


Fall 2013

# Misguided Saviors: An Analysis of International Adoption Issues and Necessary Considerations for Prospective Adoptive Parents

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## Recommended Citation

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# Misguided Saviors:

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An Analysis of International Adoption Issues and Necessary Considerations for Prospective Adoptive Parents

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**Fall 2013**

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## **Abstract**

International adoption flows from poor countries to rich countries and in the past it has been regarded as a good way to help those in need, by giving impoverished abandoned children families. Recently, however, the need for adoption in these countries has

lessened considerably, but the desire to adopt has not. With less children available for adoption and a high demand, combined with large sums of money pouring into less developed countries, adoption scandals and poor practices have been surfacing over the past few years. The right of the child is often not being protected in adoption procedures and associations such as UNICEF, Terre Des Hommes, and the International Social Service are concerned with the pressures coming from receiving countries on the countries of origin. Many prospective adoptive parents are not informed about these issues and continue to line up for their turn to adopt. International adoption involves many actors at different levels and thus it is difficult to fully comprehend the situation. Who is truly benefitting from this and is it in the best interests of the child? Why are so many prospective parents unaware of the risks involved? This report will try to answer these questions and analyze the considerations that should be taken in when deciding whether international adoption is the right decision.

## **Preface**

I worked in an adoption agency the summer of 2012 and have been very interested in the subject for a while. I decided to combine this with my interest in international relations by analyzing how adoption takes place on a global scale. My sociology background from studying at Colorado College also made me interested in the interactions between vulnerable less developed countries and wealthy western countries when sending children abroad for adoption. Children's rights is something that I feel strongly about and this report has allowed me to research a children's rights issue in depth, while taking advantage of Geneva's international location.

**Acknowledgements**

Thank you very much to all of my interviewees. I would like to especially thank Hervé Boéchat for being so helpful and sending me in the right direction on this topic. I am also very grateful for Jean-Claude Legrand taking time out of his busy UNICEF schedule to meet with me. Thanks to both of my academic directors, Dr. Csurgai and Dr. Lambert, for advising me on my project. And finally, thanks to my family for supporting me and allowing me to have this great opportunity and experience in the first place.

## **Introduction**

When people think of international adoption they often think of heartwarming stories of children being saved from poverty and abandonment, gaining a new loving family, who can offer their wealth and comfort to someone less fortunate than them. For those who could not have children on their own, it appears to be a win-win situation: an orphaned child gets a caring home, and the adoptive parents can experience the joys of raising a family. Even some fertile couples are now choosing adoption, as was the case with one Christian couple on an ABC (Australian Broadcasting Corporations) news report of Ethiopian adoption. Already with three biological children of their own, they decided to welcome three new Ethiopian children into their home, proudly explaining their decision to help



those in need<sup>1</sup>. UNICEF senior regional-advisor for child protection, Jean-Claude Legrand, explained that this was not always the case with adoption, stating that the image of adoption has evolved from something that was shameful and hidden to a situation in which adoptive parents gallantly introduce their child as being adopted<sup>2</sup>. This can in part be explained by media representations, both with the recent wave of celebrity adoptions and the depiction of orphans in poverty stricken institutions or on the streets<sup>3</sup>, as well as the increased awareness of developing world poverty and developed world privilege<sup>4</sup>.

In reality, however, the situation of intercountry adoption (ICA) is much more complex than the happy love stories that are promoted by adoption agencies, and there are many actors involved that make it difficult to fully understand how the child ended up in the care of his or her new family. Too often adoption accounts in developed countries are told from the point of view of blissfully unaware adoptive parents and the child's origin story is lost or forgotten. In this paper I will analyze some of the factors that should be considered when thinking about ICA, giving special attention to adoption issues that have come up in the countries Ethiopia, Haiti, and Nepal. I am arguing from the perspective of the rights of the child as well as the rights of the birthmother, while giving due consideration to the motivations of prospective adoptive parents (PAPs) and political motives of the state actors that drive the adoption industry. My position is that ICA needs to be more transparent and accurate information needs to be made readily available to PAPs so that they can make an educated decision on a choice that is surrounded by strong emotions.

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<sup>1</sup> ABC Television, *Fly Away Children*.

<sup>2</sup> Jean-Claude Legrand, *Personal interview*.

<sup>3</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 73..

<sup>4</sup> Sara R. Wallace, *International Adoption: The Most Logical Solution to the Disparity Between the Numbers of Orphaned and Abandoned Children in Some Countries and Families and Individuals Wishing to Adopt Others?*, 693.

## Methodology

The research used for this analysis comes primarily from scholarly articles, as well as official reports by the organizations UNICEF, Terre Des Hommes (TDH), and the International Social Service (ISS). I also conducted four formal interviews with representatives from these three organizations, as well as with a volunteer for the adoption organization @dopte.ch based in Geneva. Other sources include special TV reports, online databases, and official legislations/conventions.

## Literature Review

The debate surrounding international adoption often confusingly gets labeled as one of anti-adoption assailants fighting against pro-adoption advocates, but it is not about whether adoption should exist, rather how it should be run and regulated, as well as when is it in the best interests of the child. ICA regulation is a complicated and messy issue because each state has its own adoption policies and while there are international conventions “governing” adoption, these are non-enforceable frameworks that not every country is party to. Very often countries will be a party to one convention, but not another, making it difficult to know which laws apply, on top of which are bilateral agreements, further complicating the issue<sup>5</sup>. It is easy to see how this would make it hard for PAPs to understand what constitutes a legitimate adoption for the specific country they are adopting from.

The history of international adoption law arguably began with the UN’s Convention on the Rights of the Child (CRC) in 1989, which lays out the role of member states in ICA<sup>6</sup>. The United States, however, is not party to this convention<sup>7</sup>, despite being involved

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<sup>5</sup> Isabelle Lammerant and Marlène Hofstetter, *Adoption at What Cost?*, 11.

<sup>6</sup> Sara R. Wallace, *International Adoption*, 696.

<sup>7</sup> Joseph M. Isanga, *Surging Intercountry Adoptions in Africa*, 293.

in over half of all ICAs and the U.S. did not ratify the Hague Convention until 2008<sup>8</sup>. The Hague Convention was drafted in 1993 and it set minimum procedural standards in order to better control the adoption process. However, almost 2/3 of countries are not legally bound by it because they have not ratified it<sup>9</sup>, and those who have cannot be forced to abide by it because it lacks any concrete enforcement mechanisms. In Africa, there is also the African Charter on the Rights of the Welfare of the Child (ACRWC), which is similar to the CRC. The African Committee of Experts on the Rights of the Welfare of the Child is charged with monitoring and supervising the implementation of the charter and while only 24% of African countries have ratified the Hague, the majority have ratified the ACRWC<sup>10</sup>. The Hague is considered the most significant of the conventions on international adoption, and therefore many consider it very problematic that so many countries have still not ratified it.

UNICEF strongly urges countries to ratify the Hague and its official position on ICA is that it does not promote it as a child protection measure, but rather strongly advocates for the subsidiarity principle of international adoption, which is the idea that ICA should only be a solution after all efforts have been made to keep the child with his or her biological family and to keep the child within his or her country of origin through domestic adoption or kinship care. Many people have confused this to mean that UNICEF is “anti-ICA,” but UNICEF maintains that it recognizes the practice, and simply advocates for high standards when ICA takes place<sup>11</sup>. TDH and the ISS both share a similar standpoint, and each have published several studies revealing issues and malpractices relating to ICA, which show that one needs to take many factors into consideration when thinking about ICA. Several adoption scandals have

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<sup>8</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Inter-country Adoption*, 27.

<sup>9</sup> *Ibid*, 3.

<sup>10</sup> Joseph M. Isanga, *Surging Inter-country Adoptions in Africa*, 261-271.

<sup>11</sup> UNICEF, *Guidance Note on Inter-country Adoption in the CEE/CIS Region*, 5.

also been in the news recently, but as law professor David Smolin points out, “these cycles of abuse have been ongoing for several decades now and yet, they are always treated as some kind of surprise within the media and adoptive parent community.”<sup>12</sup>

Elizabeth Bartholet, a Harvard law professor, is often considered to be on the “pro-adoption” side. She thinks that the subsidiarity principle (international adoption only after possibilities for the child to remain in the country of origin have been examined) has been used to justify putting children into institutions and foster care over ICA and says that the more restrictions there are on adoption, the more children there will be without loving homes<sup>13</sup>. The UNICEF Innocenti Research Centre analysis found, however, that as adoption soared in countries so did the size of their youth institutional populations, indicating that adoption might actually be the cause not the solution for so many children in institutions<sup>14</sup>. Another issue is that of equating the terms “orphan” and “adoptability.” The orphan definition by both UNICEF and UNAIDs includes children that have only lost one parent and it should be noted that even children who have lost both parents are often in the care of another family member<sup>15</sup>. Thus, statistics showing large numbers of orphans within a certain country can be misleading to PAPs who think all of those children are in need of adopting. This brings up the problem of supply and demand with ICA. Many PAPs are under the impression that there is a large “supply” of children in need of adoption, while the reality is that young, healthy, adoptable babies are few and far between. Instead, the majority of adoptable children are older or have special needs<sup>16</sup>. This has created the problematic situation of a very high demand for healthy

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<sup>12</sup> David M. Smolin, *Child Laundering*, 135.

<sup>13</sup> Elizabeth Bartholet and David Smolin, *The Debate*, 388.

<sup>14</sup> UNICEF, *Guidance Note on Intercountry Adoption in the CEE/CIS Region*, 15.

<sup>15</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, 19.

<sup>16</sup> Isabelle Lammerant and Marlène Hofstetter, *Adoption: At What Cost?*, 5.

adoptable children, with large amounts of money being exchanged between the wealthiest countries to the very poor countries.

Combine this with the fact that there is very little regulation in many of these countries due to lack of resources, among other things, and one can see how this would create concerns of corruption and breaches of human rights<sup>17</sup>. I will discuss these issues in further detail through looking at the specific cases of Ethiopia, Haiti, and Nepal.

## **Ethiopia**

Ethiopia was the second highest sending country for ICA in 2010, behind China, which is 10 times the size of Ethiopia in population<sup>18</sup>. The number of children adopted from Africa tripled between 2003 and 2010<sup>19</sup>, with Ethiopia being by far the largest sending country from Africa<sup>20</sup>. It has ratified the CRC and the ACRWC, but not the Hague. This means that even when conducting adoptions with receiving countries party to the Hague, Ethiopia is technically ungoverned by the articles of this convention<sup>21</sup>. Legrand from UNICEF says one reason why countries do not sign the Hague is because it puts obligations on countries and some countries are trying to promote intercountry adoption, not always in the safest ways<sup>22</sup>. In an article analyzing the Hague convention's effects on ICA, author O'Keefe points out that in many cases failure to ratify the Hague is because for governments struggling with war, poverty, and disease, complying with it is simply impossible.<sup>23</sup> For example, it requires that a central authority ensure that the child adoptable

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<sup>17</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 36.

<sup>18</sup> Joseph M. Isanga, *Surging Intercountry Adoptions in Africa*, 231.

<sup>19</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, iv.

<sup>20</sup> Mary Ann Davis, *Intercountry Adoption Flows from Africa to the U.S.*, 795.

<sup>21</sup> David M. Smolin, *Child Laundering*, 289.

<sup>22</sup> Jean-Claude Legrand, *Personal interview*.

<sup>23</sup> Kate O'Keefe, *The Intercountry Adoption Act of 2000*, 1639.

and that all possibilities for placement of the child within the country of origin have been given due consideration. In Ethiopia, there is one judge to oversee and approve adoptions and there were over 4,000 adoptions in one year. It is unlikely that a single person could have thoroughly read through all of those files, says TDH worker Marlène Hofstetter<sup>24</sup>. Adoption within Ethiopia has undergone rapid changes over the past few years, the number of ICAs peaking in 2010 and then falling dramatically in 2011 due to an intentional slowdown by the government in March because of investigations demonstrating malpractices of varying degrees throughout the adoption process<sup>25</sup>.

### **The Adoption Business**

Adoption, sometimes at the expense of the best interests of the child, mirrors the rules of the market. There is a discrepancy between the number of applicants for adoption and the number of children available, thus there is a high demand and low supply, which inevitably leads to high costs. In the case of ICA, these costs often manifest themselves as corruption of varying degrees and as ISS director Hervé Boéchat says, Ethiopia is one of the largest countries for adoption so there are no doubt problems. “When there is a lot of money involved in something, as is the case for adoption, there are going to be malpractices involved.”<sup>26</sup> There are large incentives for Ethiopia to continue supplying children for ICA and little efforts are made to keep the child within the country, whether through kinship care or domestic adoption. When ICA happens on a large scale it can be interpreted as a failure of the state to ensure adequate care for children and there are concerns that governments are neglecting to promote programs to prevent family separation,

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<sup>24</sup> Marlène Hofstetter, *Personal interview*.

<sup>25</sup> Elisa Rosman, *Downturn in International Adoption*.

<sup>26</sup> Hervé Boéchat, *Personal interview*.

as well as that ICA is not being properly regulated<sup>27</sup>. It costs \$25,000 to adopt a child for ICA from Ethiopia, whereas in-country adoption would only give \$300 to these adoption agencies<sup>28</sup>. “It’s almost a small factory and you don’t want the adoption institution to close because it terminates the work of the people,” says Legrand<sup>29</sup>.

Problems arise when a country such as Ethiopia, with little regulation, has a huge influx of Western wealth entering the system. As Smolin says, when a sending nation has an increasing number of adoptions, it soon becomes clear that there is a lot of money to be made for those who can deliver orphans with desirable characteristics and poor nations do not have the means to prevent corruption<sup>30</sup>. An Australian news report on ABC interviewed an adoptive mother who received a child from Ethiopia that was supposedly “healthy,” but when he arrived it was clear that he had a long list of difficult medical problems and probably would not live much past adulthood. This family had specifically chosen to adopt a healthy child because they had already dealt with the hardship of burying a child and did not think they could mentally handle another parallel situation<sup>31</sup>. If a family is not prepared to handle a child with special needs, how is this adoption in the best interests of anyone? The news report also found instances of falsified paperwork which lied about the age of several adopted children.

Receiving countries also have their own means of ensuring a supply of children for their PAPs. Boéchat explains that the United States and France have ambassadors for adoption and when the U.S. gives money to Ethiopia for the protection of the child, it

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<sup>27</sup> UNICEF, *At Home or In a Home*, 41.

<sup>28</sup> Joseph M. Isanga, *Surging Intercountry Adoptions in Africa*, 291

<sup>29</sup> Jean-Claude Legrand, *Personal interview*.

<sup>30</sup> David M. Smolin, *Child Laundering*, 134.

<sup>31</sup> ABC Television, *Fly Away Children*.

is more like an investment to make sure the Americans will be able to adopt from there. “Each country does a little bit of that,” he says<sup>32</sup>. Politically speaking, there is not much reason for politicians to advocate for increased regulation on adoption because malpractice and victimized birth families abroad do not directly affect the receiving country. Meanwhile, PAPs complain when adoptions are slowed down or moratoriums are imposed<sup>33</sup>. One problem with ICA, Legrand says, is that when PAPs go through the whole process of becoming eligible to adopt, they expect to receive a child, but there are not always enough children available<sup>34</sup>. There is still this idea that the global south has an unlimited source of children desperately in need of adoption and many PAPs expect the process to be quick and easy<sup>35</sup>, but in France, for example, there are 25,000-30,000 PAPs certified to adopt on the waiting list, but the total number of ICAs each year are around 4,000<sup>36</sup>.

One reason so many people are flocking to Ethiopia to adopt is precisely because of the lack of regulations. Ricardo Graells, president for @dopt.ch, says there is a high demand for adoption with countries that have ratified the Hague, thus there is a long waitlist and parents pressed for time will turn to countries where it is quicker, which are the countries with more risks<sup>37</sup>. Smolin points out that this is a cycle that has repeated itself overtime and as one country becomes more and more popular for adoption, abuses occur and poor practices start to come out to the public. In the last 15 years the top 20 sending nations have changed, with 40% of

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<sup>32</sup> Hervé Boéchat, *Personal interview*.

<sup>33</sup> David M. Smolin, *Child Laundering*, 172.

<sup>34</sup> Jean-Claude Legrand, *Personal interview*.

<sup>35</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 23.

<sup>36</sup> UNICEF, *Guidance Note on Intercountry Adoption in the CEE/CIS Region*, 9.

<sup>37</sup> Ricardo Graells, *Personal interview*.



them virtually dropping out of ICA largely due scandals related to the adoption practice<sup>38</sup>. Although Ethiopia has not dropped out of ICA, it slowed down the process by limiting adoptions to just five cases per day to allow for more time to investigate each case after allegations were made of children being given for adoption before birthparents had fully relinquished custody, among other questionable acts<sup>39</sup>. While this is in theory good news, this will also shorten supply, increasing demand, thereby increasing pressure on origin countries to come up with adoptable children. As one country increases regulations, another seems to open its doors.

### **Adoption Agencies**

In 2010, there were more than 70 foreign adoption agencies operating within Ethiopia<sup>40</sup>. Too many adoption agencies working in one country can create competition for having the largest number of young and healthy orphans. Many African countries do not allow adoption agencies in the ICA process because of skepticism about the financial motivations of these agencies that might lead them to apply pressure in order to have more adoptable children for PAPs, as opposed to the sole goal of promoting the child's best interest<sup>41</sup>. There have been cases in Ethiopia where agencies go out searching for infants to meet demands and in 2008, Christian World Adoption was being accused for child trading, having made \$6 million, despite being a "non-profit" Christian adoption agency<sup>42</sup>. That is not to say that all adoption agencies are inherently bad, but North American adoption bodies in particular have been

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<sup>38</sup> David M. Smolin, *Child Laundering*, 132.

<sup>39</sup> Elisa Rosman, *Downturn in International Adoption*.

<sup>40</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 92.

<sup>41</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, 36.

<sup>42</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 89.

criticized for their questionable practices regarding ICA, especially because of how much money is charged<sup>43</sup>. More transparency in costs, in the receiving country and country of origin, would go a long way towards addressing these concerns. As a TDH analysis on ICA notes, the costliest adoptions are those that are paying for illicit activities, such as payment for the parent's consent, falsified documents, etc<sup>44</sup>.

### **Cultural Issues**

An editorial from the ISS points out that in Africa, the word adoption simply does not exist<sup>45</sup>. Extended family plays a huge role in Africa and kinship care is often the response to children whose parents can no longer take care of them. For this reason, laws that completely sever ties between the family and the child should be questioned<sup>46</sup>. “For a birthmother in a country where adoption is not part of the culture and she signs a paper, does she really understand that means she can never her child again?”<sup>47</sup> asks Boéchat. In addition, Ethiopia's literacy rate is only 35%<sup>48</sup>, so many are in the vulnerable position of relying on others to explain the full implications of their consent.

The principle of subsidiarity is important because familial care in the country of origin is often better for the child than ICA by allowing the child to keep close ties with their families and culture. Kinship care is practiced in Ethiopia, but while it is common for

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<sup>43</sup> Ibid, 93.

<sup>44</sup> Isabelle Lammerant and Marlène Hofstetter, *Adoption at What Cost?*, 16.

<sup>45</sup> The ISS/IRC Team, *In Africa, the Word 'Adoption' Does Not Exist*, 1.

<sup>46</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, 3.

<sup>47</sup> Hervé Boéchat, *Personal interview*.

<sup>48</sup> Mary Ann Davis, *Intercountry Adoption Flows from Africa to the U.S.*, 801.

families to incorporate children of relatives into their home, formal adoption is considered something only available for foreigners<sup>49</sup>, which explains the low domestic adoption statistics. One must consider this when looking at statistics on the number of orphans in a country as well because many of these “orphans” have family members that are taking care of them, thus giving a distorted picture of how many children are adoptable. Ethiopia has a law that a child must stay in an orphanage a minimum of two months to safeguard against premature determination of adoptability of abandoned families<sup>50</sup>, but some are still concerned how much effort is made to follow the subsidiarity principle to keep the child within the country of origin, since ICA is so highly practiced<sup>51</sup>.

Africa is also home to 27% of the world’s Muslim population and “Sharia,” based on the four pillars of Islam, does not recognize adoption. Depending on interpretation, it even prohibits it<sup>52</sup>. Islamic law has been interpreted by six African nations as prohibiting it and thus they do not have ICA<sup>53</sup>. In Ethiopia, Islam is the second most widely practiced religion behind Christianity, with approximately 34% practicing it<sup>54</sup>. With a third of the population being Muslim, it is important to understand how this affects ICA perceptions and understand that for many, adoption is simply not an option for the child.

Yet another issue that has been brought up with adopting from Africa is the idea of adoption as the new imperialism. As Wallace says,

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<sup>49</sup> Joseph M. Isanga, *Surging Intercountry Adoptions in Africa*, 291

<sup>50</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, 17.

<sup>51</sup> Joseph M. Isanga, *Surging Intercountry Adoptions in Africa*, 290.

<sup>52</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, 5.

<sup>53</sup> Mary Ann Davis, *Intercountry Adoption Flows from Africa to the U.S.*, 807.

<sup>54</sup> Central Statistical Agency of Ethiopia 2007 Census.

“A common attitude among developing nations is ‘first you want our labor and raw materials; now you want our children.’ While the West considers the practice ‘charitable, human -even noble- behavior,’ developing countries have come to define ICA as imperialistic, self-serving, and a return to a form of colonialism in which whites exploit and steal natural resources.”<sup>55</sup>

Much like the “white man’s burden,” Boéchat notes, developed nations are feeling like it is their duty to help by adopting, but while there are good intentions behind this desire, it can also be condescending<sup>56</sup>. The attitude in many receiving countries is that the child will be better in our country than the country of origin, without thinking that a family in Ethiopia can nourish a child for a good 20 years without any problems, added Hofstetter<sup>57</sup>. “There are many countries that were colonized by capitalist countries and therefore their problems can be blamed on these countries, so when these are the countries coming to take their children, it is not simple,” says Graells<sup>58</sup>. Ethiopia was never colonized by a European power, but it was occupied by Italians, who adopted over 200 children from Ethiopia in the year 2010<sup>59</sup>. One example of the sensitivity of this issue was the Chad scandal in 2007 when police arrested French citizens working for the charity organization, Zoe’s Ark, as they were about to illegally take 103 African children to France for adoption purposes. Protests by the Chad people included chants such as “no to slavery and no to child trafficking.”<sup>60</sup>

These issues (cultural, monetary motivations, and pressures of supply and demand) all must be taken into account when PAPs consider choosing ICA from an African country such as Ethiopia. There is a lot of confusion on the part of adoptive parents about the need for these children to be adopted and information needs to be made clearer. Unfortunately, adoption agencies in receiving

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<sup>55</sup> Sara R. Wallace, *International Adoption*, 709.

<sup>56</sup> Hervé Boéchat, *Personal interview*.

<sup>57</sup> Marlène Hofstetter, *Personal interview*.

<sup>58</sup> Ricardo Graells, *Personal interview*.

<sup>59</sup> Presidency of the Council of Ministers, *Data and Perspectives in Intercountry Adoptions*, 15.

<sup>60</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, 3.

countries have little incentive to say anything discouraging regarding adoption and parents are so eager to have a child that they spend little time reflecting on what is truly the best option for the child that they think they are saving.

## **Haiti**

UNICEF and TDH did a report on Haiti in 2005 in an effort to reform adoption practices because Haiti was long known for having a faulty adoption system, with problems of corruption, lack of transparency, and no monitoring system<sup>61</sup>. It is not party to the Hague and has been criticized for inadequate laws on adoption, lacking any reference to the subsidiarity principle and not covering the key issue of fees<sup>62</sup>. The adoption procedure is mainly run by the crèches (orphanages), which provide immediate care for the children and then the Institut du Bien-être social et de Recherches (IBESR) is responsible for examining all requests for adoption and finding suitable placements for the children. Before the child is declared adoptable, the Justice of the Peace is responsible for obtaining consent from the birthparents<sup>63</sup>. The adoption procedure is largely privatized with independently run crèches and lawyers playing the biggest role<sup>64</sup>. The variety among crèches is huge and the only commonality between them is having been accredited by the IBESR.<sup>65</sup> Although the IBESR demands an annual report from the crèches, it does not have the means to actually visit them<sup>66</sup>. Eighty percent of Haitians were living below the poverty line before 2010<sup>67</sup> and 40-50% of Haitians did not have a birth certificate, which is necessary

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<sup>61</sup> Mia Dambach and Christina Baglietto, *Haiti: "Expediting" intercountry adoptions in the aftermath of a natural disaster... preventing future harm*, 14.

<sup>62</sup> *Ibid*, 15.

<sup>63</sup> *Ibid*, 14.

<sup>64</sup> Marlène Hofstetter and Fernando Freire, *L'adoption internationale en Haiti*, 41.

<sup>65</sup> *Ibid*, 24.

<sup>66</sup> *Ibid*, 32.

<sup>67</sup> Mia Dambach and Christina Baglietto, *Haiti*, 12.

for adoption<sup>68</sup>. The real identity of birthparents could never be certain and many children were unregistered with the government, leaving room for trafficking. The earthquake hit Haiti in 2010 and responses from many in the international community called for the immediate expediting of all “pipeline” adoption cases (adoptions that were in the middle of being processed)<sup>69</sup>. What resulted was a second disaster that has brought people to the agreement that ICA should never be the solution directly after a natural disaster.

### **Emotional Responses**

The international community’s reaction to the earthquake in Haiti was full of good intentions, people had a deep desire to help this impoverished country that had just been wiped out by a devastating earthquake, but these emotions distorted the situation, especially with relation to adoption. People thought that these children needed to get out of Haiti as quickly as possible for their own safety, but as Hofstetter points out, if the concern was that these children were going to suffer and die, it would be necessary to get all of the children out, not just those to be adopted<sup>70</sup>. One newspaper reported that many of the expedited adopted children were not hurt by the earthquake at all, coming from orphanages that were undamaged<sup>71</sup>. An ISS report on Haiti says that governments were using emotional terms such as “reunion” that inaccurately described the situation, implying that children were being reunited with their PAPs, when many of them had never met<sup>72</sup>. The media likes to depict dramatic situations that are very biased, showing crowded,

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<sup>68</sup> Marlène Hofstetter and Fernando Freire, *L’adoption internationale en Haiti*, 36.

<sup>69</sup> Mia Dambach and Christina Baglietto, *Haiti*, 6.

<sup>70</sup> Marlène Hofstetter, *Personal interview*.

<sup>71</sup> Mia Dambach and Christina Baglietto, *Haiti*, 23.

<sup>72</sup> *Ibid*, 8.

poverty stricken institutions and does not mention that many of the children being shown are not available for adoption<sup>73</sup>. “It increases ratings and draws the public’s attention,” says Hofstetter. “When people see children in poor conditions, it’s always very touching.”<sup>74</sup> Ten nations, including the United States and France, were publically advocating for expediting adoption, while 30 were publically against it due to the lack of safeguards<sup>75</sup>. As Hofstetter mentions, the 2004 Tsunami in Sri Lanka had already demonstrated that ICA was not the answer to natural disaster, but many seemed to suddenly forget<sup>76</sup>.

### **Deteriorated System**

If Haiti had a poorly regulated adoption system before the earthquake, it only worsened in its chaotic post-disaster state. There was no competent body to ensure that procedures were being followed, few efforts were made to confirm the adoptability of a child (whether birthparents were still alive, obtaining consent, etc.), children were not prepared to meet adoptive families, and no one was overseeing the large sums of money that were being transferred<sup>77</sup>. Receiving countries also bypassed Hague requirements regarding PAPs’ eligibility, such as not including an analysis of whether these parents were prepared to adopt a child that had just gone through trauma<sup>78</sup>. With the speed of the adoptions, many PAPs were not mentally prepared and neither were the children. Some PAPs reported that at their first meeting in the airport the children were screaming, pushing people away, and being fearful<sup>79</sup>. In addition, by

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<sup>73</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 73.

<sup>74</sup> Marlène Hofstetter, *Personal interview*.

<sup>75</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 75.

<sup>76</sup> Marlène Hofstetter, *Personal interview*.

<sup>77</sup> Mia Dambach and Christina Baglietto, *Haiti*, 6.

<sup>78</sup> *Ibid*, 30.

<sup>79</sup> *Ibid*, 36.

prioritizing ICA in the Haiti earthquake, other relief measures were bypassed. For example, planes for ICA were allowed to land in Haiti, both clogging the devastated airport and not allowing other humanitarian aid to come until later<sup>80</sup>.

Since Haiti was in a state of emergency, it should have been the job of the receiving countries to make sure adoption laws were being followed. In Hofstetter's opinion, many receiving countries viewed Haiti as an opportunity to have more adoptable children, which is why they were so eager to speed up the process. Because independent adoption is allowed in Haiti, people could raise their hand and say they had a file in Haiti and it would be impossible to verify<sup>81</sup>. The chaos and confusion of a disaster make it easy for malpractice to occur and thus there were many instances of questionable adoptions. For example, only 203 of 250 approved Haitian adoptions to Canada were "legitimate."<sup>82</sup> In one infamous case, U.S. missionaries were caught trying to take 33 Haitian children across the Dominican Republic without the necessary paperwork. At least 20 of the children had one parent still living and all but one of the 33 were able to later be reunited with their families in Haiti<sup>83</sup>. Hofstetter says this was the worst of the cases and she is not sure if it was even motivated by money, but rather seemed to be done in the name of "saving" the children<sup>84</sup>.

### **Adoptability**

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<sup>80</sup> Ibid, 23.

<sup>81</sup> Marlène Hofstetter, *Personal interview*.

<sup>82</sup> Mia Dambach and Christina Baglietto, *Haiti*, 27

<sup>83</sup> Ibid, 24.

<sup>84</sup> Marlène Hofstetter, *Personal interview*.



Studies carried out after disasters such as the Haiti earthquake have shown that the majority of children are able to be reunited with their birthparents or family members<sup>85</sup>. Expediting adoptions was meant to imply speeding up the process of already approved adoptions, but with Haiti, many adoptions were carried through with children whose adoptability was still in question<sup>86</sup>. The adoption procedure in Haiti gives no way for authorities to verify how consent was obtained and therefore there is no way to verify if the child is eligible for ICA. In certain instances, it was the crèche that signed the consent form, not the birthmother<sup>87</sup>. Many children in crèches had parents and maintained regular contact with them, but had simply been placed in institutions because of poverty<sup>88</sup>. With the earthquake, adequate efforts to find alternative solutions to ICA, such as familial care, were not made. There was also a lack of identification and registration measures during the emergency (in addition to the preexisting issue that many Haitians do not have a birth certificate), which resulted in illegal movement of children across borders<sup>89</sup>.

After the initial confusion and urgency died down, at the Special Commission on adoption of 2010, there was widespread agreement that in future situations new adoptions would not take place until after the country of origin was in a position to ensure that adequate safeguards were being carried out<sup>90</sup>. Many people wanted to adopt children that had been taken away from their family environment, but this was often temporary, with families reunited afterwards<sup>91</sup>. There had been efforts to reform Haiti's adoption

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<sup>85</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 74.

<sup>86</sup> Mia Dambach and Christina Baglietto, *Haiti*, 8.

<sup>87</sup> Marlène Hofstetter and Fernando Freire, *L'adoption internationale en Haiti*, 21.

<sup>88</sup> Mia Dambach and Christina Baglietto, *Haiti*, 29.

<sup>89</sup> *Ibid*, 25.

<sup>90</sup> *Ibid*, 32.

<sup>91</sup> ACPF, *Africa- The New Frontier for Intercountry Adoption*, 20.

policies long before the earthquake hit and only now, in 2013, did the new legislation finally pass<sup>92</sup>. ICA continues in countries such as Haiti without strong efforts to reform because so many people benefit from it. For example, hotels, merchants, and artisans benefit from the PAPs' visits and for impoverished tiny countries such as Haiti, this is a big consideration<sup>93</sup>. Hofstetter says that plenty of things will change now with a recently approved new law, making the adoption process much more controlled<sup>94</sup>. It has begun the process of becoming party to the Hague, although it is unclear how long the process will take to be able to meet all of the requirements and become a full member.

Overall the lessons to be taken from the Haiti situation are that one needs to be wary of media representations of adoption, and gut emotional responses can often result in failures to respect the best interests of the child. It also is never advisable to adopt children when there is so much uncertainty and confusion in the process. Transparency is extremely important in ensuring that all actors involved (birthmothers, children, lawyers, adoption agencies, and PAPs) are following appropriate measures so that no one's rights are breached. Many complain about adoption processes being complicated and long<sup>95</sup>, but the purpose is to protect the child. If PAPs lose sight of this and only focus on their desire for a child, poor practices will continue. It is thus the receiving countries' duty, as well, to educate PAPs on the realities of adoption and not take advantage of developing countries' vulnerabilities, as was the case with Haiti's devastating earthquake.

## Nepal

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<sup>92</sup> Marlène Hofstetter, *Personal interview*.

<sup>93</sup> Marlène Hofstetter and Fernando Freire, *L'adoption internationale en Haiti*, 41.

<sup>94</sup> Marlène Hofstetter, *Personal interview*.

<sup>95</sup> Siobhan Clair, *Child Trafficking and Australia's Intercountry Adoption System*, 19.

Nepal was yet another big sending country in ICA that is not party to the Hague, but has since decreased international adoptions because of many receiving countries advising against it or in some cases suspending adoptions altogether due to adoption scandals. ICA did not begin in Nepal until 1976, when the National Code of 1964 was amended to allow adoptions outside of the country. Between 2000 and 2007, ICA rose on average by 50-100 adoptions per year, and this huge increase has led to problems, such as alleged falsification of documents, child centers buying children from biological parents, and agencies charging excessive amounts to PAPS<sup>96</sup>. The recent documentary produced by TDH, *Paper Orphans*, revealed the Nepali birthmother's side of the ICA story<sup>97</sup> and the UNICEF/TDH report on Nepal has exposed the numerous faults with Nepal's international adoption policies and practices<sup>98</sup>. Once again, problems arise due to lack of transparency, strong demand, and inadequate laws.

### **Consent of Birthparents**

It has been agreed that the absence of a clear definition of "orphan" leads to bad practices, which has been a major issue with Nepal's adoption system<sup>99</sup>. In their child centers, 80% of children examined were found to have living parents that could look after them<sup>100</sup>, which means that to be adoptable, appropriate consent should have been obtained. One practice that has been highly criticized in Nepal is that police consider a child to be abandoned if they publish the child's photo in the newspaper and after 30 days no one claims to be the parents. Hofstetter objects to this, saying that many of the families do not receive newspapers and/or are not

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<sup>96</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 9.

<sup>97</sup> Terre Des Hommes, *Paper Orphans*.

<sup>98</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*.

<sup>99</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 87.

<sup>100</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 19.

literate<sup>101</sup>. The illiteracy rate among Nepali adults is over 48%, which makes signing consent forms difficult<sup>102</sup>. In the study on Nepal, seven out of nine birthmothers interviewed by UNICEF and TDH said they signed documents without understanding them and in one case, biological parents said they had not signed any documents<sup>103</sup>.

The study also found that by far the main motivator for parents to place children in these child centers was to give their child an education because these are not simply orphanages, but rather residential centers that provide food, lodging, and send kids to schools<sup>104</sup>. While 80% of the children in centers have living parents, somehow 100% of those being sent for adoption are “abandoned orphans.” “There’s something that doesn’t make sense there,” says Hofstetter<sup>105</sup>. Adoption in Nepal was suspended briefly in May 2007, during which the number of child abandonment notices published conveniently decreased<sup>106</sup>. This relates back to the idea of supply and demand, and when there is no demand, Nepal suddenly has less orphans.

For those that did understand that they were putting their child up for adoption, there were many small lies told, such as that the child will come back and find them after they are 18 years of age. In reality, there is no central authority in Nepal to keep information about the child’s origin or about the identity of the biological parents<sup>107</sup>. Thus, the child centers are the only ones with this very important information, and yet 45% report destroying it at some point, making it virtually impossible for adopted children to

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<sup>101</sup> Marlène Hofstetter, *Personal interview*.

<sup>102</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 22.

<sup>103</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 38.

<sup>104</sup> *Ibid*, 13.

<sup>105</sup> Marlène Hofstetter, *Personal interview*.

<sup>106</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 20.

<sup>107</sup> *Ibid*, 32.

retrace their origins<sup>108</sup>. In *Paper Orphans*, a painful scene shows a birthmother asking for information about her child and no one can tell her what happened to it, instead people shut the door in her face and tell her to come back another day<sup>109</sup>. Too often birthmothers are easily forgotten in ICA and many PAPs are surprised to find out that the birthmother still deeply loves her child. The ABC report on Ethiopia showed a Christian couple meeting the birthmother who was crying when giving up her children<sup>110</sup>. “The parents say ‘God bless you for giving us your child’ and then all of a sudden it is theirs,” comments Hofstetter<sup>111</sup>. With Nepal, the majority of the time the parents gave their children up because they wanted to give them a better life, with a good education and comfortable housing<sup>112</sup>, not because they did not want the child or had passed away.

### **Poverty: A Legitimate Reason for Adoption?**

“So many people say that they are saving the child, but if all the money that parents paid for ICA went to the mother, often the mother would keep the child,” says Legrand<sup>113</sup>. It is no secret that the sending countries for ICA are poor countries, nor is it a big surprise that one of the main reasons children are up for adoption is due to poverty, but is poverty a good reason to give up one’s child? Smolin would argue not. In his paper on ICA and poverty he proposes what he calls the “aid rule,” which states that for birthparents that are living under \$1 a day, family preservation assistance must be provided as a condition precedent for accepting the

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<sup>108</sup> Ibid, 33.

<sup>109</sup> Terre Des Hommes, *Paper Orphans*.

<sup>110</sup> ABC Television, *Fly Away Children*.

<sup>111</sup> Marlène Hofstetter, *Personal interview*.

<sup>112</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 19.

<sup>113</sup> Jean-Claude Legrand, *Personal interview*.

relinquishment that would make their child eligible for ICA<sup>114</sup>. In the UNICEF and TDH study, 89% of Nepali birthparents cited poverty as a reason for giving up their children<sup>115</sup>. The ISS says that poverty should be considered the main factor for abandonment, because it also contributes to illiteracy, lack of access to primary healthcare, and other conditions for economic survival<sup>116</sup>.

There is a lack of developed social welfare systems in Nepal, including family support systems, and for many parents, these child institutions seem like the only option for children to be provided for. The CRC says states should provide adequate support to families, thus without this, ICA may be taking advantage of vulnerable populations with no other alternative<sup>117</sup>. Smolin notes that the poor lack bargaining power and therefore the ultimate solution would be to give them empowerment, which can come from social support structures<sup>118</sup>. “Those with little seem to end up with less, and have nothing left to sell or offer but themselves and their loved ones.”<sup>119</sup> UNICEF is working to increase these social structures and the de-institutionalization of children, stating that no one should ever “feel forced by poverty or insecurity to give up a child.”<sup>120</sup>

Cash incentives may be offered to birthparents for the relinquishment of their child, which has been condemned by both the CRC and the Hague. In Nepal, a few instances of cash incentives were found, but these were the minority. Instead, a major incentive is the free education that is offered by most of the centers, which in many ways acts much like a cash incentive for parents who

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<sup>114</sup> David M. Smolin, *Intercountry Adoption and Poverty*, 415.

<sup>115</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 19.

<sup>116</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 21.

<sup>117</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 10.

<sup>118</sup> David M. Smolin, *Intercountry Adoption and Poverty*, 419.

<sup>119</sup> *Ibid*, 418.

<sup>120</sup> UNICEF and International Adoption webpage FAQ.

desperately want a better future for their children<sup>121</sup>. Bartholet argues that it is not a terrible thing to give money or aid to poor birthparents who would have surrendered their child anyways<sup>122</sup>, but this view does not take into consideration that many birthparents would not have surrendered the child. For example, in *Paper Orphans*, many of the Nepali mothers are searching to find out what happened to their child who they still love and think about every day<sup>123</sup>. These mothers give up their children out of love, not because they do not want the child. As Smolin says, “there is a palpable cruelty to taking away the children of poor.”<sup>124</sup>

### **Child Abduction Cases**

Nepal, along with countries such as Haiti and Guatemala, has had several child abduction cases related to ICA<sup>125</sup>. Boéchat notes that one needs to be careful about calling it human trafficking because the children are not being exploited for their services<sup>126</sup>. Instead, the illegal trade of children involves taking the infant away from its birthparents without their consent and putting it up for adoption. This can happen in several ways; one specific case in Nepal that seems to be quite common involved telling the parents that their children would be taken care of by a children’s home. Parents Rajan and Kamar signed documents that they did not understand because of their illiteracy and their children were put up for adoption abroad<sup>127</sup>. Nepal has had numerous cases of children disappearing from centers with parents only learning later that they will never be able to see their child again because their child was

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<sup>121</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 41.

<sup>122</sup> Elizabeth Bartholet, *International Adoption: The Human Rights Position*, 26.

<sup>123</sup> Terre Des Hommes, *Paper Orphans*.

<sup>124</sup> David M. Smolin, *Intercountry Adoption and Poverty*, 437.

<sup>125</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 15.

<sup>126</sup> Hervé Boéchat, *Personal Interview*.

<sup>127</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 64.

sent away for ICA<sup>128</sup>. *Paper Orphans* shows how some of these babies were basically stolen from their mothers by getting the birthmothers to sign a paper that was supposedly for admitting the children to go to school, when in fact it was putting them up for adoption<sup>129</sup>.

Only five of the nine parents interviewed by the Nepal study were told that their child would even be sent abroad at all, and those that were told had been under the impression that it was purely for educational purposes. Many parents sending their children to these centers in the Kathmandu region live far away in very rural areas. Through the issuing of “recommendation letters” child centers are given full authority to send children for ICA without consulting biological parents<sup>130</sup>. Nepal also allows PAPs to choose children and do their own “matching”, a practice that is considered negative for several reasons, and they do this before the child has been ensured to be eligible for adoption<sup>131</sup>. This can lead to pressures on centers to make the child adoptable to meet the demands, thereby bypassing rules of gaining proper consent. In the case of Haiti, some crèches admitted to actively searching for children to meet PAP’s requirements<sup>132</sup>.

A failure of the Nepali adoption system that allows these abuses to occur is the monitoring, or lack thereof, of its adoption centers. Only 2/3 of 100 centers were monitored in the last two years and all monitoring visits were announced beforehand, thus allowing centers to prepare themselves for the evaluation. Despite this, 22 centers were still closed down in Kathmandu Valley for

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<sup>128</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 40.

<sup>129</sup> Terre Des Hommes, *Paper Orphans*.

<sup>130</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 40.

<sup>131</sup> *Ibid*, 30.

<sup>132</sup> Mia Dambach and Christina Baglietto, *Haiti*, 15.



mismanagement, exploitation of children, and poor conditions<sup>133</sup>. These are only the registered centers; unregistered centers operate outside of the law and are therefore never monitored, even though they are a major part of ICAs<sup>134</sup>. One study initiated by the Central Child Welfare Board categorized centers into A,B,C, or D, with D being the riskiest of the adoption centers. Only 2% of centers were put into category A, with the largest percent in category C<sup>135</sup>.

UNICEF and TDH have criticized the Nepali ICA system because of its lack of transparency, which often implies abuses. Many child centers were opened with the expectation of financial gain and PAPs often are unaware of what their money is paying for<sup>136</sup>. Nepal has been found to have cases of selling and buying children for adoption<sup>137</sup> and therefore needs to have more transparency in order to ensure good practices. These concerns have led the United States to suspend Nepali adoptions in 2010 and U.S. adoption service providers still do not authorize adoptions from Nepal<sup>138</sup>.

### **Receiving Countries**

International adoption occurs between sending countries and receiving countries and thus, receiving countries are very important in the process as well. While supply has gone down for ICA, demand remains strong, but receiving countries are finally beginning to decrease their numbers of international adoptions. The top five receiving countries are the United States, Spain, France,

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<sup>133</sup> UNICEF and Terre Des Hommes, *Adopting, the Rights of the Child*, 15.

<sup>134</sup> *Ibid*, 16.

<sup>135</sup> *Ibid*, 12.

<sup>136</sup> *Ibid*, 34.

<sup>137</sup> *Ibid*, 9.

<sup>138</sup> Bureau of Consular Affairs-U.S. Department of State, *Intercountry Adoption: Nepal*.

Italy, and Canada, with Italy being the only country where adoption has not diminished in the past few years<sup>139</sup>. All of these countries are party to the Hague convention, but as noted previously, these countries can and often do conduct adoptions with countries outside of this convention. In 2010, only 38.2% of adoption cases by the 10 main receiving countries were conducted under the requirements of the Hague<sup>140</sup>. It has been argued that it is the duty of the receiving countries to make sure adoption laws are being followed and to inform PAPs because origin countries often do not have the capacity to do so.

### **Role and Responsibility**

Being party to the Hague should imply that when dealing with non-member countries, it is the responsibility of receiving countries to ensure that safe practices are still being used. Even when dealing with Hague countries, it is necessary to be cautious and aware of the potential for abuse. The ISS argues that the Hague has the problem of “too good of a reputation” because it is assumed to be a guarantee, and then PAPs do not look beyond the child’s file and are less attentive to risks. Receiving countries should therefore be vigilant, whether dealing with countries that have ratified the convention or not. There has been a problem in the past with agreement and cooperation among receiving states. Not all share a common position on suspending adoption from certain sending countries, for example, there was disagreement during the Haiti disaster, and thus abuses continued even when certain countries shutdown adoption after the earthquake. There needs to be an agreed upon criteria for ICA before real change can happen<sup>141</sup>. TDH recommends that each receiving country have a clearly defined charter of ethical practices that binds the government and adoption

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<sup>139</sup> Marlène Hofstetter, *Personal interview*.

<sup>140</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Intercountry Adoption*, 10.

<sup>141</sup> Mia Dambach and Christina Baglietto, *Haiti*, 7.

bodies, which is communicated to the countries of origin<sup>142</sup>. Receiving countries also need to communicate the realities of the current state of adoption to the PAPs within their own country. People still think there is a large supply of adoptable infants, so it is the responsibility of adopting countries to give a clear message about the fact that the children in need of adoption are not toddlers and babies, but rather older kids or those with special needs. Adoption of these children, who actually need it, should be promoted<sup>143</sup>.

Receiving countries need to bear a strong responsibility in matters concerning money as well because money is largely coming from them. So far, however, there has been no collective movement to limit abuses that result from financial incentives in ICA<sup>144</sup>. In fact, some receiving countries have been largely contributing to these abuses by attempting to increase the amount of adoptable children to meet the demands of PAPs. One task of diplomatic representatives for certain countries is the promotion of adoption to their country, sending delegations to countries of origin specifically with the goal of increasing ICA numbers<sup>145</sup>. This gives the message to sending countries that quantity is more important than quality or rather, that producing a large number of adoptable children is more important than protecting the best interests of the child.

France and Italy, Hofstetter says, do not look much into where the children come from because they need to meet the demand of the adoptive parents. Italy spends millions of Euros each year to find children, even creating orphanages in certain countries to create a supply of adoptable children<sup>146</sup>. TDH holds the position that no receiving country has the right to claim children from a

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<sup>142</sup> Isabelle Lammerant and Marlène Hofstetter, *Adoption at What Cost?*, 6.

<sup>143</sup> Flavie Fuentes, Hervé Boéchat, and Felicity Northcott, *Grey Zones of Inter-country Adoption*, 23.

<sup>144</sup> *Ibid*, 39.

<sup>145</sup> UNICEF, *Guidance Note on Inter-country Adoption in the CEE/CIS Region*, 9.

<sup>146</sup> Marlène Hofstetter, *Personal interview*.

country of origin because the needs of the children should form the only legitimate basis for adoption. “No one holds the ‘right to adopt’” and on a global scale, the number of healthy young children who are adoptable is inferior to the number who want to adopt<sup>147</sup>.

### **Downward Trend: The Need for Change**

With a decreasing number of healthy children available for adoption, there needs to be a decrease in PAPs, unless they are interested in adopting older children, sibling groups, or handicapped children. The number of adoptions by receiving countries has finally begun to diminish, but the waiting list is ever growing, which can lead to enormous pressures on both receiving and sending countries. One contributing factor to this dilemma is that PAPs are frankly unaware of this simple fact. Many still have this emotional image in their heads of abandoned children in the streets of Africa, desperate to be taken in, but the reality is that a truly abandoned child is very rare. Most of these children have mothers or extended families that want to take care of them, and with an ever increasingly developing world, they are beginning to have the means to do so. Also as Graells says, “now there is an emergence of middle class in ‘southern countries,’ which has increased national adoption within these countries.”<sup>148</sup> Even those who are too poor to care for their children can often give their child to a neighbor or friend for temporary care, and then reclaim the child when they are in a better place. Hofstetter explains that TDH no longer carries out adoptions because according to her, ICA does not really exist anymore, except for the less demanded children<sup>149</sup>.

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<sup>147</sup> Isabelle Lammerant and Marlène Hofstetter, *Adoption at What Cost?*, 4.

<sup>148</sup> Ricardo Graells, *Personal interview*.

<sup>149</sup> Marlène Hofstetter, *Personal interview*.

So, should parents who cannot have children of their own not adopt? This is a difficult question to answer, but international adoption is not what it used to be and therefore there needs to be some change in the mindset of these prospective parents. Is it not surprising that these PAPs do so little research on a decision that is arguably one of the biggest decisions of their lives? How is it that these parents are unaware of the abuses and shortage of children truly in need of adoption? As E.J. Graff's piece on ICA says, it is "the lie we love,"<sup>150</sup> for people do not want to deal with the fact that the children they want so much do not need saving and are almost non-existent.

### **Motivations of Prospective Adoptive Parents**

In European countries, there are not many children available for domestic adoption, which is one of the main reasons so many are turning to ICA<sup>151</sup>. These PAPs often cannot have children of their own and therefore see adoption as a good alternative. One problem that arises when adopting solely because one desires a child, is that the rights of the child or birthparent can often be forgotten. PAPs must not lose sight of where the child is coming from and rather than pressuring governments to give them a child, they should be pressuring governments to ensure that best practices are being carried out at all stages of the adoption process.

For the United States, the situation is slightly more complex because there are a decent number of children available for domestic adoption and yet, the U.S. is the number one country involved in ICA<sup>152</sup>. Children waiting to be adopted in the U.S. foster

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<sup>150</sup> E.J. Graff, *The Lie We Love*.

<sup>151</sup> Hervé Boéchat, *Personal interview*.

<sup>152</sup> *Ibid*.

care system have actually increased dramatically from 1990 to 2007<sup>153</sup>. So, why are parents turning to international adoption when they could be adopting nationally? “It’s more exotic,” says Hofstetter. “And adoptive parents know that the mother cannot come and try to take the child away, like with domestic adoption.”<sup>154</sup> In a study looking at motivations for choosing ICA over U.S. domestic adoption, one reason listed was that the United States stresses open adoption, while international adoption is essentially finalized<sup>155</sup>.

A major reason, however, is that the majority of adoptable children in America are racial minorities. Legrand says that he was surprised to find that black children from the U.S. were being adopted in France, implying that it is easier to adopt these children abroad than within their own country<sup>156</sup>. There is a blaming of inner city poor blacks within America for creating many social problems, some of which include creating drug-affected babies<sup>157</sup>. Boéchat hypothesizes that since these children are often from poor minority families there are questions about drugs and other poor health issues<sup>158</sup>. The study on ICA vs transracial domestic adoption found that international adoption seemed to bear a heavier humanitarian tone for couples, whereas the altruistic motive was more subtle for transracial adoption<sup>159</sup>. It also found that with ICA, cultural differences of the child could be seen as “fun,” but racial differences of Americans were only seen as hurdles to be overcome<sup>160</sup>. In other words, having an African baby from Ethiopia can be seen as a humanitarian act with fun cultural implications, whereas a white couple adopting a black American child does not have the

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<sup>153</sup> Yuanting Zhang and Gary R. Lee, *Intercountry Versus Transracial Adoption*, 76.

<sup>154</sup> Marlène Hofstetter, *Personal interview*.

<sup>155</sup> Yuanting Zhang and Gary R. Lee, *Intercountry Versus Transracial Adoption*, 80.

<sup>156</sup> Jean-Claude Legrand, *Personal interview*.

<sup>157</sup> Yuanting Zhang and Gary R. Lee, *Intercountry Versus Transracial Adoption*, 78.

<sup>158</sup> Hervé Boéchat, *Personal interview*.

<sup>159</sup> Yuanting Zhang and Gary R. Lee, *Intercountry Versus Transracial Adoption*, 83.

<sup>160</sup> *Ibid*, 90.

added exotic or “do-gooder” associations. Therefore, Americans adopting abroad can be explained by being motivated by this “savior” notion, which is somehow lacking from domestic adoption. This idea is largely misinformed, however, and domestic adoption should be promoted more in the case of the United States. Couples that are able to have children of their own should be strongly urged not to turn to adoption, unless they are willing to adopt children with special needs. As previously established, young healthy babies are not in desperate need of saving and therefore it is not doing anyone any good to adopt with the purpose of doing a good deed.

### **Conclusion and Suggestions**

For those who international adoption seems to be the only choice to have a child, it is advised that they be careful in making sure that the adoption procedure takes place under the guidelines set out by the Hague, regardless of whether the sending country is a member to the convention. It is also the responsibility of all the countries involved to promote good practices. Although the Hague is not enforceable, it has greatly improved adoption and more and more countries are coming around to ratifying it. “Adoption has changed a lot since the Hague, it used to be a much more private business,” says Boéchat<sup>161</sup>. There has begun to be a decreasing trend in international adoption, which is a step in the right direction, but there are still pressures from the long list of parents waiting to adopt. It is the job of the governments then to not cave into these pressures.

Good laws concerning ICA already exist with the Hague, and thus, it is more a question of ensuring that these laws are carried out. This can be done by informing the public so that they are equipped with the knowledge necessary to avoid future abuses. If transparency and information were made more available to PAPs, pressures would switch from demanding more children to

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<sup>161</sup> Hervé Boéchat, *Personal interview*.

demanding better procedures. The cases of Ethiopia, Haiti, and Nepal just give a few examples of how abuses in ICA manifest themselves, and there will continue to be poor practices as long as receiving countries allow them to occur. International adoption is not inherently evil and in certain cases it can be a good solution, but one must be aware of the reality before jumping in and taking a child without questioning how it got there. The current situation of ICA is full of “misguided saviors” who think they are helping children in need, when in fact they are often contributing to the cycles of abuse. Therefore, a major solution to the current situation of international adoption is simply spreading information to the public and dispelling the myth of an overpopulation of orphans. It is the duty of each receiving country to do this, as well as all adoption agencies. This could shorten the waitlist and allow people to make an educated decision, rather than a purely emotional one.

### **Abbreviations**

**ABC**- Australian Broadcasting Corporations

**ACRWC**- African Charter on the Rights of the Welfare of the Child

**CRC**- Convention on the Rights of the Child

**IBESR**- Institut du Bien-être social et de Recherches

**ICA**- Intercountry Adoption

**ISS**- International Social Service

**PAPs**- Prospective Adoptive Parents



**TDH-** Terre Des Hommes

**UNICEF-** The United Nations Children's Fund

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