

Hello Mommy and Daddy, How in the World Did They Let You Become My Parents?

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ABSTRACT

Imagine what the early years of your childhood would have been like as an orphan. Now, think about the day you realized that you were different from the great majority of children, because your parents, your own blood, the people who are supposed to stick by you through thick and thin, for some unclear reason, rejected or abandoned you. In many scenarios, orphaned children, adopted as infants or toddlers, are abused both physically and sexually without drawing any outside attention until they reach school age. There is no international body of law that requires countries to monitor a child's well-being, post-adoption. To better understand the current flaws that exist in the international adoption process, the remainder of this article explores the following: Section II explains the current process parents typically encounter when adopting internationally. Section III describes the existing body of law that governs international adoption.

FULL TEXT

I. Introduction

Imagine what the early years of your childhood would have been like as an orphan. Now, think about the day you realized that you were different from the great majority of children, because your parents, your own blood, the people who are supposed to stick by you through thick and thin, for some unclear reason, rejected or abandoned you. Consider how you would feel on days like your birthday, when your parents and family are nowhere to be found to put on a party hat and sing you happy birthday because they have walked away. Would you be sad? Maybe even angry? Would you ask yourself what you in your young age could do to make them come back and simply love you? Or would you trust anyone to love you?

On top of mulling over all of the questions and emotions that an orphaned child undoubtedly experiences from perceived abandonment and neglect, imagine if you were a child, just a few years past infancy, who one day wakes up in a home in a foreign country where nothing is familiar, with strangers who suddenly call themselves your adoptive parents. These "parents" do not speak your language,¹ eat familiar food, understand your cultural traditions,² or even call you by the name you have answered to for your entire life.³ And what if these strangers, these "parents," had no intention of caring for you in the way that any parent should - they do not ensure that you receive medical care,⁴ education, proper clothing and shelter, or adequate nourishment? Or even worse, what if your new parents' only purpose in adopting you was to use you for cheap labor or sexual pleasure?⁵ How could you scream for help? Who could you trust for rescue and solace? You have no true family, no friends, and no community in this foreign country.⁶ Everyone in your world is a stranger. You are alone, and no one knows, or cares to know, if you are safe, loved, or alive.

Unfortunately, that nightmare is one that is lived daily by too many children in international adoptions. All too often, no one knows when these horror stories occur, unless the adoptive parents' acts become so egregious that they are caught in the most unthinkable criminal acts that steal the innocence of the child's youth, leaving the child a helpless victim. In many scenarios, orphaned children, adopted as infants or toddlers, are abused both physically and sexually without drawing any outside attention until they reach school age. In the more harmful scenarios,

exploitive parents may continue to hide their abuse by homeschooling and further isolating the child.⁷ In the most atrocious cases, these children end up with nothing more than a life marked with a grave, because they were murdered by the cruel and abusive hands of their adoptive parents.⁸

Recent media headlines have captured this sad reality. In 2010, an American mother from Tennessee decided after six months of parenthood, that she no longer wanted to keep her adopted seven-year-old son and put him on a plane by himself to return to Russia.⁹ As the story unfolded, people were startled to learn that the boy had never been enrolled in any form of schooling. Although a social worker had visited the adoptive home once after the boy had arrived in the states, she reported that the home was satisfactory and made no inquiry as to why the child was not enrolled in school.¹⁰ The unacceptable oversights in this adoption gone wrong left an unsettling feeling in both the American and Russian public as many began to question how people, like this mother, are allowed to adopt an orphaned child, not provide proper care or education, then re-abandon the child.¹¹

In 2003, yet another horrific story surfaced when American authorities were alerted that a pedophile was using the Internet to post pornographic images of a little girl who was posed in pictures at the Disney World Hotel in Florida.¹² To the surprise of many, the pedophile turned out to be the girl's own adoptive father. Unfortunately, the abuse did not stop with the click of the camera - this father had sexually abused the little girl from the time he adopted her from Russia at age six until she was thirteen years old.

After authorities tracked down and arrested the father, the young girl spoke out about her torture and explained that her "father" always had a hidden agenda in adopting her, as he had molested her from the very first night she arrived in the United States.¹³ He made her share the only bed in the apartment with him every night that she lived under his care, stunted her growth by feeding her only limited portions of food, mentally abused her by criticizing her thin frame for being too fat,¹⁴ and found pleasure in circulating more than 200 explicit photos of her on the Internet to other pedophiles.¹⁵ When the little girl attempted to express how unhappy she was, the father responded with the twisted justification that his abuse was normal behavior because they were "married" and the young girl was now his "bride."¹⁶

Although Russia required three "in-home" visits before legally finalizing the girl's adoption in this case, no one effectively enforced the requirement once the girl was in the United States. For example, the father passed the first visit requirement by falsifying a report that appeared to be approved by the "Social Services of Western Pennsylvania." Had anyone verified this pedophile's report, they would have discovered that both the telephone number and Social Service Agency listed on the report did not exist. The father passed the second "visit" requirement by substituting an in-person visit to his home with a simple phone interview conducted by a social worker from a New Jersey agency. The third visit never occurred, but the girl's adoption was still finalized.¹⁷ As a result, this little girl's childhood was stolen and replaced with nightly molestation for at least seven years, by a man who was able to disguise his lewd acts behind the title of "Dad."

Heart-breaking stories like these exist because currently there is no international body of law that requires countries to follow any sort of standardized screening process when selecting prospective adoptive parents. Additionally, there is no international body of law that requires countries to monitor a child's well-being, post-adoption. Although an international treaty has been developed to better regulate international adoption,¹⁸ it merely suggests that it is a good idea for countries to develop standard screening evaluations and post-adoption monitoring procedures. The treaty lacks concrete instructions for countries to follow in implementing these safeguards. Consequently, children in international adoptions continue to fall through the cracks and into the hands of ill-intentioned, unfit parents.

More must be done to protect these children and ensure they are being adopted into healthy and stable environments - with parents who truly care for their best interests and special needs.¹⁹ To accomplish this, it is imperative that existing international law be amended (or created, if necessary) to establish clear-cut, uniform procedures that countries must adhere to if they choose to participate in international adoptions. Specifically, this law must create bright-line rules that provide a minimum set of standards assuring fit parents and child protection. Additionally, revised and broadly applicable law must set forth enforcement measures so that countries and their

respective adoption agencies effectively comply with screening and monitoring guidelines throughout the adoption process. In all of this, the law must be shaped in a way that induces all nations to participate. For example, if a country chooses not to become a signatory of this international treaty, other signatory countries will categorically reject orphaned children and/or adopting parents from those countries. Further, public opinion will hopefully influence nations to sign and comply, or risk the judgment that the welfare of adopted children is not of utmost concern.

To better understand the current flaws that exist in the international adoption process, the remainder of this article explores the following: Section II explains the current process parents typically encounter when adopting internationally. Section III describes the existing body of law that governs international adoption. Section IV begins with the screening criteria used to select parents for adoption, along with the post-placement reporting requirements of countries that have agreed to abide by the Hague Adoption Convention. The section then compares the adoption practices of these countries to those of countries that have not become signatories. Section V reacts to this comparison by asking what effect international law has had in creating safer adoptions and addresses many of the unanswered questions that still remain when screening prospective parents. Section V then proposes four practical changes that should be made to international law to ensure countries use uniform standards in selecting parents for adoption, while also effectively monitoring a child's wellbeing once placed in an adoptive home. These changes include: (1) requiring the use of standard evaluation forms by accredited adoption agencies when interviewing, screening, and selecting prospective parents; (2) implementing standardized training and certification of social workers who conduct the home-study evaluation of prospective parents, along with an objective rating system to be used when conducting the home study; (3) mandating post-adoption reporting for five years after placement of the child; and (4) creating and enforcing measures to ensure compliance. Ideally, all of these changes would be incorporated into a revitalized version of the Hague Adoption Convention as it is the most applicable international treaty and promises to be the most likely vehicle for international advancement.

II. Parents' Experience in International Adoption

Over the last few decades, international adoption has become increasingly attractive for two reasons. First, such adoptions often take less time than domestic adoptions,²⁰ which can take as long as eighteen months or more. In some countries, there is often little to no wait time, which allows some adoptions to be finalized in as little as six months.²¹ Second, the cost of an international adoption can be cheaper (ranging from \$6,000 to \$25,000) than the cost of a domestic adoption (ranging from \$4,000 to \$30,000).²²

Once the cost and time of an international adoption has been weighed, most prospective parents choose to work through a private adoption agency in applying for and executing an adoption. Private adoption agencies are the international norm, rather than public agencies, which are more common in the domestic adoption of foster children.²³ On rare occasions, parents may choose to handle the adoption independently by arranging the adoption directly between the adoptive parents and the birth mother, without using an agency. Independent arrangements, however, are generally difficult. Many recipient nations will not validate an adoption unless it has been conducted through an "accredited agency" because of the recognition that independent adoptions are more prone to fraud and to black market baby theft.²⁴

Assuming that prospective parents choose to arrange the adoption through a private adoption agency, they must provide the agency with information about themselves in order to apply. The country from which the child is being adopted determines what information a parent must submit to be considered for the adoption, as the respective country's law controls in the pre-placement phase of the adoption.²⁵ Each country varies as to the degree of information that a couple or individual hoping to adopt is required to provide. Most adoption agencies require proof of the following from prospective parents:

- * Certified copy of a birth certificate;
- * Certified copy of a marriage certificate;
- * Certified copy of the death certificate of any deceased former spouse;
- * Medical statements from a physician about the parent's health - sometimes a mental health statement is also

required;

- * Medical statements about infertility;
- * Certified financial statements about bank accounts, assets, and a copy of the parent's most recent income-tax returns;
- * Verification of employment, stating salary, position, length of employment, and stability of position;
- * Letters of reference from friends or colleagues.²⁶

However, there is no international requirement that agencies consider the following list of information in selecting parents for intercountry adoption:

- * A statement from the local or state police records bureau stating that no criminal records exist for the parent or, if they do, explaining those that do;
- * A child abuse clearance letter from the respective state department of social services;
- * A traffic record summary;
- * A fingerprint check from local, state, or federal authorities;
- * Certified copies of any other (biological/adopted) children's birth certificates;
- * Medical statements for other members of the family;
- * Decree of name change, if any;
- * Lease or deed to residence;
- * Letters certifying that the parent has attended a child care class, infant CPR class, or adoptive-parenting class;
- * Verification of health insurance/life insurance coverage;
- * Autobiographies, including discussion of life experiences, marriage, and parenting;
- * Photographs of the adoptive home and neighborhood;
- * Information for the power of attorney for the prospective parents.²⁷

Beyond these elements, some adoption agencies may require a guarantee that at least one parent take time away from work after the child is placed in the home so the parent bonds with and helps the child adjust to his or her new life.²⁸ Some countries and agencies will also require that "parents not have biological children, be above a minimum age, be below a maximum age, or have a limited age difference between the parents."²⁹

In almost every country, a home study of the prospective adoptive parents) is required to determine whether the particular home is suitable for raising a child.³⁰ Although the home study must be performed by a social worker, the level of investigation that must occur within these studies is left to the judgment of the respective country.³¹ Some countries require that the social worker share some sort of affiliation with the agency arranging the adoption. Others allow prospective parents to hire an independent social worker in their own country to perform the home-study, write a report of approval, then submit the finalized home-study report to the adoption agencies facilitating the adoption in both countries. Often in this scenario, a large amount of deference is given to the social worker's determination of the fee, the format of the study, and the length of time spent evaluating the home.³² When a parent successfully passes the home-study evaluation and provides acceptable documentation, a foreign agency may, but is not necessarily required to, provide the following services in return to facilitate the adoption:

- * Identify a child for adoption and arrange an adoption;³³
- * Secure the necessary consent to terminate the parental rights of the biological parents;³⁴
- * Perform a background study and report on a child;³⁵
- * Make nonjudicial determinations of a child's best interests³⁶ and of the appropriateness of an adoptive placement;³⁷
- * Monitor a case after a child has been placed with prospective adoptive parents until final adoption;³⁸
- * Assume custody of a child and provide childcare or any other social service, in the case of a disruption.³⁹

Once an adoption match has been made, and a child is placed with parents in a new foreign home, the legal finalization begins. Some countries require that post-placement reports be completed and approved by a designated body in their country before finalization. A few countries reverse the process and allow the adoption to be finalized quickly, while reserving the right to request post-adoption reports after the fact.⁴⁰ In either case, there

is no standard as to what a post-placement report should require as proof evidencing the well-being of the child. Furthermore, there is no standardized certification process for countries to use in determining the legitimacy of the post-adoption report; thus, there is room for parents to successfully falsify information about the child on a post-placement report without being caught. Many countries do not even require the post-report step before adoption finalization, omitting what may be an important assurance of adoption success.⁴¹

The legal ramifications in finalizing an adoption raise additional issues. It is not uncommon for parents to undergo two adoption proceedings - both in the child's country of origin and in the receiving country, where the adopted child will reside.⁴² Receiving two finalizations is often done as an intended measure of protection so that the adopted child receives full recognition as an adoptee under the laws of both countries. This dual recognition is especially important where courts do not afford "the same 'full faith and credit'" to foreign adoption decrees as they do to their own orders.⁴³ Even though courts are supposed to exercise principles of comity, "recognition of a foreign decree is not automatic, but depends upon the parties' compliance with . . . foreign regulations."⁴⁴

III. Law Governing International Adoption

The United Nations lies at the heart of the international body of law effecting children's rights.⁴⁵ In 1959, the United Nations General Assembly established the foundation of international children's rights law by creating the Declaration of the Rights of Children, which set a standard with one primary idea - the best interests of the child. The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.⁴⁶

Building upon this, more recent international declarations and conventions have been established to further protect children's rights. The United Nation's Declaration on Adoption clarified its stance regarding international adoption by championing keeping orphaned children in their country of origin before supporting international adoption. The United Nations only recognizes intercountry adoption as the next-best alternative, when a child cannot be suitably cared for in his country of origin.⁴⁷

In 1989, the United Nations expanded these declarations by adopting the Convention on the Rights of the Child. With the exception of the United States and Somalia, all other member countries of the United Nations have signed and ratified the agreement.⁴⁸ This Convention adds value to international adoption law by providing direction to United Nation's Member States regarding the role they should play in upholding children's rights in adoptions: States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.⁴⁹

The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (Hague

Convention), is the most recent law to shape and regulate international adoption. The Hague Adoption Convention has indicated that its goal is to "create substantive safeguards and procedures"⁵⁰ in international adoptions by offering more definitive guidelines to countries that wish to protect the children's rights enumerated in the U.N. Convention on the Rights of the Child. The Hague Adoption Convention does not require a country to become a signatory, nor does it set a uniform law for international adoption. Instead, it sets minimum standards for countries to use when facilitating adoptions across borders.

The Hague Adoption Convention's minimum standards create the first set of conditions for countries to meet when a child is permanently adopted from one signatory country and moved to another.⁵¹ The first standard requires that a child who is adopted internationally be legitimately orphaned.⁵² Second, signatories are directed to use accredited adoption agencies to facilitate international adoptions.⁵³ Third, countries are instructed to ease the naturalization process for the child once he or she has moved to the adoptive home in the receiving country.⁵⁴ Fourth, countries are obligated to place a "central authority" in their respective country to enforce Hague Convention standards in all international adoptions performed through their state.⁵⁵

To provide further direction to countries that have become signatories to the Hague Adoption Convention, the Permanent Bureau⁵⁶ (which serves as the administrative office for the Hague Convention), has published two Guides to Good Practice in an effort to recommend even more structured guidelines regarding how countries should facilitate international adoptions in accordance with the treaty's standards.⁵⁷ The practice guides address "important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention."⁵⁸ To make the guides an accessible resource, the Permanent Bureau has drafted the guidelines in plain terms and printed them in several different languages, so they can be used as an additional sounding board for any signatory country to use when enacting national adoption legislation based upon the Hague Adoption Convention.

Signatory countries of the Hague Adoption Convention also meet and hold Special Commissions every four years to evaluate and discuss what is and is not working in protecting children as international adoption trends evolve and change.⁵⁹ At each meeting, a "Conclusions and Recommendations" report is generated, suggesting changes that should be made to better regulate international adoption. After this report is collectively agreed upon, each signatory country is responsible for publishing and communicating the changes in the report to any individual or agency within their country that plays a role in the adoption of orphaned children.⁶⁰ Additionally, the Conclusions and Recommendations are typically integrated into the most revised version of the Guide to Good Practice, and thus, in a round-about way, serve as off-the-script amendments to the treaty.⁶¹

The most recent Hague Convention Special Commission was held in the summer of 2010.⁶² The Conclusions and Recommendations adopted at this meeting addressed several "essential features of a well regulated system" for intercountry adoptions.⁶³ Of these, three of the listed features proved particularly relevant to the area of screening prospective adoption applicants, selecting parents, and monitoring parents post-adoption.

First, the report clearly stated that independent adoptions (arranged directly between adoptive parents and biological parents without assistance from an accredited adoption agency) are prohibited under the Hague Convention. The Special Commission advised signatory countries to train their judges on the problems e.g., child abduction, fraud, and sex trafficking) that often are the driving forces behind independent adoptions, so that this prohibition is strictly enforced when adoptive parents attempt to finalize an independent adoption through the legal system. The Special Commission also indicated that adoptive parents must work through an accredited adoption agency in both their own country and in the child's country of origin - only using one agency in the adoptive parents' home country to facilitate the adoption is not acceptable under the Convention.⁶⁴

Second, the Special Commission suggested agencies screen and prepare prospective parents. They first advised that countries should work together to develop bilateral criteria for selecting prospective parents when they conduct adoptions between their borders. The Commission also recommended that countries educate parents on the culture and language of the adopted child. It also suggested that the Permanent Bureau collect information about selecting and counseling parents, while also preparing a discussion on "dealing with failed adoptions and

the period of validity of the 'home study' report," to potentially be included in a new volume of the Guide to Good Practice.⁶⁵

Third, the Special Commission focused on the importance of holding adoption agencies to strict accreditation standards under the Hague Convention, given that agencies function as the primary gatekeeper in screening and selecting parents for international adoption. Specifically, the Commission endorsed the accreditation provisions found in volume two of the Guide to Good Practice: Accreditation and Adoption Accredited Bodies.⁶⁶ This volume begins by recognizing that the Convention has largely left accreditation standards and enforcement to the discretion of the signatory countries. As a result, this has created inconsistency in how countries determine whether or not an adoption agency is qualified to become accredited.⁶⁷ In light of this, the volume attempts to provide more instruction to countries regarding how to accredit adoption agencies, while also noting that evaluation criteria should be enacted in each country by statute. For example, the volume directs countries to develop clear criteria to determine whether an agency's staff and administrative practices meet accreditation standards.⁶⁸ This guide also suggests that before authorizing accreditation, countries should consider whether the agency's staff has adequate training and expertise to make qualitative selections of prospective adoptive parents, provides parents with preparation materials before the adoption, and conducts follow-up reporting postadoption.⁶⁹

To make accreditation standards more clear-cut, the second volume of the Guide to Good Practice provides a model list of criteria, which it notes would be beneficial for all countries to utilize as a filter in determining whether an agency is qualified to facilitate adoptions. In order to screen for financial corruption, the list provides a general structure of how an agency's finances should be allocated e.g., "The agency financial plan and disbursement shall show that 60% of its funds are disbursed for direct social work services and only 40% for administrative expenses." This 40% should also include salary incentives for employees and office costs.⁷⁰ Additionally, the model criteria explains that an adoption agency should typically be composed of a board of directors, executive director, accredited social workers, and qualified staff.⁷¹ In terms of evaluating an agency's techniques when interviewing and selecting adoptive parents, the list only directs countries to assess how the agency conducts this process, without giving any further instruction as to what qualifies as satisfactory. However, the list does indicate that accredited agencies should collect the following information from applicants during the screening process.

- * Duly accomplished applications form;
- * Police, FBI clearance, or its equivalent;
- * Health certificate of household;
- * Pictures of applicants and family;
- * Certified true copy of marriage certificate, if married;
- * Copy of latest income tax return or affidavit of support.⁷²

Finally, the model list of accreditation criteria advises countries to consider whether the adoption agency offers post-placement services (described as medical care, counseling, summer camp, and other followup activities).⁷³ However, the guide indicates that post-adoption monitoring does not have to be facilitated through accredited agencies; but instead, may be conducted by a central authority of the country. Ironically, after all of this discussion, the guide notes that the Hague Convention does not actually require any signatory state to appoint or use accredited agencies; rather, the guide explains that countries have discretion to enact legislation mandating the accreditation of adoption agencies in their State.⁷⁴

IV. Countries That Make It Easy for Prospective Parents to Adopt

At this time, eighty-five countries have signed the Hague Convention as contractual members and have agreed to follow the Convention's minimum standards regulating international adoption.⁷⁵ Surprisingly, however, four out of the five countries serving as the most common source of internationally adopted children have still not signed and ratified the Convention.⁷⁶ These five countries include: China, Ethiopia, Russia, Ukraine, and South Korea.⁷⁷ Of these, China is the only country that has committed to the Convention. The source nations' failure to participate under the Hague Convention has consequences, as shown on the following chart, comparing screening and post-

adoption monitoring practices of countries that are signatories vis-a-vis those that are not. Superficially, this chart does not delineate complete superiority in screening and monitoring practices when considering prospective parents for international adoption. However, the two countries that are members of the Hague Adoption Convention do appear to have more specific requirements overall - especially when it comes to the parent's age, marital history, and the existing number of children allowed in a potential adoptive home. On average, countries under the Hague Adoption Convention also maintain longer wait times before finalizing an adoption. Additionally, these countries seemingly take more care to consider the financial situation of the adoptive family, along with characteristics, such as their religious beliefs.

In contrast, the countries that have not become members of the Hague Adoption Convention can cite other screening measures wherein they require adoptive parents to travel to meet the child in their homeland at least twice before taking the child home permanently. Certainly this requirement may assist in determining that the adoptive parents and the child are a comfortable fit. Arguably, such in-person contact is advisable. Moreover, this side of the chart seems to give special consideration to the health status of the prospective parents (particularly for Russia), and their ability to take care of the child in light of parental health.

One of the most interesting distinctions appears in the post-placement reporting requirements category. Hague Adoption Convention countries require post-placement monitoring, but at most, they only require reports to be sent two to three times during the first year of the child's placement in the adoptive home. On the left side of the chart, Non-Hague Convention countries have far more involved post-adoption reporting standards, requiring reports to be turned in by adoptive parents for at least three years after placement. In fact, Ethiopia asks that adoptive parents send an annual report to the government describing the child's health and educational progress until the child reaches eighteen years of age.

Although this difference in reporting time is striking, and the NonHague nations may be commended for giving a heightened importance to this aspect of adoption, one critical question remains: How strictly do those countries enforce reporting standards? Ethiopia, for example, does not make it a legal requirement that adoptive parents report on the child after the adoption. China, however, requires that post-placement reports are notarized and conducted by a social worker (who preferably conducted the initial home study for the adoptive parents). On the one hand, Pro-Hague countries have stricter requirements as to post-placement reporting - leaving less room for parents to mislead about the child's true well-being in the first year of his or her new home. Yet, after the first six months to a year after the adoption, all monitoring and reporting stops. On the other hand, Non-Hague Member countries seem to place great significance in keeping tabs on the child long term. However, such facially advantageous terms suffer from questionable enforcement, as discussed above.

V. Necessary Changes to Adoption Convention to Protect Children

The question arises as to which countries conduct international adoption most effectively - with an eye toward making sure that children are adopted by fit and loving parents: A country who is a signatory of the Hague Convention or one conducting international adoptions on its own terms?

International adoptions have decreased by fifteen percent during 2011. Tigg suggests that no country, be it a Hague Convention signatory or otherwise, has developed a winning formula for conducting the safest adoptions. This decline correlates with the fact that several nations, which typically were the recipients of adoptive children, are now leery of participating in the process because of the corruption and greed that has been revealed in some adoption systems in recent years.¹⁰⁹

Has the Hague Adoption Convention facilitated changes since its introduction in 1993? To be fair, the treaty has created standards requiring countries to make sure that a child is legitimately orphaned before adoption - in an effort to prevent children from being stolen from their biological parents and sold on the black market. Additionally, the treaty requires countries to establish a "central authority" in their country to guarantee that intercountry adoptions are facilitated in the best interest of the child. Beyond this, the Hague Convention directs countries to stamp adoption agencies with a seal of accreditation before allowing the agency to have the power to say, "the Smith Parents will be fit and acceptable for little orphan Johnny." Yet, if these standards really made international

adoptions safer, why have they not made international adoption a more popular option? And to that point, why have the biggest players in international adoption abstained from joining the Hague Adoption Convention? The answer to these questions can be summed up as follows: despite the good intentions, the treaty's mission has very little power, because even today, the Adoption Convention fails to give countries practical tools to use in facilitating adoptions, particularly in the area of providing direction as to how to adequately select prospective parents and look after a child's well-being post-adoption. Although the Convention provides countries with a mountain of suggestions through the two Guides to Good Practice, it does not give any ascertainable step-by-step instructions to match a child with parents who acceptably meet their respective needs.

For example, even if an adoption agency is accredited under the directive standards of the Hague Adoption Convention, what questions do they ask a parent looking to adopt from their country, given that there is no established interview criteria? What should they be looking for when they evaluate a home in the home-study process? Also, what if one social worker's standard for conducting a home-study is more relaxed than that of another? Further, how is a country to determine if an applicant's finances and health are sufficiently adequate to take care of a child's needs? Should the applicant's particular occupation be a factor of consideration? Should the parent's religion be considered? What if the parent has any prior criminal history? If the criminal conduct was minor, and well in the past, can it be overlooked? How many references should an applicant be required to provide? Should there be a requirement that adoptive parents undergo a psychological evaluation to ensure that they are mentally prepared for the special challenges that often come with adopting a foreign child?

To add to this list of questions, what exactly is an adoption agency to do to monitor the child's well-being after they have been placed in the adoptive home? The 2010 Special Commission endorsed the idea that they should look after the child's medical care and offer support services to the child and family, but what kind of "services" are these supposed to be? And for how long? Not to mention, when an adoption agency is working across borders, how is an agency to know whether or not the information it receives post-placement is truly accurate and not fabricated, as in the case of the little Russian girl whose adoptive father turned out to be a pedophile?

By all means, these questions are not exhaustive. Additional ambiguity remains to be resolved as to how countries should conduct the most important phases of adoption. Nevertheless, these are questions of the utmost importance and deserve clear answers, instead of mere suggestions. Although these suggestions have been provided in an effort to give each country some discretion in shaping its own regulations when facilitating intercountry adoption, that discretion should only extend above an international floor that provides assurance of child safety. Thus, a uniform standard setting forth how adoptions should be facilitated has never been needed more than it is now.

To address this need, I propose four changes to ensure that those who facilitate international adoptions ask the right questions and effectively select parents who can provide deserved love and care. To further this goal, I offer sample statutory language that could be used to implement these changes, ideally as amendments to the Hague Adoption Convention. Rather than suggestions or recommendations, the amendments would provide specificity and enforcement measures. The hope would be that Hague countries set a standard that all other nonsignatory countries will follow.

The use of standard evaluation forms is the first change. Specifically, these evaluation forms should serve as guides, or tools, so adoption agencies ask the right questions, require adequate background information, and effectively research an applicant before deeming them fit to take on the responsibility of raising a foreign child. Luckily, there are several existing resources that could easily be used as a model. For years, courts have commonly used custody evaluation assessment forms in determining what makes an individual best suited to care for a child.¹¹⁰ Statutory language implementing the use of these standard evaluation forms could be inserted (see bold language below) into an amended version of Article 5 within the treaty, to read:

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State -

a) have determined that the prospective adoptive parents are eligible and suited to adopt after assessing the

qualifications of the adoptive parents with standard evaluation forms approved by the Convention;
b) have ensured that the prospective adoptive parents have been counseled as may be necessary; and
c) have determined that the child is or will be authorized to enter and reside permanently in that State.
Additionally, to provide accredited adoption agencies with easy access to such evaluation forms, the Hague Adoption Convention could post the approved forms on the Convention's website.

The second change involves social workers and the home study, because these areas are often where cracks in the system lie. For example, in the case of the adopted Russian girl who was sexually abused and exploited by her father, which was discussed earlier, a home study was performed by a social worker who the father hired independently. The caseworker's report noted that the father did not have any bedroom furniture for the little girl. Yet, instead of stopping and recognizing the huge red flag this raised, the social worker collected her fee and approved the father for adoption after a mere promise from the father that he would obtain adequate furniture for the girl before her arrival.¹¹¹ Although social workers who perform home studies in international adoptions must usually be certified by some type of licensing body within their country,¹¹² or be supervised by an accredited agency, major oversights, like those detailed above, occur because the standards for certification are often lax and not strictly enforced.¹¹³

Undoubtedly, the lack of international uniformity in performing and certifying home studies of prospective adoptive parents allows a back door entrance for ill-willed or incompetent prospective parents to take advantage of the system. Moreover, because there is a geographical barrier that separates a foreign adoption agency from an adoptive home, double checking the credentials of a social worker performing a home study and the true condition of a home can easily be swept under the rug of paperwork, so long as the social worker marks the study with a stamp of approval.¹¹⁴ Given this, if a social worker's confirmation can be bought at a price to pass this part of the interview process, it will be by perpetrators with ulterior motives.

The change needed to protect children from oversight and greed in this phase of the adoption is two-fold. First, the Convention's statutory language should be amended to make it clear that independent social workers should not be allowed to perform home studies if they are not directly employed as staff by the adoption agency arranging the intercountry adoption. Typically, national statutes allow for independent social workers or "exempt providers"¹¹⁵ to perform home studies, so long as their home studies are then "approved" by the adoption agency facilitating the adoption. However, without being more of a stake-player in the process (e.g., having been involved in researching the child's background and needs), these independent social workers have less reason to conduct thorough home studies. As a result, this creates a possible loophole in the system that must be statutorily eliminated altogether. The other change recommended in the area of social workers and the adoption home study involves how social workers are trained to actually conduct the study. Given that countries understandably have varied educational requirements for social workers, there is a possibility that social workers may not be trained equally in how to deal with the special issues that accompany international adoption.¹¹⁶ In recognition of this, it would behoove the Adoption Convention to include a training and certification program that all social workers must undergo (no matter the country) in order to be qualified to conduct a home study in an international adoption. If such a training program were implemented, all social workers would be able to operate with the same standards in mind, so errors would be reduced. With this, social workers should be trained to use a rating system (e.g., rating different aspects of a home and family on a scale of 1-10) when conducting a home study. Certainly numbers do not guarantee accuracy, but they are relatively more consistent than a subjective "gut feeling."

To accomplish these two changes and, in turn, create more thorough home study practices across borders, Article 22 of the Hague Convention should be amended as follows (see bolded language):

* * *

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who -
a) meet the requirements of integrity, professional competence, experience and accountability of that State; and

b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

i) If such a person conducts a home study of the adoptive parents, they must also receive training and certification approved by the Convention.

ii) If such a person becomes certified to conduct the home study, they must also use standard evaluation forms in their assessment as approved by the Convention.

Third, post-placement reporting must become mandatory in every international adoption. The Hague Adoption Convention merely reaffirms that countries should practice post-adoption reporting. Even though this same conclusion was reached in 2005, nothing has been done to date to put the practice into action. Thus, the Hague Adoption Convention needs to change the "should" practice post-adoption reporting language to a "must" so that countries realize the value and importance found in double checking that children are placed in safe homes once outside their borders.

What type of information should be included in post-placement reports? To cover the basics: medical reports detailing the child's health; proof that the child is enrolled in school, and, if necessary, is receiving special attention to work through any language barrier he or she may face; and pictures of the child and family. A standardized form, answering questions related to how the child is developing both socially and with the family, would also be especially beneficial. Also, these reports should be confirmed or notarized by the adoption agency that facilitated the adoption in the parent's home country, so the child's origin country has some way of knowing that the information is accurate. Additionally, in light of the fact that adoptions have been known to disrupt well after the first year of the child's placement, it would be wise to maintain that parents report annually on their child's development for at least five years after the adoption - particularly, when the child is adopted at an older age, as these adoptions have higher rates of disruption.¹¹⁷

A post-adoption reporting mandate could be added as an amendment to Article 9 of the Hague Convention as follows:

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to -

a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

(ProQuest: ... denotes "strike-through" in the original text omitted.)

c) require the development of adoption counseling and post-adoption services in their States;

1) Post Adoption Reporting should be mandated by statute in every State, and require adoptive parents to fulfill the requirements of the statute for five years after adoption on an annual basis.

2) Post Adoption Reports, at a minimum, should require adoptive parent's to provide information as to the child's health, education, social development, and familial development.

3) Post Adoption Reports should be certified via notarization by the accredited entity within the adoptive parent's State which facilitated the adoption, and then sent to the origin State of the adopted child to fulfill compliance.

d) provide each other with general evaluation reports about experience with intercountry adoption;

e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Fourth, and finally, the Hague Adoption Convention should establish enforcement measures framed as incentives to make it worthwhile for all nations to comply with the standards set forth above. Such enforcement could be accomplished in a number of ways. The easiest way would be to require signatory countries of the Hague Adoption Convention to abstain from working with any other country that chooses to conduct adoptions with standards that are not in compliance with Hague standards. In the case that a signatory country actually failed to comply with Hague standards, after receiving warning and subsequent time to remedy the mistake, the country could also be placed on some type of probation or suspension system established under Hague. Another option would be to

have each nation tax international adoptions, then funnel this tax money into an international fund overseen by the Hague Adoption Convention, with the idea being that money from such a fund could then be used to help a country comply with the Convention standards. Under such a tax system, the Hague Convention would theoretically have more freedom to spot problems in how adoptions are being facilitated, notify the country guilty of noncompliance, and not only warn the country of their need for correction, but also offer them monetary support in making whatever corrections would be necessary to ensure their country effectively matches children with acceptable adoptive parents. So, for example, if the reason for a country's noncompliance with post-reporting requirements was caused by a lack of qualified staff directing their Central Authority Program, the fund could provide funding to that country to ensure such staffing issues were remedied. Because such enforcement could be executed numerous ways, the statutory language could be written in a variety of ways to accomplish the end goal of safer adoptions. At the Adoption Convention's next Special Commission meeting, clearer enforcement measures would be an excellent topic for discussion and conclusion.

VI. Conclusion

In sum, standard screening evaluation forms, uniform training for social workers who perform home studies, post-adoption reporting requirements, and enforcement measures should be developed and mandated by the Hague Adoption Convention, so each country is asking the same questions and playing by the same rules when they match an orphaned child to an adoptive parent in an intercountry adoption. If a signatory country chooses to apply even higher criteria standards for one to adopt from their country, by all means, let the country implement these procedures. However, without a tool kit filled with uniform instructions that set a standard for adoption, intercountry adoptions will likely continue to fall to the corruption, fraud, and failure that has already been described - and sadly, orphaned children will continue to be the ones who pay the price for this lack of clear collaboration. This being understood, there has never been a better time for the Hague Adoption Convention to revitalize its mission by taking action and implementing these four proposed changes to ensure that orphaned children are given every opportunity to be placed with capable, safe, and loving parents in any adoption.

Footnote

1. LrrA Linzer Schwartz, *When Adoptions Go Wrong* 17 (2006).
2. "Colorblind racial attitudes (e.g., belief that racism is no longer a problem in society) can hinder the extent to which international adoptive parents engage in cultural socialization. Narrative accounts by transracially-adopted individuals similarly suggest that some adoptive parents are unaware of the ethnic and racial difficulties faced by their children (e.g., ethnic teasing and discrimination)." Megan Gunnar, *State of the Children Report- New Arrival Study International Adoption Project Newsletter* 12 (2010) (discussing research study of Dr. Lee on Korean children) available at [http://www.cehd.umn.edu/icd/IAP/newsletters/IAPnewsletter 2010.pdf](http://www.cehd.umn.edu/icd/IAP/newsletters/IAPnewsletter%2010.pdf).

Footnote

3. See generally Heather Jacobson, *Culture Keeping: White Mothers, International Adoption, and the Negotiation of Family Difference* (2008).
4. Gunnar, *supra* note 2, at 3; see also David M. Bridzinsky et al., *Children's Adjustment to Adoption* 75-76 (1998) (noting that many internationally adopted children suffer from infectious diseases, malnutrition and digestive problems, as well as intestinal parasites, which many preadoption examinations overlook).
5. See Olivia Ward, *More and More Children Exported, Russia Tightens Adoption Rules, UNICEF Reports Abuse Widespread*, *Toronto Star*, June 18, 2005, at A18 (noting that each year, more than one million children are physically or sexually abused).
6. Deborah H. Siegel, *Russian Adoption - Lessons for Social Workers*, *Social Work Today*, Sept.-Oct. 2010, at 14, available at [http://www.socialworktoday.com/archive/ 09231 Op 14..shtml](http://www.socialworktoday.com/archive/09231%20Op%2014.shtml) (discussing that "While all adoptees encounter loss, children adopted from other countries face additional losses. These may be minimized, denied, and dismissed in a world that sees adoptees as lucky to have been rescued from an orphanage or poverty abroad.").
7. *Abuse Report Recommends Supervising Homeschoolers* HSLD A, Mar. 15, 2011, available at <http://www.hslda.org/hs/state/fv201103150.asp>.

Many people in Florida and across the nation were horrified last month to learn of the alleged pattern of abuse and neglect that apparently resulted in the death of a young girl named Nubia. On February 14, 2011, police found Nubia's adoptive father and her twin brother Victor on the side of the interstate in West Palm Beach. Victor had been doused with chemicals, while Nubia lay dead in back of the pickup. This tragedy began approximately five years ago when serious allegations of abuse and neglect were made against the couple who were then foster parents to Nubia and Victor - the Barahonas. Over the next four years, two more reports of abuse and neglect were made against the Barahonas by mandated reporters. However, after a report was investigated in June of 2010, the Barahonas withdrew both children from public school, stating that they would teach the children at home.

Footnote

8. Robert C. Fellmeth, *Child Rights & Remedies* 776 (2011) (1995 to 2010, noting fourteen documented cases of adopted child murdered by their American adoptive parents); see also Pat Wingert, *When Adoption Goes Wrong*, *Newsweek*, Dec. 8, 2007, available at <http://www.thedailybeast.com/newsweek/2007/12/08/when-adoption-goes-wrong.html> (reporting that a Virginia mother murdered her Russian daughter and was sentenced to nineteen years in prison as a consequence.).

9. George Stephanopoulos, *Russian Adoption Gone Wrong*, *ABC News Videobert*, Apr. 12, 2010, available at <http://abcnews.go.com/GMA/video/russian-adoption-wrong-10349969>.

10. Id.; *Ramifications of Foreign Adoption Gone Wrong*, *Resource for Child Adoption*, Oct. 12, 2010, available at <http://www.i-a-a.org/ramifications-of-foreign-adoption-gone-wrong.htm>; Clifford J. Levy, *Russia Calls for Halt on U.S. Adoptions*, *N.Y. Times*, April 9, 2010, available at <http://www.nytimes.com/2010/04/10/world/europe/10russia.html>.

11. Siegel, *supra* note 6, at 14 (noting that the veracity of these allegations cannot be determined from the news accounts, but what is clear is a sense of outrage that this sort of event could occur. In this blame game, many longstanding questions surface about social work practice and policy in international adoption).

12. James R Marsh, *The Free Market in Child Pornography*, *Child Law Blog*, July 26, 2011, available at <http://www.childlaw.us/masha-allen/>.

Footnote

13. *Child Porn Victim Brings Her Story to Washington*, *ABC News*, Aug. 31, 2006, available at <http://abcnews.go.com/Primetime/InternationalStory?id=1919036&page=1> [hereinafter *Child Porn Victim*]; see also Nancy Grace, *Sit-Down with a Molestation Survivor*, *CNN Transcripts*, Jan. 18, 2006, available at <http://transcripts.cnn.com/transcripts/0601/18/ng.01.html> [hereinafter *Grace Transcripts*].

14. Fellmeth, *supra* note 8, at 776-77; *Grace Transcripts*, *supra* note 13 (reporting that the girl who suffered malnutrition by her adoptive father explained: "I had, like, strict diet. I ate peanut butter sandwiches, I didn't eat cooked vegetables, not a lot of meat. I didn't eat that much junk food or candy.").

15. *Child Porn Victim*, *supra* note 13.

16. Fellmeth, *supra* note 8, at 777.

17. Id.

18. See *Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, May 29, 1993, S. Treaty Doc. No. 105-51 (1998), reprinted in 32 *I.L.M.* 1134⁶ (1994) [hereinafter *Hague Adoption Convention*].

Footnote

19. See Donovan M. Steltzner, *Intercountry Adoption: Toward a Regime that Recognizes the "Best Interests" of Adoptive Parents*, 35 *Case W. Res. J. Int'l L.* 113, 130-31 (2003):

...out of reaction to their profound neglect, many of these children develop what is commonly known as "reactive attachment disorder": the inability to form emotional bonds and trust other people. Or, they can be overly and inappropriately affectionate with strangers. This reaction is a survival mechanism that institutionalized children develop because they quickly learn not to depend on adults for physical or emotional comfort. Furthermore, many of these children also show behavioral problems associated with "conduct disorder," the manifestations of which may include varying degrees of "self-mutilation, cruelty to siblings, overt sexuality and morbid fascinations with fire

and violence," theft, inability to feel remorse, and blithely lying about the obvious.

Id.

Footnote

20. Kathy Gleason, What Are the Pros of International Adoption, *Livestrong.com*, Jan. 31, 2010, available at <http://www.livestrong.com/article/78320-pros-international-adoption>.

21. Steltzner, *supra* note 19 at 119. See also International Adoption, *Adoption.com*, available at <http://adopting.adoption.com/child/international-adoption.html> (last visited Oct. 18, 2011).

22. Costs of Adopting, *Adoption.com*, available at <http://statistics.adoption.com/information/statistics-on-cost-of-adopting.html> (last visited Oct. 18, 2011). See also Lois Gilman, *The Adoption Resource Book* 179 (1998).

Footnote

23. See Bureau of Consular Affairs, Working with an Agency, International Adoptions, available at http://adoption.state.gov/adoption_process/how_to_adopt/agencies.php.

24. Gilman, *supra* note 22, at 173-75.

25. Irving J. Sloan, *The Law of Adoption and Surrogate Parenting* 88 (1988).

26. Gilman, *supra* note 22, at 221-22.

Footnote

27. Id. at 222.

28. Jennifer K. Ruark, What Makes a Family? A Historian Traces the Rise and Fall of Adoption in America, *Chron. Higher Ed.*, Oct. 25, 2002, at A12.

29. Andrew Morrison, Transracial Adoption: The Pros and Cons and the Parents' Perspective, 20 *Harv. BlackLetter L.J.* 167, 179-80 (2004) (referencing Elizabeth Bartholet, *Family Bonds: Adoption and the Politics of Parenting* (1993)).

30. See Bureau of Consular Affairs, Home Study Requirements, International Adoptions, available at http://adoption.state.gov/adoption_process/who_can_adopt/homestudy.php (last visited Oct. 18, 2011).

31. Gilman, *supra* note 22, at 203. See also Social Worker, Adoption Information, available at http://www.adoptioninformation.com/Social_worker (last visited Nov. 18, 2011) (each country may require different wording on a home-study report, specific information on the report, and even certain licensing requirements of social workers).

Footnote

32. Gilman, *supra* note 22, at 204.

33. See Working with an Agency, *supra* note 23.

34. Sloan, *supra* note 25 (noting that each country's adoption and immigration law determines if a child can leave the country. For example, a child may be adoptable but not free to leave the country for purposes of adoption because the country's policy is to place homeless children within its own country).

35. Working with an Agency, *supra* note 23.

36. Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354 (Nov. 20, 1959) (stating "[t]he child shall enjoy special protection . . . [and] [i]n the enactment of laws for his purpose, the best interests of the child shall be the paramount consideration.")

37. Working with an Agency, *supra* note 23.

38. Id.

39. Steltzner, *supra* note 19, at 132 (defining disruption as "returning the child to the adoption agency or the state before the adoption has been finalized" and noting that "adoption disruption and dissolution rates have remained relatively constant since 1985, ranging between 10 and 20 percent of all adoptions").

40. See Bureau of Consular Affairs, Post Adoption, International Adoptions, available at http://adoption.state.gov/adoption_process/how_to_adopt/postadoption.php (last visited Oct. 18, 2011).

Footnote

41. Richard P. Barth, *Adoption and Disruption* 19 (1988) noting that "Casework services may be the most common

and least documented and evaluated form of post-placement service." While mandatory visits are required between placement and legalization of the adoption, the purpose ambiguous and the requirements and duration of the reports vary from country to country." *Id.*

42. Sloan, *supra* note 25, at 89. See Steltzner, *supra* note 19, at 137.

43. Kathleen Ja Sook Bergquist, Right to Define Family: Equality Under Immigration Law for U.S. Inter-country Adoptees, 22 *Geo. Immigr. L.J.* 1, 4 (2007) (citing Elizabeth Bartholet, *International Adoption: Current Status and Future Prospects* 3 *The Future of the Child* 93 (Spr. 1993)).

44. Sloan, *supra* note 25, at 89.

45. Linda A. Malone, *International Human Rights* 33 (2003).

46. Declaration of the Rights of the Child, *The Circumcision Reference Library* (1959), available at <http://www.cirp.org/library/ethics/UN-declaration>.

Footnote

47. Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, Article 17, GA. Res. 41/85, UN. Doc. A/RES/41/85 (Dec. 1, 1986) (stating "[i]f a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, inter-country adoption may be considered as an alternative means of providing the child with a family.")

48. Fellmeth, *supra* note 8, at 747 (noting that some commentators contend that the provisions of the Convention have achieved the status of "international common law" because of their virtual acceptance and, as such, are binding on the United States under international law theory). *Id.* at 751.

Footnote

49. Convention on the Rights of the Child, G.A. Res. 44/25, GAOR, 44 Sess., U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990.

50. Hague Adoption Convention, *supra* note 18. See also *The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, Outline, Sept. 2008, available at <http://www.hcch.net/upload/ouUine33e.pdf>.

51. Hague Adoption Convention, *supra* note 18, art. 2.

52. *Id.* art. 4.

53. *Id.* art. 10-11; 6-13. "Accreditation shall only be granted to ... by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted. An accredited body shall -

a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation."

54. *Id.* art. 35-37.

55. *Id.* art. 8-9. "Central Authorities shall take ... all appropriate measures to prevent improper financial or other gain . . . and to deter all practices contrary to the objects of the Convention. Central Authorities shall take, ... all appropriate measures . . . to -

a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;

Footnote

b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

c) promote the development of adoption counseling and post-adoption services in their States;

d) provide each other with general evaluation reports about experience with intercountry adoption;

e) reply, in so far as is permitted by the law ... to justified requests from other Central Authorities or public

authorities for information about a particular adoption situation." See Accreditation and Adoption Accredited Bodies: General Principals and Guide to Good Practice, Guide No. 2, at 63, Hague Conference on Private International Law, May 2010, available at http://www.hcch.net/upload/wop/adop_2010_pd02e.pdf. [hereinafter Good Practice No. 2].

56. What Is the Permanent Bureau of the Hague Conference?, Hague Conference on Private International Law, 2011, available at http://www.hcch.net/index_en.php?act=faq.details&fid=30.

57. See The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention: Guide to Good Practice, Guide No. 1, Hague Conference on Private International Law, Family Law, 2008, available at http://www.hcch.net/upload/adoguide_e.pdf. [hereinafter, Good Practice No. 1] See also Good Practice, No. 2, supra note 55.

58. Good Practice No. 1, supra note 57, at 18.

59. See *id.*; see also Good Practice No. 2, supra note 55, at 11. "It is necessary to view the Convention as a flexible instrument that can evolve with the changing times, while the implementation of the Convention should be seen as a continuing, progressive or incremental process of improvement."

Footnote

60. Good Practice No. 1, supra note 57, at 18.

61. Good Practice No. 2, supra note 56, at 11. "The Conclusions and Recommendations are non-binding declarations which should nevertheless be followed as a matter of good practice."

62. The Judges' Newsletter on International Child Protection, Vol. XVII, Spring 2010 available at http://www.hcch.net/index_en.php?act=text.display&tid=144. "The Third Meeting of the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption . . . took place from 17 to 25 June 2010 in The Hague. . . . This was the largest meeting ever organised by the Hague Conference . . . with over 250 experts from 86 countries and 13 international and nongovernmental organisations attending. As is customary, invitations were sent to the Member States of the Hague Conference, to States Parties to the 1993 Hague Inter-country Adoption Convention and to non-Member States that participated in the negotiation of the Convention, but also to certain non-Member States that have demonstrated a keen interest in the Convention."

63. Conclusions and Recommendations Adopted by the Special Commission, Special Commission on the Practical Operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect to Inter-country Adoption, 1, June 2010 available at http://www.hcch.net/upload/wop/adop2010concl_e.pdf. [hereinafter Conclusions and Recommendations 2010].

64. *Id.* at 4.

Footnote

65. *Id.* at 2.

66. *Id.* The Special Commission requested the Permanent Bureau to make revisions to the text of this volume of the Guide to Good Practice, in particular Chapters 9 and 10 (primarily dealing with the costs of international adoption and operational challenges). This will include revision of the summaries of each chapter and some re-ordering of material (to avoid repetition).

67. Good Practice No. 2, supra note 55, at 10. Each State may adapt its own laws and procedures to implement the Convention. Ironically, it is this very flexibility, which now gives rise to concerns about how the accreditation provisions are being implemented in individual countries, in particular, the lack of consistency in the quality and professionalism of accredited bodies, not only between Contracting States, but also between agencies in the same State. The concerns are justified because of the reliance of States of origin on the decisions of receiving States, which grant accreditation to adoption bodies, and because of the range of important functions that are undertaken by those bodies in both the States of origin and in the receiving States.

68. *Id.* at 22-23, 26. The Convention sets minimum standards that must be fulfilled in relation to accredited bodies. They shall:

- * demonstrate competence to carry out properly the functions entrusted to them;
- * only pursue nonprofit objectives;
- * be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoptions;
- * be subject to supervision by competent authorities as to their composition, operation and financial situation; and their directors, administrators and employees shall not receive remuneration which is unreasonably high in relation to services rendered."

Footnote

- 69. Id. at 22.
- 70. Id. at 143.
- 71. Id. at 142⁵.
- 72. Id. at 146, 147.
- 73. Id. at 146.

Footnote

- 74. Id. at 30. "The Convention permits the Contracting States to call upon accredited bodies but does not require any State to appoint accredited bodies or use them. A receiving State or State of origin may, however, require by law the use of accredited bodies, as an increasing number of States do."
- 75. See Status Table, 33: Convention of May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, Sept. 2011, available at http://www.hcch.net/index_en.php?act=conventions.status&cid=69.
- 76. See International Adoption Statistics for 2010, Legal Language Services, Feb. 2011, available at <http://www.legallanguage.com/legal-articles/adoption-statistics-2010/>.
- 77. See David Crary, Foreign Adoptions by Americans Decline Again, to Lowest Levels Since 1994, Wash. Post, Nov. 16, 2011, http://www.washingtonpost.com/national/foreignadoptions-by-americans-decline-again-to-lowest-level-since-1994/2011/11/16/gIQAIL5bRN_story.html.
- 78. See Holt Int'l Children's Servs., Holt's Int'l Programs-Ethiopia, available at <http://www.holtinternational.org/welcome/countryCriteria.php?country=Ethiopia>.
- 79. See Intercountry Adoption, Russia, available at http://adoption.state.gov/country_information/country_specific_info.php?country-select=russia.
- 80. See Holt Int'l Children's Servs., Holt's Int'l Programs-China, available at <http://www.holtinternational.org/welcome/countryCriteria.php?country=China>.
- 81. See Holt Int'l Children's Servs., Holt's Int'l Programs - Philippines, available at <http://www.holtinternational.org/welcome/countryCriteria.php?country=Philippines>.
- 82. Holt' s-Ethiopia, supra note 78.
- 83. Intercountry Adoption-/?iííí¿a, supra note 79.
- 84. Holt' s-China, supra note 80.
- 85. Holt' s-Philippines, supra note 81.
- 86 Holt' s-Ethiopia, supra note 78.
- 87 Intercountry Adoption-/?iííí¿a, supra note 79.
- 88 Holt's-Philippines, supra note 81.
- 89 Holt' s-Ethiopia, supra note 78.
- 90 Intercountry Adoption-/?iííí¿a, supra note 79.
- 91 Holt' s-China, supra note 80.
- 92 Holt's-Philippines, supra note 81.
- 93. Holt' s-Ethiopia, supra note 78.
- 94. Intercountry Adoption-/?iííí¿a, supra note 79.
- 95. Holt' s-China, supra note 80.

96. Holt's-Philippines, supra note 81.
97. Holt' s-Ethiopia, supra note 78.
98. See Adoption Services, Adoption from Russia, available at http://www.adoptionservices.org/mternational_adoption/international_adoption_russia.htm (last visited Nov. 1 1, 201 1).
99. Holt' s-China, supra note 80.
100. Holt' s-Ethiopia, supra note 78.
101. Intercountry Adoption-/?ifii;a, supra note 79.
102. Holt' s-China, supra note 80.
103. Holt's-Philippines, supra note 81.
104. See Ethiopia Post-Placement Reports, Adoption.com, available at <http://ethiopia.adoptionblogs.com/weblogs/ethiopia-post-placement-reports>.
105. Intercountry Adoption-/?ifii;a, supra note 79.
106. See Post-Placement Requirements for China, Families Thru International Adoption, available at <http://www.ftia.org/china/postadopt.asp> (last visited January 23, 2012).
107. United Nations, Child Adoption: Trends and Policies 35 (2009).

Footnote

108. See Crary, supra note 77.
109. Id.; see also Bureau of Consular Affairs, Statistics, Intercountry Adoptions, available at http://adoption.state.gov/about_us/statistics.php.

Footnote

110. See generally Jonathan W. Gould & David A. Martindale, *The Art and Science of Custody Evaluations* (2007); Mark J. Ackerman, *Clinicians Guide to Child Custody Evaluations* (1995); Barry Bricklin, *The Custody Evaluation Handbook: ResearchBased Solutions and Applications* (1995).

Footnote

111. Fellmeth, supra note 8, at 777-78.
112. Social Worker, supra note 31.
113. "Accredited agencies and approved persons should strive to satisfy every applicable standard. Less than full compliance with some standards may not result in loss of accreditation or approval, however." Bureau of Consular Affairs, FAQs for Social Workers, Intercountry Adoption Office of Children's Issues, available at http://adoption.state.gov/content/pdf/FAQs_Guide_for_SOCIAL_WORKERS.pdf.
114. Bridget M. Hubing, *International Child Adoptions: Who Should Decide What Is in the Best Interests of the Family?*, 15 Notre Dame J.L. Ethics & Pub. Pol'y 655, 684-86 (2001).
115. See FAQs for Social Workers, supra note 113, at 5. Example given, "Exempted provider means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background study, or both, in the United States in connection with a Convention adoption (including any reports or updates), but that is not currently providing and has not previously provided any other adoption service in the case."

Footnote

116. "Although social workers may not be the ultimate authority on adoption, nor will they be perfect examples of a human being. However, getting a job with an adoption agency usually requires formal education. Depending on the agency, this may require a Masters in Social Work, or MSW, from a program accredited by the Council on Social Work Education. Those with degrees in social sciences, like psychology or sociology may also be hired by an adoption agency." See *Adoption Social Worker*, Adoption.org, available at <http://www.adoption.org/adopt/adoption-social-worker.php> (last visited Jan 29, 2012).

Footnote

117. See Barth & Barry, *Adoption & Disruption* 70 (1988).

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