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**STUCK IN THE PIPELINE: AN ANALYSIS OF THE  
HAGUE CONVENTION AND  
ITS EFFECTS ON THOSE IN THE PROCESS OF  
INTERNATIONAL ADOPTIONS**

NOTE

*Sarah M. Baird\**

INTRODUCTION

Between 2000 and 2010, United States citizens adopted over 200,000 children from other countries.<sup>1</sup> War, poverty, and disease all contribute to the overwhelming number of orphaned children worldwide.<sup>2</sup> In addition, as the social framework of America changes, the popularity of international adoption has grown.<sup>3</sup> Unfortunately, with the increasing number of intercountry adoptions, a black market of baby selling and child trafficking has emerged.<sup>4</sup> In response to the growing concern over corruption and

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<sup>1</sup> See U.S. DEP'T OF STATE, INTERCOUNTRY ADOPTION STATISTICS, [http://adoption.State.gov/about\\_us/statistics.php](http://adoption.State.gov/about_us/statistics.php) (last visited Nov. 5, 2011) (stating that from the years 2000 to 2010, United States citizens adopted 208,896 children from foreign nations). There are two categories of countries involved in international adoptions: (1) sending countries, which are the children's countries of origin; and (2) receiving countries, which are the countries to which the children are adopted; see also Laura McKinney, *International Adoption and the Hague Convention: Does Implementation of the Convention Protect the Best Interests of Children?*, 6 WHITTIER J. CHILD & FAM. ADVOC. 361, 370–71 (2007).

<sup>2</sup> See Lindsay K. Carlberg, Note, *The Agreement Between the United States and Vietnam Regarding Cooperation on the Adoption of Children: A More Effective and Efficient Solution to the Implementation of the Hague Convention on Intercountry Adoption or Just Another Road to Nowhere Paved with Good Intentions?*, 17 IND. INT'L & COMP. L. REV. 119, 120 (2007) (stating that millions of children worldwide have become homeless and orphaned due to war, disease and changing governmental regimes); see also Notesong Srisopark Thompson, Note, *Hague is Enough?: A Call For More Protective, Uniform Law Guiding International Adoptions*, 22 WIS. INT'L L.J. 441, 441 (2004).

<sup>3</sup> See United Nations Children's Fund (UNICEF), INNOCENTI DIGEST, at 3 (1999), available at <http://www.unicef-irc.org/publications/pdf/digest4e.pdf> (acknowledging that the United States receives more foreign adoptive children than any other country worldwide); see also McKinney, *supra* note 1, at 367 (attributing the changing demographics of Western countries to an increase in international adoption).

<sup>4</sup> See Erica Briscoe, Comment, *The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption: Are Its Benefits Overshadowed by Its Shortcomings?*, 22 J. AM. ACAD. MATRIM. LAW. 437, 437 (2009) (explaining that after World War II, a drastic rise in intercountry adoption led to the creation of an international black market for babies); see also Gabriela Marguez, Comment, *Transnational Adoption: The Creation and Ill*

abuse in international adoption systems, the international community developed the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (“Hague Convention”) in 1993.<sup>5</sup> The Hague Convention was designed to provide a uniform legal framework for international adoption that focuses on the best interests of the children.<sup>6</sup>

While many find the mission of the Hague Convention admirable,<sup>7</sup> it is often criticized for creating unworkable procedures.<sup>8</sup> Many countries that send children to the U.S. for adoption do not have the resources to ratify the Hague Convention or to enforce its policies.<sup>9</sup> Moreover, there is little incentive for

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*Effects of an International Black Market Baby Trade*, 21 J. JUV. L. 25, 25–26 (2000).

<sup>5</sup> See generally Hague Conference on Private International Law: Final Act of the 17th Session, including the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134 [hereinafter Hague Convention] (noting that the international community constructed a legal framework with the Hague Convention to combat the exploitation of children); see also Briscoe, *supra* note 4, at 438 (stating that the adoption of the Hague Convention on May 29, 1993 expanded the general principles of the United Nation’s Convention on the Rights of the Child (CRC)).

<sup>6</sup> See Carlberg, *supra* note 2, at 123 (explaining that the Hague Convention makes children a national priority); see also Gina M. Croft, Note, *The Ill Effects of a United States Ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*, 33 GA. J. INT’L & COMP. L. 621, 629 (2005).

<sup>7</sup> See *Karpenko v. Leendertz*, 619 F.3d 259, 265–66 (3d Cir. 2010) (asserting that the Hague Convention, by offering a judicial remedy for removal in child abduction cases, ensures the well-being of children, and prevents a cycle of abduction and re-abduction); see also Stephanie Vullo, *The Hague Convention on the Civil Aspects of International Child Abduction: Commencing a Proceeding in New York for the Return of a Child Abducted from a Foreign Nation*, 14 TOURO L. REV. 199, 201–02 (1997) (providing that the Hague Convention’s goal is to protect children wrongfully removed, and aids courts in determining where the children should live).

<sup>8</sup> See Sara Dillon, *The Missing Link: A Social Orphan Protocol to the United Nations Convention on the Rights of the Child*, 1 HUM. RTS. & GLOBALIZATION L. REV. 39, 47 (2008) (stating that the Convention has yet to resolve the issues surrounding intercountry adoption); see also Merle H. Weiner, *International Child Abduction and the Escape from Domestic Violence*, 69 FORDHAM L. REV. 593, 599 (2000) (arguing that the Hague Convention is an ineffective remedy for child abductions).

<sup>9</sup> See Caeli Elizabeth Kimball, Note, *Barriers to the Successful Implementation of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*, 33 DENV. J. INT’L L. & POL’Y 561, 572 (2005) (explaining that the burdensome costs of complying with the Hague Convention might deter non-parties from joining); see also Kelly M. Wittner, Comment, *Curbing Child-Trafficking in Intercountry Adoptions: Will International Treaties and Adoption Moratoriums Accomplish the Job in Cambodia?*, 12 PAC. RIM L & POL’Y J. 595, 625 (2003) (highlighting that many sending countries are developing countries, and therefore lack the financial ability to implement Hague Convention provisions effectively).

countries to sign the Hague Convention because they may face moratoriums from the U.S. on outgoing adoptions if they are unable to meet the Hague Convention standards.<sup>10</sup> Aside from prohibiting future adoptions from those countries, moratoriums also place a hold on adoptions that are already in the pipeline.<sup>11</sup> Thus, American families who have adoptions that are approved, yet incomplete, must wait until the moratorium is lifted before they can unite with their adopted children.<sup>12</sup>

This paper will analyze the Hague Convention focusing on the problems it has created for American adoptive parents and their internationally-adopted children, known as “pipeline families,” whose adoptions were approved before the Convention’s stringent provisions suspended the process. Part I will provide a brief background on international adoption and explain why the Hague Convention was enacted. Part II will address the standards of the Hague Convention as well as its effects on international adoption. Part III will discuss American families who had or have adoptions in the pipeline and their struggle to unite with their adopted children. Last, Part IV will propose solutions to the pipeline adoption problem. These proposals include providing U.S. government aid to countries attempting to execute the Hague Convention standards, entering into bilateral agreements with those countries, or implementing humanitarian parole.

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<sup>10</sup> See KERRY O’HALLORAN, *THE POLITICS OF ADOPTION: INTERNATIONAL PERSPECTIVES ON LAW, POLICY & PRACTICE* 132 (2009) (showing that a receiving country may suspend all adoptions from a sending country that is not in compliance with Hague Convention guidelines or policy concerns); see also Annette Schmit, Note, *The Hague Convention: The Problems with Accession and Implementation*, 15 *IND. J. GLOBAL LEGAL STUD.* 375, 377 (2008).

<sup>11</sup> See MARY ANN LAMANNA, *MARRIAGES, FAMILIES AND RELATIONSHIPS: MAKING CHOICES IN A DIVERSE SOCIETY* 249 (2009) (stating that Romania and Russia both placed moratoriums on intercountry adoptions); see also Rebecca Worthington, Note, *The Road to Parentless Children is Paved with Good Intentions: How the Hague Convention and Recent Intercountry Adoption Rules are Affecting Potential Parents and the Best Interests of Children*, 19 *DUKE J. COMP. & INT’L L.* 559, 585 (2009) (explaining that problems arise when countries, in trying to comply with the Hague Convention, completely shut off their intercountry adoption pipeline).

<sup>12</sup> See JEAN NELSON-ERICHSEN, *INSIDE THE ADOPTION AGENCY: UNDERSTANDING INTERCOUNTRY ADOPTION IN THE ERA OF THE HAGUE CONVENTION* 66 (2007) (finding that moratoriums leave prospective parents heartbroken); see also Andrea Poe, *Government Bars American Family from Contacting Daughter*, *THE WASH. TIMES COMMUNITIES* (June 21, 2011) [hereinafter Poe, *Government Bars*], available at <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/jun/21/government-bars-american-family-contacting-daughte/> (maintaining that foreign adoption moratoriums make adoption difficult for American parents).

I. *Background in International Adoption and the  
Promulgation of the Hague Convention*

International adoption has become increasingly popular and is advantageous for both sending and receiving countries.<sup>13</sup> The U.S. became a prominent figure in intercountry adoption in the 1950s when the media shed light on the thousands of impoverished children orphaned during the Korean War.<sup>14</sup> Since that time, American families have been moved by the opportunity to help children who might otherwise suffer poverty-stricken lives.<sup>15</sup> Moreover, because many war-torn countries are too unstable or financially weak to support orphaned children, they benefit from providing orphaned children loving homes abroad.<sup>16</sup>

Changes in the U.S. have also added to the heightened demand for international adoptions.<sup>17</sup> Increased access to birth control, the legalization of abortion, a greater number of women in the workforce, and more women delaying childbirth, have all contributed to the decreasing number of available children for adoption domestically.<sup>18</sup> Moreover, greater social acceptance of

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<sup>13</sup> See McKinney, *supra* note 1, at 370–71 (holding that international adoption is a recent phenomenon that stemmed from various advances in worldwide communication and transportation).

<sup>14</sup> See Nicole Bartner Graff, Note, *Intercountry Adoption and the Convention on the Rights of the Child: Can the Free Market in Children be Controlled*, 27 SYRACUSE J. INT'L L. & COM. 405, 405 (2000) (noting that intercountry adoption has been a growing industry since the 1950s); see also Wittner, *supra* note 9, at 598 (noting that intercountry adoption became popular during the Korean War).

<sup>15</sup> See Donovan M. Steltzner, Note, *Intercountry Adoption: Toward a Regime That Recognizes the "Best Interests" of Adoptive Parents*, 35 CASE W. RES. J. INT'L L. 113, 117 (2003) (discussing how the reports of substandard living conditions of children living in the former Soviet Union led many American families to adopt from there); see also Wittner, *supra* note 9, at 598 (noting the trend in American families to open their doors to children of war-torn and impoverished countries).

<sup>16</sup> See Colin Joseph Troy, Comment, *Members Only: The Need for Reform in U.S. Intercountry Adoption Policy*, 35 SEATTLE U. L. REV. 1525, 1528 (2012); see also Wittner, *supra* note 9, at 598 (explaining that American families adopt from third world countries in order to save children from impoverished lives, and the fees for adopting internationally are virtually the same as adopting domestically).

<sup>17</sup> See McKinney, *supra* note 1, at 367 (noting that scientific and cultural advances have changed the landscape of domestic adoption in the United States and other industrialized countries); see also Troy, *supra* note 16, at 1527–528.

<sup>18</sup> See UNICEF, *supra* note 3, at 2 (discussing the contributing factors to the decline of children available for domestic adoption in industrialized countries); see also Rachel J. Wechsler, *Giving Every Child a Chance: The Need for Reform and Infrastructure in Intercountry Adoption Policy*, 22 PACE INT'L L. REV. 1, 5 (2010).

single parenthood has increased the number of people looking to adopt.<sup>19</sup> These factors have resulted in an influx of international adoptions, leading to more orphaned children being adopted into Americans homes.<sup>20</sup>

While international adoption presents advantages, it has also sparked a black market where children are bought and sold like property.<sup>21</sup> Sending countries, often struggling with poverty, have developed systems of trading and selling children in order to meet the increased demand for foreign adoptions by wealthier receiving nations such as the U.S.<sup>22</sup> In Vietnam, for example, field investigations have found forged documents and cash payments to birth mothers, demonstrating corrupt practices designed to release children into orphanages for international adoption.<sup>23</sup> Similar conduct has occurred in a number of the most common sending countries, including China, Romania, and Guatemala.<sup>24</sup>

In 1993, the international community promulgated the Hague Convention in response to growing concern over abuse and

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<sup>19</sup> See Kathleen Ja Sook Bergquist, *International Asian Adoption: In the Best Interest of the Child?*, 10 TEX. WESLEYAN L. REV. 343, 346 (2004); see also McKinney, *supra* note 1, at 367.

<sup>20</sup> See McKinney, *supra* note 1, at 367 (contrasting low birth rates and increasing demand for adoption in the U.S. with the high fertility rates of most developing countries); see also Wittner, *supra* note 9, at 599.

<sup>21</sup> See Wechsler, *supra* note 18, at 14 (expressing the concern that increased regulations will not eliminate the black market for babies because of the high prices individuals are willing to pay); see also Wittner, *supra* note 9, at 599 (noting that an increase in intercountry adoptions has resulted in the victimization of children).

<sup>22</sup> See U.S. DEP'T OF STATE, INTERNATIONAL ADOPTIONS, at 6, available at [www.state.gov/documents/organization/28455.pdf](http://www.state.gov/documents/organization/28455.pdf) (acknowledging the Immigration and Naturalization Service investigative efforts to uncover irregular practices of private foreign adoption); see also Carlberg, *supra* note 2, at 121 (finding that countries shift away from looking at the best interests of the adoptive children and instead toward awarding adoptive children to the highest bidding prospective parents).

<sup>23</sup> See Patricia J. Meier, Note, *Small Commodities: How Child Traffickers Exploit Children and Families in Intercountry Adoption and What the United States Must Do to Stop Them*, 12 J. GENDER RACE & JUST. 185, 190 (2008) (describing that Vietnam stopped accepting American adoption applications after U.S. field investigations found adoption irregularities); see also Worthington, *supra* note 11, at 579 (noting the serious adoption irregularities in Vietnam found by U.S. field investigations).

<sup>24</sup> See D. Marianne Blair, *Wells Conference on Adoption Law: Safeguarding the Interests of Children in Intercountry Adoption: Assessing the Gatekeepers*, 34 CAP. U.L. REV. 349, 367–68, 376, 381 (2005) (enumerating various adoption irregularities in Guatemala, Romania, and China); see also Worthington, *supra* note 11, at 559 (listing countries, such as China, Romania, Guatemala, and Vietnam, that have tightened their regulations or closed their borders due to global scrutiny of their adoption systems).

corruption in the international adoption system.<sup>25</sup> The Hague Convention was designed to formalize and unify existing adoption processes in an effort to eliminate the international child trade.<sup>26</sup> While the Hague Convention has brought necessary focus to the problems associated with international adoption, implementation of its standards has proven impractical.<sup>27</sup>

## II. *Standards and Effects of the Hague Convention*

The Hague Convention is a multilateral treaty that was ratified in 1993 by sixty-six nations.<sup>28</sup> As of August 2012, eighty-nine countries had ratified the Convention, and an additional two (Nepal and Haiti) were signatories but not parties to the treaty.<sup>29</sup> In 1994, the U.S. signed the Hague Convention, and became a member country in December 2007.<sup>30</sup> A country is considered a member State once it has signed and ratified the Hague Convention.<sup>31</sup> Upon ratification, member States are legally obligated to abide by the treaty's terms and conditions.<sup>32</sup>

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<sup>25</sup> See David M. Smolin, *Child Laundering and the Hague Convention on Inter-country Adoption: The Future and Past of Inter-country Adoption*, 48 U. LOUISVILLE L. REV. 441, 451–52 (2010) (discussing the Hague Convention's attempt to establish safeguards to protect children in inter-country adoption); see McKinney, *supra* note 1, at 365 (describing the development of the Hague Convention in response to concerns about international adoption systems and the lack of legal protections for parties involved in the process).

<sup>26</sup> See Convention on the Civil Aspects of International Child Abduction pmbl., Oct. 25, 1980, 1343 U.N.T.S. 89; see also Worthington, *supra* note 11, at 565.

<sup>27</sup> See Briscoe, *supra* note 4, at 460 (acknowledging that the Hague Convention needs modification to properly address international child abductions); see also Melissa S. Wills, Note, *Interpreting the Hague Convention on International Child Abduction: Why American Courts Need to Reconcile the Rights of Non-custodial Parents, the Best Interests of Abducted Children, and the Underlying Objectives of the Hague Convention*, 25 REV. LITIG. 423, 428–29 (2006) (emphasizing the difficulties of litigating under the Hague Convention).

<sup>28</sup> See Mark W. Fraser & Mary A. Terzian, *Risk and Resilience in Child Development: Principles and Strategies of Practice*, in CHILD WELFARE FOR THE 21ST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS 436 (Gerald P. Mallon & Peg McCartt Hess eds., 2005).

<sup>29</sup> See HAGUE CONFERENCE ON PRIVATE INT'L. LAW, STATUS TABLE 33: CONVENTION ON 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTER-COUNTRY ADOPTION, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69) (last visited Oct. 28, 2012); see also Jennifer A. Ratcliff, Comment, *International Adoption: Improving on the 1993 Hague Convention*, 25 MD. J. INT'L L. 336, 340 (2010) (acknowledging that the Hague Convention attracted many nations and allowed them to address the need for international adoption regulations).

<sup>30</sup> See HAGUE CONFERENCE ON PRIVATE INT'L. LAW, *supra* note 29.

<sup>31</sup> See Hague Convention, *supra* note 5.

<sup>32</sup> See *Yang v. Tsui*, 499 F.3d 259, 270 (3d Cir. 2007) (establishing that a person can commence judicial proceedings under the Hague Convention in U.S. court); see also Briscoe, *supra* note 4, at 439.

However, nations are not obligated to ratify the treaty or follow its standards, after they have signed it.<sup>33</sup>

Signatories to the Hague Convention have committed themselves to ensuring that intercountry adoptions are made in the best interests of the children, thereby preventing unethical adoption practices.<sup>34</sup> Moreover, signatories have agreed on three main objectives for the treaty.<sup>35</sup> Those objectives are to: (1) guarantee that the best interests of the child are served in every intercountry adoption; (2) design a system of cooperation between countries that will help prevent the abduction, sale, or trafficking of children; and (3) secure recognition of adoptions occurring among contracting countries.<sup>36</sup>

Despite the good intentions of the Hague Convention, there is a debate regarding the effectiveness of the treaty. Those in favor of international adoption hoped that the standards set forth by the Hague Convention would improve the efficiency of the adoption system and ensure that each adoption is the result of ethical practices.<sup>37</sup> Instead, the Hague Convention has created a system that provides little incentive for sending countries to ratify the treaty, and requires resources that many sending countries do not have.<sup>38</sup> As a result, the Hague Convention has slowed, and in some instances stopped, the flow of international adoptions.<sup>39</sup>

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<sup>33</sup> See Briscoe, *supra* note 4, at 439 (indicating that signing the Hague Convention indicates only an intent to become a party, not an obligation to ratify the Convention); see also Carlberg, *supra* note 2, at 130 (noting that becoming party to the Hague Convention does not obligate a state to take further action toward ratification).

<sup>34</sup> See Hague Convention, *supra* note 5; see also Jane Gross, *U.S. Joins Overseas Adoption Overhaul Plan*, N.Y. TIMES, Dec. 11, 2007, <http://www.nytimes.com/2007/12/11/washington/11hague.html> (reporting that the Hague Convention is designed to protect children and parents from unethical practices such as abduction).

<sup>35</sup> See Hague Convention, *supra* note 5.

<sup>36</sup> *Id.*

<sup>37</sup> See Dillon, *supra* note 8, at 47–48 (noting that adoption advocates wrongly believed the Hague Convention would lead to an increase in international adoptions); see also Jena Martin, *The Good, the Bad & the Ugly? A New Way of Looking at the Intercountry Adoption Debate*, 13 U.C. DAVIS J. INT'L L. & POLY 173, 198 (2007) (highlighting the Hague Convention's goal to standardize adoption practices among divergent nations).

<sup>38</sup> See Kate O'Keefe, *The Intercountry Adoption Act of 2000: The United States Ratification of the Hague Convention on the Protection of Children, and Its Meager Effect on International Adoption*, 40 VAND. J. TRANSNAT'L L. 1611, 1615 (2007) (noting that compliance with Convention requirements is difficult to meet for countries that are unable or unwilling to invest time or resources); see also Wittner, *supra* note 9, at 618.

<sup>39</sup> See Dillon, *supra* note 8, at 48 (noting that adoption advocates hoped the Hague Convention would encourage governments to question their reliance on international adoption as a method of child welfare); see also Elizabeth J. Ryan, Note, *For the Best Interest of Children: Why the Hague Convention of*



### A. Hague Convention Standards

In order to achieve its three objectives, the Hague Convention established a number of provisions that must be abided by member countries and committed to by signatories.<sup>40</sup> First, in order for a child to be adopted, it must be determined through a number of procedural requirements that adoption is in the best interests of the child.<sup>41</sup> Second, those procedural requirements must be enforced by a Central Authority, thus preventing the abduction, sale, or trafficking of any child.<sup>42</sup> Last, Contracting States must recognize certification of an adoption made in accordance with the Convention's standards.<sup>43</sup>

#### 1. Ensuring the Bests Interests of the Child

The Hague Convention first established requirements for international adoptions aimed at promoting the best interests of the child.<sup>44</sup> Under Article 4, an adoption will only take place if the State of origin can establish that the child is adoptable, the adoption is in the child's best interests, the authorities putting the child up for adoption give their informed consent, and those authorities have not received any compensation for the adoption.<sup>45</sup> Additionally, under Article 5, the sending country is required to determine that adoptive parents are eligible and suitable for

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*Intercountry Adoption Needs to Go Further, As Evidence by Implementation in Romania and the United States*, 29 B.C. INT'L & COMP. L. REV. 353, 377 (2006) (proposing that the Hague Convention could better institute its adoption program by providing assistance with implementation).

<sup>40</sup> See Elizabeth Long, *Where Are They Coming From, Where Are They Going: Demanding Accountability in International Adoption*, 13 CARDOZO J.L. & GENDER 827, 837 (2012) (denoting that the Hague Convention requires a number of checks before a child is eligible for international adoption).

<sup>41</sup> See Schmit, *supra* note 10, at 384–85 (stating that sending countries must ensure that State placement is in the best interests of the child).

<sup>42</sup> See Hague Convention, *supra* note 5.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*; see also Worthington, *supra* note 11, at 566 (noting that it remains difficult for countries to comply with Hague Convention standards, leaving numerous children on the street or in orphanages).

<sup>45</sup> See Hague Convention, *supra* note 5; see also Lisa Myers, *Current Issues in Public Policy: Preserving the Best Interests of the World's Children: Implementing the Hague Treaty on Intercountry Adoption Through Public-Private Partnerships*, 6 RUTGERS J.L. & PUB. POL'Y 780, 794–95 (2009) (elaborating on the Convention's requirement for sending countries' competent authorities within the adoptee's country of origin to determine a child's adoptability as well as the consent of the biological parents).

adoption, counsel adoptive parents, and ensure that the child is legally authorized to live in the receiving country.<sup>46</sup>

To ensure that the guidelines aimed at the best interests of the child are followed, Article 6 requires that each Contracting State designate a Central Authority<sup>47</sup> to enforce the duties established by the Convention.<sup>48</sup> Among its many obligations, Article 16 requires the Central Authority to prepare a report detailing information about the child's "identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child."<sup>49</sup> In consideration of that report, the Central Authority must determine whether the placement of the child with his or her prospective parents is in the child's best interests.<sup>50</sup> As a final safeguard of the child's best interests, where an adoption is to take place after the child has been transferred to the receiving state, Article 21 grants the receiving state's Central Authority the power to withdraw the child from the prospective parents and arrange temporary care if it appears that the placement is no longer in the child's best interests.<sup>51</sup>

## 2. Promoting the Objectives of the Treaty Thereby Preventing the Abduction, Sale, and Trafficking of Children

Under the Convention, Central Authorities must cooperate with each other and promote the objectives of the treaty, including the prevention of corrupt adoption practices.<sup>52</sup> In order to do so,

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<sup>46</sup> See Hague Convention, *supra* note 5; see also Carlberg, *supra* note 2, at 131 (elaborating on the sending country's duties under Article 5 to ensure that prospective parents are eligible to adopt and the children may legally enter their respective receiving countries).

<sup>47</sup> For example, the Department of State serves as the U.S. Central Authority, the Vietnamese Ministry of Justice serves as Vietnam's Central Authority, and the Ministry of Civil Affairs of the People's Republic of China serves as China's Central Authority. See HAGUE CONFERENCE ON PRIVATE INT'L. LAW, *supra* note 29; see also Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47, 67 (2010) (detailing the U.S. Department of State's position as the U.S. Central Authority as well as the specific office within the Department that performs Convention-specific duties).

<sup>48</sup> See Hague Convention, *supra* note 5; see also Croft, *supra* note 6, at 631 addressing the designation of Central Authorities as well as the cooperation between them to carry out the objectives of the Convention).

<sup>49</sup> See Hague Convention, *supra* note 5.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* If a child is so removed from the prospective parents, the Central Authority must arrange, without delay, a new placement of the child, or arrange alternative long-term care.

<sup>52</sup> *Id.*

Article 7 requires Central Authorities to exchange information about their States' adoption policies with other Central Authorities, and to collaboratively eliminate any obstacles that would prevent the application of the treaty.<sup>53</sup> Additionally, under Article 8, Central Authorities are required to prevent any improper gains, financial or otherwise, with respect to adoptions, and enforce all the provisions in the treaty.<sup>54</sup> However, Article 32 details some fees that are permissible in international adoption.<sup>55</sup> Those fees include the reasonable costs and expenses of professional persons involved in an adoption.<sup>56</sup> Further, in an effort to prevent wealthy people seeking to adopt from pressuring birth parents to release their children to orphanages, Article 29 prohibits contact between the prospective parents and birth parents of a child until the requirements of Articles 4 and 5 have been met.<sup>57</sup>

### 3. Recognizing Adoptions Made in Accordance with the Treaty

The Hague Convention requires that all Contracting States recognize adoptions made in accordance with the laws of the treaty.<sup>58</sup> Recognition of an adoption, according to Article 26, requires recognition of the legal parent-child relationship between the child and his or her adoptive parents, and the termination of the prior legal relationship between the child and his or her birth parents.<sup>59</sup> Under Article 24, a Contracting State may refuse to recognize an adoption only if the adoption is "manifestly contrary to its public policy, taking into account the best interests of the child."<sup>60</sup>

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<sup>53</sup> See *id.*; see also Peter H. Pfund, *The Developing Jurisprudence of the Rights of the Child: Contributions of the Hague Conference on Private International Law*, 3 ILSA J. INT'L & COMP. L. 665, 673 (1997).

<sup>54</sup> See Hague Convention, *supra* note 5; see also Kristina Wilken, Note, *Controlling Improper Financial Gain in International Adoptions*, 2 DUKE J. GENDER L. & POL'Y 85, 90 nn.39-44 (1995).

<sup>55</sup> See Hague Convention, *supra* note 5; see also Holly C. Kennard, Comment, *Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Convention in Respect of Intercountry Adoptions*, 14 U. PA. J. INT'L ECON. L. 623, 635 (1994).

<sup>56</sup> See Hague Convention, *supra* note 5; see also Smolin, *supra* note 25, at 178.

<sup>57</sup> See Hague Convention, *supra* note 5 (stressing that there should be no contact between the prospective parents and the child's birth parents until certain requirements are met, unless the adoption takes place within a family or the contact is in compliance with the conditions set forth by the State of origin); see also Wittner, *supra* note 9, at 616 nn.160-61 (depicting that birth parents to surrender the child, as well as to prevent improprieties from occurring).

<sup>58</sup> See Hague Convention, *supra* note 5.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

## B. *Effects of the Hague Convention*

The Hague Convention presents both achievements and problems in international adoption practice. On one hand, the Hague Convention has recognized that international adoption may be in the best interests of children, and has shed light on the dangers posed by black markets and the need to reform international adoption processes. However, the Hague Convention also poses a number of problems, including its limited application in a number of developing countries, and the negative effect it has had on adoptions that were in the pipeline at the time the treaty was signed.<sup>61</sup>

### 1. Hague Convention Achievements

The Hague Convention was the first formal, international declaration to recognize that international adoption may be a positive solution for orphaned children.<sup>62</sup> Prior to the Hague Convention, there was general agreement that international adoption should only be used as a last resort.<sup>63</sup> For example, the United Nations International Children's Emergency Fund (UNICEF) opposes international adoption for abandoned children in favor of tracing children to their families within their native countries.<sup>64</sup> The problem with UNICEF's view is that it does not acknowledge the trauma that children suffer while they wait for the

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<sup>61</sup> See Trish Maksew, *Child Trafficking and Intercountry Adoption: The Cambodian Experience*, 35 CUMB. L. REV. 619, 622 (2005) (detailing how the United States temporarily halted adoptions from Cambodia in order to comply with the Convention); see also Ratcliff, *supra* note 29, at 336, 344–47 (discussing how some countries, such as Romania, lack the resources to implement the Convention effectively).

<sup>62</sup> See Elizabeth Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 BUFF. HUM. RTS. L. REV. 181, 192; see also Ratcliff, *supra* note 29, at 336, 344.

<sup>63</sup> See Bartholet, *supra* note 62, at 193 (explaining that the Convention was a rejection of previous international agreements that favored domestic options over international adoptions); see also Lisa M. Katz, Comment, *A Modest Proposal? The Convention of Children and Cooperation in Respect of Intercountry Adoption*, 9 EMORY INT'L L. REV. 283, 303 (1995) (documenting that the Convention's proposition that international adoption might take precedence over domestic options conflicted with prior U.N. documents).

<sup>64</sup> See Convention on the Rights of the Child, art. 21, G.A. Res. 44/25, 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989) (indicating that UNICEF only recognizes international adoption as a solution “if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin”); see also Thompson, *supra* note 2, at 454 (emphasizing the importance of matching children with their biological families).

results of the tracing efforts.<sup>65</sup> Due to malnutrition and lack of human contact, among other things, children are at a higher risk of physical and psychological impairments the longer they remain in orphanages.<sup>66</sup> Thus, while the Hague Convention recognizes that adoption by a family member is priority,<sup>67</sup> it focuses on finding orphaned or abandoned children permanent families regardless of where they live, rather than tracing their family ties at any cost.<sup>68</sup> However, the Hague Convention's encouragement of international adoption will theoretically allow more young children to enjoy a loving and stable permanent home.

The Hague Convention is the most significant and ambitious action taken with respect to the protection of children from the black market, and other corrupt adoption practices.<sup>69</sup> The treaty provides a framework for a uniform system of international adoption and establishes safeguards that could potentially end child trafficking.<sup>70</sup> The uniformity of adoption laws proposed by the Hague Convention helps to mediate the problems associated with the varying levels of protection for orphaned children resulting from disparate adoption systems.<sup>71</sup> Moreover, the focus that the Hague Convention has placed on corrupt international adoption practices may lead to further governmental efforts to stop child

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<sup>65</sup> See Bartholet, *supra* note 62, at 180 (noting the inadequacies of institutions for orphans in regards to physical and emotional care); see also Thompson, *supra* note 2, at 454 (explaining negative effects of waiting for children's family to be traced).

<sup>66</sup> See Promotion and Protection of the Rights of Children: Impact of Armed Conflict on Children, G.A. Res. 57/190, ¶ 72, U.N. Doc. A/RES/57/190 (Dec. 18, 2002) (stating that centers for unaccompanied children, such as orphans, are not able to meet the emotional and developmental needs of children); see also The Ministry of Social Affairs, Veterans and Youth Rehabilitation, *With the Best Intentions: A Study of Attitudes Towards Residential Care in Cambodia* at 20, 21 (2011), available at [http://www.unicef.org/eapro/Study\\_Attitudes\\_towards\\_RC.pdf](http://www.unicef.org/eapro/Study_Attitudes_towards_RC.pdf) (discussing a research study by UNICEF Cambodia Child Protection addressing the socio-emotional and cognitive development of institutionalized children).

<sup>67</sup> See Hague Convention, *supra* note 5 (stating that each State should take appropriate measures to enable children to remain in the care of their biological families).

<sup>68</sup> See Bartholet, *supra* note 62, at 193 (explaining the Convention's goal to push for a family environment); see also Ratcliff, *supra* note 29, at 342.

<sup>69</sup> See Ratcliff, *supra* note 29, at 340 (recognizing the Convention's success based upon global outreach); see also Thompson, *supra* note 2, at 442 (emphasizing the global impact of the Hague Convention).

<sup>70</sup> See Troy, *supra* note 16, at 1544 (arguing that adherence to the Convention's standards will further the goal of stopping child trafficking).

<sup>71</sup> See Schmit, *supra* note 10, at 376–77 (establishing that differing legislation from country to country creates difficulties in preventing corruption in intercountry adoption).

trafficking.<sup>72</sup> Thus, the Hague Convention has the potential to put an end to the problems of abuse and corruption in international adoption practices.

## 2. Problems Arising from the Hague Convention

While the Hague Convention has its benefits, its stringent provisions deter developing countries from ratifying the treaty because they fear adoptions from their country will be suspended, or they lack the resources necessary to execute its standards. The Hague Convention offers little incentive for developing countries to ratify the treaty.<sup>73</sup> Although ratifying the Hague Convention allows developing countries to signal to the world that they are committed to ethical intercountry adoption policies, that incentive is not enough for countries with struggling economies that rely on the lucrative child trafficking trade.<sup>74</sup> Moreover, the U.S. continues to permit adoptions from countries that are not members of the Hague Convention, while simultaneously placing holds on adoptions from member countries that do not abide by the Hague Convention's standards.<sup>75</sup> This inconsistency creates a disincentive for developing countries to ratify the Hague Convention because they do not want to risk having the U.S. suspend adoptions.<sup>76</sup> As a result, the Hague Convention is not

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<sup>72</sup> See U.S. GOV'T ACCOUNTABILITY OFFICE, FOREIGN AFFAIRS: AGENCIES HAVE IMPROVED THE INTERCOUNTRY ADOPTION PROCESS, BUT FURTHER ENHANCEMENTS ARE NEEDED 29 (2005); see also Carlberg, *supra* note 2, at 133–34.

<sup>73</sup> See Kimball, *supra* note 9, at 564 (establishing that the economic burden of compliance in conjunction with underlying social and cultural opposition to intercountry adoption provides little incentive for ratification by major sending countries).

<sup>74</sup> See Sarah Sargent, *Suspended Animation: The Implementation of the Hague Convention on Intercountry Adoption in the United States and Romania*, 10 TEX. WESLEYAN L. REV. 351, 358 (2004) (arguing that the economic imbalance between major sending countries and major receiving countries leads to criticism of intercountry adoption as an exploitation of developing countries); see also Wittner, *supra* note 9, at 618 (stating that little incentive exists for Cambodia to ratify the treaty when the child trafficking trade adds approximately \$7.5 million per year to its economy).

<sup>75</sup> See Andrew C. Brown, Comment, *International Adoption Law: A Comparative Analysis*, 43 INT'L LAW 1337, 1363–364 (2009) (explaining that the United States discontinued adoptions from Guatemala, a member of the Convention, but continued adoptions from countries that are not parties to the Convention and have problems with fraudulent adoption practices); see also Schmit, *supra* note 10, at 377.

<sup>76</sup> See Schmit, *supra* note 10, at 377 (explaining that the Hague Convention punishes countries that are members to the Convention, but have yet to implement its standards, while rewarding non-member countries by allowing those countries to ignore Convention requirements).

being signed by the very countries where child trafficking is most prevalent.<sup>77</sup>

Even when developing countries ratify the Hague Convention, they often lack the resources to implement its provisions.<sup>78</sup> While the Hague Convention was designed to work with several different legal regimes, it is difficult to implement in countries that struggle with poverty, political discourse, or an inadequate police force.<sup>79</sup> The Hague Convention places a heavy burden on sending countries to execute the treaty's provisions.<sup>80</sup> Additionally, the Hague Convention requires each member State to establish a Central Authority to enforce its provisions.<sup>81</sup> Those obligations are extraordinarily costly and nearly impossible for developing countries to implement without the help of foreign aid.<sup>82</sup> Moreover, the fact that it took the U.S., a country with much greater political and financial resources than many of the ratifying countries, more than ten years to implement the Hague Convention is a testament to how difficult it is to comply with its standards.<sup>83</sup>

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<sup>77</sup> See Briscoe, *supra* note 4, at 451; see also Wittner, *supra* note 9, at 617.

<sup>78</sup> See O'Keefe, *supra* note 38, at 1615 (explaining that many developing countries lack the funds to fully comply with the Hague Convention); see also Wittner, *supra* note 9, at 625.

<sup>79</sup> See Carlberg, *supra* note 2, at 127 (noting that some receiving countries are skeptical of adopting children from sending countries that are without the economic means to enact necessary safeguards against corrupt adoption practices); see also Schmit, *supra* note 10, at 390.

<sup>80</sup> See Kimball, *supra* note 9, at 563 (noting that the Hague Convention favors receiving countries who tend to be wealthier and thus able to shoulder a larger economic burden than the sending countries). For example, sending countries are responsible for investigating birth and adoptive families, and combating corrupt adoption practices. See Wittner, *supra* note 9, at 617.

<sup>81</sup> See Hague Convention, *supra* note 5 (delegating a Central Authority to implement and enforce its provisions).

<sup>82</sup> See Carlberg, *supra* note 2, at 147 (observing that the start-up costs to implement the Hague Convention's provisions are impossibly high for developing countries); see also Katherine Sohr, Note, *Difficulties Implementing the Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoption: A Criticism of the Proposed Ortega's Law and an Advocacy for Moderate Adoption Reform in Guatemala*, 18 PACE INTL. L. REV. 559, 582-83 (2006) (stating that the main problem with the Hague Convention's proposed reforms is inadequate funding for developing countries to revamp their adoption programs).

<sup>83</sup> See McKinney, *supra* note 1, at 391 (stressing that even a country with greater power struggled to implement the Hague Convention regulations). The extended delay in U.S. ratification of the Hague Convention was caused by conflicts between the U.S. Department of State and American adoption experts on how to best implement the Convention's standards. Because intercountry adoption policies in the U.S. were regulated by state governments rather than the federal government prior to the Hague Convention, the U.S. had to restructure its adoption system before it could ratify the treaty. See Laura Beth Daly, Note, *To Regulate or Not to Regulate: The Need for Compliance with International*

When a country ratifies the Hague Convention but is unable to implement its provisions, there is a risk that the country will place a hold on its outgoing adoptions. For example, while Romania was one of the first countries to ratify the Hague Convention, corruption ensued when it attempted to improve its adoption system.<sup>84</sup> Because the Romanian government was unable to quell the corruption, it issued a moratorium on international adoptions in 2001.<sup>85</sup> Political debate over international adoption and inadequate financing has resulted in Romania's inability to meet the standards of the Hague Convention.<sup>86</sup> Consequently, Romania's moratorium has left more than 80,000 Romanian children without permanent families.<sup>87</sup>

Moratoriums imposed by the U.S. upon countries that do not comply with the Hague Convention also pose problems for those involved in international adoptions. The U.S., as the receiving country of the greatest number of international adoptions worldwide,<sup>88</sup> monitors the ethical standing of sending countries' adoption processes.<sup>89</sup> When the U.S. Department of State finds that a country has not signed the Hague Convention or is not meeting Hague Convention standards, it may suspend adoptions from that country.<sup>90</sup> However, by banning adoptions from such countries, the U.S. limits its citizens' adoption options, and abandons countries that have little hope of implementing the Hague Convention on their own.<sup>91</sup>

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*Norms by Guatemala and Cooperation by the United States in Order to Maintain Intercountry Adoptions*, 45 FAM. CT. REV. 620, 623 (2007).

<sup>84</sup> See Ratcliff, *supra* note 29, at 345 (expanding on Romania's difficulties in implementing the Hague Convention's requirements).

<sup>85</sup> *Id.* (noting that the Romanian government issued a temporary moratorium on international adoptions in 2001 in order to reform their adoption system).

<sup>86</sup> *Id.* at 345–56.

<sup>87</sup> *Id.* at 346.

<sup>88</sup> See UNICEF, *supra* note 3 (stating that the U.S. is responsible for approximately half of all foreign adoptions).

<sup>89</sup> See, e.g., Press Release, Dep't of State and Dep't of Homeland Sec., Joint Statement on Suspension of Processing for New Adoption Cases Based on Abandonment in Nepal (Aug. 6, 2010), <http://www.state.gov/r/pa/prs/ps/2010/08/145767.htm> (stating that the U.S. Department of State investigated Nepal's child abandonment reports and found them unreliable).

<sup>90</sup> See Carlberg, *supra* note 2, at 127 (noting that the U.S. refuses to participate in intercountry adoption proceedings with sending countries that mistreat orphaned children, are known for child trafficking, or have otherwise corrupt adoption practices); see also Gross, *supra* note 34 (commenting on how the U.S. threatened to suspend adoptions from Guatemala because of corruption claims, even though the country ratified the Hague Convention).

<sup>91</sup> See U.S. DEP'T OF STATE, *supra* note 1 (displaying the sharp decrease in U.S. adoptions from Guatemala); see also Schmit, *supra* note 10, at 391–92 (emphasizing the effect of a U.S. ban on Guatemalan adoptions).



The U.S. moratorium on adoptions from Cambodia exemplifies some of the serious and long-term effects that a ban can have on international adoption. In 2001, the U.S. placed a moratorium on adoptions from Cambodia because Cambodia did not sign the Hague Convention.<sup>92</sup> Although Cambodia became a party to the Hague Convention in 2007, and ratified the treaty in 2009, the U.S. reconfirmed its moratorium on Cambodia in 2009 because of concerns that Cambodia was not properly implementing the standards of the Hague Convention.<sup>93</sup> Since the ban, mortality among children in Cambodia has steadily risen.<sup>94</sup> Further, because Cambodia has a law prohibiting the adoption of children over the age of eight years old, there is a growing concern that the continuing moratorium will cause many orphaned children to lose the opportunity to ever have a permanent family, merely because of their age.<sup>95</sup> By banning adoptions from a country attempting to satisfy Hague Convention standards, the U.S. ignores the underlying problems causing that country to fall short of the treaty's standards. Moreover, the bans severely impact orphaned children who will remain without permanent families indefinitely or until the U.S. is satisfied that the country has complied with the Hague Convention.

### III. *Pipeline Families and The Efforts to Complete Their Adoptions*

The adoption moratoriums on countries that are unwilling or unable to implement the Hague Convention standards have created a problem for adoptions that were approved yet incomplete prior to when the bans were placed.<sup>96</sup> The adoptive parents and

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<sup>92</sup> See Press Release, U.S. Dep't of Justice, INS Announces Suspension of Cambodian Adoptions and Offer of Parole in Certain Pending Cases (Dec. 21, 2001) (announcing the United States' immediate suspension of Cambodian adoption petitions); see also Wittner, *supra* note 9, at 619 (recounting the United States' imposition of a ban on Cambodian adoptions as a method for preventing intercountry adoption fraud).

<sup>93</sup> See CONGRESSIONAL COALITION ON ADOPTION INSTITUTE, COUNTRY UPDATE: CAMBODIA, <http://www.ccaainstitute.org/country-update-cambodia.html> (last visited Sept. 18, 2012). The Cambodian government continues to make efforts to better its adoption system and expects, with U.S. recognition, to receive adoption proposals in April 2012.

<sup>94</sup> See UNITED NATIONS CHILDREN'S FUND (UNICEF), CAMBODIA STATISTICS, [http://www.unicef.org/infobycountry/cambodia\\_statistics.html](http://www.unicef.org/infobycountry/cambodia_statistics.html) (last visited Sept. 18, 2012) (showing an increase in the mortality rates of children under the age of five in Cambodia from 2000 to 2010).

<sup>95</sup> See Thompson, *supra* note 2, at 451 (assessing how some children have lost their chance to be adopted because they have turned eight years old).

<sup>96</sup> See Worthington, *supra* note 11, at 585 (critiquing the Hague Convention's failure to consider the effects of compliance on pending adoptions); see also Mireya Navarro, *To Adopt, Please Press Hold*, N.Y. TIMES, June 5, 2008,

children in those situations, known as “pipeline families,” have been forced to put their adoptions on hold, while the Contracting States determine what additional guidelines must be met before the adoptions can be completed.<sup>97</sup> The delay in these adoptions has created a number of problems, including the deterioration of the mental and physical health of the adopted children as they continue to live in orphanages or foster homes.<sup>98</sup>

While countries attempt to understand the steps the Hague Convention requires them to take in order to complete these adoptions in the pipeline, the adopted children are left to live in orphanages with little to no contact with their adoptive families.<sup>99</sup> During this time, adoptive parents have banded together to form support groups, file petitions, and coordinate marches in hopes of persuading the U.S. government to remedy their tragic situations.<sup>100</sup> Unfortunately, the U.S. government has provided little insight into how pipeline adoptions can be completed, leaving these families to wonder if they will ever be united with their adopted children.<sup>101</sup>

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<http://www.nytimes.com/2008/06/05/fashion/05adopt.html> (revealing the effects of tightened U.S. regulations on American adoptive parents seeking to adopt children in Guatemala and Vietnam).

<sup>97</sup> See Andrea Poe, *Step Forward for Orphans March: American Families to Protest U.S. Policies*, THE WASH. TIMES COMMUNITIES, Aug. 15, 2011, [hereinafter Poe, *Step Forward*], <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/aug/15/separated-their-children-us-policies-american-fami/> (announcing that pipeline families are staging marches to urge the U.S. government to finalize adoption policies that remain in a state of uncertainty).

<sup>98</sup> See Andrea Poe, *Happy Endings: America[n] Family Nick and Lori LeRoy Fight Bureaucracy to Bring their Son Home*, THE WASH. TIMES COMMUNITIES, Apr. 23, 2012, [hereinafter Poe, *Happy Endings*], <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2012/apr/23/america-family-fight-bureaucracy-bring-their-son-h/> (stating that the working orphanage in the Vietnamese Bac Lieu province is a former prison camp with minimal medical and educational supplies).

<sup>99</sup> See Poe, *Happy Ending*, *supra* note 98.

<sup>100</sup> See *Bring Home the Bac Lieu Orphans*, PETITION2CONGRESS, <http://www.petition2congress.com/4665/> (last visited Nov. 14, 2011) (petitioning Congress for help to unite pipeline parents with their adopted children from Vietnam); see also Poe, *Step Forward*, *supra* note 97 (explaining that pipeline parents have coordinated a march on Washington, D.C. to raise awareness for their cause).

<sup>101</sup> See U.S. DEP'T OF STATE, GUATEMALA UPDATE, [http://adoption.state.gov/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=notices&alert\\_notice\\_file=guatemala\\_9](http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=guatemala_9) (last visited October 31, 2012) (indicating that some American adoption cases pending in Guatemala were closed between 2011 and 2012 after the children were reunited with their biological parents or placed in domestic adoption); see also Poe, *Government Bars*, *supra* note 12 (illustrating that even if Vietnam ratifies the Hague Convention, its Central Authority may match children with different adoptive parents and thus preclude pipeline parents from uniting with their children).

### A. *The Plight of Pipeline Families*

There are hundreds of U.S. families who are caught in limbo as intercountry adoption regulations shift to comply with the Hague Convention.<sup>102</sup> In those cases, prospective parents were matched with specific children, and have waited as long as three years to bring their children to the U.S.<sup>103</sup> In many cases, the adoptive parents have met with their adopted children and spent quality time with them before their adoptions were completed.<sup>104</sup> Prior to their adoptions being put on hold, pipeline parents provided their adopted children with “medical care, emotional support, toys, books, and clothing” while the children lived in their countries of origin.<sup>105</sup> After the hold, the U.S. Department of State stopped many of those families from visiting, writing, and calling their children.<sup>106</sup> Moreover, living alone in these orphanages puts pipeline children at an increased risk of damage to their cognitive,

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<sup>102</sup> See Nacha Cattan, *Guatemala to Renew Adoptions Halted Midway by Ban*, ASSOCIATED PRESS, Aug. 22, 2011, <http://news.yahoo.com/guatemala-renew-adoptions-halted-midway-ban-223337120.html> (stating that there are currently an estimated 400 pipeline cases in Guatemala alone).

<sup>103</sup> See Mary McCarty, *Area Family Caught in International Adoption Dispute*, DAYTON DAILY NEWS, May 28, 2011, <http://www.daytondailynews.com/news/news/local/area-family-caught-in-international-adoption-dispu/nMrsS/> (telling the story of a family that has been waiting over two years to adopt due to their pipeline status); see also Poe, *Step Forward*, *supra* note 97 (arguing that due to intercountry adoption administrative procedures, many children are placed in orphanages for long periods as their adoptions are processed).

<sup>104</sup> See Steve Freiss, *40 U.S. Families Allowed to Adopt Cambodian Kids*, USA TODAY, Mar. 31, 2002, <http://www.usatoday.com/news/healthscience/health/child/2002-04-01-cambodia-adoption.htm> (stating that many prospective parents have moved to their child's country of origin to stay with them while their adoption is processed); see also Poe, *Government Bars*, *supra* note 12 (reporting on a family from Florida who spent years in Vietnam with their child before they could bring him to the United States).

<sup>105</sup> See Poe, *Rubio Blocks Obama's Nominee for Vietnamese Ambassador*, WASH. TIMES COMMUNITIES, May 23, 2011, [hereinafter Poe, *Rubio Blocks*], <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/may/23/rubio-blocks-obama-nominee-vietnam-ambassador/> (stating that prior to Senator Marco Rubio's temporary hold on President Obama's nominee for ambassador to Vietnam, prospective parents provided their child with many of the basic necessities of life while the child was in Vietnam).

<sup>106</sup> See Poe, *Government Bars*, *supra* note 12 (addressing the fact that many families who continuously contacted their Vietnamese child have lost virtually all contact with their child).

social, and physical well-beings.<sup>107</sup> Thus, the longer these children live in orphanages, the more difficult it will be for them to assimilate into their new homes when, or if, they are permitted to live with their adoptive families in the U.S.<sup>108</sup>

The Hague Convention does not provide any procedure for resolving the problems created for adoptions in the pipeline when moratoriums are placed on countries struggling to comply with the treaty's standards.<sup>109</sup> Consequently, in countries where moratoriums have been placed, there is little direction for pipeline families who wait for a governmental solution to their problem.<sup>110</sup> In most of these cases, pipeline parents already have paperwork indicating DNA matches between the pipeline children and their birth mothers, and relinquishment of the birth mothers' rights to their children.<sup>111</sup> Yet, as pipeline children's countries of origin attempt to comply with Hague Convention standards, pipeline parents are forced to jump through more hoops.<sup>112</sup> Despite their willingness to comply with the adoption regulations of both contracting countries, pipeline parents are still prohibited from bringing their children to the U.S.

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<sup>107</sup> See U.S. DEP'T HEALTH & HUMAN SERVICES, IMPACT OF ADOPTION ON ADOPTIVE PARENTS, [http://www.childwelfare.gov/pubs/factsheets/impact\\_parent/index.cfm](http://www.childwelfare.gov/pubs/factsheets/impact_parent/index.cfm) (last visited Sep. 20, 2012) (emphasizing that adoptive parents should be wary of the impact on the child's psyche from their stay in an orphanage and their life with their biological parents); see also *Nepal Adoptions, HOPE'S PROMISE*, <http://www.hopespromise.com/adoption/international/nepal-adoptions/> (last visited Sep. 25, 2012) (arguing that institutionalization of a child early in their life puts them at an increased risk of psychological disorders).

<sup>108</sup> See *Nepal Adoptions*, *supra* note 107 (arguing that adopted children waiting in orphanages need to be brought to America as soon as possible because early intervention is the key to treating any psychological problems these child may have); see also Dr. Ronald S. Federici, Psy.D., *Raising the Post-Institutionalized Child: Risks, Challenges and Innovative Treatment*, CARE FOR CHILDREN INT'L, [http://www.drfederici.com/raising\\_child.htm](http://www.drfederici.com/raising_child.htm) (last visited Sep. 20, 2012) (stating that the longer the prospective child has been institutionalized, the more he has been deprived from invaluable social interactions).

<sup>109</sup> See Worthington, *supra* note 11, at 585 (suggesting that even though there are no alternative procedures in place, there are solutions preferable to a complete termination of intercountry adoptions).

<sup>110</sup> See Nancy Bartley, *Parents Caught in Adoption Dispute*, THE SEATTLE TIMES, Jan. 1, 2011, available at [http://seattletimes.com/html/localnews/2013818275\\_adopt01m.html](http://seattletimes.com/html/localnews/2013818275_adopt01m.html); see also Poe, *Step Forward*, *supra* note 97.

<sup>111</sup> See O'Keefe, *supra* note 38, at 1619–624 (discussing the role DNA samples and statements of relinquishment play in preventing the trafficking of children); see also Poe, *Rubio Blocks*, *supra* note 105.

<sup>112</sup> See Nok-Noi Ricker, *Orrington Family Fights to Bring Nepalese Child Home*, BANGOR DAILY NEWS, Dec. 24, 2010, <http://bangordailynews.com/2010/12/24/news/bangor/orrington-family-fights-to-bring-nepalese-child-home/> (stating that the U.S. Department of State requires more from pipeline parents adopting from Nepal despite the State Department's finding that there was no fraud involved with their adoptions).

### B. Case Studies: Pipeline Adoptions from Vietnam and Nepal

While developing countries struggle to meet the standards of the Hague Convention, pipeline children continue to live in sub-standard conditions, without adequate food, medical attention, education, or caring adult interaction.<sup>113</sup> At the same time, pipeline parents grapple with shifting adoption requirements in the children's countries of origin as they strive to bring their children home to the U.S.<sup>114</sup> Analyses of the pipeline adoptions in Vietnam and Nepal demonstrate the hardships faced by pipeline parents and children during the tumultuous process of international adoption in accordance with Hague Convention standards.

#### 1. Vietnam

In 2008, the U.S. and Vietnamese governments jointly banned adoptions from Vietnam to the U.S. based on allegations of fraud and corruption in Vietnam's adoption system.<sup>115</sup> As a result, hundreds of adoptions between American families and orphaned children in Vietnam were halted.<sup>116</sup> As of 2008, most of the 534 outstanding adoptions have been resolved under exceptions to the moratorium, yet sixteen cases remained, allegedly because of mistakes made by an adoption worker in Vietnam,<sup>117</sup> until January 2012.<sup>118</sup>

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<sup>113</sup> See Poe, *Step Forward*, *supra* note 97 (remarking that these squalid conditions cause pipeline children to suffer from severe illnesses which often result in hospitalization); see also *Nepal Adoptions*, *supra* note 107 (reiterating the deplorable conditions pipeline children are forced to live in and the negative effects it has on their development).

<sup>114</sup> See, e.g., U.S. DEP'T OF STATE, NOTICE: U.S. DEPARTMENT OF STATE TO DELAY RESUMING ADOPTIONS IN VIETNAM, [http://adoption.state.gov/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=notices&alert\\_notice\\_file=vietnam\\_4](http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=vietnam_4) (last visited Sep. 18, 2012) (stating that adoptions between the United States and Vietnam would continue to be on hold until Vietnam fully complied with the provisions of the Hague Convention). See Poe, *Step Forward*, *supra* note 97 (declaring a lack of urgency in the drafting of acceptable adoption laws and procedures has exacerbated the wait time for parents, and has kept families separated for years at a time).

<sup>115</sup> See U.S. DEP'T OF STATE, VIETNAM, [http://adoption.State.gov/countryinformation/country\\_specific\\_info.php?country-select=vietnam](http://adoption.State.gov/countryinformation/country_specific_info.php?country-select=vietnam) (last visited Oct. 31, 2012) (stating that adoptions between the United States and Vietnam have been halted in the wake of alleged concerns arising out of Vietnam).

<sup>116</sup> See E. J. Graff, *Anatomy Of An Adoption Crisis*, FOREIGN POL'Y, Sept. 12, 2010, [http://www.foreignpolicy.com/articles/2010/09/07/anatomy\\_of\\_an\\_adoption\\_crisis](http://www.foreignpolicy.com/articles/2010/09/07/anatomy_of_an_adoption_crisis) (describing American families being stonewalled by politicians and disallowed from concluding their adoptions).

<sup>117</sup> See Chris Glorioso, *Orphans in Limbo as Vietnamese Adoptions Stall*, NBC NEW YORK, July 16, 2011, <http://www.nbcnewyork.com/news/local/Orphans-in->

The pipeline parents of the sixteen remaining cases waited for three years to bring their adopted children home to the U.S., while the pipeline children remained in an orphanage in the Bac Lieu province.<sup>119</sup> In the orphanage, which was previously used as a prison, the children ate, slept, and bathed in a single room.<sup>120</sup> Paint peeled on the orphanage walls, and ants covered the floors, leaving the children with bites and welts.<sup>121</sup> The poor sanitary conditions in the orphanage led most of the children to contract pneumonia and many to be hospitalized.<sup>122</sup> Moreover, one pipeline parent explained that the children were “starved for love,” and “the minute an adult comes into the room, they swarm . . . to be held and touched.”<sup>123</sup> Meanwhile, in the U.S., suffering pipeline parents did not give up hope that their children would one day sleep in the nurseries they prepared, and wear the clothes that were purchased for them.<sup>124</sup>

Before these pipeline adoptions were halted, many pipeline parents visited their adopted children in the Bac Lieu orphanage

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Limbo-as-Vietnamese-Adoptions-Stall--125674053.html (detailing the events that led to the ‘Bac Lieu Sixteen’).

<sup>118</sup> See Kelly Ensslin, *Fixing the International Adoption Mess*, GLOBALPOST, May 20, 2012, <http://www.globalpost.com/dispatches/globalpost-blogs/commentary/fixing-the-international-adoption-mess> (adding that eleven of the sixteen Bac Lieu children were able to go home to their American families by January 2012); see also Poe, *Happy Ending*, *supra* note 98 (interviewing a set of adoptive parents who were not able to bring their son home until January 2012 amid growing pressure on the Vietnamese government).

<sup>119</sup> See Rah Bickley & John O’Brien, *Waiting For Their Families*, THE HERALD SUN, July 26, 2011, [http://www.heraldsun.com/view/full\\_story/14836738/article-July-26](http://www.heraldsun.com/view/full_story/14836738/article-July-26) (affirming that sixteen toddlers were held behind in the Bac Lieu province); see also Margie Mason, *16 Vietnamese Kids, US Families in Adoption Limbo*, ASSOCIATED PRESS, June 15, 2011, [http://seattletimes.com/html/nationworld/2015321480\\_apasvietnamorphansinlimbo.html](http://seattletimes.com/html/nationworld/2015321480_apasvietnamorphansinlimbo.html) (explaining that issues with paperwork delayed the children in Bac Lieu from being united with their adoptive parents in the United States).

<sup>120</sup> See Poe, *Happy Ending*, *supra* note 98 (describing the orphanage as terribly underfunded with minimal educational and health supplies); see also Poe, *Government Bars* *supra* note 12 (detailing the dilapidated conditions at the orphanage).

<sup>121</sup> See Ensslin, *supra* note 118 (commenting that many of the children suffered from decayed teeth and various skin ailments due to the conditions in the orphanage); see also Poe, *Government Bars*, *supra* note 12 (explaining that the orphanage was infested with insects).

<sup>122</sup> See Poe, *Government Bars*, *supra* note 12 (describing the inadequate health conditions at the Bac Lieu orphanage).

<sup>123</sup> See David Markiewicz, *An Orphan’s Odyssey: ‘When Am I Coming to America?’*, THE ATLANTA JOURNAL-CONSTITUTION, April 30, 2006, at 1A (illustrating how quickly a strong bond develops between orphans and adults they see as parental figures); see also Poe, *Government Bars*, *supra* note 12 (analyzing the interaction between orphans and adults).

<sup>124</sup> See Mason, *supra* note 119 (explaining how the consequences from delays in adoption are felt and embodied within the adoptive parents’ homes).

while they waited for their adoptions to go through.<sup>125</sup> One couple visited their daughter nine times in failed attempts to bring her home.<sup>126</sup> Another father, who expected imminent finalization of his daughter's adoption documents, stayed with his daughter for two months before returning to the U.S. without her.<sup>127</sup> In that case, the father soon learned that the Vietnamese government found his family's adoption packet incomplete, despite approval from the U.S. government.<sup>128</sup> In December 2010, the U.S. Embassy told the sixteen pipeline families to cease all contact with their children until Vietnam signed the Hague Convention, and explained that contact during that time would be detrimental to their cases.<sup>129</sup>

Ironically, the pipeline father described above met all of the Hague Convention's standards.<sup>130</sup> For example, even though DNA testing was not required when he first filed his adoption papers, he obtained DNA confirmation of his adopted child's birth mother after the U.S. Citizenship and Immigration Services (USCIS) issued its new DNA regulations.<sup>131</sup> Moreover, he obtained records that indicate the birth mother's relinquishment of her parental rights to the child, and her approval of the adoption by his American family.<sup>132</sup> Despite following all of the old and new adoption rules in both the U.S. and Vietnam,<sup>133</sup> his pipeline adoption remained in limbo for three years.<sup>134</sup>

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<sup>125</sup> See Poe, *Government Bars*, *supra* note 12 (detailing the amount of contact pipeline parents had with their children while their adoptions were put on hold).

<sup>126</sup> See Mason, *supra* note 119.

<sup>127</sup> See Poe, *Government Bars*, *supra* note 12 (describing how the international adoption process can be longer and more difficult than anticipated by parents).

<sup>128</sup> *Id.* (noting that the United States signed off on the particular adoption but the Vietnamese government failed to do so); see also Poe, *Rubio Blocks*, *supra* note 105 (describing the changing regulations in both States as hindering attempts by the adoptive parents to bring their adoptive children to the United States).

<sup>129</sup> See Press Release, U.S. Citizenship and Immigr. Servs, U.S. Dep't of Homeland Sec., USCIS Unable to Resume Processing Adoptions from Vietnam (Feb. 2, 2011) (on file with author) (noting that USCIS announced that they would not resume new adoption cases until Vietnam acceded to and complied with the Hague Adoption Convention); see also Poe, *Government Bars*, *supra* note 12 (noting the U.S. embassy's declaration that adoptive parents should cease contact with their adoptive children and orphanages).

<sup>130</sup> See Poe, *Government Bars*, *supra* note 12 (noting that the pipeline father met all of the major criteria established in the Hague Convention); see also Poe, *Rubio Blocks*, *supra* note 105 (describing the hurdles adoptive parents had to navigate even after complying with all treaty regulations).

<sup>131</sup> See Press Release, U.S. Citizenship and Immigr. Servs, U.S. Dep't of Homeland Sec., *supra* note 129.

<sup>132</sup> See Poe, *Government Bars*, *supra* note 12.

<sup>133</sup> *Id.*

<sup>134</sup> See Angela Ganote, *Families Bring Vietnamese Orphans Home Following Three Year Fight*, FOX 59 NEWS, <http://www.fox59.com/news/wxin-families-bring-vietnamese-orphans-home-following-three-year-fight->

Fortunately, in January 2012, eleven of the sixteen Bac Lieu children were united with their families in the U.S.<sup>135</sup> While Vietnam ratified the Hague Convention on November 1, 2011, the treaty was not entered into force until February 1, 2012.<sup>136</sup> The united pipeline families are thrilled to finally have their adopted children home in the U.S., yet they remain concerned about the children who are still being denied the right to join their adoptive parents in the U.S.<sup>137</sup> Moreover, the three years that the pipeline children waited in the orphanage has taken its toll. For example, one pipeline child's teeth rotted out at the orphanage, requiring extensive dental work costing more than \$6,000 when he was united with his pipeline family in the U.S.<sup>138</sup> While most of the Bac Lieu children were finally united with their adoptive parents in the U.S., the U.S. Department of State announced on February 2, 2012 that it will not resume intercountry adoptions with Vietnam because Vietnam allegedly has not met its obligations under the treaty.<sup>139</sup> Thus, the future of intercountry adoption between the U.S. and Vietnam remains uncertain.

## 2. Nepal

Unlike the ban on international adoption in Vietnam, the U.S. Department of State is solely responsible for the moratorium on adoptions from Nepal.<sup>140</sup> In August 2010, the U.S. Department of State and USCIS suspended all new adoption cases involving children who were reported abandoned based on a finding that Nepalese adoption documents were unreliable.<sup>141</sup> As a result,

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2011228,0,4828110.column (detailing the three year struggle to receive their adopted child).

<sup>137</sup> See Ensslin, *supra* note 118.

<sup>139</sup> *Id.*

<sup>140</sup> See Poe, *Happy Ending*, *supra* note 98.

<sup>141</sup> Sharon Vanepps, *After a Three-year Fight, an Indiana Family Finally Brings Home Their Son from Vietnam*, *WHATEVER THINGS ARE TRUE: THE GOOD, THE BAD, AND THE BEAUTIFUL IN THE WORLD OF INTERNATIONAL ADOPTION* (Apr. 24, 2012), [http://whateverthingsaretrue.typepad.com/whatever\\_things\\_are\\_true\\_/2012/04/after-a-three-year-fight-an-indiana-family-finally-brings-home-their-son-from-vietnam.html](http://whateverthingsaretrue.typepad.com/whatever_things_are_true_/2012/04/after-a-three-year-fight-an-indiana-family-finally-brings-home-their-son-from-vietnam.html).

<sup>142</sup> See Press Release, U.S. Citizenship and Immigr. Servs, U.S. Dep't of Homeland Sec., USCIS Unable to Resume Processing Adoptions from Vietnam (Feb. 2, 2011) (on file with author).

<sup>140</sup> See Press Release, U.S. Citizenship and Immigr. Servs, U.S. Dep't of Homeland Sec., U.S. Suspends Processing New Nepal Adoption Cases Based on Abandonment (Aug. 6, 2010) (on file with author).

<sup>141</sup> *Id.* (explaining that the Department of Justice and United States Citizenship and Immigration Services stopped processing adoptions due to the lack of documentation that the children were actually abandoned); see also Press Release, U.S. Dep't of State Bureau of Pub. Affairs, *Joint Statement on Suspension of Processing for New Adoption Cases Based on Abandonment in*



approximately 80 pipeline adoptions were halted, 54 of which remain unresolved.<sup>142</sup>

Despite the fact that USCIS investigators found no evidence of fraud in the 54 pipeline adoptions, USCIS is requiring pipeline parents to prove that their adopted children were not abandoned before they can obtain visas.<sup>143</sup> USCIS officials claim that the heightened requirements ensure that pipeline children were not forcefully removed from their biological families.<sup>144</sup> However, critics argue that the requirements are impossible to meet, given the poor record-keeping and absence of a birth certificate system in Nepal.<sup>145</sup> Given that the USCIS has not found fraud with respect to these adoptions, pipeline families argue that they should be granted visas for their children to be brought home to the U.S.<sup>146</sup> However, the State Department continues to require pipeline parents to prove the absence of fraud, opting for a 'guilty until proven innocent' burden of proof regarding the abandonment status of pipeline children.<sup>147</sup>

The new regulations for pipeline adoptions in Nepal are financially strenuous on pipeline parents. In order to prove the absence of fraud, pipeline parents are required to hire a private investigator in Nepal and an attorney in the U.S., costing approximately \$10,000.<sup>148</sup> As a result, at least one pipeline family

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*Nepal* (Aug. 6, 2010), available at <http://www.state.gov/r/pa/prs/ps/2010/08/145767.html> (indicating that a great deal of documents are fabricated, while other documents are completely unavailable).

<sup>142</sup> See Press Release, U.S. Citizenship and Immigr. Servs, U.S. Dep't of Homeland Sec., *supra* note 141; see also Bartley, *supra* note 110.

<sup>143</sup> See Bartley, *supra* note 110 (noting that visas will be granted contingent on proof that the child was actually abandoned); see also David Crary, *Despite Hurdles, Families Pursue Nepal Adoptions*, THE HUFFINGTON POST, Jan. 22, 2011, [http://www.huffingtonpost.com/2011/01/22/despise-hurdles-families-\\_n\\_812618.html](http://www.huffingtonpost.com/2011/01/22/despise-hurdles-families-_n_812618.html) (stating that adoptions were suspended because officials discovered that some of the children being adopted were not orphans).

<sup>144</sup> See Bartley, *supra* note 110 (explaining that the reason behind proof of abandonment is to avoid situations where biological parents are still looking for their children).

<sup>145</sup> John R. Crook, *United States Suspends Processing of Adoptions of Abandoned Children From Nepal*, 104 AM. J. INT'L L. 661, 661 (2010) (explaining that among the documents needed to prove that a child is not abandoned are a birth certificate, and orphanage and police records); see also Bartley, *supra* note 110.

<sup>146</sup> See Bartley, *supra* note 110 (indicating that no other requirement should be needed where no evidence of fraud is found).

<sup>147</sup> See Habiba Nosheen & Lisa Desa, *Nepal: Adoption Limbo*, <http://pulitzercenter.org/reporting/nepal-adoption-orphanage-children-legitimacy> (last visited Sept. 19, 2012) (stating that families had to provide ample proof that their children were not trafficked and their adoptions were not fraudulent).

<sup>148</sup> See Ricker, *supra* note 112 (uncovering the high costs of hiring a private investigator and attorney for the adoption process); see also Crary, *supra* note

is selling their house in order to bring their daughter home from Nepal.<sup>149</sup> Other pipeline parents have taken out loans, or asked their family and friends for donations.<sup>150</sup> Some parents risk their careers and incomes while they visit Nepal for various lengths of time.<sup>151</sup>

While pipeline parents are allowed to contact or even live with their adopted children in Nepal, those privileges raise a number of concerns, particularly when the family is unable to live with their child. Pipeline parents that are able to live with their children in Nepal must give up their lives for an indefinite period of time.<sup>152</sup> They sacrifice their jobs, and time with their families and friends in the U.S., yet they take comfort in knowing that their adopted children are safe.<sup>153</sup> On the other hand, many pipeline parents do not have the option of leaving their careers and families in the U.S. to live abroad, and therefore, must remain separated from their adopted children.<sup>154</sup> The children of pipeline parents who do not live with them continue to live in orphanages,<sup>155</sup> which experts say can cause psychological and physical damage to the children.<sup>156</sup> Orphanages struggle to provide the children with their basic needs, including nutritious diets and medical attention.<sup>157</sup> Furthermore, the orphanages are kept cold,<sup>158</sup> made only worse by a short supply of clothing and blankets for the children.<sup>159</sup> Not

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143 (recognizing the high financial costs that families have had to pay in order to complete the adoption process).

<sup>149</sup> See *Nepal Adoptions*, *supra* note 107; see also *Crary*, *supra* note 143 (noting that one family had to sell their condominium to defray the high costs of the adoption process).

<sup>150</sup> See *Nepal Adoptions*, *supra* note 107.

<sup>151</sup> See Monica Brady-Myerof, *Revere Women Questions Frustrating Nepalese Adoption, Fraud Claims*, 90.9 WBUR, May 11, 2011, available at <http://www.wbur.org/2011/05/11/nepaladoption-2> (explaining that one parent had to take unpaid leave to go to Nepal and subsequently lost her job when she returned to the United States); see also *Nepal Adoptions*, *supra* note 107.

<sup>152</sup> See *Bartley*, *supra* note 110.

<sup>153</sup> *Id.* (stating that pipeline parents who remain in Nepal risk their retirement savings and homes, because they consider the security of their children more important).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* (illustrating the worries of parents who had to return to the U.S. and leave their children behind).

<sup>156</sup> See *Bartholet*, *supra* note 62, at 124 (emphasizing that the longer children spend in orphanages, the less chance they have at normal development).

<sup>157</sup> See *Crary*, *supra* note 143.

<sup>158</sup> See *Bartley*, *supra* note 110 (highlighting the fact that the orphanages are cold and the children often do not have enough clothing and blankets to keep warm).

<sup>159</sup> See *Krithika Varagur*, *On Poverty and Beauty at a Nepal Orphanage*, SENTINEL, May 5, 2010, [http://medm.gmnews.com/news/2010-05-05/Front\\_Page/On\\_poverty\\_and\\_beauty\\_at\\_a\\_Nepal\\_orphanage.html](http://medm.gmnews.com/news/2010-05-05/Front_Page/On_poverty_and_beauty_at_a_Nepal_orphanage.html) (describing how six Nepali orphans had to share three sets of clothing).

only do pipeline families struggle with the knowledge that their adopted children are living in an orphanage,<sup>160</sup> but they must also share their heartache every time their visits end.<sup>161</sup> Regardless of whether the pipeline parents live in Nepal or the U.S., every family struggles with the fact that they cannot begin their new lives together in the U.S.<sup>162</sup>

### C. Steps to Remedy the Problem

Because the halting of pipeline adoptions stems from countries imposing the new Hague Convention standards, little has been done to rectify the issue.<sup>163</sup> The pipeline adoption problem is one of governmental regulation,<sup>164</sup> and thus, parents can only petition the government for help to bring their children home.<sup>165</sup> While the pleas of the pipeline families for governmental action have not gone completely unheard,<sup>166</sup> the U.S. government has failed to rectify the situation.<sup>167</sup> Despite the efforts of some politicians to take action, their efforts have been mostly futile.<sup>168</sup>

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<sup>160</sup> See Barthelet, *supra* note 62, at 165.

<sup>161</sup> See Bartley, *supra* note 110 (quoting a parent who discussed the heartbreak a child would feel if her was not finalized).

<sup>162</sup> See Monica Brady-Myerov, *Revere Woman Questions Frustrating Nepalese Adoption, Fraud Claims*, 90.9 WBUR, May 11, 2011, available at <http://www.wbur.org/2011/05/11/nepaladoption-2> (explaining the struggle of one pipeline parent who was forced to leave her job and take out a home equity line of credit when she moved to Nepal for five months in order to bring her adopted daughter to the United States).

<sup>163</sup> See Press Release, U.S. Citizenship and Immigr. Servs., U.S. Dep't of Homeland Sec., *supra* note 141.

<sup>164</sup> See Barthelet, *supra* note 62, at 167 (indicating that in order to complete an international adoption, parents must comply with all United States federal, state, and sending country's laws).

<sup>165</sup> See Monica Brady-Myerov, *Stuck in Nepal: Local Woman in Adoption Nightmare*, 90.9 WBUR, Oct. 8, 2010, available at <http://www.wbur.org/2010/10/08/nepal-adoption> (indicating that there is little parents can do to combat the moratorium placed by the United States).

<sup>166</sup> See Crownover, *supra* note 163 (detailing the contact between a pipeline family and several U.S. congresspersons).

<sup>167</sup> See Bartley, *supra* note 110; see also Poe, *Step Forward*, *supra* note 97 (opining that a lack of governmental urgency has exacerbated the struggles of pipeline families).

<sup>168</sup> Compare Poe, *Rubio Blocks*, *supra* note 105 (explaining that Senators Rubio and Lugar attempted to block the appointment of an ambassador to Vietnam in an effort to secure information about the status of assistance to pipeline families), with U.S. Dep't of State, *Biography of David Shear*, EMBASSY OF THE UNITED STATES IN HANOI, VIETNAM, <http://vietnam.usembassy.gov/ambassador.html> (last visited Sept. 19, 2012) (noting that the ambassador to Vietnam was appointed on August 4, 2011).

## 1. Steps Taken by Pipeline Parents

Pipeline parents have used several mechanisms to bring the U.S. government's attention to the pipeline adoption problem. For example, the pipeline parents of children in Vietnam petitioned Congress, asking for help from Secretary of State Hillary Clinton and the Prime Minister of Vietnam to explore solutions for the speedy resolution of pipeline adoptions.<sup>169</sup> The pipeline parents of children in Nepal have also started a petition to Congress, requesting that members of Congress continue to urge the U.S. Department of State and USCIS to resolve the pipeline adoptions in Nepal immediately.<sup>170</sup> Moreover, these families have submitted hundreds of letters directly to President Obama, asking for his intervention to help bring their children home quickly and safely.<sup>171</sup>

Many Americans argue that the pipeline adoption issue is not getting necessary media coverage. Internet blogs, such as "Red Thread: An Adoptive Family Forum," are filled with comments from pipeline parents and their supporters who are outraged by the lack of media and governmental support for pipeline families.<sup>172</sup> One pipeline mother commented that it is a "tragedy that [the U.S.] government does not see the urgency in getting these children home with their waiting families."<sup>173</sup> Another pipeline parent questioned what it will take to reform international adoption, and thanked those on the Red Thread blog for bringing awareness to her cause.<sup>174</sup> Most bloggers demand to know where the television

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<sup>169</sup> See *Petition2Congress*, *supra* note 100 (showing that, as of October 2012, over 13,500 letters and emails were sent to the U.S. Congress as a result of the petition).

<sup>170</sup> See *Petition2Congress*, *Your Continued Support for the Eighty Nepal Pipeline Families*, <http://www.petition2congress.com/3710/> (last visited Oct. 31, 2012) (showing that, as of October 2012, over 2,100 letters and emails were sent to the U.S. Congress as a result of the petition).

<sup>171</sup> See *Nepal Adoptions*, *supra* note 107; see also Crary, *supra* note 143 (chronicling the efforts of pipeline families to bring their adopted children to the U.S., including petitioning President Obama).

<sup>172</sup> See RED THREAD: AN ADOPTIVE FAMILY FORUM, <http://communities.washingtontimes.-com/neighborhood/red-thread-adoptive-family-forum/> (last visited Nov. 14, 2011) (displaying a collection of stories on the plight of pipeline families).

<sup>173</sup> See Powerofonepk, Comment to *Government Bars American Family from Contacting Daughter*, THE WASH. TIMES COMMUNITIES, <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/jun/21/government-bars-american-family-contacting-daughte/> (last visited Sept. 26, 2012) (commenting, from personal experience, on the government's inaction as adoptive child sat in an institution in Nepal).

<sup>174</sup> See *Experts Respond To 'The Baby Business'*, THE SCHUSTER INSTITUTE FOR INVESTIGATIVE JOURNALISM, [http://www.brandeis.edu/investigate/adoption/expertsrespond\\_PEAR.html](http://www.brandeis.edu/investigate/adoption/expertsrespond_PEAR.html) (last visited Feb. 22, 2011) (providing eight

coverage is for the plight of pipeline families, with the expectation that if politicians were aware of the pipeline adoption problems, attempts would be made to resolve it.<sup>175</sup>

In August 2011, in an attempt to bring national coverage to the pipeline adoption problem, pipeline families scheduled a march in Washington, D.C., called the "Step Forward for Orphans March," to implore the U.S. government to address the critical situation affecting orphans worldwide.<sup>176</sup> Unfortunately, due to Hurricane Irene, the march was postponed until December 2011.<sup>177</sup> At the march, pipeline families were expected to join leaders in the international adoption community and children's aid organizations with a mission to reform the international adoption system.<sup>178</sup> Pipeline parents understand that officials at the U.S. Department of State have the power to expedite the completion of pipeline

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suggestions to alleviate concerns of corruption and to reform international adoption); *see also* Lori Lu Green LeRoy, Comment to *Step Forward for Orphans March: American Families to Protest U.S. Policies*, THE WASH. TIMES COMMUNITIES, <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/aug/15/separated-their-children-us-policies-american-fami/> (last visited Sept. 26, 2012) (expressing hope that children's aid organizations can aid in improving the international adoption system).

<sup>175</sup> *See* Comments to *Rubio Blocks Obama's Nominee for Vietnamese Ambassador*, THE WASH. TIMES COMMUNITIES, <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/may/23/rubio-blocks-obama-nominee-vietnam-ambassador/> (last visited Sept. 26, 2012) (praising Senators Rubio and Lugar for taking stances in support of pipeline family unification); *see also* DRNACHAMA, Comment to *Government Bars American Family from Contacting Daughter*, THE WASH. TIMES COMMUNITIES, June 21, 2011, <http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/jun/21/government-bars-american-family-contacting-daughte/> (demonstrating attempts to gather support for a political petition).

<sup>176</sup> *See* Poe, *Step Forward*, *supra* note 97 (declaring that participants for the event included pipeline parents, children's aid organizations, and other supporters).

<sup>177</sup> *See* Craig Juntunen, *Hurricane Irene Scraps Plans for the Step Forward for Orphans March*, BOTH ENDS BURNING (Aug. 30, 2011), <http://bothendsburning.org/happening/hurricane-irene-scraps-plans-step-orphans-march/> (informing readers that the movement's tentative plan was to re-schedule for December 2011).

<sup>178</sup> *See* *Step Forward for Orphans March to Tell Story of Children Blocked from Joining Families*, BUS. WIRE (Aug. 23, 2011), <http://www.businesswire.com/news/home/20110823005193/en> (listing expected participants in the march); *see also* Poe, *Step Forward*, *supra* note 97 (asserting that a goal of the march was to bring this issue to the attention of the U.S. Department of State which has the power to facilitate unification of these pipeline families).

adoptions,<sup>179</sup> and the march was intended to bring the attention of those officials to an issue that has been ongoing for years.<sup>180</sup>

## 2. Steps Taken by the U.S. Government

Despite the outcries from pipeline parents and their supporters, the U.S. Department of State has done little to remedy the pipeline adoption problem. In fact, the Department of State has further obstructed the process of pipeline adoptions by failing to give constructive advice to pipeline families inquiring about the completion of their adoptions.<sup>181</sup> For example, in late 2010, after pipeline parents were told to cease all contact with their children in Vietnam, the Department of State advised them to withdraw their adoption petitions completely because, as the Department of State alleged, the U.S. cannot help to facilitate their adoptions.<sup>182</sup> Further, officials at the Department of State told pipeline families they should reapply for adoption in Vietnam after Vietnam ratified the Hague Convention,<sup>183</sup> completely disregarding the fact that these pipeline parents and children had already formed a familial bond. Moreover, the Department of State noted that if Vietnam implemented the Hague Convention, any child whose petition was withdrawn would be matched with a different family, and pipeline parents would lose the opportunity to ever unite with their adopted

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<sup>179</sup> See Hague Convention, *supra* note 5 (stipulating that Central Authorities can take necessary actions to oversee quick adoption measures in countries that are parties to the Convention).

<sup>180</sup> See 'Step Forward for Orphans March' to Advocate for a Child's Right to a Permanent Family, BUCKNER INTERNATIONAL (Aug. 18, 2011), <http://www.buckner.org/enews/index.php/2011/08/step-forward-for-orphans-march/> (quoting Both Ends Burning founder, Craig Juntunen, who stated that his goal was to create a social movement that will help spur policy change for international adoptions); see also Poe, *Step Forward*, *supra* note 97 (expressing that the march's goal was to gain the Department of State's attention).

<sup>181</sup> See McCarty, *supra* note 103 (elaborating on the failure of the Department of State to give assistance to a pipeline family); see also Poe, *Government Bars*, *supra* note 12 (criticizing the Department of State for the lack of assistance it has been given to the pipeline families).

<sup>182</sup> See U.S. DEP'T OF STATE, ADOPTION NOTICE VIETNAM, [http://adoption.state.gov/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=notices&alert\\_notice\\_file=vietnam\\_2](http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=vietnam_2) (last visited Oct. 31, 2012) (pronouncing that the U.S. Department of State must evaluate Vietnam's adoption program before they are able to facilitate adoptions); see also Poe, *Government Bars*, *supra* note 12 (indicating that a family was told by the U.S. Department of State to withdraw their petition to adopt a child from Vietnam).

<sup>183</sup> See Poe, *Government Bars* *supra* note 12; see also Elaine, *An Open Letter for the Bac Lieu 16*, LOOKING FOR GEORGE (June 27, 2011), <http://lookingforgeorge.wordpress.com/2011/06/27/an-open-letter-for-the-bac-lieu-16/> (emphasizing that the pipeline parents of the Bac Lieu orphans were simply told to reapply after Vietnam ratifies the Hague Convention).

children.<sup>184</sup> The State Department's recommendations suggest that these orphaned children were somehow interchangeable, and pipeline families rightfully refused to follow such ignorant advice.<sup>185</sup>

Government officials who tried to shed light on the pipeline adoption issue have had varying success. In late 2010, Senator John Kerry and House of Representatives member Stephen Lynch, along with twenty-three of their Congressional colleagues, sent a letter to Secretary of State Clinton urging her to resolve the Nepal pipeline cases quickly.<sup>186</sup> That letter explained that pipeline families are "enduring extreme emotional and financial burdens while their children's cases are investigated further."<sup>187</sup> In a press conference, Senator Kerry stated that one pipeline mother from Massachusetts is "caught in a snag of international red tape trying to do what's right for her family and for an innocent child in need of medical attention . . . She's played by the rules and our job is to help her."<sup>188</sup> Despite the encouraging tone of the letter and speech, there is little evidence of any progress on the Nepal pipeline adoptions by Secretary of State Clinton or the Congresspeople who wrote the letter.<sup>189</sup>

Unlike the limited progress made by politicians on the pipeline adoptions in Nepal, many parents who were recently united with their adopted children from Bac Lieu credit Senators Mark Rubio and Richard Lugar.<sup>190</sup> In May 2011, Senator Mark Rubio placed a hold on the nomination of David Shear for

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<sup>184</sup> See Poe, *Government Bars*, *supra* note 12 (reporting that the child is likely to be matched with a new family under the new system of adoptions).

<sup>185</sup> *Id.* (specifying that a family refused to withdraw the petition, as the State Department told them to do).

<sup>186</sup> See Press Release, John Kerry, Urging U.S. State Department to Expedite Nepalese Adoptions Already in Progress (Sept. 20, 2010) (on file with author).

<sup>187</sup> *Id.*

<sup>188</sup> *Id.* (stating that a child with a cleft pallet was awaiting medical treatment available in the U.S.); see also Brady-Myerov, *supra* note 163 (explaining how a mother refuses to abandon her adopted child, although she may lose her job if she stays with her child abroad).

<sup>189</sup> See Jessica Dealy, *Snag in Nepal Adoptions to US Families*, NECN.COM, Sept. 27, 2010, [http://www.necn.com/09/27/10/Snag-in-Nepal-adoptions-to-US-families/landing\\_politics.html?&blockID=3&apID=b8ca6247a3fe44c9a117ffbb95189ae7](http://www.necn.com/09/27/10/Snag-in-Nepal-adoptions-to-US-families/landing_politics.html?&blockID=3&apID=b8ca6247a3fe44c9a117ffbb95189ae7) (revealing that as of September 27, 2010, the U.S. government did not process any pipeline cases that its adoption website suggested would be processed); see also Press Release, U.S. Dep't of State, U.S. Department of State Continues to Recommend Against Adopting from Nepal (Aug. 14, 2012) (on file with author) (indicating that the U.S. government has not changed its position towards Nepalese adoptions).

<sup>190</sup> See Ensslin, *supra* note 118 (recognizing Senator Lugar and others who took action on behalf of pipeline families by placing a hold on President Obama's ambassador nominee); see also Ganote, *supra* note 134 (indicating a family's recognition that their Vietnamese adoption became official because of Senator Lugar's help).

ambassador to Vietnam in an effort to get pipeline families information about the status of assistance to their cause.<sup>191</sup> Senator Rubio's action followed a hold placed by Senator Richard Lugar for similar concerns.<sup>192</sup> The senators' actions were a response to the obstacles faced by pipeline families when they tried to gain information about their adoption files from the Departments of State and Homeland Security.<sup>193</sup> One attorney for a pipeline family was hopeful that the block would "instill a sense of urgency and help the Department of State focus on resolving these cases immediately."<sup>194</sup> In addition, one pipeline couple attributed their unification with their adopted child to Senator Lugar's hold which prompted the Department of State to get involved.<sup>195</sup>

#### IV. *Political Suggestions to Help Safely Expedite Pipeline Adoptions*

Aside from the action of a few politicians, the U.S. government has not proposed any potential solutions for the pipeline problem created by the Hague Convention. The Department of State has done little beyond encouraging countries with pipeline children to ratify and implement the regulations of the Hague Convention.<sup>196</sup> There is no doubt that the Hague

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<sup>191</sup> See Matthew Pennington, *Senate Confirms 1st U.S. Special Envoy to Myanmar, New Ambassador to Vietnam*, CANADIAN PRESS (Aug. 3, 2011, 2:25 PM) (reporting that a group of lawmakers blocked David Shear's nomination as Vietnam's ambassador to challenge adoption delays in Vietnam); see also Poe, *Rubio Blocks*, *supra* note 105 (noting that Senator Rubio placed a hold on Shear's nomination to pressure the government to report the status of pending Vietnamese adoptions).

<sup>192</sup> See Lona O'Connor, *Local Teacher Takes Adoption Plea to D.C.*, THE PALM BEACH POST (May 29, 2011), available at <http://www.palmbeachpost.com/news/local-teacher-takes-adoption-plea-to-dc/nLsn2/> (acknowledging that Senator Lugar and Senator Rubio's holds were effective in bringing government attention to international adoption issues); see also Poe, *Rubio Blocks*, *supra* note 105.

<sup>193</sup> See Lesley Clark, *Marco Rubio Puts a Hold on an Obama Nominee*, THE MIAMI HERALD (May 23, 2011), available at <http://miamiherald.typepad.com/nakedpolitics/2011/05/marco-rubio-puts-a-hold-on-an-obama-nominee.html>; see also Poe, *Rubio Blocks*, *supra* note 105.

<sup>194</sup> See Poe, *Rubio Blocks*, *supra* note 105 (quoting attorney Kelly Ensslin's belief that the Senators' holds on Ambassador Shear would propel the Department of State to take action on the issue).

<sup>195</sup> See Poe, *Happy Ending*, *supra* note 98 (expressing the LeRoy family's appreciation of Senator Lugar's work bringing attention to the issues of pipeline families).

<sup>196</sup> See U.S. DEP'T OF STATE, U.S. DEPARTMENT OF STATE CONTINUES TO RECOMMEND AGAINST ADOPTING FROM NEPAL, [http://adoption.state.gov/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=notices&alert\\_notice\\_file=nepal\\_4](http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=nepal_4) (last visited Oct. 31,



Convention is a significant step toward providing parentless children homes in an ethical manner.<sup>197</sup> However, by prohibiting pipeline parents from uniting with their adopted children, the U.S. government has inappropriately placed priority on Hague Convention regulation over the best interests of the children.<sup>198</sup>

More must be done to aid pipeline families, in order to satisfy the best interests standard emphasized by the Hague Convention. Thus far, the U.S. government has put forth mediocre efforts to rectify the pipeline adoption problem. Moreover, while pipeline parents wait for government action, their adopted children continue to languish in sub-standard orphanages. In light of this problem, I argue that the U.S. should aid sending countries while they implement the Hague Convention standards. Furthermore, the U.S. should establish bilateral agreements with sending countries to expedite pipeline adoptions safely. Alternatively, the U.S. and sending countries should allow for humanitarian parole while pipeline adoption paperwork is finalized.

*A. The U.S. Should Provide Aid to Sending Countries Trying to Implement the Hague Convention*

Because the pipeline adoption issue is predominately an American problem,<sup>199</sup> the U.S. should use some of its resources to help countries implement the Hague Convention regulations in order to expedite unification of pipeline parents and their adopted children. Most sending countries are developing countries that need financial assistance and time to implement the Hague Convention's standards.<sup>200</sup> Moreover, the U.S. has the resources and governmental stability to help sending countries develop effective laws and adoption systems.<sup>201</sup> By relieving some of the

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2012) (discussing the U.S.' attempt to encourage Nepal to adopt the Hague Adoption Convention).

<sup>197</sup> McKinney, *supra* note 1, at 389 (arguing that the Hague Convention is an accomplishment for international law because of its declaration that "children succeed when raised by stable families"); *see also* Lynn D. Wardle, *Parentlessness: Adoption Problems, Paradigms, Policies, and Parameters*, 4 WHITTIER J. CHILD & FAM. ADVOC. 323, 358 (2005) (recognizing that the Hague Convention's importance in international law is that it formally acknowledges that children do better when brought up in a permanent family environment).

<sup>198</sup> *See* McKinney, *supra* note 1, at 389 (stating that the Hague Convention's initial goal of protecting the timely placement of orphaned children with adoptive families has shifted toward regulation and restriction of international adoptions); *see also* Bartley, *supra* note 110 (noting that when the U.S. stops visas it favors regulation over the "heartache and frustration" of pipeline families).

<sup>199</sup> *See* UNICEF, *supra* note 3.

<sup>200</sup> *See* McKinney, *supra* note 1, at 394-95.

<sup>201</sup> *See* Troy, *supra* note 16, at 1546 (stating that the United States would fulfill their commitment of making international adoption safer by helping non-

financial burden required to implement the Hague Convention, sending countries could more quickly and efficiently resolve pipeline adoptions. Thus, U.S. assistance would expedite pipeline adoptions and make it possible for new adoptions as well. Furthermore, help from the U.S. would ensure that pipeline adoptions and future adoptions are made using ethical adoption practices in accordance with the Hague Convention.

Although some may argue that U.S. assistance with Hague Convention implementation would be paternalistic, this is not the case because developing countries have attempted to comply with Hague Convention's standards on their own but have simply lacked the resources to do so. With U.S. help, developing countries that wish to comply with the Hague Convention would be given the resources to implement the treaty. Moreover, aid would only be necessary during the transitional period from signing to ratifying the convention.<sup>202</sup> The Hague Convention states that signatory countries should collaborate through their Central Authorities to establish a system of adoption that complies with Hague Convention standards.<sup>203</sup> Thus, aid from the U.S. would not be an improper imposition on developing countries. Rather, it would help other signatories develop adoption practices that would facilitate the completion of pipeline adoptions, and establish a foundation for developing countries to implement Hague Convention standards.

The U.S. should help sending countries' complete pipeline adoptions by analyzing them on a case-by-case basis, to ensure that no unethical practices have occurred. Such assistance places an emphasis on the best interests of the children by expediting unification with their adoptive families and providing one last safeguard against unethical adoption practices. Although doing a case-by-case analysis will inevitably take more time than simply implementing a blanket law delivering pipeline children to their parents in the U.S., it will be faster than waiting for sending countries to comply with the Hague Convention on their own.

Although the U.S. should assist sending countries with applying the Hague Convention and completing pipeline adoptions, the U.S. should have limited enforcement capability. Some scholars argue that a body of oversight and enforcement

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member sending countries to become members of the Convention); *see also* Worthington, *supra* note 11, at 585 (indicating that the United States has the adequate tools and experience to facilitate a poorer country's implementation of effective adoption systems).

<sup>202</sup> *See* Wittner, *supra* note 9, at 617–18 (noting that developing countries struggle to ratify the treaty).

<sup>203</sup> *See* Hague Convention, *supra* note 5.

should be put in place to effectuate lawful adoption procedures.<sup>204</sup> However, that type of overbearing regulation may lead to needless tension between the U.S. and sending countries, creating the potential for moratoriums on international adoptions. Moreover, sending countries may be unwilling to accept assistance from the U.S. if they fear the U.S. will impose penalties or punishments for failing to comply with Hague Convention standards. Thus, the U.S. should help sending countries to expedite pipeline adoptions and develop ethical adoption practices, but should not act as a policing mechanism.

*B. The U.S. Should Enter Bilateral Agreements with Sending Countries to Expedite Pipeline Adoptions*

By using bilateral agreements, both the U.S. and sending countries could agree to standards that would ensure ethical adoption practices and safely unite pipeline children with their adoptive parents without interfering with implementation of the Hague Convention. Bilateral agreements would expedite pipeline adoptions because pipeline parents would not have to wait until the sending countries have fully complied with the Hague Convention. While some may argue that bilateral agreements would allow sending countries to bypass the Hague Convention's standards,<sup>205</sup> the U.S., as a member of the Hague Convention, would ensure that the bilateral agreements contain ethical adoption practices.<sup>206</sup> Thus, bilateral agreements have the potential to expedite pipeline adoptions in sending countries that are struggling with implementing the Hague Convention in its entirety.

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<sup>204</sup> See Daly, *supra* note 83, at 628 (arguing that an oversight body should be imposed in Guatemala that would comprise of "U.S. State Department officials, representatives from accredited American adoption agencies who operate in Guatemala, and Guatemalan professionals who currently engage in lawful adoption procedures"); see also Ratcliff, *supra* note 29, at 353–54 (asserting that a UN appointed oversight body be created to ensure that the Convention is applied correctly and to enforce penalties on countries that have sub-standard adoption policies).

<sup>205</sup> See Kimball, *supra* note 9, at 564 (remarking that intercountry adoptions with non-member countries will persist, regardless of whether they ratify and implement the Hague Convention); see also Carlberg, *supra* note 2, at 152 (suggesting that the bilateral treaty between the U.S. and Vietnam may permit Vietnam to side-step implementation of the Hague Convention while still allowing adoptions to the U.S.).

<sup>206</sup> See, e.g., Press Release, U.S. Citizenship and Immigr. Servs, U.S. Dep't of Homeland Sec., The Agreement Between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children (July 13, 2011) (on file with author) (explaining that the goal of the bilateral adoption agreement between the U.S. and the Russian Federation was to ensure ethical adoption practices).

In 2005, the U.S. and Vietnam signed a bilateral agreement to implement ethical adoption practices and facilitate adoptions between the two countries without requiring Hague Convention standards.<sup>207</sup> The bilateral agreement expired on September 1, 2008 and there is no expectation to renew it.<sup>208</sup> The expiration of this bilateral agreement is not indicative of the fate of future bilateral agreements on international adoption because the prior agreement lacked the specificity necessary for it to be effective. The language in the agreement was almost identical to that of the Hague Convention, and therefore posed many of the same problems.<sup>209</sup> Unlike the 2005 treaty between the U.S. and Vietnam, the bilateral agreements that I suggest would only relate to pipeline adoptions, and would require review of those adoptions on a case-by-case basis. By making the treaties specific, there would be greater understanding of their requirements and greater potential for their success.

While the goal of these bilateral agreements is to unite pipeline children with their families, they must also ensure children are not subject to unethical adoption practices. However, because many pipeline parents have already met the heightened requirements of the Hague Convention, the bilateral agreements should permit fulfillment of those requirements to satisfy the check against unethical practices. For example, in many pipeline cases, DNA tests have been done to confirm the identity of the children's birth mothers.<sup>210</sup> In addition, many pipeline parents have paperwork demonstrating that the birth mother of their adopted child relinquished her parental rights to that child.<sup>211</sup> Under these bilateral agreements, such documentation should act as proof of ethical adoption practices. For cases involving pipeline parents who cannot produce such documentation, bilateral agreements should impose regulations to ensure that the pipeline child was not a victim of unethical adoption practices. Thus, these bilateral

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<sup>207</sup> See Agreement Between the United States of America and the Socialist Republic of Vietnam Regarding Cooperation on the Adoption of Children, U.S.-Viet, June 21, 2005, available at <http://www.state.gov/s/l/2005/87188.htm> (setting forth a section specifically addressing ethical practices).

<sup>208</sup> See U.S. CITIZENSHIP AND IMMIGR. SERVS, U.S. DEP'T OF HOMELAND SEC., FREQUENTLY ASKED QUESTIONS: ADOPTIONS FROM VIETNAM TO THE UNITED STATES WILL NOT RESUME WITHOUT A NEW BILATERAL AGREEMENT (Oct. 16, 2008), [http://www.uscis.gov/files/article/VietnamFAQ\\_16oct08.pdf](http://www.uscis.gov/files/article/VietnamFAQ_16oct08.pdf) (stating that the bilateral agreement between the U.S. and Vietnam has expired); see also Ben Stocking, *U.S.-Vietnam Adoption Pact Ends, Hundreds in Limbo*, USA TODAY (Sept. 1, 2008), [http://www.usatoday.com/news/world/2008-09-01-3166225393\\_x.htm](http://www.usatoday.com/news/world/2008-09-01-3166225393_x.htm) (stating that at the time the agreement expired, the adoption program was said to be "suspended indefinitely").

<sup>209</sup> See Carlberg, *supra* note 2, at 150.

<sup>210</sup> See Poe, *Rubio Blocks*, *supra* note 105.

<sup>211</sup> See *id.*

agreements would both expedite pipeline adoptions and protect against unethical adoption practices.

*C. Alternatively, the U.S. and Sending Countries Should Use Humanitarian Parole while Pipeline Adoption Paperwork is Finalized*

If the U.S. and sending countries cannot agree to terms for bilateral agreements to expedite pipeline adoptions, humanitarian parole<sup>212</sup> should be used. Humanitarian parole would allow pipeline children to unite with their adoptive families in the U.S. for a specified period of time while their adoption paperwork is finalized.<sup>213</sup> If during that specified period of time, there was a finding of unethical adoption practices with respect to a child, that child would be sent back to the sending country.<sup>214</sup> However, because so many pipeline families have already met requirements to prove their adoptions are legitimate,<sup>215</sup> the possibility that children would be sent back to their countries of origin would be slight. Thus, humanitarian parole would allow pipeline parents and children to unite sooner with a low risk of being separated.

The success of humanitarian parole in pipeline adoption cases was demonstrated by its application in 2001 by the Immigration and Naturalization Service (INS) after a moratorium was placed on adoptions from Cambodia to the U.S.<sup>216</sup> In that instance, twelve families were united with their children for two

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<sup>212</sup> See U.S. CITIZENSHIP AND IMMIGR. SERVS, U.S. DEP'T OF HOMELAND SEC., HUMANITARIAN PAROLE, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=acc3e4d77d73210VgnVCM10000082ca60aRCRD&vgnnextchannel=acc3e4d77d73210VgnVCM10000082ca60aRCRD> (defining humanitarian parole as a device "to bring someone who is otherwise inadmissible into the United States for a temporary period of time due to a compelling emergency," and listing the requirements for receiving humanitarian parole).

<sup>213</sup> See, e.g., Wittner, *supra* note 9, at 596 (noting that Cambodian children who were granted humanitarian parole were allowed to join new families in the United States).

<sup>214</sup> See *INS Reverses Stance for Cambodian Orphans*, 20/20 (Jan. 18, 2002), available at <http://abcnews.go.com/2020/story?id=123957&page=1#.TtFr4WNC9Rs>.

<sup>215</sup> See, e.g., Poe, *Government Bars*, *supra* note 12 (noting that one adoptive family spent years receiving adoption approval).

<sup>216</sup> See Wittner, *supra* note 9, at 596 (acknowledging that the ban on adoptions from Cambodia did not affect twelve families who were granted humanitarian parole for their adopted children); see also *INS Reverses Stance for Cambodian Orphans*, 20/20 (Jan. 18, 2002), available at <http://abcnews.go.com/2020/story?id=123957&page=1#.TtFr4WNC9Rs> (discussing the INS decision to grant humanitarian parole for twelve families).

years while their adoption paperwork was finalized.<sup>217</sup> While those families were grateful to have their adopted children home in the U.S., they remained anxious over the unlikely possibility that the birth mothers who abandoned their children would come forward, requiring the pipeline parents to send their children back to Cambodia.<sup>218</sup> Because of that stress and the possibility that a child may have to return to his or her country of origin, humanitarian parole is not preferred over establishing bilateral agreements. However, it is preferable to leaving pipeline children in orphanages where their basic needs are not met. Thus, countries that are unable to adopt a bilateral agreement should implement humanitarian parole in order to expedite the unification of pipeline parents and children.

#### CONCLUSION

While the mission of the Hague Convention is morally admirable, its policy to protect the best interests of children in international adoption has been thwarted by poor implementation. Because many developing countries are incapable of implementing the treaty's heightened requirements, the treaty remains largely ineffective. In addition, the moratoriums on international adoptions that resulted from poor implementation of the Hague Convention have created serious problems for adoptions that were in the pipeline when the bans were put in place. While the Hague Convention was designed to provide a framework for safer international adoptions, in practice, it has slowed adoptions and caused hundreds of orphaned children to suffer in sub-standard orphanages without knowing when or if their adoptive parents will come for them. In an effort to rectify this problem, the U.S. government should provide aid for sending countries that are trying to implement the Hague Convention. Moreover, the U.S. should establish bilateral agreements with sending countries, or use humanitarian parole. These proposed solutions would expedite the unification of pipeline parents and children, and protect against corrupt adoption practices, thereby providing for the best interests of the pipeline children where the Hague Convention has not.

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<sup>217</sup> See Wittner, *supra* note 9, at 596; see also *INS Reverses Stance for Cambodian Orphans*, *supra* note 217.

<sup>218</sup> See *INS Reverses Stance for Cambodian Orphans*, *supra* note 217.