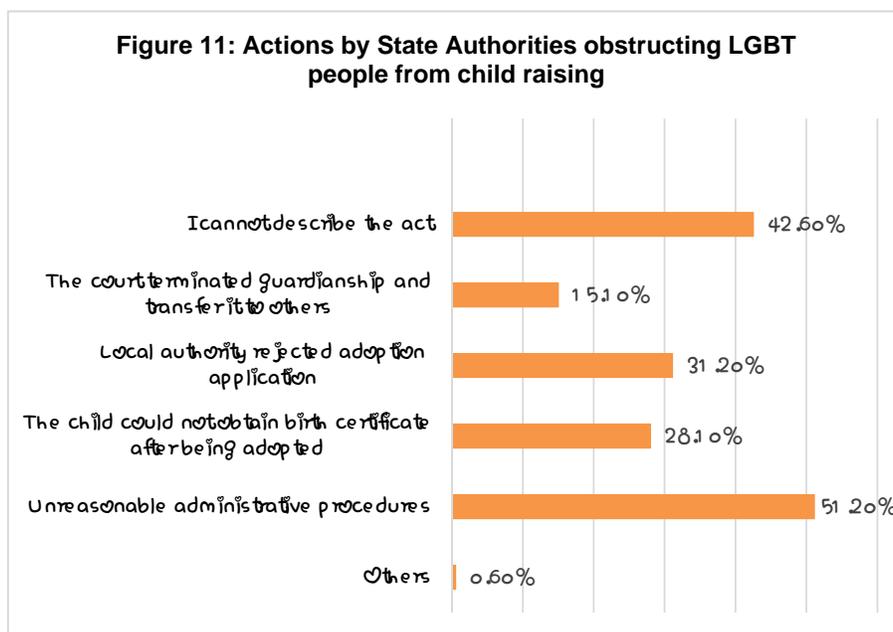
As revealed in group discussions, transgenders usually encountered difficulties in performing administrative procedures with local authorities due to their appearance contrasting with their birth registration certificate. This was especially so with adoption procedures⁶⁰.

Case study I⁶¹:

H. went to the local People’s Committee where he resided to carry out procedures to adopt a baby. However, commune People’s Committee officials refused to allow him to execute the adoption procedure because he was gay. The adoption faced a lot of difficulties, because the local officials prevented him from carrying out the adoption procedure and getting consent from the baby’s birth parents. Finally, he asked a law firm to help with procedures and make a birth certificate for the baby at a cost of VND30 million. All necessary procedures were completed after three months and H. became the baby’s foster father.

⁶⁰ See Annex IV, Group Discussion in Ha Noi, Ho Chi Minh City and Can Tho

⁶¹ See Annex III, Case Study I.



The level of State authorities' lack of cooperation in supporting LGBT people's child rearing is revealed by the online survey, with 51% reporting difficulties in implementing administrative procedures (Please see Figure 11), while refusing an application for adoption was second most common (31%) followed by the non-issuance of documents (28%).

From the survey of judicial officials from communal People's Committees in Ha Noi and Ho Chi Minh City, most confirmed there was no discrimination against adopters on the basis of sexual orientation and gender identity when performing adoption registration procedures. One public servant in Ha Noi⁶² said if an applicant did not reveal their sexual orientation or gender identity their adoption application would be treated as per other single persons, while the law did not forbid them from adopting children even if they had disclosed their sexual orientation or gender identity. All officials in charge of judicial-civil status work said it was necessary to comply with all legal regulations during the process of consideration and issuance of a decision in relation to child adoption. However, one civil status official in a Ho Chi Minh City ward opined that adoption applicants who had disclosed their status would be rejected as they were not recognized by laws⁶³. Similarly, in a Ha Noi ward a civil status official thought homosexuality was a pathological condition and required certification by medical institutions before any adoption could take place⁶⁴. However of all communal judicial officials interviewed for this study, none had managed adoption administrative procedures for an applicant who had disclosed their sexual orientation or gender identity. Interviewed couples adopting children declined to reveal their status to local authorities in case it jeopardized their case.

⁶² Interview in Ha Noi, 5 June 2014

⁶³ Interview in Ho Chi Minh City, 12 June 2014

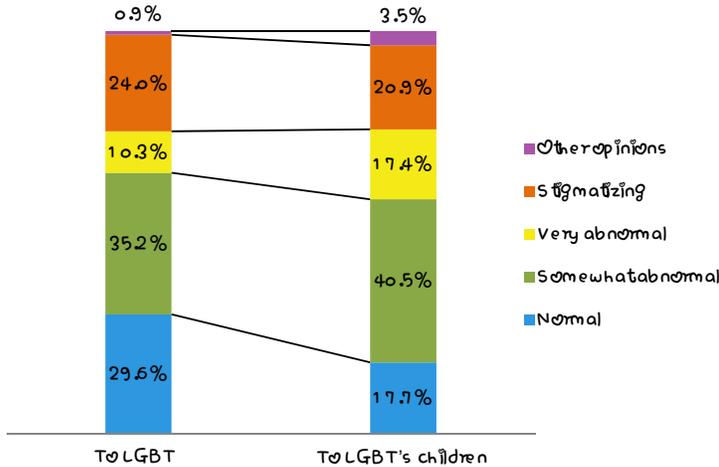
⁶⁴ Interview in Ha Noi, 4 June 2014.

c. Attitudes of communities:

Community attitudes are also viewed as important factors in the adoption process (Please see Figure 9). Through in-depth interviews, the Research Team found that most survey participants highly appreciated supportive community attitudes as they benefited a child’s normal development. In addition, community support is needed as it may influence changes to laws in relation to

eliminating discrimination due sexual orientation and gender identity.

Figure 12: Community and society attitudes towards LGBT people's child raising



The online survey showed that discrimination due to sexual orientation and gender identity exists in communities and society towards LGBT people and their children. Some 69.5% of respondents said community or society displayed “somewhat abnormal”, “very abnormal” or “stigmatizing” attitudes to people on the basis of sexual orientation or gender identity. Such attitudes can also

impact on children’s development (Please see Figure 12).

Of the 79 interviewees, 44 said current community and society attitudes towards LGBT people’s cohabitation and child rearing, including adoption, was “less positive” or “negative”. They also shared that community attitudes to gender and sexuality diversity in recent times had positively changed, especially among young people. However, transgender people still received more stigma in comparison to homosexual and bisexual people.

Case study V⁶⁵:

In four years living together with love and respect, T.A. and H. felt a true sense of happiness, yet this was blighted by stigma from neighbours, which had even forced them to move house once. But, local authority had not created difficulties during their time living together. At the time of survey, they rented a private house to avoid further possible stigma and attempted to get along with their neighbours.

Community attitudes towards gender and sexuality diversity, especially to children whose parents are LGBT, generally reflect traditional prejudices that are still common in Vietnamese society today. Such concepts include:

- (i) Gender and sexual diversity is a psychological condition that affects one’s ability to be a father or mother

⁶⁵ See Annex III, Case Study V.

- (ii) Relationships between same-sex couples are unsustainable and negatively impact on children's development
- (iii) Differences in parents' sexual orientation and gender identity will impact on children's development, psychology and physiology, and may cause difficulties in social relationships⁶⁶.

Box II: Capacity of gay and lesbian people to be parents and development of children in families with same-sex parents

Charlotte J. Patterson confirmed in her study there is no practical basis to state that gay and lesbian people are not suitable to be fathers or mothers. According to studies on lesbian couples, they tend to usually share housework with appropriate divisions of labour. In some cases, their parental skills are even better than those of heterosexual parents. The author analyzed three components of children's sexual identity in families with homosexual parents, that being gender identity, gender-role behavior and sexual orientation. Regarding gender identity, Patterson quoted related studies and concluded that no research on gender identity had proven gender identity difficulties of children living in families with gay or lesbian parents. In terms of gender behaviour, the author found no differences between children of lesbian parents and heterosexual mothers with respect to toy references, activities, favourite television programmes interests and occupational choices. In terms of sexual orientation, in all studies most children of gay or lesbian parents identified their own sexual orientation as heterosexual. The study also depicted a positive picture of community activities, especially in the school environment of children of homosexual parents, even though some children faced anti-homosexual attitudes from their peers. Within the family, children of lesbian parents regularly maintain relationships with other family members such as the father (divorced) or grandparents⁶⁷.

However, recent research by Mark Regnerus paints a different picture with limitations experienced by children growing up with homosexual parent(s). He reported that the unemployment and psychology rates of treatment for children of homosexual parents was higher than for heterosexual family children. The study pointed out that children of lesbian mothers and gay fathers seem to be more open to homosexual relations. But, the rate of children using drugs, smoking cigarettes, being arrested and found guilty of breaking the law in families of lesbian mothers was rather high⁶⁸.

As yet, few studies have been undertaken on children living in families with transgender parents. However, there is evidence that some agencies in charge of adoptive children and arbitration sometimes try to prevent transgenders from taking children into their lives or even separate children from their carer. Prejudices against transgenders are the root of disputes in the right to bring up a child. Documents confirm that parents' satisfaction of social requirements with respect to gender roles are not related to measurements of "children's best interests", the standard employed by courts to determine child-rearing issues. At present, there is no evidence that children with transgender parents have more of a tendency to influence their gender, taking into account several studies from the 1970s. Legally speaking, in some American states, parental status depends on legal marriage, which in turn depends on the sex written on identity documents which can be problematic for transgenders with regards marriage status and parental rights. The law and the practice in the US show that courts are usually entitled to decide the right to rear a child or visit and feed a child based on "the child's best interests". If transgender parents' gender is of no

⁶⁶ Charlotte J. Patterson, *Lesbian and Gay Parents and their Children: Summary of research findings*, *Lesbian & Gay Parenting*, American Psychological Association, 2005, pg. 05-15

⁶⁷ Charlotte J. Patterson, *Lesbian and Gay Parents and their Children: Summary of research findings*, *ibid*, pg. 05-15

⁶⁸ Mark Regnerus, *How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study*, *Social Science Research* 41 (2012), 752-770.

harm to children, there should no reason to limit the relationship between parents and children or to change the right to rear, visit and feed children. Several courts support this principle and treat transgender people in child rearing issues similarly to those in other cases and only focus on elements such as parental skills. In several cases, transgender people's ability to be parents has been recognized⁶⁹. In reality, some courts recognize the rights of transgender people to adopt⁷⁰, while in other cases the court terminated their rights to visitation saying that such visit(s) would harm the child socially and psychologically⁷¹.

In Viet Nam as of September 2014, no study has proven the relationship between sexual orientation or gender identity and the capacity to be a parent or development of children in families with LGBT parent(s). Through its study of typical cases, the Research Team found:

- (i) Three couples of gay men and lesbian women with children in healthy family environments strongly supported their children's development. In all three cases, the parents were worried that their child could suffer from stigma and discrimination at school. With one of the couples, gay men fostering a three-year-old child, the two fathers expressed concern about their ability to explain their child had "two fathers". They have even considered withholding the truth until the child grew up. In the second case of two lesbian women rearing a 6-year-old girl, the two mothers have explained their situation and the girl was reported to be comfortable having a "second mum". For the other lesbian couple, their 14-year-old son was dutiful and understanding and addressed them as "father" and "mother". Their son also did not report any stigma or discrimination at school despite questioning about his domestic situation. When they attended parents' meetings at school, neither detected differences in teachers' conduct.
- (ii) Two interviewed couples without a child (gay and bisexual couples) foresaw difficulties for any potential child, especially community stigma. One couple even planned their child rearing in several stages, to explain the meaning of "homosexual" to their children in an appropriate way. They especially learn about children's psychology and take reference from psychological doctors to prepare not only material but also mental conditions for their child rearing progress⁷².

d. Attitudes of the family:

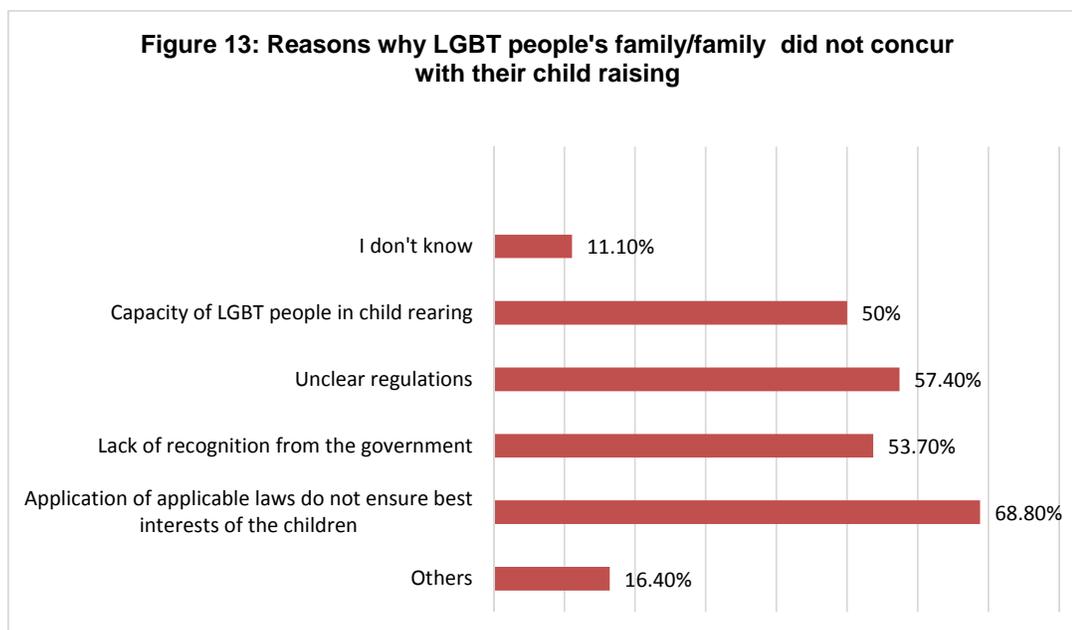
Most online survey respondents recognized the importance of family support for adoption (Please see Figure 9). In interviews, the Research Team noticed the important role of family in any decision to cohabit and raise children, including adoption. In particular, 73 respondents said family support and assistance was "very important" or "important" when deciding to cohabitate or adopt. Moreover, maintaining good family relationships would help children feel more complete. In group discussions, the Research Team recorded several cases where LGBT people were supported by their family when they came out, decided to live with their lover/partner and have a child. However, there were also cases where persons had not come out nor disclosed they had married a partner and raised a child to maintain family relationships and avoid stigma due to their identity.

⁶⁹ Lambda Legal, *Transgender Rights Toolkit: A legal guide for Trans people and their advocates*; Jack Pyne, *Transgender parents: Struggles, Strategies and Stories of Transformation as a Critical Review of the Literature*.

⁷⁰ *Mayfield v. Mayfield*, Case No. 96AP030032, 1996 Ohio App. LEXIS 3724 (Ohio Ct. App. Aug. 14, 1996)

⁷¹ *Cisek v. Cisek*, No. 80 C.A. 113, 1982 Ohio App. LEXIS 13335 (Ohio Ct. App. July 20, 1982)

⁷² See Annex III Case Study.



The quantitative survey revealed that most families (68.8%) were concerned applicable laws did not ensure the best interests of children regardless of their parents' sexual orientation or gender identity. In addition, some families feared regulations did not address sexual orientation and gender identity in provisions on adoption and that State authorities in localities may not recognize the right to child rearing due to sexual orientation and gender identity. Half of respondents thought their family may also worry about the influence of sexual orientation and gender identity on their ability to care for children (Please see Figure 13).

Upon direct discussions (including in-depth interviews and group discussions), only 23 out of 79 participants thought families showed "very supportive" or "supportive" attitudes towards their cohabitation and child raising, while 45 said families were "less supportive" or "not supportive". The Research Team found family attitudes usually depended on:

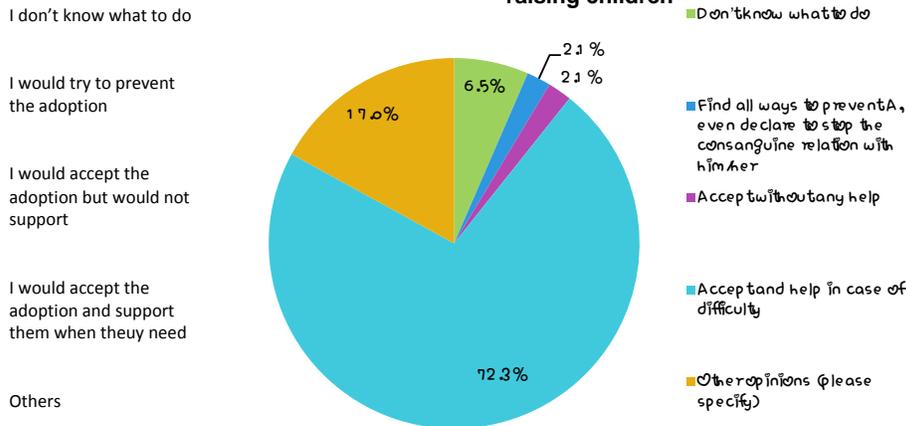
- (i) Awareness of family members on gender and sexuality diversity (affected by family members' working and living environments)
- (ii) Family, clan and kinship viewpoints on gender and sexuality diversity
- (iii) Community and society attitudes about gender and sexuality diversity
- (iv) Manner of coming out, persuasion and family reactions.

Case study V⁷³:

After three months living together, T.A. introduced H. to her family as a friend. The regular appearance of H. at T.A.'s house made T.A.'s family concerned about their relationship. They had support from T.A.'s father (who used to work in an international NGO) and her younger sisters/brothers, but not her mother. However after a process of persuasion and encouragement, T.A.'s mother finally gave her support for them to live together. T.A.'s family promised to allow them to publicly hold a wedding if the law recognized same-sex marriage. However until now, T.A. and H. have yet to declare their relationship with H.'s family due to fears of its non-acceptance.

⁷³ See Annex III, Case Study V.

Figure 14: Reactions of LGBT people's relatives to raising children



questionnaire, if LGBT people have a child and bring it up without support from family and relatives, most relatives would accept and help in case of difficulties in child raising (Please see Figure 14).

Most face-to-face survey participants supported their relatives to have children or adopt a child regardless of their sexual orientation or gender identity (28 relatives supported, one was unsure and three did not support). Reasons for support included capable child rearing ability, acceptance of the human need to raise offspring and the need for someone to provide care to a parent when they became older. Those who did not support did so because they thought children might be stigmatized and disadvantaged and child nurturing would be challenging due to sexual orientation and gender identity differences.

e. Other elements:

In addition to these factors, in direct discussions with 79 individuals the Research Team also evaluated influences from other elements in any decision to have and raise a child, including adoption, namely:

- **Economic conditions:** Some 14 participants reminded the Research Team in interviews about the importance of economic health in any decision to adopt a child, have a child naturally and raise it. Via group discussions, the importance of having a settled life before deciding to have children was also highlighted.
- **Organizations, networks and groups of LGBT people:** Of 79 in-depth interview participants, 65 thought that LGBT organizations, network and groups played “very important” or “important” role in championing LGBT people’s rights to live together, have and raise children as such organizations helped to raise social awareness about sexuality and gender diversity, provide knowledge and advocate for greater recognition and exercising of rights among law-makers. However, some said such organizations had failed to achieve maximum efficiency.
- **Knowledge and skills:** According to respondents, knowledge and skills for cohabitation and raising children were “very important” or “important”. However, interviewees also recognized that current knowledge and skills were rather limited as many LGBT respondents were still young with limited living skills.

Many LGBT people’s relatives thought gender and sexuality diversity was normal and not a sign of a mental or physiological illness nor a sign of a degradation in lifestyle.

Most relatives responding to the online questionnaire supported LGBT people’s child rearing, particularly that of their relatives. In fact, only one did not agree due the fact he was still a student, not due to his sexual orientation or gender identity. According to the online

- **Self-stigma:** Of the 79 interviewees, 58 said that self-stigma (worries about their own sexual orientation or gender identity which leads to low self-esteem) was a “very important” or “important” factor on their cohabitation and adoption as a sense of happiness was needed to fully meet children’s needs. Some 42 of the 79 interviewed people considered self-stigma among LGBT people was “very low” or “low”, while 22 thought that it was “rather high” and five others thought it was “very high”. In group discussions, participants shared it was difficult to accurately assess “self-stigma” on the basis of sexual orientation or gender identity of all people, including those who do not consider themselves LGBT. The respondents themselves could not estimate the number of people with sexual orientation or gender identity different from the social norms, as well as the number of people who have disclosed their own sexual orientation or gender identity.
- **Legal aid centre, legal consulting centre:** Most interviewed people could not comment on the roles of legal aid or legal consulting centres if the sexual orientation and gender identity of adopters had impacted on cohabitation and child rearing as they had little or no contact with such centres. This survey’s results indicate limitations in legal aid or legal consulting centre operations. As a result, the Research Team looked at how people with minority sexual orientations or gender identities could better utilize their services and whether gender and sexuality diversity caused an individual to become a disadvantaged group in society, such as the poor or ethnic minorities. In practice, gender and sexuality diversity consists of sexual orientation, gender identity, gender presentation, sexual behavior and such differences in sexual orientation are divided into groups such as gay men, lesbian women and bisexual people. Transgender people are those with differences in terms of gender identity, including intersex. Some groups are more vulnerable than others, but these groups may share some common issues. Moreover, in the context of legal aid providers in Viet Nam not capable to support all disadvantaged people in need, such as victims of family violence, children, persons arrested or accused in criminal cases⁷⁴, more support and resources may be needed to better support those with gender and sexuality diversity in terms of legal provisions on legal aid.

Sub-conclusion for 3.2 – Practice of cohabitation, child raising and adoption

-  At present, there are few cases of LGBT individuals or couples with biological or adoptive children, but the demand for child raising exists and is expected to increase.
-  There are three options for LGBT people in Viet Nam who want to have a child: (i) have a child with a partner of a different sex (if they have marital relationship, LGBT will be entitled to raise the child after divorce), (ii) adopting (registered or unregistered) and (iii) giving birth by scientific method.
-  The recognition of laws, support from local authority, family and lovers/partners, community and society attitudes and the adoptor’s psychology have important impacts on adoption. Most interviewed relatives of LGBT people supported their cohabitation, adoption and child raising.

⁷⁴ Vietnamese legal aid, Solutions to improve regulations on people who need legal aid, at <http://www.giup-phap.ly.gov.vn/nghien-cuu-trao-doi/giai-phap-hoan-thi-n-cac-quy-dinh-phap-tuative-nguoi-duoc-ho-giup-phap-ty>

-  There are still limitations in the applicable of adoption registration procedures, with subjective standards and conditions that fail to protect gender and sexual diversity, which causes difficulties in the adoption application process.
-  Negative attitudes from the family, community and society towards gender and sexual diversity causes difficulties in child rearing as well as produces psychology barriers for children in community activities.
-  Economic conditions, activities of LGBT organizations, networks and groups, cohabitation and child rearing knowledge and skills and overcoming self-stigma are considered factors impacting on LGBT people's cohabitation, child raising and adoption.
-  Communities and society have become more open to gender and sexuality diversity as well as cohabitation of same-sex couples. Nevertheless, there is still concern about the influence of sexual orientation and gender identity on the ability to be a parent and a child's development.

3.3. Desires and recommendations of LGBT people and their relatives

3.3.1 Recommendations to amend legal regulations in relation to cohabitation, child raising and adoption

In direct interviews, almost all participants (77/79) expressed their wish to amend legal provisions to permit same-sex couples to adopt the same child and a similar proportion thought that the Law on Marriage and Family should be amended to permit same-sex marriage. Relatives of LGBT people also supported the amendment of laws to facilitate same-sex couples to raise children.

To more thoroughly investigate LGBT people's desires and plans for cohabitation and child rearing, the Research Team studied possible de facto agreements between same-sex couples or those with transgender people about cohabitation, caring and nurturing children. The study revealed such agreements are available regarding cohabitation and mainly made orally and voluntarily. All online respondents said laws should recognize written agreements between couples regardless of their gender or sex for caring and nurturing children. At group discussions, participants said if laws recognized adoption by same-sex couples, conditions on nurturing could be stipulated, such as reporting regimes, bank savings accounts, and employment of baby-sitters by gay couples or family assistance⁷⁵.

Case study V⁷⁶:

After accepting and supporting the decision of T.A. and H. to live with each other and have a child, T.A.'s parents promised to allow them to publicly have a wedding if the law recognized same-sex marriage.

T.A. and H. discussed agreements about living together and raising a child, including property issues. However, they understood and believed in each other and thought it unnecessary to have such an agreement. At the time of the survey, both had sent money into an account of H. (the main card holder) and T.A. (supplementary card holder), for spending and management. Their common assets are currently insignificant, but if they had high-value assets in the future, they would have an agreement to outline each

⁷⁵ See Annex IV, group discussion with gay men in Ho Chi Minh City

⁷⁶ See Annex III: Case Study V.

other’s rights. They thought that if they did not live with each other anymore, H. would be more disadvantaged because T.A was the child’s biological mother. They decided that if they had a child, they would make an agreement to ensure the child’s rights.

Case study I⁷⁷:

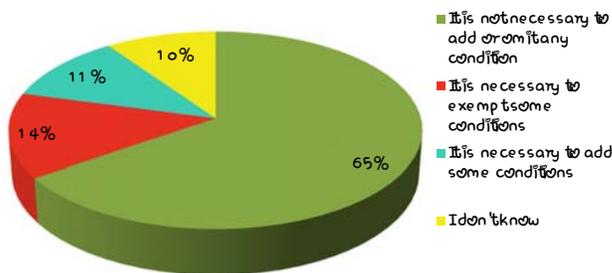
H. tried to learn about a child’s psychology at different ages, but this was difficult due to its young age (three years old).

Whether the law allows same-sex marriage is unimportant to T.H. and H. because they are both living happily. H. said he was satisfied with his present life, adding he hoped the law could recognize sexual orientation diversity so he could easily explain their living situation to their son.

Case study III⁷⁸:

Ms. H. and Ms. Y. felt satisfied with their present life, which had the acceptance of their families. However, both expressed hope the law would recognize same-sex marriage, so Ms. Y. could be automatically recognized as the child’s mother, which would be a good long-term solution for their family.

Figure 15: Opinions on adding extra conditions for adoption by LGBT people



At the time of the survey the Law on Marriage and Family 2014 was about to be approved, but the draft submitted to the National Assembly did not recognize marriage of same-sex couples. However, people directly interviewed still desired to amend legal regulations related to recognition of same-sex couples’ marriage and child raising together. Most wanted laws to recognize three important rights of same-sex couples with or without children namely: (i) the right to be cared for by a family formed by couples living together, (ii) the right of children to receive alimony

when they no longer live with their parents and (iii) the right to common assets. Some said it was unnecessary to recognize such rights as once they lived together, all responsibilities and interests would be equally shared based on common benefits and voluntary nature of both partners.

Some 65.3% of people answering the online questionnaire about exemption or supplementation of conditions for LGBT people to adopt children revealed they did not want to supplement or reduce any conditions listed by the Research Team in accordance with regulations of laws and relevant assumptions (Please see Figure 15). This proves that differences in sexual orientation and gender identity in comparison to social norms requires protection from discrimination to ensure equality for all people.

In relation to adoption procedures, some interviewees wished to reduce documentation required in adoption application documents. Of those who had studied adoption procedures, 42.9%

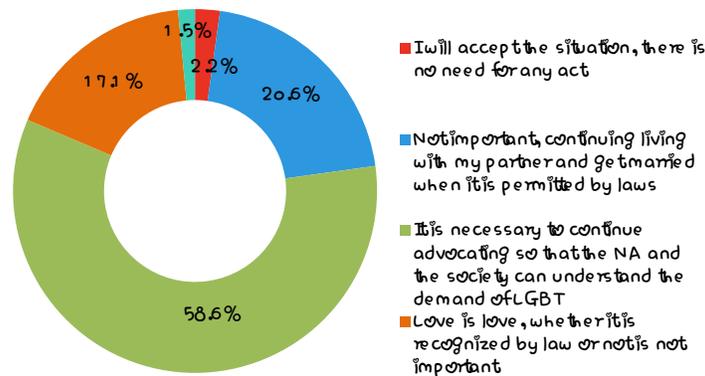
⁷⁷See Annex III Case Study I

⁷⁸See Annex III Case Study III.

of respondents in the quantitative survey did not want to provide certification of marital status as the law did not recognize same-sex marriage.

3.3.2 Action tendency

Figure 16: Attitude LGBT people towards recognition of same-sex marriage in the Law on Marriage and Family



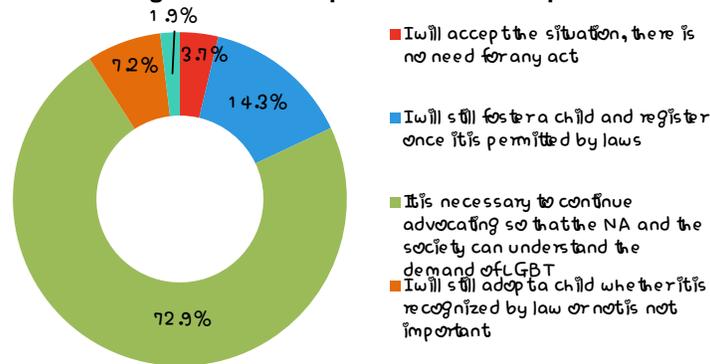
To learn about participants' attitudes and actions with the Law on Marriage and Family not recognizing same-sex couples' marriage or cohabitation, the majority of interviewees (58.6%) confirmed they needed to continue advocating for the National Assembly and society to understand their needs (Please see Figure 16).

From group discussions, the Research Team noticed that the majority predicted that laws would not recognize marriage of same-sex couples. In cases where interviewees appeared to lose belief, most agreed they must continue advocating for their and their children's rights.

Regarding discrimination based on sexual orientation and gender identity, 72.9% stated that progress in policy and social advocacy should be continued, 7.2% did not care about legal permission and 14.3% shared they would still adopt, nurture and register a child once permitted by law (Please see Figure 17).

Some 22 out of 32 interviewed relatives said they were well-prepared to raise their voice to protect and persuade policy-makers to amend legal regulations to recognize same-sex couples’ rights to get married and adopt the same child. Only nine out of 32 did not want to raise their voice publicly out of fear identity of their relatives might be disclosed or they did not believe they could influence law changes.

Figure 17: Attitude and intentions of LGBT people when regulations on adoption do not recognize child adoption of LGBT couples



Sub-conclusion for 3.3 – Desires of LGBT people and their relatives

-  Most LGBT people and their relatives wished that laws could be amended towards recognizing the right of same-sex couples to get married and raise children together.
-  LGBT people confirmed they would continue implementation of suitable measures to protect the rights of themselves and their children.
-  Differences in sexual orientation and gender identity did not result in differences in protection against discrimination.
-  Relatives of LGBT people are well prepared to publicly protect their rights towards recognizing the right to get married and raising children together regardless of sexual orientation or gender identity.



CHAPTER 4: CONCLUSIONS AND RECOMMENDATIONS

4.1. CONCLUSIONS

Children must be entitled to general human rights, such as the right to non-discrimination and special rights such as the right to be adopted as well as those recognized in international treaties to which Viet Nam is a member. Two core principles emphasized in international treaties related to children's rights protection are "non-discrimination against children" and "in the best interests of children". International laws have recognized and protected children's rights without discrimination based on sexual orientation and gender identity of children or their parents. Applicable Vietnamese laws do not display any differences in regulations on sexual orientation and gender identity for children or their parents.

Differences in terms of sexual orientation and gender identity neither disqualifies a person's human capacity before the law nor deprives their human rights in any aspect of life, including the right to marry, to form a family and adopt children. That every person regardless of their sexual orientation or gender identity should be entitled to the right of non-discrimination and equality is a core principle of international human rights law. From the perspective of human rights, several studies have been conducted in countries to amend legal regulations towards changing old perceptions about gender, marriage and family, as well as consider the confirmation and elimination of discrimination due to sexual orientation and gender identity as a signal of respect and high appreciation of human's basic freedom rights in an increasingly democratic society⁷⁹.

In the review of Vietnamese legal regulations, no regulation was found on prohibition or conditions for sexual orientation or gender identity of adopters, guardians or representatives. Therefore, differences in terms of sexual orientation or gender identity do not deprive such individual rights. However, legal provisions remain unclear and some regulations are subjective, leading to instances of discrimination during the approval process for adopters and guardians based on sexual orientation and gender identity.

Although only a small number of LGBT participants raise children, the survey shows that the demand for having children (including adoptive and biological children) is held by many couples and individuals regardless of their gender or sexuality. Communities and society have gradually become more open about gender and sexual diversity and cohabitation of same-sex couples despite concern about the impacts of sexual orientation or gender identity on the capacity to be parents and the development of children. Study participants also proved that their ability to take care of a child

⁷⁹ In the United States, on 26 June 2013, the Federal Supreme Court released a judgment in a case regarding LGBT's right to get married named "United States v. Windsor", in which Article 3 of Defense Marriage Act-DOMA was declared to violate the United States Constitution by defining that the definition of husband and wife only applied to heterosexual couples. This judgment opened a new chapter in the law of the United States towards recognition of LGBT's rights on marriage and families, which was evaluated by President Obama as "a victory of democracy".

was not affected by sexual orientation or gender identity. In general, participants felt laws should equitably facilitate all parents and children to enjoy similar conditions without discrimination due to gender or sexuality.

The majority of survey participants hoped the legal system would be amended to recognize same-sex couples' rights to get married and nurture children together. They do not want to be stigmatized, but be equally treated in executing their human rights. Deriving from this desire, the Research Team found that some legal concepts of "gender", "gender equality" and the method of identifying the entity being violated in "family violence" need to be expanded towards determining gender identity without consideration of biological sex. If such legal concepts are expanded, it will have a large impact on legal institutions for people with gender and sexuality diversity.

4.2. RECOMMENDATIONS

On the basis of the review and analysis of legal regulations as well as research into the implementation of legal regulations on the influence of sexual orientation and gender identity on the right to adopt children, the Research Team's proposals and recommendations to amend some legal documents are as follows:

4.2.1 Recommendations to amend the Civil Code

- **Right to have guardians:** As analyzed in Chapter 2 of this report, current regulations on guardianship can affect children's rights, as under the Civil Code 2005 on guardianship, the automatic guardians of a minor are those who have a blood relationship with him/her, such as biological siblings, grandfather, grandmother, uncle or aunt who fully meet conditions to be a guardian. *In case of no automatic guardian* (no relatives or relatives not meeting conditions to be the guardian⁸⁰), the People's Committee of a commune, ward or township where the ward resides shall have the responsibility to appoint a guardian or propose an organization to undertake the guardianship⁸¹. Thus, current applicable legal regulations have not created favourable conditions for people not a child's relatives as defined by the law, but have a close relationship and suitable conditions to take care of the child (for instance, living and taking care of children) to become their guardians. The Research Team suggests that in the case of same-sex couples living together, in which one person is the child's biological or adoptive father or mother - but does not have suitable conditions to take care of the child, the person who is not the child's legal parent should become the automatic guardian ("next of kin") or be prioritized to be appointed as guardian under the proposal from the child's father or mother.

With such limitations on guardianship institutions under the Civil Code, the Research Team identified the need for studying and supplementing Civil Code regulations in relation to the guardianship institution with two targets: (i) to guarantee the rights of children to enjoy the best care and (ii) simplify procedures for appointing guardians. Children's interests must be taken care of in mental and physical aspects. Accordingly, they should live with and be entitled to care from those

⁸⁰ C C , Articles 60 and 61

⁸¹ C C , Articles 61 ,62 and 63 .

who truly love them and have the financial ability to take care and nurture them, whether they have a blood relationship with the children or not.

- **Right to have an authorized legal representative:** The Civil Code 2005 has no regulations authorizing legal representation of parents to children or guardians to wards⁸². This may affect children's interests when parents or guardians cannot authorize legal representation, but can authorize others to perform representation in some specific transactions, usually regarding property. Through studying the draft amended Civil Code, the Research Team found it allowed for a regime of "re-representation", in which parents or guardians as the representative could make or perform the act of representation via other persons or legal entities through "re-representation" institution⁸³. If this institution is approved, it will be a solution to protect the rights of children to have legal representatives in cases where their parents or guardians do not have conditions to take care of them. Especially, in case of same-sex couples living together, both can take care and represent the child together.

- **Right to sex re-assignment:** As analyzed in Chapter 2, the Civil Code 2005 provides regulations on the rights of persons to have sex re-assignment if they are intersex. Although the Civil Code 2005 does not prohibit sex reassignment surgery, a decree guiding the implementation of the Civil Code 2005 limits it to intersex people⁸⁴. Sex reassignment requires further study when the Civil Code 2005 is amended to include those whose gender identity does not match their sex assigned at birth. This could also provide a basis for other relevant laws such as the Law on Civil Status, Adoption Law, Law on Marriage and Family to establish legal institutions for transgender people and for other related issues such as biological children and adopted children of transgender people, especially transgender people subscribing as the adoptive children's parents in birth certificates. In addition, the Research Team also recommends legal institutions' consideration of providing a third option beside male and female as gender marker, especially for those who are intersex, including the right not to be subject to medical intervention for "re-assignment" of sex and the right to choose sex without being dependent on doctors' diagnosis or decisions. The Civil Code should omit the definition that intersex people are those with "naturally-born defects in terms of sex" to avoid any discrimination against them.

4.2.2. Recommendations to amend the Adoption Law

- **The Adoption Law can expand adoption forms to temporary adoption or adoption within a defined time period (foster care):** This form does not create a relationship between adoptive parents and adoptive children as in the Civil Code 2005 and Adoption Law, including the caring, nurturing, inheritance and personal relationships. This form only creates a relationship for caring and nurturing between adoptive parents and children, ensuring children's interests and the need to nurture and care for children disregarding their sexual orientation or gender identity.

- **By-law documents to guide conditions on adopters are needed:** As analyzed in Chapters 2 and 3, there is no specific guidance on such conditions in Viet Nam. In reality, each locality defines

⁸² CC, Articles 91, 107, 113 and 141

⁸³ See full text of the draft at website:
http://duthaonline.gov.vn/DuThaoLisTbD_T_DUTHAO_LUAT/Vieu_Detail.aspx?ItemID=588&LanID=589&TabIndex=1

⁸⁴ Decree No. 88/2008/ND-CP dated 05 August 2008 of the Government on sex re-assignment, Article 4.

conditions based on suitable criteria, such as the locality's average income. Criteria for assessment are similar to cases considering granting married couples the right to nurture children upon divorce with first priority to protect children's rights. The Ministry of Justice should release a set of standards to guide the assessment of "qualitative" criteria (subjective) to guarantee transparent and lawful consideration of adoption dossiers, ensure the rights of all people without discrimination due to sexual orientation or gender identity when performing adoption procedures as well as contribute to ensure children's interests once they are adopted by persons meeting all standards. In addition, it should provide guidance for "competent and valid dossiers" and the time for certifying that the relevant People's Committee has received the "competent and valid dossiers" from the registering adoption applicant to guarantee authorities receive dossiers in compliance with the duration for settling administrative procedures.

- **Ensure no discrimination in common adoption by couples:** To achieve no discrimination on the basis of sexual orientation, more intensive research is needed to create a basis for advocacy towards law amendments. It should be noted that such research should be conducted on a large-scale with survey subjects having different sexual orientations and gender identities as well as prioritizing the principle of guaranteeing children's interests. In addition, research should focus on family aspects and any potential sexual orientation and gender identity influences on children's development. Especially, such research should consider Viet Nam-specific cultural issues. From the perspective of protecting children's rights, the Research Team is fully aware of the importance of setting up mechanisms to monitor adoption, not only confined to provisions on periodic reports made by adoptive parents or current regulations on inspections/examinations, especially when piloting models for couples to adopt children together in the future (if any). In some countries, social workers carry out periodic supervisions of families adopting children by conducting regular interviews with children, adoptive parents, neighbours and residential groups where their family lives and report to the local State body. In Viet Nam at present, communal People's Committees have officials in charge of children and family issues, but such officials usually struggle to undertake monitoring duties as they are often overloaded with other tasks. In the future, if the model for non-marital couples adopting children together is piloted, social workers at local people's committees should be involved in monitoring and such workers can be mobilized from social organizations specializing in protecting children's rights.

4.2.3. Recommendations to amend the Gender Equality Law

According to current provisions of the Gender Equality Law, concepts are limited to "gender" and "sex". Meanwhile, such new concepts as "sexual orientation" or "gender identity" are increasingly popular and understood in many diverse ways within society. There is a need to legalize these new concepts and supplement gender equality regulations to include non-discrimination on the grounds of sexual orientation and gender identity and not just differences in "gender" or "sex" (biological sex). Gender equality should also be understood as equality not only between two genders, but also among all people with gender not considered a "landmark" or a criterion for division of rights. Consequently, social prejudices on gender and gender binary systems (only two genders (male and female) exist and each gender has its own duties) will also be eliminated. As analyzed in Chapter 2, if legal concepts on "gender" and "gender equality" are expanded, it will have a significant impact on current legal institutions for all members of society, including LGBT people and institutions on nurturing adoptive children and taking care and protecting children, especially recognition of gender identity of transgender people in the adoption process.

4.2.4. Recommendations to amend the Children Law

The applicable Children Law recognizes the principle of non-discrimination to children; accordingly, children, whether female or male, in or out of wedlock, biological or adopted, born to one party or both parties to a marriage; irrespective of their nationality, belief, religion, social background and position as well as political opinions of their parents or guardians, are all protected, cared for and educated, and enjoy rights prescribed by law⁸⁵. It will be more comprehensive if this principle of law further recognizes that the diversity in terms of gender and sex of the children themselves, their parents, or guardians is not a criterion for discrimination to children either.

4.2.5. Recommendations to amend the Law on Civil Status

As analyzed in Chapter 2, under applicable regulations in Article 36 of the Civil Code and Decree No.88/2008/ND-CP on sex re-assignment, people with congenital sex defects or unidentifiable sex under specific medical criteria (intersex) are entitled to “re-assign their sex” and perform procedures to adjust civil status information in accordance with the re-assigned sex. For transgender people, because sex transformation surgery is not permitted by applicable law, the sex after transmission of this group is not recognized in legal documents such as Personal Identification Cards, Citizen’s Identity, Birth Registration Certificates or Certificates of Adoption.

The Research Team suggests social organizations, non-governmental organizations, sponsors, community groups, law firms and media organizations related or interested in gender and sexuality diversity in Viet Nam should cooperate and coordinate to act out specific plans. Four main areas for action to be implemented are: (i) continue intensive research into specific aspects relating to gender and sexuality diversity rights, (ii) enhance self-management capacity and policy advocacy of self-help and community groups for LGBT people, (iii) strengthen communication on issues related to gender and sexuality diversity in Viet Nam and globally and (iv) enhance policy advocacy to amend, supplement and perfect applicable laws to recognize and exercise rights without discrimination on the basis of sexual orientation and gender identity, from the perspective of guaranteeing human rights which Viet Nam is committed to with the international community.

⁸⁵ Children Law, Article 4

ANNEX I – REFERENCE

A – LEGAL DOCUMENTS

INTERNATIONAL CONVENTIONS

1. Convention on the Elimination of All Forms of Discrimination Against Women (1979)
2. UN Convention on the Rights of the Child (1989)
3. LaHaye Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993)
4. International Covenant on Civil and Political Rights (1966)
5. International Covenant on Economic, Social, and Cultural Rights (1966)
6. UN Declaration of the Rights of the Child (1959)
7. Geneva Declaration of the Rights of the Child (1924)
8. Universal Declaration of Human Rights (1948)

LEGAL NORMATIVE DOCUMENTS OF VIETNAM

1. The Constitution of the Socialist Republic of Viet Nam passed by the National Assembly of Viet Nam, Legislature XIII, Session 6 on 28 November 2013
2. The Civil Code No. 33/2005/QH11 passed by the National Assembly of the Socialist Republic of Viet Nam on 14 June 2005
3. The Law on Social Insurance No. 71/2006/QH11 passed by the National Assembly of the Socialist Republic of Viet Nam on 29 June 2006
4. The Law on Child Protection, Care, and Education No. 25/2004/QH11 passed by the National Assembly of the Socialist Republic of Viet Nam on 15 June 2004
5. The Law on Marriage and Family No. 52/2014/QH13 passed by the National Assembly of the Socialist Republic of Viet Nam on 19 June 2014
6. The Law on Adoption No. 52/2010/QH12 passed by the National Assembly of the Socialist Republic of Viet Nam on 17 June 2010
7. Decree No. 110/2013/ND-CP of the Government dated 24 September 2013 providing for sanction of administrative violations in the field of judicial assistance, judicial administration, marriage and family, civil judgment enforcement, enterprise and cooperative bankruptcy
8. Decree No. 12/2003/ND-CP of the Government dated 12 February 2003 on childbirth by scientific methods
9. Decree No. 158/2005/ND-CP of the Government on civil status registration and management of which was amended and supplemented by Decree No. 06/2012/ND-CP of the Government amending and supplementing a number of articles of decrees on civil status, marriage and family, and certification
10. Decree No. 19/2011/ND-CP of the Government dated 21 March 2011 providing detailed implementation of some articles of the Law on Adoption
11. Decree No. 88/2008/ND-CP of the Government dated 05 August 2008 on sex re-assignment
12. Incorporated document No. 03/VBHN-BCA on Identity Card dated 26 September 2013

B – OTHER DOCUMENTS

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3. Australian Institute of Family Studies, School experiences of the lesbian and gay, Family Matters No.59 Winter 2001
4. Ministry of Foreign Affairs, Country Report of Periodical Review on Human Rights Exercise in Viet Nam.
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8. CRIGHTS, International laws on rights of vulnerable people groups, Labor-Society Publishing House, 2010
9. Charlotte J. Patterson, Lesbian and gay parents and their children: Summary of research findings, 2005
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11. Fiona L. Tasker and Susan Golombok, Growing up in a lesbian family: Effects on child development, Guilford Press, London, 1997
12. Gary J. Gates, M.V. Lee Badgett, Kate Chambers, Jennifer Macomber, Research Report on LGB-parent families, 2007
13. iSEE, Living in a Heterosexual Society: Stories of 40 Women Who Love Women, Relationship with Family (Vietnamese), 2010
14. iSEE, Preliminary online survey results: Socio-economic Characteristics of Men Who Have Sex with Men in Viet Nam, 2009
15. Jack Pyne, Transgender parents: Struggles, Strategies and Stories of Transformation – A critical Review of the Literature
16. Judith Stacey and Timothy J. Biblarz, (How) Does the Sexual Orientation of Parents Matter?, American Sociological Review, 2001
17. Lambda Legal, Transgender Rights Toolkit: A legal guide for Trans people and their advocates
18. Mark Regnerus, How different are the adult children of parents who have same-sex relationships? Findings from the New Family Structures Study, Social Science Research 41, 2012
19. National Clearinghouse on Child Abuse and Neglect Information National Adoption Information Clearinghouse, Gay and Lesbian Adoptive Parents: Resources for Professionals and Parents, 2010
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22. UNDP & USAID, *Being LGBT in Asia: Viet Nam National Report: A Participatory Review and Analysis of the Legal and Social Environment for Lesbian, Gay, Bisexual and Transgender (LGBT) Persons and Civil Society*, 2014
23. United Nations Human Rights Office of the High Commissioner, *Born Free and Equal – Sexual Orientation and Gender Identity in International Human Rights Law*, 2012.

ANNEX II: ADMINISTRATIVE PROCEDURES IN RELATION TO IMPLEMENTATION OF THE RIGHTS OF CHILDREN AND LGBT

| PROCEDURES FOR ADOPTION | | |
|--|----------------------------------|--|
| Conditions applicable to domestic adoption | Adopter | <ul style="list-style-type: none"> • Having full civil act capacity • Being 20 years or more older than the adopted person⁸⁶ • Having health, financial and accommodation conditions for assuring the care for and nurture and education of the adopted child; and • Having good ethical qualities |
| | Person who may not adopt a child | <ul style="list-style-type: none"> • Having some of the parental rights over a minor child restricted; • Currently serving an administrative handling decision at an educational institution or medical treatment establishment; • Currently serving an imprisonment penalty; • Having a criminal record of commission of any of the crimes: intentionally infringing upon another's life, health, dignity and honor; maltreating or persecuting one's grandparents, parents, spouse, children, grandchildren or caretaker; enticing or compelling a minor to violate the law or harboring a minor violator; trafficking in, fraudulently swapping or appropriating children, which has not been remitted yet. |
| | The to-be-adopted child | Only be entitled to be adopted by a single person or a couple being husband and wife |
| Conditions applicable to adopters with foreign elements | Adopter | <ul style="list-style-type: none"> • Similar conditions to those applied to domestic adopters; and • Satisfying all conditions required by the laws on adoption of the country in which they permanently reside (in case of Overseas Vietnamese or foreigners permanently residing abroad who seek to adopt a Vietnamese), or the laws of the country in which the to-be-adopted person permanently resides (in case of Vietnamese citizens who seek to adopt a foreigner) |

⁸⁶ Not applied to cases of step-father adopting his wife's child, step-mother adopting her husband's child; or consanguineal aunt, cousin adopting her/his niece or nephew

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| | The to-be-adopted child | Only be entitled to be adopted by a single person or a couple with marriage registration. |
| Procedures for domestic adoption | Procedure to registering adoption demand ⁸⁷ | Conducted at the Department of Justice of the province where the person seeking to adopt a child permanently resides If a child is available to be adopted, the local Department of Justice will introduce the adopter to the People’s Committee of the commune in which the child permanently resides for consideration and settlement. It is impossible to find specific regulations about the procedure to register adoption demand at the Department of Justice |
| | Procedure of adoption registration | Step 1: Adopter prepares his/her documents (documents of the adopter) and the child’s documents to submit to the People’s Committee of the commune in which the child or the adopter permanently resides Step 2: The People’s Committees of the commune receiving the documents checks the documents, consults opinions from the natural parents/guardian of the child and of the child if he/she is of from full 9 years old Step 3: The communal People’s Committees registers the adoption when the adopter and the introduced child are eligible for adoption Total duration: 30 days from the date where the communal People’s Committees receives valid application documents |
| Procedures for adoption with foreign elements | Procedure to register for adopting a specific child | Step 1: Adopter prepares the documents to submit <u>to</u> the Bureau of Adoption (Ministry of Justice) Step 2: Within 15 days from the date of receiving the valid documents, the Ministry of Justice sends the documents to the Department of Justice of the province in which the child introduced to be adopted permanently resides to submit to the provincial People’s Committee for consideration and decision Step 3: The Provincial People’s Committee considers and decides the case. Step 4: Adoption: carried out at the headquarter of the Department of Justice, in the presence of representatives from the Department of Justice, the to-be-adopted child, adoptive parents, biological parents and guardian of the child in case where the child is adopted from a family. Step 5: The adoption will be notified to the diplomatic representative agency of Viet Nam in foreign countries for implementation of child protection measures in case of necessity. |

⁸⁷ When they cannot determine/cannot find a child to adopt

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| | | <p>Duration: not stipulated</p> |
| | <p>Procedure to register for adopting a child in general (through introduction)</p> | <p>Adopter: Must reside in countries that have signed the International treaty on adoption with Viet Nam. Procedures:</p> <p>Step 1: The adopter prepares documents to submit to the Bureau of Adoption (Ministry of Justice) through an adoption organization of his/her country licensed to operate in Viet Nam; if there is no such organization of his/her country in Viet Nam, the documents will be submitted to the Bureau of Adoption through the diplomatic mission or consular office of that country in Viet Nam.</p> <p>Step 2: The Ministry of Justice sends the documents of the adopter to the Department of Justice of the province in which the child introduced for adoption permanently resides for consideration and recommendation of children for adoption</p> <p>Step 3: The Department of Justice reviews and introduces a child to be adopted and submits to the provincial People's Committee. The documents of this child are given to the Department of Justice for checking by his/her parents or guardian (in case of child living with his/her family), child care institution (for child living at a child care institution). The Department of Justice also consults opinions of the biological parents (guardian) and opinions of the child (if the child is from full 9 years old) about adoption with foreign elements.</p> <p>Step 4: Once it is agreed by the provincial People's Committee, the Department of Justice sends the documents to the Ministry of Justice</p> <p>Step 5: If the documents are valid, the Ministry of Justice makes an evaluation of the eligibility of a Vietnamese child to be adopted by foreigners and notifies the competent authorities of the country where the adopter permanently resides.</p> <p>Step 6: After the competent authority of the country where the adopter permanently resides agrees on the adoption, the Ministry of Justice will inform the Department of Justice.</p> <p>Step 7: After receiving notification from the Ministry of Justice, the Department of Justice will submit to the provincial People's Committee the decision to permit a child to be adopted abroad.</p> |
| <p>Recording domestic adoption into the register book of civil status⁸⁸</p> | | <p>The state agency issuing the decision on adoption registration is responsible for notifying the People's Committee where relevant civil status events of the adopter and the adopted child to record the adoption into the register book of civil status.</p> |

⁸⁸ Pursuant to the 4th Draft of the Law on Civil Status: The procedure of adoption includes two procedures, namely: (i) Procedure of registering adoption under the Law on Adoption, Decree 19 and (ii) Procedure of recording the adoption into the register book of civil status

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|---|--|-----------------------------|--|-------------------------------------|--|
| <p>Recording the adoptions settled by competent authorities of foreign countries into the register book of civil status⁸⁹</p> | <p>Step 1: The person requesting to record the adoption into the register book of civil status submits a written request (in the prescribed form) and copy of the adoption papers issued by the competent authority of the foreign country for civil registration office to the people's Committee of the district where the application resides.</p> <p>Step 2: The public servant in charge of civil status work of the Justice board will record the adoption into the Register book of civil status if it is deemed to be relevant to regulations of laws; the President of the district Peoples' committee will sign the extract of civil status book and issue to the applicant.</p> | | | | |
| <p>PROCEDURES TO REGISTER GUARDIANSHIP</p> | | | | | |
| <p>Sequence of Implementation</p> | <p>Step 1: The person appointed to be guardian will submit a declaration form (in the prescribed form) and the document appointing the guardian</p> <p>Step 2: The communal People's Committee will register the guardianship if the guardian is considered eligible under provisions of law.</p> <p>Time limit for settlement: 5 days from the date of receipt of valid documents. Where verification is requested, the duration is 10 days</p> <p>Results of procedure implementation: Chairman of the communal People's Committee signs and issues the original decision to recognize the guardianship. Officials of the Justice board records the guardianship and the Decision on guardianship recognition into the register book of civil status.</p> | | | | |
| <p>PROCEDURE TO OBTAIN AN IDENTITY CARD/CITZEN IDENTITY CARD</p> | | | | | |
| <p>Contents of personal record</p> | <table border="1" style="width: 100%;"> <tr> <td data-bbox="348 980 543 1149"> <p>Identity card</p> </td> <td data-bbox="550 980 1915 1149"> <p>Front side: On the left, top down; the national emblem of the Socialist Republic of Viet Nam with diameter of 14mm; 20 x 30 mm picture of the holder; the lines "be valid until (date, month, year)". On the right, top down: Socialist Republic of Viet Nam; Independence - Freedom – Happiness; the term "Chung minh nhan dan" in red (Personal identification card); number, registered full name, other names; date of birth; gender; ethnicity; hometown; residence place</p> </td> </tr> <tr> <td data-bbox="348 1154 543 1302"> <p>Citizen identity card</p> </td> <td data-bbox="550 1154 1915 1302"> <p>Front: the national emblem of the Socialist Republic of Viet Nam; picture of card holder; expiry date. On the right, top down: the line "Socialist Republic of Viet Nam, Independence - Freedom – Happiness"; below is the line "CAN CUOC CONG DAN"; personal identification number; registered birth name; other name; date of birth; gender; ethnicity; hometown; residence place</p> </td> </tr> </table> | <p>Identity card</p> | <p>Front side: On the left, top down; the national emblem of the Socialist Republic of Viet Nam with diameter of 14mm; 20 x 30 mm picture of the holder; the lines "be valid until (date, month, year)". On the right, top down: Socialist Republic of Viet Nam; Independence - Freedom – Happiness; the term "Chung minh nhan dan" in red (Personal identification card); number, registered full name, other names; date of birth; gender; ethnicity; hometown; residence place</p> | <p>Citizen identity card</p> | <p>Front: the national emblem of the Socialist Republic of Viet Nam; picture of card holder; expiry date. On the right, top down: the line "Socialist Republic of Viet Nam, Independence - Freedom – Happiness"; below is the line "CAN CUOC CONG DAN"; personal identification number; registered birth name; other name; date of birth; gender; ethnicity; hometown; residence place</p> |
| <p>Identity card</p> | <p>Front side: On the left, top down; the national emblem of the Socialist Republic of Viet Nam with diameter of 14mm; 20 x 30 mm picture of the holder; the lines "be valid until (date, month, year)". On the right, top down: Socialist Republic of Viet Nam; Independence - Freedom – Happiness; the term "Chung minh nhan dan" in red (Personal identification card); number, registered full name, other names; date of birth; gender; ethnicity; hometown; residence place</p> | | | | |
| <p>Citizen identity card</p> | <p>Front: the national emblem of the Socialist Republic of Viet Nam; picture of card holder; expiry date. On the right, top down: the line "Socialist Republic of Viet Nam, Independence - Freedom – Happiness"; below is the line "CAN CUOC CONG DAN"; personal identification number; registered birth name; other name; date of birth; gender; ethnicity; hometown; residence place</p> | | | | |

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| <p>Changing identity card</p> | <p>Circumstances requested to change Identity card</p> <ul style="list-style-type: none"> • Expiry of the Identity card • Damage to the Identity card which cannot be used; • Changes to the first name, name, middle name, or date of birth; • Changes to place of permanent residential address outside the provinces or centrally-run cities • Changes to identifying characteristic. <p>There is no specific regulation on the content of “Changes to identifying characteristic”.</p> | |
| <p>PROCEDURES OF BIRTH REGISTRATION</p> <p>Person in charge: father, mother, grandfather, grandmother or other relatives of a child</p> | | |
| <p>Procedure of birth registration (for Vietnamese children)</p> | <p>Legislation on Civil Status</p> <p>Decree No. 158/2005/ND-CP and related documents</p> | <p>The forth Draft of the Law on Civil Status</p> <p>Accessed on 15 September 2014 at http://duthaonline.quochoi.vn/</p> |
| | <p>Step 1: the person applying for birth registration submits the declaration form and the birth-certifying paper (in the given form) or certifying document of the witnesses. If there is no witness, the person applying for birth registration must make a pledge that the birth is real and produce the certificate of marriage of the father and mother of the infant (if they have registered their marriage)</p> <p>Step 2: After examining all valid papers, judicial officials shall record into the birth registration book and original birth certificate. The communal People’s Committee presidents shall sign and issue an original birth certificate to the person applying for birth registration.</p> <p>Name of the father/mother: In case of registering the birth of an illegitimate child, if his/her father cannot be identified, the section for information on father in the birth registration book and birth certificate shall be left blank. If by the time of birth</p> | <p>Step 1: the person applying for birth registration submits the document requesting for birth registration (in the given form) and the birth-certifying paper to civil status registration agency. If a birth-certifying paper is unavailable, a certifying document of the witnesses is requested. If there is no witness, the person applying for birth registration must make a pledge that the birth is real except for case of abandoned children.</p> <p>Step 2: Immediately after receiving the request, the judicial official checks information of parents of the registered child in the national database on population. If the information is appropriate, the birth registration is legal, the official will write down contents of birth registration, including:</p> |

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| | <p>registration, an infant is recognized by someone, the communal People's Committee will handle the child recognition and birth registration at the same time.</p> | <p>a) Full name; gender; date of birth; place of birth; ethnicity; nationality; Personal identification number of the registered child;</p> <p>b) Full names; year of birth; ethnicity; nationality; residence place of the parents of the registered child.</p> <p>into civil status book, original birth certificate and updates onto the national database on population to get the personal identification number. This number will be recorded in the civil status book and birth certificate.</p> <p>Step 3: Judicial official and the person applying for birth registration applicant together sign into the civil status book and birth certificate; the president of the communal People's Committee signs and issues the original birth certificate to the person applying for birth registration.</p> |
| <p>Procedures of birth registration (for abandoned children)</p> | <p>Step 1: the People's Committee or police agency of the commune, ward, or township where the child is abandoned makes a minutes when receiving the child and seeks for individuals or organizations to permanently care for the child.</p> <p>Step 2: The People's Committee of the commune making the receiving minutes makes an announcement on local broadcasting or television station in order to find the biological parents of the child. After 30 days from the date of the last day of announcement, if the biological parents cannot be found, the persons or organizations temporarily fostering the child shall be responsible for making the birth registration</p> <p>Name of the child on birth certificate: full name of the child as requested by the person applying for birth registration. The section for information on father, mother and ethnicity of the child in the birth certificate and birth registration book shall be left blank. In the note section of the birth registration book,</p> | <p>There is no specific regulation on the procedure to register birth for abandoned children</p> <p>Birth registration for abandoned children is done similarly to registration for normal children</p> |

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| | <p>the words "tre em bi bo roi" (child abandoned) must be clearly written.</p> | |
| <p>Procedure of birth registration (for children involving foreign elements)</p> | <p>Step 1: Similar to the procedure of birth registration for Vietnamese children. If the parents choose the foreign nationality for the child, there must be an agreement of the father and mother on nationality selection</p> <p>Step 2: After receiving valid documents, officials of the Department of Justice records into the birth registration book and the original birth certificate, the Director of the Department of Justice signs and issues an original birth certificate to the person applying for birth registration. Duplicates of birth certificate are issued at the request of the person applying for birth registration.</p> <p>Name of the father/mother: In case of registering the birth of an illegitimate child, if his/her father cannot be identified, the section for information on father in the birth registration book and birth certificate shall be left blank. If by the time of birth registration, an infant is recognized by someone, the Department of Justice will handle the child recognition and birth registration at the same time.</p> <p>Name of the child: The name of the child may be either Vietnamese or foreign name depending on the parents' choice.</p> | <p>Step 1: Similar to the procedure of birth registration for Vietnamese children. If the parents choose the foreign nationality for the child, an agreement of the father and mother on nationality selection must be submitted to the civil status registration agency</p> <p>Step 2: Similar to Step 2 (birth registration for Vietnamese children). Results: judicial officials record the birth registration content into the register book of Civil Status, birth certificate and update onto the national database on population.</p> <p>In case that the child has Vietnamese nationality, officials undertaking civil status work of the Justice board shall get the personal identification book under regulations of the Government from the national database on population and record into the civil status book and the birth certificate.</p> <p>Step 3: the official undertaking civil status wok of the justice board and the person applying for birth registration applicant together sign into the civil status book and birth certificate; the president of the communal People's Committee signs and issues the original birth certificate to the person applying for birth registration.</p> |

| PROCEDURE TO AMEND AND SUPPLEMENT BIRTH CERTIFICATE AFTER ADOPTION | | |
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| Procedure to amend and supplement a birth certificate upon adoption | <p>Supplementing names of parents (abandoned children): the People’s Committee of the commune where the child’s birth was registered will base on the decision recognizing child adoption to supplement the information on the adoptive father and mother in the section of father and mother in the adopted child’s birth certificate and the birth registration book if so requested by the adoptive parents. In the note section of the birth registration book, the words "cha, me nuoi" (adoptive father, mother) must be clearly written.</p> <p>Change to father/mother’s name: Where the biological and adoptive parents reach an agreement to change in the section for father and mother declaration from biological parents to adoptive parents in the adopted child’ birth certificate and birth registration book and if it is consented by the adopted child of full 9 years old or older, the People’s Committee of the commune where registered the child’s birth will re-register the birth accordingly. In the note section of the birth registration book, the words "cha, me nuoi" (adoptive father, mother) must be clearly written.</p> <p>Result: The original and duplicates of birth certificate of adopted children will be issued with the new contents. The former birth certificate shall be revoked.</p> | |

The above information is based on: the Law on Adoption (Articles 8, 14,15, 18, 19, 20, 21, 29, 31, 34, 36 and 37), Decree No. 19 (Articles 6, 8, 9 and 17); the Draft Law on Civil Status – the Forth Draft (Section 6, Article 3, paragraph 2, point d and Article 48); VBHN-BCA (Articles 1, 2 and 5), Circular No. 57/2013/TT-BCA regulations of the Ministry of Public Security on the People’s Identity Card sample; Draft Law on Citizen Identification – the third Draft (Articles 3, 10 and 18); Decree No. 158 (Articles 1, 13, 14, 15,16, 49 and 50); the Draft Law on Civil Status - the forth Draft (Articles 2, 3, 13, 14, 15, 16, 35 and 36)

ANNEX III – 05 TYPICAL CASE STUDIES

A- CASE STUDY I

1. General introduction

A gay couple, H. (32 years old) and T.H. (30 years old), is living together with H's biological parents and H's adoptive 3-year-old boy in Can Tho.

2. Child adoption process

Adopting the boy was quite a surprising decision. When H. came to a hospital to visit a friend 3 years ago, he saw a baby abandoned at the hospital of obstetrics and gynecology. Despite intensive care of doctors in the hospital, the baby boy was continuously crying until seeing H. Thinking that it was his long-sealed fate, H. decided to adopt the baby. At the time of adoption, he had just broken up with his boyfriend so he discussed the adoption with his parents and made decision himself. H. received the support from his parents and he believed that he had enough love and economic conditions to raise the baby (H. had a wedding studio with stable income). Thus, he went to the local People's Committee to carry out procedures for adopting the baby. However, the communal People's Committee officials refused to instruct him in executing adoption procedure because he was a homosexual. The adoption faced a lot of difficulties, first because the local officials prevented him from carrying out adoption procedure; secondly, the reason was that he adopted the baby from hospital without recognition of the baby's parents. H. carried out the procedures himself for over one month but it brought no results. Finally, he asked a law firm to help with the procedures and making birth certificate for the baby with the fee of VND 30 million. All necessary procedures were then completed after three months and he became the baby's foster father.

3. The life of H., TH. and the baby

In the early time, being a man and unhandy, H met a lot of difficulties in taking care of the newborn. H. had to hire a nanny and ask his mother for help. At the time of this survey in May, the boy was 3 years old. He was very healthy under the care of H., his mother and his current boyfriend, T.H.

H. and T.H. has lived together for 2 years. In the beginning time when they just knew each other, H. also confided that he had an adoptive child and clarified that taking care of the child was his responsibility, T.H. could decide himself to help or not. During the time living together, the baby called them both "daddy". Normally, T.H. usually took the baby out, played with the baby and took care of the baby when he was at home. When asked about assigning works to taking care of the baby, T.H. said: "I myself love the baby as my own son. The feeling of having a happy family life is more completed because of him. H. and I spend time for him every day. When having free time, we often take him out to play. We do not divide responsibility at home; we just do our necessary work with voluntary spirit and without binding."

When talking about the future if they broke up and the responsibility to raise the baby, H. asserted that "He is my son and I am definitely responsible to raise him. The moment I adopted him, I already determined to raise him till he grows up to an adult".

Whether the law allows same-sex marriage or not is not important to T.H. and H. because at this moment, they are both living happily. H. said he was satisfied with the present life; adding that he just hoped the law could

recognize the diversity of sexual orientations so that he could easily explain to his son about himself, and his son would not feel ashamed at school or in the society.

4. The child's psychology

At the time of adopting the baby, H. only thought that "the child is abandoned, it would be better if I adopt him. His life will be better because at least I can give him a stable living". H. also tried to learn about psychology of a child at different ages; however, the baby's reactions would be unpredictable because it was only 3 years old. H. also did not know how to explain to the baby when he knew his father is an LGBT. In case the baby had a strong reaction against this problem, H. would accept to lie about himself and wait until the baby grows up to make him understand later.

H. was quite worried because his child would go to school in the upcoming time. In the school environment, his child could be teased and could not be integrated with them due to having an LGBT father or not having mother.

B- CASE STUDY II

1. Introduction

A lesbian couple, T. and C., are living together with T's 14-year-old son in Can Tho.

2. Child adoption process

In the course of business, T. got to know C. They fell in love with each other but still kept their relationship secret to their families. When marriage age came, T.'s parents intentionally arranged an engagement ceremony for her, which made her leave home to live with her lover, Ms. C. They then opened a fruit store for living. 10 years later, when T. came to hospital to take care of her sick mother, she accidentally saw someone give birth and leave the baby. She decided to take the baby home and registered the birth of the baby as her own child. The baby's birth certificate only contains information of the mother (Ms. T.), the father's section is unfilled. Now, up to the survey's date, their child is 14 years old and is an 8th grade student.

3. Common life of T., C. and the child

The couple has been living together for 25 years. At the time of survey, they lived happily because they were both congenial to each other, together did business and raised their child like other families. Their roles in the family were not clearly divided. They did whatever work they considered suitable and shared the tasks in raising their child. Although T. is the mother on the birth certificate, C. also considered the child as her own child and put much of her effort to educate and nurture the child.

Being asked about the right to raise the child in case of breaking up, they both laughed and said: "We don't know about other people but we have already lived with each other for nearly 30 years, there is no such thing like breaking up".

The residential group and their neighbors already knew they were a lesbian couple living together but they did not receive any protest against their cohabitation and child rearing. They also participated in normal activities of

the residential group such as election, meeting, etc. They just wanted to concentrate on doing business and bringing up their child. Because they raised the child together, they hoped to give all of their saved assets to the child after passing away.

4. The child's psychology

According to Ms. C., up to then, her daughter was an obedient, polite and comprehensive child. In the family, she often called Ms. T and Ms. C as "parents" like other families. He himself did not wonder about or response to any story of his "parents". He went to school like other children and they did not hear any information that he was discriminated or teased at school when asking him about the issue. Ms. T. usually attended parents' meetings for her child and did not hear anything about such issues from teachers. At home, the son often played with other neighboring children and kept visiting neighbors' houses usually.

After 14 years of bringing up and taking care of the child, both Ms. T. and Ms. C. recognized that there was no difference between a homosexual couple and a heterosexual couples in raising a child.

C- CASE STUDY III

1. Introduction

A lesbian couple, H., 32 years old and Y. 33 years old, is living together with H's 6-year-old daughter in Ho Chi Minh City.

2. Approach to Cohabitation and Child adoption

Ms. Y. and Ms. H. knew each other via friends' meetings in Ha Noi. They were just friends at first, and then gradually fell in love with each other. At that time, Ms. H. already had a husband and a child, but she no longer found any feeling for her husband. Finding real love with Ms. Y., H. decided to divorce her husband. In the divorce and come-out period, Ms. H. and her family were extremely tired and hurt because of the barriers on fine customs in the North. Fortunately, her parents and her parents-in-law understood and felt compassion for her. After divorcing, Ms. H. moved to Ho Chi Minh City to live with Ms. Y. After that, Ms. H's family allowed to send her 3-year-old child to Ho Chi Minh City to live with her and Ms. Y.

3. Life of the couple and the child

The couple felt satisfied with their present life. Their daily life did not have too many difficulties due to the acceptance from their families and their real personalities. They shared their daily housework without clear work division. Work was done based on their ability and Ms. Y normally took charge of heavy work. The work of child rearing was also taken by both of them without any discrimination. In fact, the child also had her father (Ms. H's ex-husband) so they three were responsible for raising and educating her. The relationship between the couple and Ms. H's ex-husband was very good so nothing affected the child's psychology.

The couple stated that the biggest and most popular difficulty of a homosexual couple when raising children was the attitude of people around and the child's psychology. This was an obstacle which any couple had to overcome. However, a homosexual couple had more advantages than a heterosexual couple. For instants, they

did not have a distinct division of each person's roles in the common life; a homosexual couple's child could have chance to know and understand the homosexuality; therefore, he/she could have a rich perspective and an open mind; in a homosexual family, respect was always ranked the first in a relationship so the child would learn to respect other people.

They expressed the hope that the law would recognize same-sex marriage so that Ms. Y. would be automatically recognized as the child's mother, which would be a good and long-term solution for their family.

4. The child's psychology

As a smart, open-minded and emotional child, the girl knew the relationship between herself and the couple in the family. She initially asked why her mother and she did not live with her father but with mother Y. After being explained, she was aware that she had a father and two mothers. She understood why her two mothers loved each other and even encouraged them to get married so that she could be a bridesmaid in their wedding. When talking with her, the couple also explained her about the diversity of life. There exists not only love between a man and a woman but also between two women or two men. She herself also felt that this was very natural and felt very comfortable to meet other people around her.

At that time, the child was learning at a private kindergarten. The couple realized that teachers, classmates and other parents also showed normal attitude to her without any discrimination. They had no fear that the girl may be teased because the relationship between the child and her father was very good. However, they also anticipated the possibility that she could be discriminated and always told her that their relationship and their care for her were from their heart and she always had her father, mothers who were good friends and loved her so much. The two mothers believed that her thorough understanding and respect for the love of her mothers would help her be stable and have appropriate behaviors in negative situations. The most important thing when educating, as the couple said, was the confidence and honesty between parents and their child. They also confirmed that with this teaching manner, the child would have strong psychology to overcome the society's stigma due to her homosexual mothers.

D- CASE STUDY IV

1. Introduction

A gay couple, P. (27 years old) and S. (29 years old), is living together and intends to adopt a child in the next 3 years.

2. Progress to cohabitation

S. met P. for the first time when S. came to P.'s company to maintain the company's network. They got to know each other, went out, understood and then loved each other. At that time, S. and P. lived together despite the protest from S.'s parents because they both served in the army. They were very conservative, traditional and always worried about the public opinions around. P.'s family already accepted the relationship. They were waiting for the acceptance from S.'s family. After being totally accepted by the family, they would adopt a child. The adoption had been discussed for quite a long time. They both had stable economic conditions and desired a happy long-term family life in with children's voices in the house like other heterosexual families.

3. Plan to adopt a child and preparation

When discussing about child adoption, they both desired to adopt a child from a struggling families among their relatives. Whoever named as the father/mother in the birth certificate was not important to them but the fact that the child could grow up becoming a useful citizen of the society.

The best time for adopting a child is when a baby has been weaned to ensure that the baby is fully breastfed in the beginning time. They intended to follow a child care course and ask their mothers to take care of the child. When the child was adopted, one person would stay home to take care of the child and the other would work to always maintain one person beside the child at all times. They both thought that LGBT couples, especially gay couples, would meet more difficulties in raising children than heterosexual couples.

They also made a plan to educate their child in each phase; especially, they would explain the child about the reason why he/she only had 2 fathers without mother, about homosexuality so that he/she could have an understanding on homosexuality and other relationships around. They would also try to figure out the child's psychology via books or psychiatrists to prepare the best in terms of both mentality and physiology for the child during its childhood. S. also said "When teaching the child about issues regarding homosexuality, I will have talks with him/her according to relevant age. For example, in the stage of learning in primary school, I can explain her as from fairy tales. When he/she grows up, I will find other ways to explain so that he/she can accept the difference between his/her family and others". The only thing made S worried when adopting a child was the child's psychology affected by other people's attitude due to the homosexual fathers.

E- CASE STUDY V

1. Introduction

T.A.'s registered sex on the birth certificate is female, but her sexual orientation is bisexual, and she is now living with H., a transgender (with sex on the birth certificate as female and gender identity as male). T.A. and H. have lived together for 04 years and planned for T.A.'s artificial insemination/in vitro fertilization, then H would be child's foster parent.

2. Progress to cohabitation

T.A. and H. met each other since 2010 when they were both deep in love crisis. It was quite surprising when they felt in love with each other. At first, both of them were quite worried about their love for each other, then after a period of time living together, they began to feel the happiness in their family.

After 3 months living together, T.A. introduced H. to her family as a friend. The regular appearance of H. at T.A.'s house made T.A.'s family concerned about their relationship. They had support from T.A.'s father (who used to work in an international NGO) and her younger sisters/brothers except for her mother due to concerns that they would be miserable when living together. However, after a process of persuasion and encouragement, T.A.'s mother finally supported them to live with each other. T.A.'s family promised to allow them to publicly hold the wedding if the law recognized same-sex marriage. However, until now, T.A. and H. have not yet declared their relationship with H.'s family because H's family is quite conservative.

In 4 years living together with love and respect, T.A. and H. both felt the simple happiness from their own family, sharing everything together. The only difficulty that they met was the stigma of neighbors. The couple had to move house 3 times, once for reason of the neighbors' stigma. The local authority did not create any difficulties for them during the time living together. At the time of survey, they chose to rent a private house to avoid any stigma and try to get along with their neighbors.

3. Plan to adopt a child and preparation

After about 01 year living together, when they felt understanding each other well, T.A. and H. intended to live with each other in a long-term. They both desired to become mothers, to have children. There were many ways to have babies but they did not want to do in "normal way" so they tried to save money for artificial insemination. T.A.'s parents supported them in having children and were ready to help both physically and mentally.

T.A. and H. also read about artificial insemination and in vitro fertilization (due to T.A. relatively weak uterus) and they understood the difficulties to be encountered because the supply source of sperm in Viet Nam was limited and their financial capacity was restricted (total income of about VND10 million/month). They also found information on procedures for child adoption and would perform it for sure so that H. could adopt the child. They were both aware that the child adoption procedure would be complicated but they would try. Besides, because of concern of the child's rights, they agreed to keep the rights and obligations of the biological mother to the child.

If they had a child, T.A. and H. would teach her/him to call them mother and father. They were deeply aware of the difficulties they would encounter from the pregnancy period due to stigma against single mother (but they were confident to overcome it) to the biggest difficulty when the baby would be born. They wondered whether their child could accept the difference of their family at the first stage of life or could overcome the public stigma by right education. They did not worry about the legal procedures like registration of birth or nationality for the child to go to school because those rights have been law already stipulated by laws. T.A. and H. used to discuss about agreement on living together and raising child, including issues on property. However, they understood and believed in each other and thought that it was not necessary to have such an agreement. At the time of the survey, they both sent their money into an account of H. (main card holder), T.A. (supplementary card holder), for spending and management. Their common asset was currently insignificant; in the future, when they had large value asset, there would be an agreement providing particular rights of each other. They thought that if they did not live with each other anymore, H. would be more disadvantaged because T.A. was the child's biological mother. They intended that if they had a child, they would make testaments to ensure the rights of the child.

ANNEX IV – REPORTS OF GROUP DISCUSSION IN HA NOI, HO CHI MINH CITY, AND CAN THO

GROUP DISCUSSION IN HA NOI

| Issues of discussion | Group discussion of gay men and transgender people | Group discussion of lesbian women and transgender people |
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| <p>1. Does LGBT community in general have the demand for living together frequently and in long term? Why?</p> | <p>Yes, 100% agreed that the LGBT community in general needs to live together frequently and for long-term. They gave such reasons as: living together frequently and for long term will help couple feel more happy and confident, be able to care for each other better, and also help share the economic burden.</p> <p>The discussion group also shared the difficulties that LGBT face in the cohabitation process. In addition to income issues and personality conflicts as heterosexual couples, LGBT also encounter the stigma surrounding them (usually not through direct sayings but via attitude).</p> | <p>Yes, 100% agreed that the LGBT community in general needs to live together frequently and for long-term. They gave the reasons, including the LGBT needs love, sharing and desire to build a happy family together.</p> |
| <p>2. In general, do LGBT couples have the demand to register their marriage? Why?</p> | <p>They said that lesbian couples often need the registration of marriage more than gay couples. Gays are still subject to the thinking that men should get married, have children to continue the family line. In addition, they also said that many gay men are afraid of being bound by responsibilities and in fact, many heterosexual married couples were not happy.</p> | <p>10/12 said that the marriage registration was needed. The reason raised include to be ensured the interests of common property; to be capable of caring their partner (representing, signing commitment when the partner has surgery, etc...); to ensure the rights of children; the society will have a different perspective when couples register their marriage; and marriage is a basic human right, regardless of sexual orientation.</p> <p>2/12 commented that they did not need to register their marriage, because the marriage registration brings less significance than the real affection; the registration does not determine the sustainability of the relationship; if divorcing, they will suffer from double discrimination from divorce and being lesbian women.</p> |
| <p>3. Do LGBT individuals and couples have the</p> | <p>8/14 commented that they have the need of raising a child because they love children and capable of being single father;</p> | <p>10/12 raised opinions that they needed to have a child to enhance family cohesion; increase the responsibilities of family members.</p> |

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| <p>demand for child rearing? Why?</p> | <p>and they want to increase the responsibility and cohesion among family members, help family members develop, enjoy life.</p> <p>6/14 had comments that they were not in need of raising a child. The reasons given include the economic burden, still being dependent on their family in terms of finance,, loving free life, not being bound by responsibility.</p> | <p>2/12 had no opinion.</p> |
| <p>4. If you are in need of raising a child, please indicate the view on division of parenting responsibilities, the rights and responsibilities on common property and private property?</p> | <p>They didn't think it was necessary to make clear the division of responsibilities of each family member as they must self-determine their responsibilities for child care. If there is any conflict, they will settle it by themselves; the agreement in writing will not show the voluntariness but only be considered as agreed obligations. In case where a couple of gay men adopts a child, the one who registers for adoption will take responsibility for raising the child until the child is mature.</p> <p>There was an opinion that it is necessary to apply existing laws to ensure property rights for the child (through civil agreement).</p> | <p>The lesbian women said they needed to have their names jointly subscribed on the title of common property (such as house, car, etc.) and to have a written agreement about parenting responsibility to ensure the rights of children.</p> |
| <p>5. Between a non-coming out and a coming out LGBT, who suffers more difficulties in child adoption and rearing?</p> | <p>The gay men thought that LGBT who have not come-out met more difficulties for the reason that they are subject to the pressure from their family for the questions of getting married, having children. Explanation for the child adoption and pressure from friends, colleagues; so they receive less sympathy and support.</p> <p>For those who came-out already, there is a case where local government preventing a gay from adopting a boy (they fear the child being abused), the local government said that gay men were not capable of raising a child as heterosexual people.</p> | <p>They thought those who came-out met more difficulties as they would get trouble with the local authorities in the process of implementing procedures; have to suffer from stigma and discrimination.</p> |
| <p>6. How does the adopter who is an LGBT individual or couple wish to have</p> | <p>100% wanted to stand their names as 2 fathers.</p> <p>With transgenders, they want to be recognized according to their gender identity.</p> | <p>100% wanted their names stood as 2 mothers.</p> <p>With transgenders, they want to be recognized according to their gender identity.</p> |

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| <p>their names stood on their child’s civil papers (such as birth certificate, household register, academic transcripts)?</p> | | |
| <p>7. What difficulties do transgenders face when they adopt children?</p> | <p>Transgenders often have difficulties with the issue of identification papers; difficulties in the process of implementing administrative procedures with local government (their appearance is different from their sex indicated on the birth certificate); possibility of being stigmatized. In particular, there’s a case where the family being required to take their child to psychological treatment.</p> | |
| <p>8. Evaluation of factors affecting the implementation of the right to cohabit and child adoption of same-sex couples?</p> | <p>They did not concern much about the recognition by the law. They just expected to achieve their goal without violating the law. They also said that local government did not express clear attitude. Regarding the community, the majority opinions that it depended on the residential area. There are some cases where the community did not react negatively when LGBT come-out; some cases encountered discrimination. Most of them did not pay attention to community attitudes. 100% of participants highly considered the opinions of the family.</p> | <p>They thought the current laws neither prohibited nor allowed the adoption. In fact they did not meet any obstacles in legal aspect yet. Meanwhile, local governments did not show their clear attitude. The community was increasingly more open due to the active operation of LGBT organizations. The LGBT also cared about public opinions as they worried that their child might be discriminated. The communities in different areas had different attitudes (e.g. in apartment buildings where the population had high awareness, their attitude would be different from that of the population in village). To the family, they all appreciate families’ opinions and they all said that they needed to have measures to convince their families to gradually accept LGBT’s lifestyle, so that LGBT could live well, contribute to the family and society.</p> |
| <p>9. Comment on the understanding of legal provisions relevant to the LGBT community?</p> | <p>Still low, they almost do not care.</p> | <p>The access to information varies depends on the region. Understanding the laws also derives from the needs of the individuals. For example, in case a lesbian couple wants to perform artificial insemination or child adoption, they will study laws related to such issues.</p> |

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| <p>10. The understanding and participation of LGBT community in the process of amending the Law on Marriage and Family?</p> | <p>The Community has engages in the advocacy for amending the Law on Marriage the Family, for example, the program “Toi dong y” (“I agree”), 16+, etc.</p> | <p>LGBT community put quite much effort in the process of amending the Law on Marriage and Family, but many of them are not interested in this issue. Each LGBT organization has its own strength, and operating ebulliently.</p> |
| <p>11. Does LGBT community in general demand for the Law on Marriage and Family to be amended in the direction of registered sex marriage? Why?</p> | <p>Yes</p> | <p>Yes</p> |
| <p>12. In case where the Law on Marriage and Family does not allow homosexual marriage, so how is the LGBT community’s response?</p> | <p>Some expressed the attitude of annoyance, lack of confidence. Meanwhile, the majority showed their opinions to wait for the right moment and advocate more efficiently.</p> | <p>They thought this was understandable result, because many more developed countries also need to have a roadmap for implementation. It is possible to study some other forms besides same-sex marriage such as civil , couple combination and so on.</p> |
| <p>13. Recommendations from the LGBT community to bring the right to adoption of LGBT couples into practice?</p> | <p>It is suggested to recognize the LGBT first, then recognize same-sex marriage, and lastly regulate provisions allowing joint adoption.</p> | <p>They proposed to recognize the rights of homosexual couples and amend the law towards the direction of allowing joint adoption.</p> |

GROUP DISCUSSION IN HO CHI MINH CITY

| Matters of discussion | Group discussion of gay men and transgenders | Group discussion of lesbian women |
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| <p>1. Does LGBT community in general have the demand for living together frequently and in long term? Why?</p> | <p>10 out of 10 participants have lived with their partner frequently and for a long time, so that they can share all the matters in their own life. This is a basic need of the human being.</p> <p>But some participants said that living together caused a lot of consequences about properties, children, and family reputation and so on if the law did not recognize.. Thus they considered about living together very carefully, especially with those who were living with their families in HCM City.</p> | <p>10 out of 10 participants said yes because it is a regular need of the human, there is no difference between homosexual and heterosexual person. Homosexual couple living together is also complicated and they have to face many difficulties.</p> <p>Participants also denied the opinion “<i>living together of LGBT is for the movement only</i>”. Maybe this happens only in a very small part of LGBT people and people who aren’t LGBT but they consider they are.</p> <p>When LGBT couples live together, they share with each other so many things materially and mentally. That is the mutual responsibility of the couples.</p> |
| <p>2. In general, do LGBT couples have the demand to register their marriage? Why?</p> | <p>8 out of 10 participants said “yes” because it was a basic and necessary demand of human. Recognizing marriage is one of the ways to solve the consequences of living together and to improve the responsibilities of each person in their marital relationship.</p> <p>2 out of 10 participants said “no” because according to their point of view, at this time, Viet Nam should aim to civil combination, in order to ensure the basic rights of property and custody of children. In order to recognize same sex marriage, there are still a lot of matters and it is very difficult to achieve in the current circumstance.</p> | <p>9 out of 10 participants said “yes”. Some participants said that marriage registration certificate was a legal recognition for LGBT people, as well as an assurance of the human rights in the marital relationship, and sometimes the marriage could prove the happiness of a.</p> <p>1 out of 10 participants said “no” because he/she found that the most important matter between his/her partner and himself/herself was how to live together and how long they would be together. If they got married and then divorced, the society would not have good attitude on LGBT.</p> |
| <p>3. Do LGBT individuals and couples have the</p> | <p>10 out of 10 participants agreed that raising children was a necessary thing not only for the couples but also for individuals. If two people love and care about each other, having a child will</p> | <p>9 out of 10 participants said “yes” about the need to raise children. As it is a natural function of the woman and the</p> |

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| <p>demand for child rearing? Why?</p> | <p>make them like a normal family. Moreover, this is not only the experience of taking care a child but also the social responsibility in creating a future generation.</p> <p>If they adopt a child, LGBT themselves have to identify clearly on the adoption, the factors to ensure that the child can develop the best such as finance, love. If the law recognizes the child adoption by LGBT couples, it should set forth requirements for nurturing such as reporting regime, savings account in the bank, or hiring a nurse or have parent help in case of adoption by gay couples, etc.</p> | <p>desire of raising and loving children together with her partner.</p> <p>However, the selection of adoption or natural birth varies from person to person. Some do not care about the difference between adoption and natural birth, the important thing is raising the child well or not. Someone wants to raise their natural children.</p> |
| <p>4. If you are in need of raising a child, please indicate the view on division of parenting responsibilities, the rights and responsibilities on common property and private property and guarantee of capacity of raising and the development of the child?</p> | <p>There is a viewpoint that when raising a child, two people must take responsibility for the child and for each other so it is not necessary to divide the responsibilities.</p> <p>While others shared the viewpoint that it was necessary to share the responsibilities of raising child, to be equal in the economic contribution and doing housework to ensure the child to be raised in the best conditions.</p> <p>Some participants said that the division varied from couple to couple, just like heterosexual couples, so it is hard to say about the appropriate division in general.</p> <p>About common properties, like other heterosexual couples, the division should be based on the principle “ husband makes procession and wife puts effort”.</p> | <p>5 of 10 participants shared that they would divide the parenting responsibilities as other heterosexual couples. The inheritance or donation will also be arranged as other heterosexual couples.</p> <p>5 of 10 participants said that they didn’t divide responsibilities. The child will be cared much more by two mothers. For a lesbian couple, one plays the role of a man but she herself remains something of female instinct so she still has the ability to take care of the child like feeding, washing and so on. Both of them will help each other perform the parenting responsibilities, so it is unnecessary to have a clear division of responsibilities. The child will be at the first priority, both of them will try for their child.</p> |
| <p>5. Difficulties suffered by a non-coming out LGBT in child adoption and rearing?</p> | <p>A person who does not “come-out” his/her sexual orientation when adopting a child, he/she must meet the requirements of the law on adoption like other heterosexuals. The local government also bases on legal provisions to solve. Therefore, he/she will not meet legal difficulty.</p> <p>The biggest difficulty comes from their family. Because LGBT people who hide their true gender will not “come-out” with</p> | <p>When not “coming-out” sexual orientation, LGBT will unilaterally carry out the child adoption, but they will face difficulties from their families, the society. Their families will oppose them to become a single mom. The society will consider whether a single woman can raise the child and fulfill all responsibilities or not. When only one person become the mother, her partner will not receive any</p> |

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| | <p>their parents, so it is difficult to explain to their parents about the desire for child adoption. This can cause psychological pressure to LGBT themselves</p> | <p>support from her working place during the time when the child is ill.</p> <p>When concealing and not “coming-out” sexual orientation, LGBT couples will encounter difficulties in raising the child. How will the couple raise the child if they do not “come-out”? How to teach the child to be self-confident before others?</p> |
| <p>6. Difficulties suffered by a come- out LGBT in child adoption and rearing.</p> | <p>When they “come-out” their sexual orientation, the adoption will encounter difficulties from the local government as the majority of people working in the local government system still have prejudice with LGBT.</p> <p>Some participants said that if LGBT can meet the requirements of the law on adoption, such as stable job, stable finance, no social diseases, etc., then the adoption is not too difficult.</p> | <p>The majority of participants said that when “coming-out”, they will face difficulties with the local authorities, but LGBT will feel more comfortable and easier to adopt a child, especially after receiving support from their families.</p> <p>Some thought that the authorities would not deny LGBT to adopt because there were many orphans at that time. This is the results from short relationship and unseriousness of heterosexual couples who are known as normal and good.</p> |
| <p>7. How does the adopter who is LGBT individual or couple wish to have their names stood on their child’s civil papers)?</p> | <p>Most participants wished to record on paper according to their gender identity.</p> | <p>Most participants wished to be recognized according to their gender identity. For a transgender couple, it is better to record according to their gender identity to legalize; for a couple with 02 females, recording one of their name is acceptable. Indicating two mothers may cause difficulty for the child (discrimination from teachers, friends, etc.)</p> <p>If it is impossible to indicate according to gender identity (as the father), then it is acceptable to state just the mother’s name into the child’s papers. This is better than stating two mothers on such papers because the important thing is to teach and shape the child to be confident to tell others about his/her father.</p> |

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| | | <p>It is necessary to have a clear division between the role of the father and mother because the child needs this clarification, especially when others question the child about his/her parents or when the child do homework of depicting family scenery, describing his/her father and so on.</p> <p>In Viet Nam, the traditional conception is still popular so it is better not to record name of both on the birth certificate and other papers of the child. This is simple and two people will agree who is the person named.</p> |
| <p>8. What the difficulties do transgenders face when they adopt children?</p> | <p>In the opinion of the participants, the child adoption by transgender is extremely difficult because when the correction of their identification papers after the transgender is not easy to get, the child adoption procedure is even harder.</p> | <p>The participants refused or did not express their views about the difficulties that a transgender faced when adopting a child because there is no transgender in their group.</p> |
| <p>9. Evaluation of factors affecting the implementation of the right to cohabit and child adoption of same-sex couples.</p> | <p>Most of the participants' commented that legislation is very important. It causes the responsibilities and obligations of the parties with the child to be undertaken. If the law recognizes, the discrimination attitude of local authorities towards LGBT will decrease significantly.</p> <p>According to the current evaluation, the community is more open to LGBT.</p> <p>The attitude and support from family are very important factors. Currently, those families who have their children as LGBT still have many negative reactions.</p> <p>The networks and groups may help LGBT relieve and express their aspirations via facebook, the propaganda activities about health care, etc.</p> <p>Legal aid centers are still not known by the participants.</p> | <p>The legislation is the most important factor (6/10) because when the law recognizes LGBT's rights, it will confirm the existence of LGBT and their demand like heterosexuals. From that, the public thinking will be changed towards more positive direction. Once recognized by law, there will be no reason for others to prohibit them. LGBT people will not face difficulty caused local authority in terms of procedures and paperwork. In contrast, if the law does not recognize it, LGBT will face difficulty. The recognition also help LGBT be more responsible to their partner</p> <p>Family is the most important factor (2/10) because with the family's support, both will feel very comfortable and pressure-free.</p> |

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| | Knowledge and skills for cohabitation, child adoption of LGBT are still low in general. | Community is the most important factor (2/10) as the community will promote a common voice for the LGBT, help accelerate the recognition. |
| 10. Comments on the understanding of legal provisions relevant to the LGBT community. | Most of the participants said that as the law did not recognize LGBT people so there was nothing to learn. | The participants shared the common opinion that the knowledge of LGBT community currently are vague. |
| 11. The understanding and participation of LGBT community in the process of amending the Law on Marriage and Family. | Participants said that the community knew about the amendment of the Law on Marriage and Family, but the number who studied and participated in this process was very small. | Most of the participants know that marriage and family law is being revised as it is popularised through the community, media and social networks. |
| 12. Does LGBT community in general demand for the Law on Marriage and Family to be amended in the direction of registered sex marriage? Why? | 8 of 10 participants answered “yes” 2 of 10 participants answered “no” with the reason that they only desired to live together, did not want to bind in the future; they thought that this demand was depended on each person. | 10 of 10 participants identified that the LGBT community had the demand for the law on marriage and family to be amended toward recognizing same-sex marriage. |
| 13. In case where the Marriage and Family Law does not allow homosexual marriage, so how is the LGBT community’s response? | Their common reactions are feeling disappointed, but they still live their normal life and find other solutions such as social mobility, seeking for official voice from different agencies (for example, Woman Union), but there are also concerns about the political and traditional aspects. | Most of participants agreed to " <i>Continue advocating to amend the Law</i> ". It is necessary to prove that LGBT has made contributions to the society like anyone else by joining social activities, charitable activities, and so forth in order to change the perceptions of the public about LGBT. LGBT should join in useful activities to prove that LGBT can do things that people usually do not think that they can, or |

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| | | they even do better and LGBT are not inferior to others. Then, there is no reason for the public to discriminate LGBT and thus recognize LGBT community. |
| 14. Recommendations from the LGBT community to realize the right to adoption of LGBT couples | <p>It is necessary to have agencies to direct, supervise the child adoption of LGBT community;</p> <p>There should be regulations in proving cohabitation period (It is advisable to have a trial period of living together).</p> | <p>Firstly, the law should recognize LGBT. That will be the basis for the implementation of other rights such as the right to marriage, the right to adoption and so on.</p> <p>It is better to establish an organization or agency where LGBT people can get information about their rights.</p> |

GROUP DISCUSSION IN CAN THO CITY

| Matters of discussion | Group discussion of gay men | Group discussion of lesbian women |
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| 1. Does LGBT community in general have the demand for living together frequently and in long term? Why? | <p>8/10 said that whatever sexual orientation, they all want to live together for long term and share with each other. Finding true love in the LGBT community is also very difficult, so they appreciate this.</p> <p>2/10 did not want because according to them, each should have their private space. Living together may put them under much objection by the society then their works may be affected accordingly.</p> | <p>9/10 said that the LGBT community had the demand to live together for long term. When falling in love, anyone wish to live together. They can share with each other all pressure and together overcome difficulties in life.</p> <p>1/10 said that cohabitation was stressful, especially pressure coming from family and society, so it would be very easy for them to break up. The cohabitation is not an urgent need when the society has not recognized.</p> |
| 2. In general, do LGBT couples have the demand to register their marriage? Why? | <p>8/10 said that LGBT community need to register their own marriage and there should be a legal binding between them to assert their relationship, to make their partner confident and reduce the consequences due to unsafe living habits.</p> <p>2/10 did not agree with the above opinion. According to them, the majority of middle-aged LGBT do not want to get married but they need their rights to be recognized</p> | <p>10/10 thought that that the LGBT community had the demand for marriage registration as a recognition of the law. This helps the rights of both parties to be respected, enhance the responsibility of the parties. That also help their families be easier to accept.</p> |

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| <p>3. Do LGBT individuals and couples have the demand for child rearing? Why?</p> | <p>10/10 LGBT participating in the discussion agreed that LGBT people were keen to have children. While adopting a child will help them have the sense of family and have a person who care for them when they are old.</p> | <p>The majority of the participants expected to raise a child but the child must be their own natural child to have the feeling of parenting and understand the difficulties of their parents.</p> <p>Having a child in family will help two people be more responsible, set a better orientation. The child acts as a link between the two parties and helps solve their conflicts.</p> |
| <p>4. If you are in need of raising a child, please indicate the view on division of parenting responsibilities, the rights and responsibilities on common property and private property and the guarantee of capacity of raising and the development of the child?</p> | <p>Most of the participants said that the division of responsibilities was not important. The important thing is that each person has to know their work, be responsible for caring the child physically and emotionally.</p> | <p>It is argued that the division of responsibility for raising the child is very difficult. Each couple will have their own way to divide their responsibility appropriately. For lesbian women, their maternal instinct is so strong, so the caring and affection between mother and the child is also very easy.</p> <p>In case where the couple separates, the child will stay with their natural mother, while the person play the role as the father will provide finance for the child rearing. If the child is eligible to think himself/herself, it is better to follow the opinion of the child. To avoid any hurt to the child, they should explain the situation for the child to understand and let the child make choice.</p> <p>The children are very observant, when the child grows up, he/she will realize the difference between their family and heterosexual families. To raise the child well, two people have to find the way to talk with the child to understand their love and understand them.</p> |
| <p>5. Difficulties suffered by a non-coming out LGBT in child adoption and rearing</p> | <p>LGBT participating in the discussion agreed that it was easier for LGBT people who have not come out to do the parenting and child adoption as the public see them as other heterosexual.</p> | <p>A majority of participants in the discussion said that they want to raise their own natural children, so they do not know about the difficulty of LGBT people who do not come out.</p> |

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| | The only difficulty comes from their family. Their parents will certainly be very difficult to accept their son to adopt a child when he has not got married. | |
| 6. Difficulties suffered by a coming-out LGBT in child adoption and rearing. | <p>7/10 LGBT participating in the discussion agreed that the adoption of LGBT people would be very difficult. As the local government or raising institutions are concerned about the psychological aspect of the child, they do not allow the adoption.</p> <p>3/10 participants said that the orphanages just focus on the economical factors. If meeting all the conditions, LGBT can adopt.</p> | <p>The most difficulty in raising a child is the psychology of the child. Moreover, if the adopting couples break up, the child will be helpless. Therefore, the law should recognize the adoption to ensure the responsibility from 2 parties and the interests of the child.</p> <p>Difficulties from family and neighbors may be resolved over time by living and doing useful works, so LGBT people can still overcome the difficulties and can give birth and raise their own child.</p> |
| 7. How does the adopter who is an LGBT individual or couple wish to have their names stood on their child's civil papers? | <p>3/10 participants in the discussion expected to record according to their true gender. Because in the process of parenting, the child will recognize who is his/her father, who is his/her mother.</p> <p>7/10 LGBT thought that it would be better to indicate according to biological sex of father / mother</p> | <p>9/10 LGBT participating in discussion wish to indicate their gender identity on papers of the child as they want to be recognized as parents of the child.</p> <p>1/10 participants said that the naming did not matter. The important thing is the responsibility of both to their child if the law recognized this matter.</p> |
| 8. What the difficulties do transgenders face when they adopt a child? | The participants in the discussion shared the same opinion that the child adoption by a transgender was very difficult. Transgenders faced many difficulties, the adoption is just part of the difficulties. | Transgender's sexual orientation is not recognized so stating their name on the birth certificate of the child or adopting a child will face many difficulties. However, transgender has an advantage that they already came out, so they are not afraid of public opinion. |
| 9. Evaluation of factors affecting the implementation of the right to cohabit and child adoption of same-sex couples. | <p>They all realized that the law was a very important factor, but the current laws had strong barriers.</p> <p>Local authorities cannot decide much, because they have to work according to law.</p> | <p>One participant had the opinion that the law did not paid too much attention to the child delivery and raising. Currently, there are no barriers for those who want to deliver a baby.</p> <p>3/10 participants appreciated legal factor as they worried about the identity and interests of the child.</p> |

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| | <p>The support from their family and the community are important but only affects the spirit of LGBT, but no major impact on the right to living together and adoption.</p> <p>Finance is the most important issue in the decision on whether to adopt a child or not.</p> | <p>3/10 participants got pressure from families, especially from the family of her partner. It is also a very important factor while performing the cohabitation, raising child of the couple.</p> <p>Economic issues are mentioned by many participants. 9/10 interviewed participants said that the economic status must be strong enough to decide to give birth and raise their child. When they had plan to have a child, they must have a specific plan to earn their living and raise their child.</p> |
| <p>10. Comment on the understanding of legal provisions relevant to the LGBT community</p> | <p>Many of them said that LGBT-related information were hard to access so many people could not know. There are 4 participants admitted they did not understand legal provisions on LGBT</p> | <p>The participants in the discussion shared the same comment that they received no propaganda of the law, so LGBT people did not know and understand the law. Only when they faced troubles related to their interests, they began to find out. Moreover, Vietnamese legal documents are hard to read and too far away.</p> |
| <p>11. The understanding and participation of the LGBT community in the process of amending the Law on Marriage and Family.</p> | <p>5/10 participants in the discussion have learnt about advocacy. There are many programs such as I agree, 16+, Awakening rainbow and so on. However, due to limited understanding and fear of crowds so many of them still do not dare to attend.</p> | <p>10/10 participants in the discussion said that they just recently knew about the process of amending the Law on Marriage and Family. Only one participant joined in the programs such as I agree, 16 +and signed for support.</p> |
| <p>12. Does LGBT community in general demand for the Law on Marriage and Family to be amended in the direction of registered sex marriage? Why?</p> | <p>8/10 participants in the discussion said that the LGBT community had the demand for the Law on Marriage and Family to be revised towards allowing same-sex marriage registration.</p> <p>2/10 participants said that it was fine to only recognizee LGBT’s rights by the law.</p> | <p>According to them it is difficult to assess the needs of the LGBT community in the amendment to the Law on Marriage and Family in the direction of same-sex marriage registration because there are so many issues when getting married and marriage is the matter of two families.</p> <p>While some participants said that registering marriage was a way to legalize their love, pushing the couple to take higher responsibility and more tied together, so many</p> |

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| | | people look forward that the Law will be amended towards marriage registration. |
| 13. In case where the Law on Marriage and Family does not allow homosexual marriage, so how is the LGBT community's response | If the National Assembly does not pass the amended Law on Marriage and Family in the direction of allowing same-sex marriage, the LGBT community will continue to fight for their rights. | <p>3/10 participants said that they would continue struggling if the law on marriage and family was not amended towards allowing same-sex marriage.</p> <p>2/10 said that the recognition by the law was not important, the important thing was that how two people live together.</p> <p>5/10 said that they still lead a good life for others to recognize and think differently about LGBT.</p> |
| 14. Recommendations from the LGBT community to realize the right to adoption of LGBT couples | <p>It is advisable to have sex education about LGBT issues in schools;</p> <p>It is better to recognize the right to cohabitation first.</p> | <p>Coming out, proving to everyone that it is a normal nature.</p> <p>Living positively to mobilize community recognition.</p> <p>Prove to the National Assembly to have active operations, understand clearly the current operations.</p> <p>Propagandizing about LGBT for the public;</p> <p>Participating in and carrying out researches on LGBT.</p> |

ANNEX V – LIST OF EXPERTS INTERVIEWED

| No. | Full name | Agency/Organization |
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| 1. | Nguyen Minh Thuyet | Committee on Culture, Education, Adolescents, and Children |
| 2. | Nguyen Hoang Nam | Department of Civil – Economic Laws, Ministry of Justice |
| 3. | Nguyen Van Binh | Manager of the Bureau of Adoption, Ministry of Justice |
| 4. | Kim Anh | Deputy Manager of the Bureau of Adoption, Ministry of Justice |
| 5. | Truong Hong Quang | Institute of Legal Science, Ministry of Justice |
| 6. | Nguyen Thi Lan | Vice Head of Marriage and Family Law, Ha Noi Law University |
| 7. | Le Thi Nguyet Chau | Dean of Law Department - Can Tho University |
| 8. | Tran Thi Huong | Lecturer of HCMC Law University |
| 9. | La Khanh Tung | CRIGHTS |
| 10. | Luong The Huy | iSEE |
| 11. | Hoang Tu Anh | CCIHP |
| 12. | Nguyen Anh Thuan | CLOSET |
| 13. | Tran Khac Tung | Director of ICS |
| 14. | Do Quoc Anh | Committee of Propaganda, Viet Nam Women’s Union |
| 15. | Bui Quang Nghiem | Ho Chi Minh City Bar Association |
| 16. | Nguyen Thi Thuy Kieu | Lawyer of Hoang Hai Law Office |
| 17. | Pham Tien Bai | Lawyer of Hoang Kim Law firm |
| 18. | Nguyen Thi Hong Hanh | Lawyer of Bach Minh Law firm |
| 19. | Lam Hien Anh | Journalist of Viet Nam Economic Times |
| 20. | Nghia Nhan | Journalist of Ho Chi Minh City Law Newspaper |
| 21. | My Le | Journalist of Sai Gon Tiep thi Newspaper |

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| 22. | Le Nhung | Journalist of Viet Namnet – News, NA activities, Viet Nam week (Tuan Viet Nam) column |
| 23. | Birla Children’s Village, Ha Noi | |
| 24. | Children Sponsor Center III – Unit 3: Center for raising orphaned and malnourished children, Ha Noi | |
| 25. | Department of Justice, Ha Noi | |
| 26. | Department of Justice, Ho Chi Minh City | |
| 27. | People’s Committee of Doi Can Ward, Ba Dinh District, Ha Noi | |
| 28. | People’s Committee of Quang An Ward, Tay Ho District, Ha Noi | |
| 29. | People’s Committee of Thinh Quang Ward, Dong Da District, Ha Noi | |
| 30. | People’s Committee of Ward 13, Go Vap District, Ho Chi Minh City | |

ANNEX VI – QUANTITATIVE AND QUALITATIVE QUESTIONNAIRES

A – MAIL QUESTIONNAIRES FOR LGBT (QUANTITATIVE QUESTIONNAIRE)

Under UNDP’s support, NHQuang&Associates law firm has been cooperating with CSAGA to conduct this survey on the right to adoption of LGBT in Viet Nam. This survey aims to clarify the demand for and understanding about the right to adoption of LGBT in Viet Nam, thus, creating the background for advocacy for amendment to relevant legal provisions such as the Law on Family and Marriage, the Law on Adoption, etc.

We would highly appreciate your cooperation to answer the questions below following our guidelines. All your personal information shall be kept confidential to any third party, and it will only be disclosed upon your permit.

We hereby request you to

- ✓ **Try to answer all questions included herein**
- ✓ **Choose only one option of answer for each question. Those which allow multiple choice will be noted (*in bracket and in italics*)**
- ✓ **Complete only one questionnaire for each person in one of the following manners:**
 - Option 1: Fill in this printed questionnaire and send to the Research team to the address given at the end of the questionnaire,**
 - or**
 - Option 2: Fill the online questionnaire by entering www.khaosattuphap.net.**

Please fill your own code upon answering as follows:

**(Regional telephone code of the city/province you are residing) + (a random character) +
(4 final digits in your mobile or fixed-line number)**

For instance: if you are now living in Ho Chi Minh city with mobile number xxxxxx0781, please enter the code of 08g0781 for your questionnaire.

SECTION I – GENERAL INFORMATION ABOUT RESPONDENTS

- 1. **Year of birth:**
- 2. **Gender Identity** (the gender identified by the respondent): Male Female Other
- 3. **Gender identified on your birth certificate:** Male Female
- 4. **Education level:**
 - No education
 - Primary school
 - High school/Vocational school
 - University/college
 - Post-graduate
 - Other:
- 5. **Occupation:**

| Occupation | State sector | Private sector |
|--|--------------------------|--------------------------|
| a. Civil servants, state officials | <input type="checkbox"/> | |
| b. Non-manufacturing jobs (<i>officers, engineers, interpreters, office staff, etc.</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Professional jobs (<i>lawyers, doctors, architects, accountants, auditors, etc.</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Participating in direct manufacture (workers, drivers, guards, etc.) | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Student | | <input type="checkbox"/> |
| f. Businessman/woman | | <input type="checkbox"/> |
| g. Craftsman | | <input type="checkbox"/> |
| h. Farmers | | <input type="checkbox"/> |
| i. No stable job | | <input type="checkbox"/> |
| k. Other job (specify) | <input type="checkbox"/> | <input type="checkbox"/> |

- 6. **Average income per month:**

- Below 2 million VND
- Over 2 to 5 million VND
- Over 5 million to 10 million VND
- Over 10 million VND
- I don't want to answer this question

7. Residential area:

8. Your sexual orientation:

- Gay
- Lesbian
- Bisexual
- Other.....

9. Have you come out yet in practice?

- Yes, I have come out completely to the community
- Yes, I have come out to some certain persons (family/ relatives/friends)
- Not yet

10. Your marital/cohabitation situation in practice:

- I am single (not yet registered any marriage)
- I am married (registered) to a partner of different sex
- I have divorced from a partner of different sex
- I am living with my lover/partner being LGBT
- Other

11. Have you had any natural child?

- Yes
- No

12. Have you adopted any child?

- Yes
- No

SECTION II

A. ISSUES RELATED TO CHILD REARING

(Including both natural and adoptive children)

Question 1: In your opinion, do LGBT meet any DIFFICULTIES in bringing up their children?

- a. I don't know *(please go ahead with Question 3)*
- b. I don't see any difficulties *(please go ahead with Question 3)*
- c. There are some difficulties but they could overcome
- d. It is so difficult that LGBT must send their children to others for raising

Question 2: What are the DIFFICULTIES? (multiple choice is possible)

- a. The attitude of the surrounding community or society in general
- b. LGBT's family does not concur with them
- c. It is still restricted by applicable laws
- d. It is obstructed by local state agency
- e. Other difficulties *(please specify)*:.....

Question 3: In your opinion, what is the ATTITUDE showed by the surrounding community or society in general towards LGBT's child rearing?

| | a. Normal | b. Somewhat abnormal | c. Very abnormal | d. Stigmatizing | e. Other opinions |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| To LGBT themselves | <input type="checkbox"/> |
| To LGBT's children | <input type="checkbox"/> |
| Please specify if you have other opinions: | | | | | |

Question 4: In your opinion, if LGBT's family/family of LGBT's lover/partner does not concur with LGBT's child rearing, what can be the reasons thereof? (multiple choice is possible)

- a. I don't know the reason
- b. They are worried about LGBT's capacity to take care of their children
- c. They are worried that applicable regulations are not yet clear in permitting LGBT to bring up children
- d. They are worried that local state authorities do not recognize the right to bring up children of LGBT in practice
- e. They are worried that the application of applicable laws cannot ensure the best interests for LGBT's children

- g. Other reasons **(please specify)**:.....
.....

Question 5: In your opinion, which applicable regulations are restricting LGBT’s child rearing? (multiple choice is possible)

- a. I don’t know which regulations
- b. Regulations of civil laws
- c. Regulations of laws on family and marriage
- d. Regulations of laws on adoption
- e. Regulations of laws on sanctions of administrative violations
- f. Regulations of laws on handling criminal liabilities
- g. Other regulations **(please specify)**:
.....

Question 6: In your opinion, which actions do the local state authorities commit that prevents LGBT’s child rearing? (multiple choice is possible)

- a. I cannot describe the act
- b. The court has a decision to send LGBT’s children to others for raising or to terminate LGBT’s raising of adoptive children
- c. The local state administrative agency issues a decision to refuse LGBT’s application for adoption
- d. There is no decision on refusing LGBT’s application for adoption but the adoptive child cannot get birth registration or be granted with citizenship
- e. They cause difficulties in the process of implementing related administrative procedures, leading to LGBT’s unsuccessful application for adoption
- f. Other actions **(please specify)**:
.....

B – ISSUES RELATED TO ADOPTION

Question7: Have you ever got to know about procedures to adopt a child?

- a. I have studied the procedures to adopt a child and I have adopted a child

- b. I have studied the procedures to adopt a child, but I have not adopted any child
- c. I have not studied the procedures to adopt a child **(please skip Questions 8, 9, 10, 11, 12 and continue with Section C – Question 13)**

Question 8: According to your study, which conditions a person applying for adopting a child has to meet? (multiple choice is possible)

| Condition | LGBT | Heterosexual people |
|---|--------------------------|--------------------------|
| a. Having full civil act capacity <i>(being from full 18 years old and having no decision declaring loss of civil act capacity by the court)</i> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Being at least 20 years older than the adoptive child | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Having sufficient conditions in terms of health, economy, and residential place to ensure the care, raising, and education of the adoptive child | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Having good moral character | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Completing a psychology test for parents | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Other conditions (please specify) :..... | <input type="checkbox"/> | <input type="checkbox"/> |

Question 9: In your opinion, do LGBT need to satisfy further conditions or be exempted from any conditions to adopt a child?

- a. It is not necessary to add or omit any condition
- b. It is necessary to exempt some conditions → **Please specify which conditions:**
 - ba. Having full civil act capacity (being from full 18 years old and having no decision declaring loss of civil act capacity by the court).
 - bb. Being at least 20 years older than the adoptive child
 - bc. Having sufficient conditions in terms of health, economy, and residential place to ensure the care, raising, and education of the adoptive child
 - bd. Having good moral character
 - be. Completing a psychological test for parents

Reason:

.....

.....

c. It is necessary to add some conditions → **Please specify which conditions and reason:**

.....

d. I don't know

Question10: According to your study, which of the following documents are REQUIRED in the dossiers to apply for child adoption? (multiple choice is possible)

| Documents | For LGBT | For heterosexual people |
|--|--------------------------|--------------------------|
| a. Application for child adoption | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Copy of passport or personal identification card | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Criminal record | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Document certifying marital status | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Health examination record | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Psychological test form | <input type="checkbox"/> | <input type="checkbox"/> |
| g. Document certifying family situation, residential status, and economic conditions issued by the People's Committee of the commune where the applicant lives | <input type="checkbox"/> | <input type="checkbox"/> |
| h. Written agreement of the applicant's family | <input type="checkbox"/> | <input type="checkbox"/> |
| i. Dossiers of the child introduced to be adopted (prepared by the natural parents, guardians, or nurturing establishment) | <input type="checkbox"/> | <input type="checkbox"/> |
| j. Other documents (<i>please specify</i>): | <input type="checkbox"/> | <input type="checkbox"/> |

Question11: In your opinion, which of the following documents that LGBT people DO NOT NEED to present? (Multiple choice is possible)

- a. Application for child adoption;
- b. Copy of passport or personal identification card;
- c. Criminal record;
- d. Document certifying marital status;

- e. Health examination record;
- f. Psychological test form;
- g. Document certifying family situation, residential status, and economic conditions issued by the People’s Committee of the commune where the applicant lives;
- h. Written agreement of the applicant’s family;
- i. Dossiers of the child introduced to be adopted (prepared by the natural parents, guardians, or nurturing establishment);
- j. All of the above documents are not necessary;
- k. All of the above documents must be presented;
- j. Other documents (*please specify*):

Reason:.....

Question 12: According to your study, which of the following steps is included in the procedure of applying for adoption (*multiple choice is possible, no need for correct sequence*)

- a. The applicant prepares and submits the dossiers at the communal People’s Committee
- b. The People’s Committee gets the opinion from the natural father, mother, or guardian of the intended adoptive child
- c. The People’s Committee gets the opinion of the intended adoptive child in case he/she is of full 9 years old
- d. The applicant experiences an interview at the communal People’s Committee
- e. The applicant receives results at the communal People’s Committee
- f. Other steps (*please specify*):.....

C – FOR RESPONDENTS WHO HAVE NOT HAD ANY CHILD
(either natural or adoptive child)

Question 13. Do you intend or plan to have a child?

- a. Yes → In which way do you intend to get the child:
 - aa. I will have a natural child
 - ab. I will have an adoptive child
 - ac. In both ways
- b. No → Why?

- ba. I don't want or I have not demanded for.
- bb. The economical and material conditions have not permitted me to think about this.
- bc. I am not supported by my family
- bd. I am afraid that it will be not good for the child in the future
- be. Other reasons (please specify)

.....

Question 14: If you adopt a child, how do you want to stand your name in his/her birth certificate?

- a. Father
- b. Mother

D –FOR RESPONDENTS HAVING NATURAL CHILD
(If you have not had a natural child, please skip this Section and continue with Section E from Question 16)

Question 15: In your opinion, should the laws recognize agreements on child care and raising between LGBT couples?

- a. Yes.** Why *(multiple choice is possible)*
 - aa. To increase responsibility of LGBT couples
 - ab. To ensure rights and interests of the children
 - ac. To protect rights and interests of each person in LGBT couples
 - ad. Other reasons *(please specify)*:

- b. No.** Why *(multiple choice is possible)*:
 - ba. Taking care of and bringing up children is the natural responsibility of each person in LGBT couples once they live with each other.
 - bb. The responsibility of parents in taking care of and bringing up children has been stipulated by laws
 - bc. Other reasons *(please specify)*:

- c. I don't know**

E. FOR RESPONDENTS HAVING ADOPTIVE CHILDREN
(either registered or not registered adoption)
(If you have not had any adoptive child, please skip this Section and continue with Section F from Question 21)

Question 16: How long have you adopted your child?

- a. Less than 1 year
- b. From 1 to less than 2 years
- c. From 2 to less than 3 years
- d. From 3 to less than 4 years
- e. From 4 to less than 5 years
- f. From 5 to less than 10 years
- g. From 10 years and more

Question 17: Do you implement procedures to register your adoption at the local state authorities?

- a. Yes, I carried out registration procedures at the local state authorities.
- b. No. I foster the child myself and have not registered at any state authorities (**please skip Question 18 and continue with Question 19**)

Question 18: In your opinion, with the applicable adoption procedures, are applicants being LGBT facilitated in applying for adoption? (multiple choice is possible) (please skip Question 19 and continue with Question 20)

- a. Individual applicant who has come out with gender identity different from the gender stated in the birth certificate has not been facilitated
- b. LGBT couples have not been facilitated to adopt a child
- c. Adoption procedures are still complicated and difficult to implement
- d. Other opinions (**please specify**):

Question 19: Why don't you register your adoption? (multiple choice is possible)

- a. I have already carried out procedures to apply for adoption but the certificate of adoption is not issued
- b. I don't know that I have to register
- c. I myself find that I do not satisfy the required conditions
- d. The procedures are too complicated
- e. I am afraid that I will not be accepted by local authorities since I have come out or my true gender is disclosed during procedure implementation
- f. Other reasons (**please specify**):

Question 20: Which of the following difficulties do you face up with during raising your adoptive child? (multiple choice is possible)

- a. Difficulty in registering birth, death, and marriage record for my adoptive child (related to birth certificate, family records, etc.). Reason:
- b. Difficulty for the child in entering school. Reason:

- c. Limitations of the child in participating collective or social activities (at school, class, living cluster, common activities with neighbors, etc.). Reason:
-
- d. Difficulties in taking care of the child’s health (injection, medical examination, health insurance, etc.). Reason:
-
- e. Other difficulties (**please specify**):

F – FACTORS IMPACTING LGBT’S ADOPTION

Question 21: In your opinion, which of the following factors impact LGBT’s ADOPTION and their level of influence? (multiple choice is possible)

| | Very important | Importan t | Less important |
|--|---------------------------|--------------------------|---------------------------|
| a. Recognition of laws | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Support of the local authorities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Support of the family | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Attitude of the community and society | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Support of the lover/partner | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Psychology of the LGBT him/herself (complex, fear, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g. Other factors (please specify): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Question 22: In case where the Law on Family and Marriage does not recognize the marriage or even cohabitation of same-sex couples, how will you react or what do you plan to do?

- a. I will accept the situation, there is no need for any act

- b. It is not important. I will continue living with my partner and will get married when it is permitted by laws
- c. It is necessary to continue advocating so that the NA and the society can understand the demand of LGBT
- d. Love is always love, whether it is recognized by law or not is not important
- e. Other opinions (please specify):
.....

Question 23: In case where legal provisions on adoption do not recognize LGBT couples' adoption, how will you react or what do you plan to do?

- a. I will accept the situation, there is no need for any act
- b. I will still foster a child and register once it is permitted by laws
- c. It is necessary to continue advocating so that the NA and the society can understand the demand of LGBT
- d. I will still adopt a child whether it is recognized by law or not is not important
- e. Other opinions (please specify):
.....

Thank you very much.

Could you please share us your email address/mobile number so that we could get contact with you in case of necessity. This information will be kept absolutely confidential.

.....

Please send back the filled questionnaire before **20/6/2014** to our address given below:

NHQUANG&ASSOCIATES
Villa B23 – Trung Hoa Nhan Chinh, Nguyen Thi Dinh Street,
Thanh Xuan District, Ha Noi

B – MAIL QUESTIONNAIRES FOR LGBT RELATIVES (QUANTITATIVE QUESTIONNAIRE)

Under UNDP’s support, NHQuang&Associates law firm has been cooperating with CSAGA to conduct this survey on the right to adoption of LGBT in Viet Nam. This survey aims to clarify the demand for and understanding about the right to adoption of LGBT in Viet Nam, thus, creating the background for advocacy for amendment to relevant legal provisions such as the Law on Family and Marriage, the Law on Adoption, etc.

We would highly appreciate your cooperation to answer the questions below following our guidelines. All your personal information shall be kept confidential to any third party, and it will only be disclosed upon your permit.

We hereby request you to

- ✓ **Try to answer all questions included herein**
- ✓ **Choose only one option of answer for each question. Those which allow multiple choice will be noted (*in bracket and in italics*)**
- ✓ **Complete only one questionnaire for each person in one of the following manners:**

Option 1: Fill in this printed questionnaire and send to the Research team to the address given at the end of the questionnaire,

or

Option 2: Fill the online questionnaire by entering www.khaosattuphap.net.

Please fill your own code upon answering as follows:

**(Regional telephone code of the city/province you are residing) + (a random character) +
(4 final digits in your mobile or fixed-line number)**

For instance: if you are now living in Ho Chi Minh city with mobile number xxxxxx0781, please enter the code of 08g0781 for your questionnaire.

SECTION I – GENERAL INFORMATION ABOUT RESPONDENTS

13. Year of birth:

14. Residential area:

15. Gender identified on your birth certificate: Male Female

16. Education level:

- No education
- Primary school
- High school/Vocational school
- University/college
- Post-graduate
- Other:

17. Occupation:

| <i>Occupation</i> | <i>State sector</i> | <i>Private sector</i> |
|--|--------------------------|--------------------------|
| a. Civil servants, state officials | <input type="checkbox"/> | |
| b. Non-manufacturing jobs (<i>officers, engineers, interpreters, office staff, etc.</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Professional jobs (<i>lawyers, doctors, architects, accountants, auditors, etc.</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Participating in direct manufacture (<i>workers, drivers, guards, etc.</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Student | | <input type="checkbox"/> |
| f. Businessman/woman | | <input type="checkbox"/> |
| g. Craftsman | | <input type="checkbox"/> |
| h. Farmers | | <input type="checkbox"/> |
| i. No stable job | | <input type="checkbox"/> |
| k. Other job (<i>specify</i>) | <input type="checkbox"/> | <input type="checkbox"/> |

1.5 You have a family member being [hereinafter referred to as A]

- A man loving men
- A woman loving women
- A person loving both men and women
- A man making sure that he is a woman
- A woman making sure that she is a man
- Other (please specify):

18. What kind of family relationship do you have with A:

- a. Grandfather/grandmother
- b. Father/Mother
- c. Brother/Sister
- d. Uncle/Aunt

19. Has A come out yet?

- Yes, A has come out completely to the community
- Yes, A has come out to some certain persons (family/relatives/friends)
- No

20. A's current marital/cohabitation situation in practice:

- A is single (not yet registered any marriage)
- A is married (registered) to a partner of different sex
- A has divorced from a partner of different sex
- A is living with his/her lover/partner being LGBT
- Other

21. Does A have any natural child:

- Yes
- No

22. Has A adopted any child:

- Yes
- No

23. Have you ever read any materials or had any information about LGBT?

Yes

No

24. In your opinions, LGBT are:

- a. A normal phenomenon
- b. The expression of the “pathological” situation in terms of mentality or physiology
- c. The signal of degradation in terms of lifestyle
- d. Other comments (please specify):

.....
.....

25. In the case of A, it is:

- a. A normal phenomenon
- b. The expression of the “pathological” situation in terms of mentality or physiology
- c. The signal of degradation in terms of lifestyle
- d. Other comments (please specify):

.....
.....

SECTION II: QUESTIONS

Question 1: Do you support in general LGBT to BRING UP A CHILD?

- a. Support → Please tell the reason why (**multiple choice is possible**):
 - aa. They can take care of the child similarly to others (heterosexual people)
 - ab. They are normal people, thus they have the right to bring up children
 - ac. It is not restricted by laws
 - ad. Other reasons (**please specify**):

.....

- b. Do not support → Please tell the reason why (**multiple choice is possible**):

- ba. They cannot take care of the child as others do (heterosexual people)
- bb. They are abnormal people, thus they should not bring up children
- bc. It is restricted by laws
- bd. It could be prevented by local state authorities
- be. The child may be stigmatized and its psychology will be affected
- bf. The child may grow up abnormally since its parents are not like other couples of different sex
- bg. Other reasons (**please specify**):
-

Question 2: In A’s case, do you support A to bring up a child?

- a. Support → Please tell the reason why (**multiple choice is possible**):
 - aa. A can take care of the child similarly to others (heterosexual people)
 - ab. A is a normal person, thus A has the right to bring up children
 - ac. It is not restricted by laws
 - ad. Other reasons (**please specify**):
 -
- b. Do not support → Please tell the reason why (**multiple choice is possible**):
 - ba. A cannot take care of the child as others do (heterosexual people)
 - bb. A is an abnormal person, thus A should not bring up children
 - bc. The laws do not permit such LGBT as A to bring up children
 - bd. It could be prevented by local state authorities
 - be. The child may be stigmatized and its psychology will be affected
 - bf. The child may grow up abnormally since its parents are not like other couples of different sex
 - bg. I am afraid of the attitude showed by the neighbors, relatives, and society
 - bh. Other reasons (**please specify**):
 -

Question 3: In your opinion, which applicable regulations are restricting LGBT to raise children? (multiple choice is possible)

- a. I don't know which regulations
- b. Regulations of civil laws
- c. Regulations of laws on family and marriage
- d. Regulations of laws on adoption
- e. Regulations of laws on sanctions of administrative violations
- f. Regulations of laws on handling criminal liabilities
- g. Other regulations (*please specify*):

.....

Question 4: In your opinion, which actions do the local state authorities commit that prevent LGBT's child rearing? (multiple choice is possible)

- a. I cannot describe the act
- b. The court has a decision to send LGBT's children to others for raising or to terminate LGBT's raising of adoptive children
- c. The local state administrative agency issues a decision to refuse LGBT's application for adoption
- d. There is no decision on refusing LGBT's application for adoption but the adoptive child cannot get birth registration or be granted with citizenship
- e. They cause difficulties in the process of implementing related administrative procedures, which cause LGBT's unsuccessful application for adoption
- f. Other acts (*please specify*):

.....

Question 5: If you do not support but A still has a child and brings it up with his/her partner, what will you do?

- a. I don't know what to do
- b. Find all ways to prevent A, and even declare to stop the consanguine relation with him/her
- c. Accept without any help
- d. Accept and help in case of difficulty
- e. Other opinions (please specify):

Question 6: In your opinion, should the laws recognize agreements on child care and raising between LGBT couple?

- a. Yes. Why (*multiple choice is possible*)

- aa. To increase responsibility of LGBT couple
- ab. To ensure rights and interests of the child
- ac. To protect rights and interests of each person in an LGBT couple
- ad. Other reasons (*please specify*):

- b. No. Why (*multiple choice is possible*):**
 - ba. Taking care of and bringing up children is the natural responsibility of each person in a LGBT couple once they live with each other.
 - bb. The responsibility of parents in taking care of and bringing up children has been stipulated by laws
 - bc. Other reasons (*please specify*):

- c. I don't know**

Question 7: In your opinion, which of the following factors impact LGBT's ADOPTION and their level of influence? (*multiple choice is possible*)

| | Very important | Important | Less important |
|--|--------------------------|--------------------------|--------------------------|
| a. Recognition of laws | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Support of the local authorities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Support of the family | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Attitude of the community and society | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Support of the lover/partner | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Psychology of the LGBT him/herself (complex, fear, etc.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g. Other factors (<i>please specify</i>): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Question 8: In case where the Law on Family and Marriage does not recognize the marriage or even cohabitation of same-sex couples, how will you react or what do you plan to do?

- a. I will accept the situation, there is no need for any act
- b. I will accept the situation and request LGBT not to live with their partner or get married

- c. It is not important. LGBT can continue living with their partner and get married when it is permitted by laws
- d. It is necessary to help LGBT continue advocating so that the NA and the society can understand their demand
- e. Other opinions (please specify):
.....

Question 9: In case where legal provisions on adoption do not recognize LGBT couples' adoption, how will you react or what do you plan to do?

- a. I will accept the situation, there is no need for any act
- b. I will accept the situation and request LGBT not to adopt any child
- c. LGBT should still adopt children and register when it is permitted by laws
- d. It is necessary to continue advocating so that the NA and the society can understand their demand
- e. Other opinions (please specify):
.....

Thank you very much

Could you please share us your email address/mobile number so that we could get contact with you in case of necessity. This information will be kept absolutely confidential.

.....

Please send back the filled questionnaire before **20/6/2014** to our address given below:

NHQUANG&ASSOCIATES
Villa B23 – Trung Hoa Nhan Chinh, Nguyen Thi Dinh Street,
Thanh Xuan District, Ha Noi

C – QUESTIONNAIRE FOR DIRECT INTERVIEW WITH LGBT (QUALITATIVE QUESTIONNAIRE)

Introduction by the interviewer about the purpose and manner of implementing the survey:

Under UNDP’s support, NHQuang&Associates law firm has been cooperating with CSAGA to conduct this survey on the right to adoption of LGBT in Viet Nam. This survey aims to clarify the demand for and understanding about the right to adoption of LGBT in Viet Nam, thus, creating the background for advocacy for amendment to relevant legal provisions such as the Law on Family and Marriage, the Law on Adoption, etc.

We would highly appreciate your cooperation to answer the questions below following our guidelines. All your personal information shall be kept confidential to any third party, and it will only be disclosed upon your permit.

Thank you very much.

SECTION I: GENERAL INFORMATION ABOUT INTERVIEWEE

1.1 Year of birth:.....

1.2 Residential place:

1.3 Your sex identity (identified by yourself): Male Female Other

1.4 Your sex recorded on birth certificate: Male Female Other

1.5 Main occupation

| Occupation | State sector | private sector |
|--|--------------------------|--------------------------|
| a. Civil servants, state officials | <input type="checkbox"/> | |
| b. Non-manufacturing jobs (<i>officers, engineers, interpreters, office staff, etc.</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Professional jobs (<i>lawyers, doctors, architects, accountants, auditors, etc</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Participating in direct manufacture (<i>workers, drivers, guards, etc.</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Student | | <input type="checkbox"/> |

| | | |
|---------------------------------|--------------------------|--------------------------|
| f. Businessman/woman | | <input type="checkbox"/> |
| g. Craftsman | | <input type="checkbox"/> |
| h. Farmers | | <input type="checkbox"/> |
| i. No stable job | | <input type="checkbox"/> |
| k. Other job (<i>specify</i>) | <input type="checkbox"/> | <input type="checkbox"/> |
| | | |

1.6 Education level:

- No education
- Primary school
- High school/Vocational school
- University/college
- Post-graduate

1.7 Income/month:

- Below 2 million VND
- Over 2 to 5 million VND
- Over 5 million to 10 million VND
- Over 10 million VND
- I don't want to answer this question

1.8 Your sexual orientation:

- Gay
- Lesbian
- Bisexual
- Other.....

1.9 Have you come out or not yet in practice?

- Yes, I have come out completely to the community
- Yes, I have come out to some certain persons (family/ relatives/friends)
- No

1.10 Your marital/cohabitation situation

- I am single (not yet registered any marriage)
- I am married (registered) to a partner of different sex
- I have divorced from a partner of different sex
- I am living with my lover/partner being LGBT
- Other

1.10.1 If yes, how long have you been living with your partner? (choose the longest time)

- Less than 1 year
- Over 1 year to less than 3 years
- Over 3 year to less than 5 years
- More than 5 years

1.11 Have you had any natural child?

- Yes
- No

1.12 Have you adopted any child?

- Yes
- No

1.12.1 If yes, do you get a certificate of adoption registration?

- Yes
- No

SECTION II: QUESTIONS

DEMAND FOR LIVING TOGETHER, HAVING A BABY, ADOPTING A CHILD

Including natural and adoptive child

Question 1: Do you demand to live with your lover/partner being LGBT regularly and permanently?

- 1.1 Yes (MOVE TO QUESTION 2)

1.2 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. We shall face difficulties from our families
- b. We shall meet difficulties due to stigma from the community
- c. We shall face difficulties from local authorities
- d. It is difficult to find a suitable partner to live regularly and permanently
- e. We are afraid of troubles in resolving legal consequences from actual cohabitation
- f. Other reasons (specify):
-
-

➔ Move to QUESTION 4

Question 2: If you want to live with your partner/lover, do you demand to get married?

- 2.1 I don't want to answer this question
- 2.2 Yes (MOVE TO QUESTION 3)
- 2.3 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. I don't want or have no possibility to have strong attachment in a long term
- b. It is not accepted by the family
- c. It is not accepted by law
- d. Other reasons (specify):
-
-

➔ MOVE TO QUESTION 4

Question 3: If you want to get married, in current context where the laws do not permit a registered marriage, do you want to have a public wedding?

- I don't want to answer this question
- Yes (MOVE TO QUESTION 4)
- No. Why?

Check to see if the given reason matches any of the following suggestions

- a. It is obstructed by two families
- b. It is obstructed by the authorities
- c. I fear of discrimination by the community
- d. Other reasons (specify):
-
-
-

➔ MOVE TO QUESTION 4

Question 4: For you, in the past, at present, or in the future, is it really necessary to have a child and bring it up?

- 4.1 I don't want to answer this question
- 4.2 Yes. In which way do you want to have the child? *One option allowed*
 - a. I want to have a natural child
 - b. I want to have an adoptive child
 - c. Either natural or adoptive child is alright to me
- 4.3 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. I don't like having children
- b. I don't want to adopt children
- c. Having a child (either a natural or an adoptive one) will throw me into difficulty with
 - (i) My family and relatives
 - (ii) My work
 - (iii) (Social) community
 - (iv) Local authorities
 - (v) The partner living with me
- d. I am not sure that I can ensure the material and moral life of the child
- e. Other reasons (specify):
-
-

Note: Question 5 and Question 6 below are applied to 02 different interviewees:

- **The interviewee NOT living with the lover/partner or having NO lover/ partner at present --> Question 5**
- **The interviewee NOW living with the partner --> Question 6**

Question 5 (for interviewees NOT living with a partner): Do you yourself plan to have a child or adopt a child in the next 03 (three) years?

- 5.1 I don't want to answer this question
- 5.2 I don't know
- 5.3 Yes.

5.3.1 How? *One option allowed*

- a. Having a natural child with a partner of different sex
- b. Applying for adopting a child
- c. Having a natural child by way of scientific methods (artificial fertilization, in vitro fertilization)

5.3.2 Will you bring up your child yourself or with your lover/partner? *One option allowed*

- a. Myself
- b. With my lover/partner

➔ MOVE TO QUESTION 7

- 5.4 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. I have had a child thus I not yet want another
- b. I don't want or I have not demanded for a child
- c. My economic and material conditions have not facilitated me to have a child
- d. I have not had a long-term partner living with me
- e. I have not persuaded my partner to have his/her consent
- f. My family and relatives have not accepted
- g. I want a natural child but I have not had enough conditions to do that
- h. I find obstruction from laws, authorities, or legal procedures, which do not ensure the child's rights and interests
- i. I don't believe that the child's parents could agree to let me (a LGBT) adopt it
- j. I fear that I may come out as a LGBT and find troubles at work, with my family and the community
- k. I fear that the child will be stigmatized
- l. Other reasons (specify):.....

.....

.....

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➔ MOVE TO QUESTION 7

Question 6 (for interviewee NOW living with the lover/partner): Do you have any intention or plan to have a common child?

- 6.1 a. I don't want to answer this question
- 6.2 b. I don't know
- 6.3 c. Yes. How? *One option allowed*
 - a. Two of us will adopt a child
 - b. One of us will find way to have a natural child and the other shall apply to become its adoptive father/mother
 - c. We shall try both of the above
 - d. I have not know which way to do

➔ MOVE TO QUESTION 7

- 6.4 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. Both of us have not had a child but we don't want or have not demanded for
- b. One of us already have a natural child thus we do not demand for
- c. Our economic and material conditions are not good enough
- d. Either of us want, but the other is not yet ready
- e. The family and relatives of either of us have not accepted
- f. One of us wishes to have a natural child and the other will be the adoptive father/mother but we have not had conditions to realize it
- g. We still find obstruction from the laws, authorities, and legal procedures, which does not ensure the child's rights and interests
- h. We fear that the common child will be stigmatized
- i. Other reasons (specify).....

.....

.....

➔ MOVE TO QUESTION 7

MATTERS FACED BY LGBT IN LIVING AND ADOPTING A CHILD TOGETHER, INCLUDING SUPPORTIVE AND OBSTRUCTIVE FACTORS

Question 7: How do you think about the importance of laws’ impact to ensure the right to live together of LGBT?

- 7.1 Very important
- 7.2 Important
- 7.3 Not very important
- 7.4 Not important
- 7.5 Difficult to assess

→ Reason:
.....
.....

Question 8: Do the applicable laws create favorable conditions for the cohabitation of LGBT?

- 8.1 Very favorable
- 8.2 Favorable
- 8.3 Not very favorable (difficult)
- 8.4 Not favorable (obstructive)
- 8.5 Difficult to assess

→ Reason:
.....
.....

Question 9: How do you think about the importance of laws’ impact to ensure the right to bring up a child (including adopting a child) of LGBT?

- 9.1 Very important
- 9.2 Important
- 9.3 Not very important
- 9.4 Not important
- 9.5 Difficult to assess

→ Reason:

.....
.....

Question 10: How do applicable laws support (create favorable conditions for) children raising (including adopting a child) of LGBT?

- 10.1 Very favorable
- 10.2 Favorable
- 10.3 Not very favorable (difficult)
- 10.4 Not favorable (obstructive)
- 10.5 Difficult to assess

→ Reason:
.....
.....

Question 11: How do you think about the importance of interventions and behaviors of local authorities to cases of LGBT living together:

- 11.1 Very important
- 11.2 Important
- 11.3 Not very important
- 11.4 Not important
- 11.5 Difficult to assess

→ Reason:
.....
.....

Question 12: How do you think about the favorableness in the interventions and behaviors of local authorities to the cohabitation of LGBT:

- 12.1 Very favorable
- 12.2 Favorable
- 12.3 Not very favorable (difficult)
- 12.4 Not favorable (obstructive)
- 12.5 Difficult to assess

→ Reason:

.....
.....

Question 13: How do you think about the importance of interventions and behaviors of local authorities to LGBT’s child rearing (including ADOPTION):

- 13.1 Very important
- 13.2 Important
- 13.3 Not very important
- 13.4 Not important
- 13.5 Difficult to assess

→ Reason:
.....
.....

Question 14: How do you think about the favorableness in the interventions and behaviors of local authorities to LGBT’s child rearing (including ADOPTION):

- 14.1 Very favorable
- 14.2 Favorable
- 14.3 Not very favorable
- 14.4 Not favorable
- 14.5 Difficult to assess

→ Reason:
.....
.....

Question 15: How is the importance of the impact by the attitude of community and society towards LGBT’s COHABITATION and CHILD REARING (including ADOPTION, if any)?

- 15.1 Very important
- 15.2 Important
- 15.3 Not very important
- 15.4 Not important
- 15.5 Difficult to assess

→ Reason:

.....
.....

Question 16: How do you evaluate the current attitude of community and society towards LGBT’s COHABITATION and CHILD REARING (including ADOPTION, if any)?

- 16.1 Very positive
- 16.2 Positive
- 16.3 Less positive
- 16.4 Negative
- 16.5 Difficult to assess

→ Reason:

.....

.....

Question 17: How do you evaluate the meaning and impact by the family’s support for LGBT’s COHABITATION and CHILD REARING (including ADOPTION, if any)?

- 17.1 Very important
- 17.2 Important
- 17.3 Not very important
- 17.4 Not important
- 17.5 Difficult to assess

→ Reason:

.....

.....

Question 18: How do you evaluate the practical support by the FAMILY for LGBT’s COHABITATION and CHILD REARING (including ADOPTION, if any)?

- 18.1 Very supportive
- 18.2 Supportive
- 18.3 Less supportive
- 18.4 Not supportive
- 18.5 Difficult to assess

→ Reason:

.....
.....

Question 19: Do you find any OTHER issues regarding LGBT’s rights in COHABITATION and CHILD REARING (including ADOPTION) to share with us?

.....
.....

ABOUT LEGAL PERCEPTION OF INTERVIEWEES

Question 20: Do you know that the National Assembly has been discussing the amendment to the Law on Family and Marriage, including the recognition of LGBT’s cohabitation?

- 20.1 Yes
- 20.2 No
- 20.3 Other opinions (specify)

.....
.....

Question 21: Do you know about the abrogation of the Government’s decree on administrative sanction on marriage of same-sex couples?

- 21.1 a. Yes
- 21.2 b. No

Question 22: In your opinion, is it necessary that the National Assembly amends the Law on Family and Marriage towards permitting registration of same-sex marriage?

- 22.1 a. I don’t want to answer this question
- 22.2 b. Yes
- 22.3 c. No. Why? Choose the options that you make sure of
 - a. It isn’t the time to raise this requirement since it will hardly be accepted
 - b. Love is always love, registered marriage is not important
 - c. Other reasons (specify):

.....
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.....
.....

Question 23: Do you support the amendment of regulations on child adoption and raising towards permitting a LGBT couple to adopt the same child?

- 23.1 a. I don't want to answer this question
- 23.2 b. Yes
- 23.3 c. No. Why?

.....
.....

Question 24: In your opinion, is it necessary for the laws to recognize the following rights of LGBT?

- **The right to be cared among members in family formed by couple living together**
- **The right of children to receive alimony when the couple no longer live together**
- **The right to common assets**

- 24.1 a. I have no opinion
- 24.2 b. Yes
- 24.3 c. No. Why?

.....
.....

Question 25: If you want the National Assembly to amend the laws as mentioned above, are you and the general LGBT prepared to raise your voice publicly (disclosing your identity) to request and persuade the NA deputies?

- 24.1 a. I don't want to answer this question
- 24.2 b. Yes
- 24.3 c. No. Why?
 - a. I am afraid of coming out and being stigmatized
 - b. I don't believe that the National Assembly will accept
 - c. Other reasons (specify):

.....

Question 26: If the law on Family and Marriage does not recognize the marriage or even cohabitation of same-sex couples, how will you react or plan to act?

- 26.1 a. I don't want to answer this question
- 26.2 b. I will accept the situation, there is no need for any act
- 26.3 c. It is not important, I will continue living with my partner and will get married once it is permitted by laws
- 26.4.d. It is necessary to continue advocating so that the NA and the society can understand the demand of LGBT
- 26.5 e. Love is always love, whether it is recognized by law or not is not important
- 26.6 f. Other options (please specify):

.....

.....

.....

Question 27: In case where legal provisions on adoption do not recognize LGBT's adoption, how will you react or plan to act?

- 27.1 a. I don't want to answer this question
- 27.2 b. I will accept the situation, there is no need for any act
- 27.3 c. I will still foster a child and register once it is permitted by laws
- 26.4 d. It is necessary to continue advocating so that the NA and the society can understand the demand of LGBT
- 27.5 e. I will still adopt a child, whether it is recognized by law or not is not important
- 27. 6 f. Other options (please specify):

.....

.....

.....

Thank you very much!

SECTION III: INFORMATION ABOUT THE INTERVIEWER

- **Time/date of interview:**
- **Place of interview:**
 - Ha Noi
 - Ho Chi Minh City

Can Tho

- **Interviewer (Full name and signature):**

- **Group leader (Full name and signature):**

D - QUESTIONNAIRE FOR DIRECT INTERVIEW WITH LGBT RELATIVES (QUALITATIVE QUESTIONNAIRE)

Introduction by the interviewer about the purpose and manner of implementing the survey:

Under UNDP’s support, NHQuang&Associates law firm has been cooperating with CSAGA to conduct this survey on the right to adoption of LGBT in Viet Nam. This survey aims to clarify the demand for and understanding about the right to adoption of LGBT in Viet Nam, thus, creating the background for advocacy for amendment to relevant legal provisions such as the Law on Family and Marriage, the Law on Adoption, etc.

We would highly appreciate your cooperation to answer the questions below following our guidelines. All your personal information shall be kept confidential to any third party, and it will only be disclosed upon your permit.

Thank you very much.

SECTION I: GENERAL INFORMATION ABOUT INTERVIEWEE

1.13 When were you born:.....

1.14 Your sex:

- Male
- Female
- Other

1.15 Where are you living:

1.16 Education level:

- No education
- Primary school
- High school/Vocational school
- University/college
- Post-graduate

1.17 You have a family member (asking for his/her name, then using this name) being [in this questionnaire, we use A to address this person]

- A man loving men
- A woman loving women

- A person loving both men and women
- A man making sure that he is a woman
- A woman making sure that she is a man
- Other (please specify):

1.18 What kind of family relationship do you have with A (grandparents/parents/brother or sister/uncle or aunt)

1.7 Do you live at the same place with A?

- Yes
- No

1.8 Have you ever read any materials or had any information about LGBT?

- Yes
- No

1.9 In your opinions, LGBT are:

- a. A normal phenomenon
- b. The sign of pathodology in terms of mentality or physiology
- c. The signal of degradation in terms of lifestyle
- d. Other comments (please specify):

.....

.....

1.10 In the case of A, it is:

- a. A normal phenomenon
- b. The expression of the “pathological” situation in terms of mentality or physiology
- c. The signal of degradation in terms of lifestyle
- d. Other comments (please specify):

.....

.....

.....

SECTION II: QUESTIONS

Question 1: Does A reveal that he/she wants to live with a same-sex partner?

- 1.1 Yes
- 1.2 No

Question 2: Do you support same-sex couples to LIVE TOGETHER?

2.1 As regards LGBT community in general

- 2.1.1 I do not have any viewpoint yet
- 2.2.2 Yes
- 2.3.3 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. It is not permitted by laws and authorities
 - b. It is not relevant to the tradition of the family and community
 - c. The family of the LGBT couples will be ashamed or feel embarrassed with the community
 - d. They will meet several difficulties and complicated troubles in living together
 - e. They will not have a good future or possibility of stability
 - f. Other reasons:
-

2.2 As regards A’s case

- 2.2.1 I do not have any viewpoint yet
- 2.2.2 Yes
- 2.2.3. No. Why?

Check to see if the given reason matches any of the following suggestions

- a. It is not permitted by laws and authorities
- b. It is not relevant to the tradition of the family and community
- c. The family of the LGBT couples will be ashamed or feel embarrassed with the community
- d. They will meet several difficulties and complicated troubles in living together
- e. They will not have a good future or possibility of stability
- f. Other reasons:

If you do not support but A still lives with the partner and even finds ways to organize a wedding, what will you do?

Check to see if the given reason matches any of the following suggestions

- a. Find all ways to prevent A, and even declare to stop the consanguine relation with him/her
- b. Accept without help
- c. Accept and help in case of difficulty
- d. I don't know
- e. Other opinions (please specify):

Question 3: Do you support same-sex couples to HAVE A CHILD OR ADOPT A CHILD TOGETHER?

3.1 As regards LGBT community in general?

- 3.1.1 I do not have any viewpoint yet
- 3.1.2 Support. Why

Check to see if the given reason matches any of the following suggestions

- a. They can take care of the child similarly to others (heterosexual people)
- b. They are normal people, thus they have the right to bring up children
- c. It is not restricted by laws
- d. Other reasons ***[please specify]:***

.....
.....

- Do not support. Why?

Check to see if the given reason matches any of the following suggestions

- a. They cannot take care of the child as others do (heterosexual people)
- b. They are abnormal people, thus they should not bring up children
- c. It is restricted by laws
- d. It could be prevented by local state authorities
- e. The child may be stigmatized

- f. Other reasons *[please specify]:*

.....

.....

.....

3.2 As regards the case of A

- 3.2.1 I do not have any viewpoint yet

- 3.2.2 Support. Why?

Check to see if the given reason matches any of the following suggestions

- a. A can take care of children similarly to others (heterosexual people)
- b. A is a normal person, thus A has the right to bring up children
- c. It is not restricted by laws
- d. Other reasons *[please specify]:*

.....

.....

- Do not support. Why?

Check to see if the given reason matches any of the following suggestions

- a. A cannot take care of children similarly to others (heterosexual people)
- b. A is an abnormal person, thus A should not bring up children
- c. The laws do not permit such LGBT as A to bring up children
- d. It could be prevented by local state authorities
- e. The child may be stigmatized
- f. I am afraid of the attitude by the neighbors, relatives, and society
- g. Other reasons *[please specify]:*

.....

.....

If you do not support but A still has a child and brings it up with the partner, what will you do?

Check to see if the given reason matches any of the following suggestions

- a. I don't know what to do
- b. Find all ways to prevent A, and even declare to stop the consanguine relation with him/her
- c. Accept without any help

- d. Accept and help in case of difficulty
- e. Other opinions (please specify):

Question 4: In your opinion, which acts do the local state authorities commit that prevents LGBT’s child rearing?

Check to see if the given reason matches any of the following suggestions

- 4.1 I cannot describe the act
- 4.2 The court has a decision to send LGBT’s children to others for raising or to terminate LGBT’s raising of adoptive children
- 4.3 The local state administrative agency issues a decision to refuse LGBT’s application for adoption
- 4.4 There is no decision on refusing LGBT’s application for adoption but the adoptive child cannot get birth registration or be granted with citizenship
- 4.5 Other acts ***[please specify]:***

.....

.....

.....

Question 5: Do you know that the National Assembly has been discussing the amendment to the Law on Family and Marriage, including the recognition of LGBT’s cohabitation?

- 5.1 Yes
- 5.2 No

Question 6: Do you know about the abrogation of the Government’s decree on administrative sanction on marriage of same-sex couples?

- 6.1 Yes
- 6.2 No

Question 7: Do you want the Law on Family and Marriage to be amended towards permitting registration of same-sex marriage?

- 7.1 I do not have any viewpoint yet
- 7.2 Yes
- 7.3. No. Why?

Check to see if the given reason matches any of the following suggestions

- a. It wasn't the time that this requirement be accepted by the National Assembly
- b. It will lead to several negative consequences for the society
- c. Other reasons (specify):
-
-
-
-

Question 8: Do you support the amendment of regulations on child adoption and fostering towards permitting a LGBT couple to adopt the same child?

- 8.1 I do not have any viewpoint yet
- 8.2 Yes
- 8.3 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. LGBT couples will face up with several difficulties in bringing up the child
- b. LGBT couples are not suitable to bring up a child
- c. The child will have much disadvantages
- d. Other reasons (specify):
-
-
-

Question 9: If the National Assembly does not recognize the marriage or even cohabitation of same-sex couples, how will you react or plan to act?

Check to see if the given reason matches any of the following suggestions

- 9.1 I will accept as it is normal and understandable
- 9.2 I will feel dissatisfied since human rights are not respected
- 9.3 I think that LGBT community has not been strong enough to have a sufficient voice to persuade the society and the NA to understand and support them
- 9.4 Other options (please specify):
-
-

Question 9a. In this case, what is your particular attitude and actions towards A?

Check to see if the given reason matches any of the following suggestions

- a. I will wait patiently and try to prevent A from living together, getting married, or having a child until it is permitted by laws
- b. I will still agree to let A live with his/her partner, getting married, and having a child
- c. Other options (please specify):

.....

.....

.....

Question 10: If you want the National Assembly to amend the laws as mentioned above, are you and the general LGBT prepared to raise your voice publicly (disclosing your identity) to request and persuade the NA deputies?

- 10.1 Yes
- 10.2 No. Why?

Check to see if the given reason matches any of the following suggestions

- a. I am afraid that A will come out and be stigmatized
- b. I don't believe that the National Assembly will accept
- c. Other reasons (specify):

.....

Thank you very much!

SECTION III: INFORMATION ABOUT THE INTERVIEWER

- **Time/date of interview:**
- **Place of interview:**
 - Ha Noi
 - Ho Chi Minh City
 - Can Tho
- **Interviewer (Full name and signature):**
- **Group leader (Full name and signature):**

This publication was produced for review by the United States Agency for International Development and the United Nations Development Programme. It was prepared by NH Quang & Associates law firm.