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A Case for Ethical Intercountry Adoption

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Throughout its history, intercountry adoption has had its detractors in the form of nationalists in other countries objecting to foreigners, usually Americans and other Westerners, providing loving homes and families to their country's orphans. Recently, however, voices have been raised in the United States questioning the appropriateness of Americans adopting babies from foreign countries, typically those in the developing world. These advocates contend that the so-called demand for children to adopt far outstrips the number of available orphans, and that women are frequently coerced or tricked into making adoption placements for their children as a result.

The worldwide orphan population has been exaggerated by some, but there is little evidence to support the claim that the demand for children to adopt among Westerners exceeds the number of adoptable children worldwide. And while deplorable abuses of the intercountry adoption process do occur, these can and should be prevented through systemic reforms, enforcement of existing laws, and self-policing on the part of international adoption agencies. To shut down intercountry adoption, as some of its more radical critics suggest, would harm far more children than it would help and is therefore not an appropriate response to the problems facing the institution.

The History of Intercountry Adoption to U.S. Parents

Agency-sponsored intercountry adoption began in the United States in the mid-1940s, when American parents opened their hearts and homes to European children orphaned by World War II and the Greek civil war. Several thousand Asian-born children, a majority of them Japanese, were also

adopted by American parents in the late 1940s and early 1950s. In the mid 1950s the number of intercountry adoptions to American parents increased dramatically as American couples began adopting children orphaned during the Korean War. Between 1953 and 1962, approximately 15,000 foreign-born children were adopted by American parents, and by 1976, the total number of foreign-born children adopted by Americans exceeded 30,000.¹

As the number of children born abroad and adopted by U.S. parents has increased, the children's countries of origin have diversified. For example, in every year from 1972 to 1987 save one, the majority of foreign-born children adopted by American parents were from the Republic of Korea. But in 2008, no single sending country was responsible for the majority of foreign-born adopted children. Children from Guatemala and China each comprised about 23 percent of the total number of children adopted internationally by US parents. An additional 10 percent were born in Russia, while the remaining 45 percent were born in countries as diverse as Ethiopia, Vietnam, Kazakhstan, India and Haiti.²

There are two reasons behind this diversification. First is the decision of more countries to open up to the practice of intercountry adoption as one way to provide for their orphan populations. Second is the Republic of Korea's successful initiatives to promote domestic adoption, which have decreased the number of orphans available for adoption from that country. These initiatives were spurred largely by nationalist embarrassment over the number of Korean orphans being taken in by Americans.³ Thus, intercountry adoption has benefited not only those Korean orphans adopted by American parents, but also many Korean orphans adopted domestically.

1. Howard Alstein and Rita J. Simon, eds., *Intercountry Adoption, A Multinational Perspective*. (New York, Greenwood Publishing Group, 1991), 3.

2. Office of Children's Issues, United States Department of State, "Total Adoptions to the United States," available at http://adoption.state.gov/news/total_chart.html (accessed March 25, 2009).

3. Towriss, John, "Future of Korean Adoptions Comes into Focus," *AdoptionToday*, December/January 2009.

Criticisms Regarding the Size of the International Adoptable Child Population and Western Demand

Domestic opponents of intercountry adoption increasingly argue that the demand among Western couples for healthy infants is far greater than the number of healthy infants available for adoption abroad. As a result of this disparity, such critics allege, women are tricked, coerced or bribed into making international adoption placements for their children, and children themselves are outright kidnapped by adoption service providers. As E.J. Graff argued in a recent opinion piece on intercountry adoption appearing in *Foreign Policy*:

*“Yes, hundreds of thousands of children around the world do need loving homes. But more often than not, the neediest children are sick, disabled, traumatized, or older than 5. They are not the healthy babies that, quite understandably, most Westerners hope to adopt. There are simply not enough healthy, adoptable infants to meet Western demand.”*⁴

The majority of children Americans adopt from foreign countries have traditionally been very young. As recently as 2001, 89 percent of children adopted internationally were under the age of five.⁵ However, the percentage of children adopted internationally who were over the age of five – 11 percent – is not insignificant. It is *not* true that Americans are unwilling to adopt children who are sick, disabled, or traumatized. On the contrary, the history of international adoption is one of Americans adopting children precisely from those areas of the world where children are least likely to be emotionally and physically healthy. For example, the mid 1970s saw a peak in the number of Vietnamese children adopted by Americans, who rushed to care for orphans created by that country’s conflict. And in 1991, following the fall of Communism and the United States media’s reporting of thousands of abandoned Romanian children living in terrible institutions, Americans adopted over 2,500 children from Romania alone.⁶

Also, while countries of origin often have systems favoring the adoption of younger, healthier children, Americans respond in significant numbers when foreign countries create systems for special needs adoptions. One example of this is China’s Waiting Child Program, through which thousands of Americans have adopted Chinese children with mild to severe special needs. Another example is Russia, which only allows Russian children with special needs to be available for international adoption, and from which thousands of children are adopted by Americans each year.

Having said that, it’s true that many Westerners would prefer to adopt healthy infants, for understandable reasons. Included among these reasons are the severe, negative effects of institutionalization on children’s cognitive and emotional development—effects which can be circumvented by the timely placement of orphans with loving families. Unfortunately, there is not enough data to know whether the global population of healthy, adoptable infants falls short of what would be necessary to meet Western demand. Opponents of intercountry adoption are often quick to point out that UNICEF’s estimate for the global orphan population is grossly inflated, which is true. UNICEF defines the term “orphan” to mean a child who has lost *one or both parents to death or desertion*. The overwhelming majority of the 133 million orphans that UNICEF estimates are living worldwide have only lost one parent to death or desertion, and would not be considered orphans as the term is commonly used and understood. However, this still leaves a global population of over 16 million “double orphans,” or children who have lost *both* parents to death or desertion.⁷ Many of these children are being cared for by aunts, uncles, cousins, grandparents, and other members of their extended families, but many are not. Many others may find their adoptive families in their own countries. But again, many may not.

Furthermore, it’s erroneous to assume that only those children in the developing world who have lost both their biological parents are adoptable. In 2002, the most recent year for which statistics are available, 22,291 women living in the United States made adoption placements for their child.⁸ In 1970, prior to *Roe vs. Wade*

4. Graff, E.J. “The Lie We Love,” *Foreign Policy*, November/December 2008, available at http://www.foreignpolicy.com/story/cms.php?story_id=4508 (accessed March 25, 2009).

5. The Evan B. Donaldson Adoption Institute, “International Adoption Facts,” available at <http://www.adoptioninstitute.org/FactOverviewinternational.html> (accessed March 25, 2009).

6. *Ibid.*

7. UNAIDS, UNICEF, and USAID, “Children on the Brink 2004: A Joint Report on New Orphan Estimates and a Framework for Action,” Appendix I, available at http://www.unicef.org/media/files/cob_layout6-013.pdf (accessed March 25, 2009).

8. Placek, Paul, “National Adoption Data,” *Adoption Factbook IV*, Ed. Thomas Atwood. PMR Printing Company, Inc., Sterling, VA. 30.

and changing cultural mores leading to greater acceptance of single motherhood, 175,000 American women made adoption placements for their children.⁹ In many ways, the precise reasons women in the United States have made and continue to make adoption placements are as unique as the women themselves and the circumstances surrounding their pregnancies. However, most American women who make an adoption placement do so in the hope that their children might have a better life. Like their American counterparts, women living in the developing world should have the opportunity to make adoption placements for their children without condemnation, either explicit or implicit, when they feel that doing so is in their children's best interests. This opportunity may be all the more important to women in countries where poverty rates are high and access to family planning is minimal.

How the Hague Convention on Intercountry Adoption Helps Ensure Ethical Adoption Practices

Rather than argue over the size of the international adoptable child population and whether it is large enough to satisfy Western demand, we would like to propose methods to ensure that all intercountry adoptions are done in an ethical manner, with the best interests of the children involved paramount. Once such an ethical intercountry adoption system is in place and the laws governing it are strictly enforced, the question of whether there are enough adoptable children worldwide to meet Western demand will answer itself. We've already asserted that women in the developing world should have the same right as their Western counterparts to make adoption placements in the best interest of their children. We should add to this that women in the developing world should also enjoy the same freedom from coercion, exploitation and solicitation in the course of making or considering adoption placements. (Sadly, poverty and a lack of education make women and their children especially vulnerable to human rights violations in this as in other areas.) Women in the developing world should also have access to the same type of family

preservation services as do women in the West. Finally, an ethical intercountry adoption system would be one that sought to place a child internationally only after genuine and timely efforts to both preserve the child's biological family (assuming the child is not an orphan) *and* to place the child in an adoptive family in his or her country of origin had been made without success.

To date, The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, which over 75 nations including the United States have signed, represents the best international effort at ensuring an ethical intercountry adoption system. The Hague Convention requires each signatory nation to take appropriate measures to allow the child to remain in the care of his or her biological family and to prevent "the abduction, the sale of, or traffic in children."¹⁰ The Convention also stipulates that the child's parents or guardians must provide written consent to any adoption placement and that such consent may not be "induced by payment or compensation of any kind."¹¹ This stipulation is particularly important considering that poor parents in some developing countries will customarily leave their children in institutions where they may receive education, housing, or regular meals with the intention of retrieving them once the family's financial situation improves. Finally, the Convention gives preference to domestic adoptions over intercountry adoptions, and requires that each signatory country's central authority take "all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention."¹²

One frequent criticism of The Hague Convention is that it doesn't cap the adoption fees paid to adoption agencies, but instead stipulates that such fees be "reasonable." Reasonable fees are to be arrived at after taking into account both "the country in which the adoption services are provided and norms for compensation within the Intercountry adoption community in that country."¹³ Some have alleged that allowing "norms for compensation within the

9. Maza, Penelope L. "Adoption Trends: 1944-1975," Child Welfare Research Notes #9 (U.S. Children's Bureau, August 1984), pp. 1-4, Child Welfare League of America Papers, Box 65, Folder: "Adoption—Research—Reprints of Articles," Social Welfare History Archives, University of Minnesota. Available at <http://darkwing.uoregon.edu/~adoption/archive/MazaAT.htm> (accessed March 25, 2009).

10. Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993.

11. Hague Convention, Chapter II, Article 4(3)

12. Hague Convention, Chapter III, Article 8

13. Final Rule, Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons," 22 C.F.R. 96, 97, 98. (Feb 15th, 2006), published in Fed.Reg. 8142.

Intercountry adoption community” to bear on what fees are considered reasonable allows international adoption agencies and their partners to charge however much they like, simply because other adoption agencies or service providers operating in the country are charging the same. This is worrisome. For while the majority of adoption service providers do good work and are motivated by humanitarianism, experience has shown that when the prospect of making large amounts of money by placing children for adoption in the United States or other Western nations becomes feasible, foreign adoption service providers who are motivated by greed also enter the system. Fortunately, if properly enforced, the stipulation to also consider “the country in which the adoption services are provided” should be sufficient to deter exorbitant fees and adoption abuses in Hague compliant countries.

How Self-Policing on the Part of International Adoption Agencies Can Ensure Ethical Adoption Practices

Recent adoption scandals in Cambodia, India and Guatemala involving international adoption agencies in the United States or Europe show that even experienced agencies may inadvertently partner with alleged child launderers and traffickers. International adoption agencies can protect themselves from unknowingly participating in such abhorrent practices in several ways. The first step agencies should take is to set and abide by guidelines for reasonable adoption services fees in each country of origin *based on the costs of living and of comparable social services in that country*. Agencies may wish to publish their reasonable fees guidelines on their websites in order to motivate other agencies to take similar measures to ensure the integrity of intercountry adoption. Furthermore, agencies should provide prospective adoptive parents with country-specific guidelines and counseling on the dangers of acceding to additional fees, with the possible exception of elective donations to reputable orphanages to be paid *after* the child arrives in the United States. Finally, agencies should take it upon themselves to investigate allegations against staff members of any adoption services providers with which they partner as though these allegations had been made against members of their own staff.

In addition to setting and abiding by country-specific guidelines for adoption services fees,

international adoption agencies should also exercise extreme caution and restraint when operating or partnering with adoption services providers in non-Hague compliant countries. There has been a pattern whereby international adoption agencies descend on a recently opened, developing nation that lacks the means necessary to adequately oversee the adoption process, leading to allegations of widespread abuses and, ultimately, the complete closure of international adoptions from the recently opened nation. International adoption agencies simply cannot operate on the assumption that a developing, non-Hague compliant country is capable of providing proper oversight for each intercountry adoption. Furthermore, agencies must realize that there are those who would take advantage of their exuberance for placing orphans with loving families to make a profit without any regard for the well-being of the children involved.

An ideal way to ensure best practices is for an international adoption agency to oversee its own orphanage and child welfare systems in the foreign countries in which it operates. These orphanages, complete with their own staff members familiar with the country’s laws, language or languages and customs, would partner with state and private child welfare organizations in the country to ensure that intercountry adoption is the last option for children in need of permanency. By removing the need to partner with other adoption services providers, an international adoption agency may ensure that every intercountry adoption placement it facilitates is done ethically and is in the child’s best interests. It must be stressed that such orphanages cannot operate or provide services independently of the broader child welfare system. For example, any birthing center associated with such an orphanage must be made available to women in need of a safe place to give birth regardless of whether they plan to make an adoption placement for their child. Otherwise, the international adoption agency may unintentionally create an incentive (i.e. access to a safe birthing center) for women to make adoption placements for their children.

Having suggested this option, however, we should note that it is not a practical one in the majority of cases. Many countries prohibit non-state run orphanages, and many agencies simply don’t have the means necessary to run orphanages even in those countries where they would be allowed to do so. A more practical measure would be for agencies to ensure that

the adoption services providers with which they partner are integrated as much as possible in that nation's broader child welfare system. This will help ensure that an intercountry adoption placement is made for a child only after attempts at family preservation and domestic adoption have failed.

Conclusion: The Benefits of Intercountry Adoption to Adoptable Children Worldwide Make Ethical Intercountry Adoptions Indispensable

Since its beginnings in the 1940s, intercountry adoption has given hundreds of thousands of children who otherwise might have grown up in institutions or on the street the loving families that are so crucial to their development. Today, it offers the possibility of helping hundreds of thousands more. The immeasurable benefits of intercountry adoption to a child who would otherwise never enjoy the safety and security of a family make it all the more imperative that we prevent adoption abuses from being carried out in its name. Implementation of the Hague Convention on Intercountry Adoption among all sending countries is the first step toward ensuring ethical intercountry adoptions. However, self-policing on the part of international adoption agencies is vital to ensuring only ethical adoptions occur in both Hague compliant and non-Hague compliant countries alike. Perhaps most importantly, international adoption agencies should set and abide by their own fee guidelines for significant countries of origin which take into account the costs of living and comparable social services in those countries. Agencies that can afford to do so may want to run their own orphanages in those countries where non-state run orphanages are permitted. When this is not an option, agencies should work with credible child welfare organizations in sending countries to ensure that intercountry adoption is only an option after attempts at family preservation or domestic adoption have been tried and failed. Finally, agencies must exercise restraint and avoid overwhelming developing countries that open up to intercountry adoption as a way to provide for their orphans. The implementation of the Hague Convention by more countries and increased self-policing on the part of international adoption agencies will go a long way toward ensuring that intercountry adoption achieves its goal of helping adoptable children throughout the world find the loving families they need.