Stuck in the Pipeline: An Analysis of the Hague Convention and Its Effects on Those in the Process of International Adoptions

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INTRODUCTION

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

¹ See U.S. DEP’T OF STATE, INTERCOUNTRY ADOPTION STATISTICS, 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 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).


emerged. In response to the growing concern over corruption and 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. The Hague Convention was designed to provide a uniform legal framework for international adoption that focuses on the best interests of the children.

While many find the mission of the Hague Convention admirable, it is often criticized for creating unworkable procedures. Many countries that send children to the U.S. for

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7 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).

adoption do not have the resources to ratify the Hague Convention or to enforce its policies. Moreover, there is little incentive for 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. Aside from prohibiting future adoptions from those countries, moratoriums also place a hold on adoptions that are already in the pipeline. 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.

This paper will analyze the Hague Convention focusing on the problems it has created for American adoptive parents and their 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).


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Internationally-adopted children, known as “pipeline families,” whose adoptions were approved before the Convention’s stringent provisions put them on hold. 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.

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. 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. Since that time, American families have been moved by the opportunity to help children who might otherwise suffer poverty-stricken lives. Moreover, because many war-torn countries are too unstable or


14 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 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, 598 (2003) (noting that intercountry adoption became popular during the Korean War).

15 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 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, 598 (2003) (noting the trend in American families to open their doors to children of war-torn and impoverished countries).
financially weak to support orphaned children, they benefit from providing orphaned children loving homes abroad.16

Changes in the U.S. have also added to the heightened demand for international adoptions.17 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.18 Moreover, greater social acceptance of single parenthood has increased the number of people looking to adopt.19 These factors have resulted in an influx of international adoptions, leading to more orphaned children being adopted into Americans homes.20

While international adoption presents advantages, it has also sparked a black market where children are bought and sold like property.21 Sending countries, often struggling with poverty,

21 See 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, 14
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.\textsuperscript{22} 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.\textsuperscript{23} Similar conduct has occurred in a number of the most common sending countries, including China, Romania, and Guatemala.\textsuperscript{24}

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

\textsuperscript{22} See U.S. DEP’T OF STATE, INTERNATIONAL ADOPTIONS, at 6, available at www.state.gov/documents/organization/28455.pdf (acknowledging the Immigration and Naturalization Service investigative efforts to uncover irregular practices of private foreign adoption); \textit{see also} Lindsay K. Carlberg, Note, \textit{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, 121 (2007) (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).


\textsuperscript{24} 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); \textit{see also} Rebecca Worthington, Note, \textit{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, 559 (2009) (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. The Hague Convention was designed to formalize and unify existing adoption processes in an effort to eliminate the international child trade. While the Hague Convention has brought necessary focus to the problems associated with international adoption, implementation of its standards has proven impractical.

II. Standards and Effects of the Hague Convention

The Hague Convention is a multilateral treaty that was ratified in 1993 by sixty-six nations. 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.


In 1994, the U.S. signed the Hague Convention, and became a member country in December 2007. A country is considered a member State once it has signed and ratified the Hague Convention. Upon ratification, member States are legally obligated to abide by the treaty’s terms and conditions. However, nations are not obligated to ratify the treaty or follow its standards, after they have signed it.

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. Moreover, signatories have agreed on three main objectives for the treaty. 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.

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31 See Hague Conference, supra note 5.


35 See Hague Conference, supra note 5.

36 Id.
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.\(^{37}\) 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.\(^{38}\) As a result, the Hague Convention has slowed, and in some instances stopped, the flow of international adoptions.\(^{39}\)

### 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.\(^{40}\) 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

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\(^{40}\) 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).
interests of the child.\(^{41}\) Second, those procedural requirements must be enforced by a Central Authority, thus preventing the abduction, sale, or trafficking of any child.\(^{42}\) Last, Contracting States must recognize certification of an adoption made in accordance with the Convention’s standards.\(^{43}\)

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.\(^{44}\) 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.\(^{45}\) Additionally, under Article 5, the sending country is required to determine that adoptive parents are eligible and suitable for adoption, counsel adoptive parents, and ensure that the child is legally authorized to live in the receiving country.\(^{46}\)

To ensure that the guidelines aimed at the best interests of the child are followed, Article 6 requires that each Contracting


\(^{42}\) See Hague Conference, supra note 5

\(^{43}\) Id.


\(^{46}\) See Hague Conference, supra note 5; see also 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, 131 (2007) (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).
State designate a Central Authority to enforce the duties established by the Convention. 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.” 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. 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.

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. In order to do so, 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

47 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, Authorities, http://www.hcch.net/index_en.php?act=authorities.listing (last visited Oct. 29, 2012) (listing the State agencies that serve as Convention member States’ Central Authorities); 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 F LA 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).
49 See Hague Conference, supra note 49.
50 See id.
51 See 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.
52 See id.
the application of the treaty.\textsuperscript{53} 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.\textsuperscript{54} However, Article 32 details some fees that are permissible in international adoption.\textsuperscript{55} Those fees include the reasonable costs and expenses of professional persons involved in an adoption.\textsuperscript{56} 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.\textsuperscript{57}

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.\textsuperscript{58} 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.\textsuperscript{59} Under Article 24, a Contracting State may refuse to recognize an adoption only if the adoption is “manifestly contrary


\textsuperscript{57} See Hague Conference, 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 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, 616 nn.160–61 (2003) birth parents to surrender the child, as well as to prevent improprieties from occurring).

\textsuperscript{58} See Hague Conference, supra note 5.

\textsuperscript{59} Id.
to its public policy, taking into account the best interests of the child.”

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.

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. Prior to the Hague Convention, there was general agreement that international adoption should only be used as a last resort. 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. The problem with UNICEF’s view is that it does not

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60 Id.
61 See Trish Makse, 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 Jennifer A Ratcliff, International Adoption: Improving on the 1993 Hague Convention, 25 MD. J. INT’L L. 336, 344–47 (2010) (discussing how some countries, such as Romania, lack the resources to implement the Convention effectively).
63 See Elizabeth Bartholet, International Adoption: Propriety, Prospects and Pragmatics, 13 J AM. ACAD. MATRIM. LAW 181, 193 (1996) (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).
acknowledge the trauma that children suffer while they wait for the results of the tracing efforts.65 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.66 Thus, while the Hague Convention recognizes that adoption by a family member is priority,67 it focuses on finding orphaned or abandoned children permanent families regardless of where they live, rather than tracing their family ties at any cost.68 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.69 The

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66 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 (discussing a research study by UNICEF Cambodia Child Protection addressing the socio-emotional and cognitive development of institutionalized children).

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


treaty provides a framework for a uniform system of international adoption and establishes safeguards that could potentially end child trafficking. 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. Moreover, the focus that the Hague Convention has placed on corrupt international adoption practices may lead to further governmental efforts to stop child trafficking. Thus, the Hague Convention has the potential to put an end to the problems of abuse and corruption in international adoption practices.

1. 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. 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.\textsuperscript{74} 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.\textsuperscript{75} 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.\textsuperscript{76} As a result, the Hague Convention is not being signed by the very countries where child trafficking is most prevalent.\textsuperscript{77}

Even when developing countries ratify the Hague Convention, they often lack the resources to implement its provisions.\textsuperscript{78} While the Hague Convention was designed to work


\textsuperscript{76}See Annette Schmit, Note, \textit{The Hague Convention: The Problems with Accession and Implementation}, 15 \textit{Ind. J. Global Legal Stud.} 375, 377 (2008) (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).


with several different legal regimes, it is difficult to implement in countries that struggle with poverty, political discourse, or an inadequate police force.  

The Hague Convention places a heavy burden on sending countries to execute the treaty’s provisions.  

Additionally, the Hague Convention requires each member State to establish a Central Authority to enforce its provisions.  

Those obligations are extraordinarily costly and nearly impossible for developing countries to implement without the help of foreign aid.  

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.

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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. INTL. L. & POL’Y 561, 563 (2005) (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 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, 617 (2003).

See Hague Conference, supra note 5 (delegating a Central Authority to implement and enforce its provisions).

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, 147 (2007) (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).

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. 84 Because the Romanian government was unable to quell the corruption, it issued a moratorium on international adoptions in 2001. 85 Political debate over international adoption and inadequate financing has resulted in Romania’s inability to meet the standards of the Hague Convention. 86 Consequently, Romania’s moratorium has left more than 80,000 Romanian children without permanent families. 87

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, 88 monitors the ethical standing of sending countries’ adoption processes. 89 When the U.S. Department of State finds 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 Norms by Guatemala and Cooperation by the United States in Order to Maintain Intercountry Adoptions, 45 FAM. CT. REV. 620, 623 (2007).

87 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),
that a country has not signed the Hague Convention or is not meeting Hague Convention standards, it may suspend adoptions from that country. 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.

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. 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. Since the ban, mortality
among children in Cambodia has steadily risen. 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. 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. The adoptive parents and 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. The delay in these adoptions has

95 See Notesong Srisopark Thompson, Note, Hague is Enough?: A Call for More Protective, Uniform Law Guiding International Adoptions, 22 Wis. Int’l L.J. 441, 451 (2004) (assessing how some children have lost their chance to be adopted because they have turned eight years old).
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.98 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.99 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.100 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.101

(announcing that pipeline families are staging marches to urge the U.S. government to finalize adoption policies that remain in a state of uncertainty).


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.\(^\text{102}\) 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.\(^\text{103}\) In many cases, the adoptive parents have met with their adopted children and spent quality time with them before their adoptions were completed.\(^\text{104}\) 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.\(^\text{105}\) After the hold, the U.S. Department of State

daughter/ (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).


stopped many of those families from visiting, writing, and calling their children.\textsuperscript{106} Moreover, living alone in these orphanages puts pipeline children at an increased risk of damage to their cognitive, social, and physical well-beings.\textsuperscript{107} 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.\textsuperscript{108}

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.\textsuperscript{109} Consequently, in countries where moratoriums have been placed, there is little direction for pipeline families who wait for a governmental solution to their problem.\textsuperscript{110}
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.\textsuperscript{111} Yet, as pipeline children’s countries of origin attempt to comply with Hague Convention standards, pipeline parents are forced to jump through more hoops.\textsuperscript{112} 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.

**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 substandard conditions, without adequate food, medical attention, education, or caring adult interaction.\textsuperscript{113} At the same time,

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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. 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. As a result, hundreds of adoptions between American families and orphaned children in Vietnam were halted. 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, until January 2012.

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118 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
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.119 In the orphanage, which was previously used as a prison, the children ate, slept, and bathed in a single room.120 Paint peeled on the orphanage walls, and ants covered the floors, leaving the children with bites and welts.121 The poor sanitary conditions in the orphanage led most of the children to contract pneumonia and many to be hospitalized.122 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.” 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.

Before these pipeline adoptions were halted, many pipeline parents visited their adopted children in the Bac Lieu orphanage while they waited for their adoptions to go through. One couple visited their daughter nine times in failed attempts to bring her home. 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. 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. In December 2010, the U.S. 

daughte/ (describing the inadequate health conditions at the Bac Lieu orphanage).


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.\textsuperscript{129}

Ironically, the pipeline father described above met all of the Hague Convention’s standards.\textsuperscript{130} 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.\textsuperscript{131} 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.\textsuperscript{132} Despite following all of the old and new


adoption rules in both the U.S. and Vietnam, his pipeline adoption remained in limbo for three years.

Fortunately, in January 2012, eleven of the sixteen Bac Lieu children were united with their families in the U.S. While Vietnam ratified the Hague Convention on November 1, 2011, the treaty was not entered into force until February 1, 2012. 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. 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. 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. Thus, the future of intercountry adoption between the U.S. and Vietnam remains uncertain.

1. 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. 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. As a result, approximately 80 pipeline adoptions were halted, 54 of which remain unresolved.

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. USCIS officials claim after a three-year fight an Indiana family finally brings home their son from Vietnam.html.

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that the heightened requirements ensure that pipeline children were not forcefully removed from their biological families. However, critics argue that the requirements are impossible to meet, given the poor record-keeping and absence of a birth certificate system in Nepal. 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. 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.

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. As a result, at least one pipeline family

http://seattletimes.nwsource.com/html/localnews/2013818275_adopt01m.html (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/despite-hurdles-families-n_812618.html (stating that adoptions were suspended because officials discovered that some of the children being adopted were not orphans). See Nancy Bartley, Parents Caught in Adoption Dispute, THE SEATTLE TIMES, Jan. 1, 2011, available at http://seattletimes.nwsource.com/html/localnews/2013818275_adopt01m.html (explaining that the reason behind proof of abandonment is to avoid situations where biological parents are still looking for their children).

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 Nancy Bartley, Parents Caught in Adoption Dispute, THE SEATTLE TIMES, Jan. 1, 2011, available at http://seattletimes.nwsource.com/html/localnews/2013818275_adopt01m.html.

See Nancy Bartley, Parents Caught in Adoption Dispute, THE SEATTLE TIMES, Jan. 1, 2011, available at http://seattletimes.nwsource.com/html/localnews/2013818275_adopt01m.html (indicating that no other requirement should be needed where no evidence of fraud is found).

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).

is selling their house in order to bring their daughter home from Nepal.\textsuperscript{150} Other pipeline parents have taken out loans, or asked their family and friends for donations.\textsuperscript{151} Some parents risk their careers and incomes while they visit Nepal for various lengths of time.\textsuperscript{152}

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.\textsuperscript{153} 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.\textsuperscript{154} 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.\textsuperscript{155} The children of pipeline parents


who do not live with them continue to live in orphanages, which experts say can cause psychological and physical damage to the children. Orphanages struggle to provide the children with their basic needs, including nutritious diets and medical attention. Furthermore, the orphanages are kept cold, made only worse by a short supply of clothing and blankets for the children. Not only do pipeline families struggle with the knowledge that their adopted children are living in an orphanage, but they must also share their heartache every time their visits end. 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.


157 See Elizabeth Bartholet, International Adoption, in CHILDREN AND YOUTH IN ADOPTION, ORPHANAGES, AND FOSTER CARE: A HISTORICAL HANDBOOK AND GUIDE 66, 124 (Lori Askeland ed., 2005), available at http://www.law.harvard.edu/faculty/bartholet/pdfs/IAChapter5FINAL.pdf (emphasizing that the longer children spend in orphanages, the less chance they have at normal development).


159 See Nancy Bartley, Parents Caught in Adoption Dispute, THE SEATTLE TIMES, Jan. 1, 2011, available at http://seattletimes.nwsource.com/html/localnews/2013818275 adopt01m.html (highlighting the fact that the orphanages are cold and the children often do not have enough clothing and blankets to keep warm);


162 See Nancy Bartley, Parents Caught in Adoption Dispute, THE SEATTLE TIMES, Jan. 1, 2011, available at http://seattletimes.nwsource.com/html/localnews/2013818275 adopt01m.html (quoting a parent who discussed the heartbreak a child would feel if her was not finalized).

163 See Monica Brady-Myerov, Revere Woman Questions Frustrating Nepalese Adoption, Fraud
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. The pipeline adoption problem is one of governmental regulation, and thus, parents can only petition the government for help to bring their children home. While the pleas of the pipeline families for governmental action have not gone completely unheard, the U.S. government has failed to rectify the situation. Despite the efforts of some politicians to take action, their efforts have been mostly futile.

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).


See Elizabeth Bartholet, International Adoption: Thoughts on the Human Rights Issues, 13 BUF. HUM. RTS. L. REV. 151, 167 (2007) (indicating that in order to complete an international adoption, parents must comply with all United States federal, state, and sending country’s laws).

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).


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. 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. 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.

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. 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.

(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).

170 See Petition2Congress, Bring Home the Bac Lieu Orphans, http://www.petition2congress.com/4665/bring-home-bac-lieu-orphans/ (last visited Oct. 31, 2012) (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).

171 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).


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.¹⁷⁵ Most bloggers demand to know where the television 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.¹⁷⁶

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.¹⁷⁷ Unfortunately, due to Hurricane Irene, the march was postponed until December 2011.¹⁷⁸ 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.\(^{179}\) Pipeline parents understand that officials at the U.S. Department of State have the power to expedite the completion of pipeline adoptions,\(^{180}\) and the march was intended to bring the attention of those officials to an issue that has been ongoing for years.\(^ {181}\)

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.\(^ {182}\) For example, in late 2010, after

\(^{179}\) 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 Andrea Poe, Step Forward for Orphans March: American Families to Protest U.S. Policies, THE WASH. TIMES COMMUNITIES (Aug. 15, 2011), http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/aug/15/separated-their-children-us-policies-american-fami/ (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).

\(^{180}\) See Hague Conference, supra note 5 (stipulating that Central Authorities can take necessary actions to oversee quick adoption measures in countries that are parties to the Convention).

\(^{181}\) 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 Andrea Poe, Step Forward for Orphans March: American Families to Protest U.S. Policies, THE WASH. TIMES COMMUNITIES (Aug. 15, 2011), http://communities.washingtontimes.com/neighborhood/red-thread-adoptive-family-forum/2011/aug/15/separated-their-children-us-policies-american-fami/ (expressing that the march’s goal was to gain the Department of State’s attention).

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. Further, officials at the Department of State told pipeline families they should reapply for adoption in Vietnam after Vietnam ratified the Hague Convention, 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 children. The State Department’s recommendations suggest that these orphaned children were somehow interchangeable, and pipeline families rightfully refused to follow such ignorant advice.

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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. That letter explained that pipeline families are “enduring extreme emotional and financial burdens while their children’s cases are investigated further.” 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.” 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.

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. In May 2011, Senator Mark

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189 See Press Release, John Kerry, Urging U.S. State Department to Expedite Nepalese Adoptions Already in Progress (Sept. 20, 2010) (on file with author) (stating that a child with a cleft pallet was awaiting medical treatment available in the U.S.); see also Monica Brady-Myerov, Stuck in Nepal, Local Woman in Adoption Nightmare, 90.9 WBUR (Oct. 8, 2010), http://www.wbur.org/2010/10/08/nepal-adoption (explaining how a mother refuses to abandon her adopted child, although she may lose her job if she stays with her child abroad).
191 See Kelly Ensslin, Fixing the International Adoption Mess, GLOBALPOST (May 20, 2012, 8:31), http://www.globalpost.com/dispatches/globalpost-blogs/commentary/fixing-the-international-adoption-mess (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 Angela Ganote, Families Bring Vietnamese Orphans Home Following Three Year Fight, Fox 59 (Dec. 28, 2011, 6:28 PM), http://www.fox59.com/news/wxin-families-bring-
Rubio placed a hold on the nomination of David Shear for ambassador to Vietnam in an effort to get pipeline families information about the status of assistance to their cause. Senator Rubio’s action followed a hold placed by Senator Richard Lugar for similar concerns. 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. 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.” In addition, one pipeline couple attributed their Vietnamese orphans home following a three-year fight.


unification with their adopted child to Senator Lugar’s hold which prompted the Department of State to get involved.  

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. There is no doubt that the Hague Convention is a significant step toward providing parentless children homes in an ethical manner. 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.


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, 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. Moreover, the U.S. has the resources and governmental stability to help sending countries develop effective laws and adoption systems. By relieving some of the 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 when the U.S. stops visas it favors regulation over the “heartache and frustration” of pipeline families).

202 See Colin Joseph Troy, Comment, Members Only: The Need for Reform in U.S. Intercountry Adoption Policy, 35 SEATTLE U. L. REV. 1525, 1546 (2012) (stating that the United States would fulfill their commitment of making international adoption safer by helping non-member sending countries to become members of the Convention); 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) (indicating that the United States has the adequate tools and experience to facilitate a poorer country’s implementation of effective adoption systems).
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. 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. 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 should be put in place to effectuate lawful adoption procedures.

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205 See Laura Beth Daly, Note, To Regulate or Not to Regulate: The Need for
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, the U.S., as a member of the Hague Convention, would ensure that

Compliance with International Norms by Guatemala and Cooperation by the United States in Order to Maintain Intercountry Adoptions, 45 FAM. CT. REV. 620, 628 (2007) (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 Jennifer A. Ratcliff, Comment, International Adoption: Improving on the 1993 Hague Convention, 25 MD. J. INT’L L. 336, 353–54 (2010) (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).

the bilateral agreements contain ethical adoption practices. Thus, bilateral agreements have the potential to expedite pipeline adoptions in sending countries that are struggling with implementing the Hague Convention in its entirety.

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. The bilateral agreement expired on September 1, 2008 and there is no expectation to renew it. 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. 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

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207 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).


209 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 (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 (stating that at the time the agreement expired, the adoption program was said to be “suspended indefinitely”).

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. In addition, many pipeline parents have paperwork demonstrating that the birth mother of their adopted child relinquished her parental rights to that child. 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 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 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. If during that specified period of time, there was a


[213] See U.S. CITIZENSHIP AND IMMIGR. SERVS, U.S. DEP’T OF HOMELAND SEC., HUMANITARIAN PAROLE, http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543ff6d1a/?vgnextoid=acc3e4d777d73210VgnVCM100000082ca60aRCRD&vngextchannel=acc3e4d77d73210VgnVCM100000082ca60aRCRD (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).

[214] See, e.g., Kelly M. Wittner, Comment, Curbing Child-Trafficking in Intercountry Adoptions: Will International Treaties and Adoption Moratoriums...
finding of unethical adoption practices with respect to a child, that child would be sent back to the sending country. However, because so many pipeline families have already met requirements to prove their adoptions are legitimate, 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. In that instance, twelve families were united with their children for two years while their adoption paperwork was finalized. 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. 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.