

**INTERCOUNTRY ADOPTION FRAUD: HOW POORLY
IMPLEMENTED LEGISLATION EFFECTS COUNTRIES,
CHILDREN, AND PARENTS**

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INTRODUCTION

As the world regains normalcy following a global pandemic, intercountry adoption¹ has taken a hit. Intercountry adoption within the United States reached its peak in 2004, with 22,988 children placed with families.² Since 2004, the United States has seen a drastic decrease in intercountry adoption rates.³ In 2020, only 1,622 international adoptions took place in the United States;⁴ slightly increasing in 2021, with 1,785 children adopted.⁵ There are multiple causes for the decline in adoptions. For example, origin countries, such as Russia and Guatemala, have terminated their international adoption programs with the United States.⁶ More recently, the leading cause of this decrease is the COVID-19 pandemic.⁷ Many countries, including China, placed adoptions on hold as the coronavirus took over the world.⁸ In contrast, other countries such as Colombia and Bulgaria, relaxed their visitation rules to allow international adoptions to continue.⁹

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1. “Intercountry adoption is the process by which you adopt a child from a country other than your own through permanent legal means and then bring that child to your country of residence to live with you permanently.” U.S. Dep’t of State, *Intercountry Adoption*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/Intercountry-Adoption.html> (last visited Nov. 22, 2022).

2. Amanda L. Baden, *Intercountry Adoption: The Beginning of the End*, UNIV. OF MASS. AMHERST PUBL’N SERIES, 1 (2019); see also Jennifer S. Jones, *Top 5 International Adoption Countries of 2021*, ADOPTION.ORG (Jan. 29, 2022), <https://adoption.org/top-5-international-adoption-countries>.

3. Baden, *supra* note 2, at 1.

4. Jones, *supra* note 2.

5. U.S. DEP’T OF STATE, ANNUAL REPORT ON INTERCOUNTRY ADOPTION (July 2022), <https://travel.state.gov/content/dam/NEWadoptionassets/pdfs/FY21%20Annual%20Report%20on%20Intercountry%20Adoption.pdf> [hereinafter U.S. DEP’T OF STATE, ANNUAL REPORT ON INTERCOUNTRY ADOPTION].

6. Jones, *supra* note 2.

7. *Id.*

8. China is one of the most popular countries for international adoption. See *id.*

9. Adrianna Zhang, *International Adoptions Resume Amid COVID, But Not in China*, VOA (Dec. 11, 2020, 3:45 PM), https://www.voanews.com/a/east-asia-pacific_voa-news-china_international-adoptions-resume-amid-covid-not-china/6199478.html.

The current intercountry adoption laws and treaties protect children's rights and prevent illicit adoption practices.¹⁰ The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption¹¹ ("Hague Convention") and the United Nations Convention on the Rights of the Child¹² ("UNCRC") established safeguards to ensure that intercountry adoptions occur in the "best interest of the child."¹³ However, protection for adoptive parents and birth parents is left to the laws of the country in which they reside.¹⁴ For example, in the United States, the federal statute governing intercountry adoption is the Intercountry Adoption Act of 2000 ("IAA").¹⁵ Unfortunately, despite the multiple treaties and statutes implemented to prevent illicit adoption practices, fraud still occurs.¹⁶

An adoptive mother and her husband, Judi and Tony Mosley, were deeply affected by fraudulent adoptions on five different occasions with their children from Cambodia, Vietnam, and Sierra Leone.¹⁷ For example, their daughter Camryn, was part of an adoption

10. See Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *opened for signature* May 23, 1993, S. Treaty Doc. No. 105-51 [hereinafter Hague Convention]; see Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter Convention on the Rights of the Child].

11. Hague Convention, *supra* note 10.

12. Convention on the Rights of the Child, *supra* note 10.

13. See Hague Convention, *supra* note 10.

14. *Id.* Each Contracting Party is responsible for implementation of the Hague Convention, this includes enacting adoption-specific legislation. *Id.*

15. Intercountry Adoption Act of 2000, 42 U.S.C. §§ 14901–14954.

16. "Adoptions resulting from crimes such as abduction and sale of and trafficking in children, fraud in the declaration of adoptability, falsification of official documents or coercion, and any illicit activity or practice such as lack of proper consent by biological parents, improper financial gain by intermediaries and related corruption, constitute illegal adoptions and must be prohibited, criminalized and sanctioned as such." Special Rapporteur on the Sale and Sexual Exploitation of Children, *Illegal Adoptions*, UNITED NATIONS OFFICE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/en/special-procedures/sr-sale-of-children/illegal-adoptions> (last visited Jan. 8, 2023).

17. E.J. Graff, *In 1998, Americans Adopted 29 Children From a Town in Sierra Leone. Their Birth Families Say They Were Stolen*, SLATE (Aug. 9, 2011, 10:55 PM), <https://slate.com/human-interest/2011/08/in-1998-americans-adopted-29-children-from-a-town-in-sierra-leone-their-birth-families-say-they-were-stolen.html> [hereinafter Graff, *Sierra Leone*].

fraud and laundering scheme in Cambodia.¹⁸ Camryn was solicited off the street by an adoption recruiter when she was six years old.¹⁹ During the same time, Judi discovered that her other daughter's picture and story were being used by an adoption facilitator in Vietnam to attract prospective adoptive parents.²⁰ Years later, Judi came across a social media post about Sierra Leonean parents looking for their missing children of fifteen years.²¹ As she read the post, Judi realized that one of the missing children was her sixteen-year-old son whom she adopted in 1998.²²

This Comment considers the actions taken by adoptive parents, birth parents, receiving countries, and origin countries *after* fraudulent intercountry adoptions occur. Part I discusses the background of the Hague Convention and the UNCRC. Part II examines the types of intercountry adoption fraud, focusing on Haiti, Sierra Leone, Guatemala, and the United States. Part III focuses on the current frameworks to prevent and punish fraud within the United States. Part IV examines the problems within the current system and analyzes various solutions proposed by scholars and government officials. Finally, Part V proposes creating an agency within the Hague to oversee the specific litigation matters of intercountry adoption fraud among the Hague Convention countries.

I. RELEVANT TREATIES IN FORCE

The two main treaties that advocate for children's rights are the UNCRC and the Hague Convention.²³ The UNCRC established a legal framework that focuses on the protected time of childhood.²⁴ The Hague Convention builds upon Article 21 of the UNCRC and focuses specifically on the adoption of children.²⁵ Unlike the UNCRC, there is no independent committee within the Hague Convention that monitors

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* See *infra* Part III.

23. See Hague Convention, *supra* note 10; Convention on the Rights of the Child, *supra* note 10.

24. Convention on the Rights of the Child, *supra* note 10.

25. *Id.*

and enforces the treaty's provisions.²⁶ Upon signing and ratifying both treaties, each country commits to "[r]ecogniz[e] that the child, for the full harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding."²⁷

A. *The United Nations Convention on the Rights of the Child*

The UNCRC became effective on September 2, 1990.²⁸ The treaty was derived from the idea "that children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather they are human beings and individuals with their own rights."²⁹ Although the UNCRC is the most widely-ratified human rights treaty in history, the United States is only a signatory and has not yet ratified this treaty.³⁰ As a mere signatory, there is an obligation to refrain from acts that would defeat or undermine the objectives and purpose of the treaty, but there is no binding agreement.³¹ Ratification creates a binding legal contract to undertake "all appropriate legislative, administrative and other measures" to uphold the rights of a child.³²

The UNCRC inspired governments to make changes in legislation that promote the welfare of children and provide safeguards to protect children from violence and exploitation.³³ The UNCRC is enforced and monitored by the UN Committee on the Rights of the Child

26. *Implementing and Monitoring the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/implementing-monitoring> (last visited Nov. 22, 2022).

27. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW PERMANENT BUREAU, 25 YEARS OF PROTECTING CHILDREN IN INTERCOUNTRY ADOPTION 37 (2018).

28. Convention on the Rights of the Child, *supra* note 10.

29. *Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention#learn> (last visited Nov. 22, 2022).

30. *Id.* See also Convention on the Rights of the Child, *supra* note 10; *How the Convention on the Rights of the Child Works*, UNICEF, <https://www.unicef.org/child-rights-convention/how-convention-works> (last visited Nov. 22, 2022).

31. *How the Convention on the Rights of the Child Works*, *supra* note 30.

32. *Implementing and Monitoring the Convention on the Rights of the Child*, *supra* note 26.

33. *Convention on the Rights of the Child*, *supra* note 29.

(“Committee”).³⁴ This Committee is comprised of eighteen independent children’s rights experts; however, it should be noted that these experts are *not* representatives of their countries.³⁵ Upon ratification, member states must submit reports to the Committee explaining the efforts taken to realize children’s rights.³⁶ The Committee reviews these reports and gives recommendations on how to improve existing legislation within the member states.³⁷ The UNCRC also allows the United Nations agency, UNICEF, to be involved with the Committee and to provide expert advice to the States.³⁸ Although this Committee is important to intercountry adoption regulation, it does not handle disputes that may arise from illicit practices.³⁹ Ultimately, implementing a similar committee to oversee adoption disputes between Hague Convention countries would greatly improve the intercountry adoption system.

B. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

The Hague Convention opened for signature on May 29, 1993.⁴⁰ As of 2022, the Hague Convention has 105 Contracting Parties.⁴¹ Pursuant to Article 1, the objects of the Convention are:

- a) To establish safeguards to ensure that intercountry adoptions take place in the best interest of the child with respect

34. *Implementing and Monitoring the Convention on the Rights of the Child*, *supra* note 26. Committee members are persons of high moral character elected for a term of four years by parties to the UNCRC. See Committee on the Rights of the Child, *Membership*, UNITED NATIONS OFFICE HIGH COMM’R FOR HUM. RTS., <https://www.ohchr.org/en/treaty-bodies/crc/membership> (last visited Jan. 12, 2023).

35. *Implementing and Monitoring the Convention on the Rights of the Child*, *supra* note 26.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. Hague Convention, *supra* note 10.

41. *Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, HCCH, <https://www.hcch.net/en/instruments/conventions/status-table/?cid=69> (last visited, Dec. 1, 2022).

- for his or her fundamental rights as recognized in international law;
- b) To establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
 - c) To secure the recognition in Contracting States of adoptions made in accordance with the Convention.⁴²

The Hague Convention encourages Contracting Parties to improve upon the minimum standards by making legislation changes related to intercountry adoption.⁴³ It does not impose repercussions or punishments, however, it does prohibit illicit adoptions that may result in improper financial gain for either party.⁴⁴ The Hague Convention applies to the process that occurs before the adoption is finalized.⁴⁵ Thus, it only *promotes* the use of post-adoption services, such as counseling and support; search for origins; post-adoption reports to the origin country; and remedies for breakdown or disruption of the adoption.⁴⁶ The United States Department of State encourages families to contact the United States Embassy or Consulate located in the child's country of origin to report any fraudulent activity.⁴⁷

The Hague Convention creates a sense of transparency between the origin and receiving countries.⁴⁸ Upon signature and ratification, the Contracting Parties agree to cooperate, which means committing to uphold the rights of a child.⁴⁹ The Hague Convention made inter-

42. Hague Convention, *supra* note 10.

43. Hague Conference on International Private Law, *Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption*, HCCH, <https://assets.hcch.net/docs/e5960426-2d1b-4fe3-9384-f8849d51663d.pdf> (last visited Apr. 4, 2023).

44. *Id.*

45. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW PERMANENT BUREAU, *supra* note 27, at 31.

46. *Id.*

47. U.S. Dep't of State, *Adoption Scams and Fraud*, TRAVEL.STATE.GOV, https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-scams-and-fraud.html (Mar. 22, 2019).

48. Hague Conference on International Private Law, *supra* note 43.

49. THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW PERMANENT BUREAU, *supra* note 27, at 11.

country adoption more regulated, multifaceted, and expensive for all parties involved.⁵⁰ Specifically, it made a significant impact on immigration law.⁵¹ According to Article 23, adoptions made in accordance with the Hague Convention are recognized by “operation of law” in the other contracting states.⁵² This international recognition eliminates the need for re-adoption in the receiving country.⁵³ Moreover, the complexities of the Hague Convention and immigration law make obtaining an attorney specializing in intercountry adoption crucial to the adoption process. The designated Central Authorities for each Contracting Party can only communicate with accredited bodies, including attorneys.⁵⁴ Therefore, one must obtain an accredited attorney that is recognized by the Hague Convention.

The Hague Convention implements a system of Central Authorities in all Contracting countries.⁵⁵ These Central Authorities have various obligations, which include cooperating with one another through the exchange of general information, eliminating obstacles to the application of the Convention, and deterring all practices contrary to the purpose of the Convention.⁵⁶ The Hague Convention allows for adoption accredited bodies to supervise and uphold the principles of the Convention to prevent illegal and improper practices.⁵⁷ Intercountry adoption between Hague Convention countries requires compliance with the laws of the sending and receiving countries.⁵⁸ Despite countries being Contracting Parties to the Convention, the individual country’s laws regarding intercountry adoption may not correspond.⁵⁹

50. Irene Steffas, *The Hague Adoption Convention and Its Impact on All Adoptions*, FED. LAW. 35 (2010), <https://www.fedbar.org/wp-content/uploads/2010/11/The-Hague-Adoption-Convention-pdf-1.pdf>.

51. *See id.*

52. Hague Conference on International Private Law, *supra* note 43.

53. *Id.*

54. Steffas, *supra* note 50, at 36.

55. Hague Conference on International Private Law, *supra* note 43.

56. *Id.*

57. *Id.*

58. Steffas, *supra* note 50, at 35.

59. For example, determining a child’s habitual residence can be especially difficult. *See id.* at 36.

II. FRAUDULENT ADOPTION PRACTICES AROUND THE GLOBE

Children become the most susceptible to illicit adoption practices when the origin country is most vulnerable.⁶⁰ For example, a country often becomes vulnerable when it experiences natural or political disasters such as those illustrated in Haiti and Sierra Leone.⁶¹ These events, coupled with weak or nonexistent child protection systems, put children and families at risk of illegal adoptions. There is no accurate data on adoptions resulting from trafficking and other illegal acts because of the clandestine nature of those activities.⁶² Some illegal adoptions go undiscovered because of the falsified documents that appear to be “official” adoption papers.⁶³ Other threats to children and the intercountry adoption system are deceitful individuals and corrupt governments, as demonstrated in Guatemala and the United States.⁶⁴ When the illicit practices are systemic, government officials bear responsibility by either omission or complicity.⁶⁵

A. Haiti

On January 12, 2010, a catastrophic earthquake struck Haiti, displacing hundreds of thousands of people.⁶⁶ The country and its children became even more vulnerable after the earthquake.⁶⁷ For example, before the earthquake, Haiti’s mortality rate for infants and children under the age of five was the highest among countries in the

60. See Hum. Rts. Council, Rep. of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography Thirty-Fourth Session, U.N. Doc. A/HRC/34/55, at 8 (2017) [hereinafter Special Rapporteur].

61. Brandeis Univ., *Resources & News Specific to Haiti’s Children After the 2010 Earthquake*, SCHUSTER INST. FOR INVESTIGATIVE JOURNALISM (Feb. 23, 2011), <https://www.brandeis.edu/investigate/adoption/haiti.html>.

62. Special Rapporteur, *supra* note 60, at 7.

63. *Id.*

64. *Id.* See *infra* Part II C–D.

65. Special Rapporteur, *supra* note 60, at 8.

66. Richard Pallardy, *2010 Haiti Earthquake*, ENCYC. BRITANNICA, <https://www.britannica.com/event/2010-Haiti-earthquake> (last visited Nov. 22, 2022).

67. Jhumka Gupta & Alpna Agrawal, *Chronic Aftershocks of an Earthquake on the Well-being of Children in Haiti: Violence, Psychosocial Health and Slavery*, 182 CAN. MED. ASSOC. J. 1935, 1997 (2010).

Western Hemisphere.⁶⁸ Helping the people and children of Haiti was already a global focus; however, after the earthquake, it became a priority.⁶⁹

Shortly following the earthquake, ten American missionaries went to Haiti on a do-it-yourself “rescue mission” to bring children to an orphanage in the Dominican Republic.⁷⁰ Officers at Haiti’s main border crossing with the Dominican Republic detained the missionaries because they had no adoption papers for the thirty-three children with them.⁷¹ The group faced charges of child kidnapping and criminal association.⁷² Haiti’s prime minister Jean-Max Bellerive called the group “kidnappers” because he believed the missionaries “knew what they were doing was wrong.”⁷³ The Haitian court ultimately dropped the charges for all ten missionaries.⁷⁴ However, the court convicted the group’s leader, Laura Silsby, of arranging illegal travel and sentenced her to three months and eight days in a Haitian jail.⁷⁵ Silsby told the court she believed the children were orphans; however, an investigation revealed that all thirty-three children had at least one living parent.⁷⁶ Twenty of these parents willingly gave their children to the missionaries after being promised the children would receive an education and better life.⁷⁷ Although some of the parents voluntarily released their children, the missionaries’ actions were nonetheless illegal because they did not obtain official adoption papers.⁷⁸

68. *Id.*

69. *See id.*

70. Associated Press, *8 Baptists Freed by Haiti Arrive in Miami*, CBS NEWS (Feb. 18, 2010, 1:27 AM), <https://www.cbsnews.com/news/8-baptists-freed-by-haiti-arrive-in-miami/>.

71. Joseph Guyler Delva, *Americans Arrested Taking Children out of Haiti*, REUTERS (Jan. 30, 2010, 2:24 PM), <https://www.reuters.com/article/us-quake-haiti-arrests/americans-arrested-taking-children-out-of-haiti-idUSTRE60T23I20100130>.

72. Ben Quin, *U.S. Missionaries Charged with Child Kidnapping in Haiti*, GUARDIAN (Feb. 4, 2010), <https://www.theguardian.com/world/2010/feb/04/missionaries-charged-child-kidnapping-haiti>.

73. *Id.*

74. Associated Press, *Haiti Frees Last U.S. Missionary*, NBC NEWS (May 17, 2010, 12:01 PM), <https://www.nbcnews.com/id/wbna37194964>.

75. *Id.*

76. *Id.*

77. Associated Press, *supra* note 70. *See also* Ben Quin, *supra* note 72.

78. Delva, *supra* note 71.

On January 20, 2010, the Secretariat of the Hague Conference on Private International Law made a press release (“The Release”) regarding intercountry adoption after the earthquake.⁷⁹ Following the earthquake, children became separated from their families, putting them at risk of illegal adoptions, abduction, sale, and child trafficking.⁸⁰ The Release discussed the importance of appropriate safeguards to protect the displaced children, with a priority of reuniting the children with their parents or family members.⁸¹ Additionally, with evacuation as another primary concern, The Release stated that “[e]vacuation should not be confused with intercountry adoption which is a more radical measure changing the parenthood of a child.”⁸² Haiti had not ratified the Hague Convention at this time; however, it ratified the UNCRC.⁸³ The Release strongly encouraged Haiti to apply the standards and safeguards of the Hague Convention, despite Haiti not being a Contracting Party.⁸⁴

The Release discussed the possibility of expediting intercountry adoptions which were granted a final adoption decree but awaited travel documents.⁸⁵ In these cases, expediting the adoption and transferring the child to the adoptive family with proper identification would be justifiable.⁸⁶ However, The Release makes it clear that “[a] humanitarian disaster such as the earthquake should not be the reason for bypassing essential safeguards for safe adoption.”⁸⁷

The earthquake and the missionary scandal brought necessary attention to Haiti’s fragile adoption laws. On June 11, 2012, the Haitian Congress ratified the Hague Convention,⁸⁸ and the treaty went

79. Press Release, Secretariat of The Hague Conf. on Priv. Int’l L., Hague Conf. on Priv. Int’l L., Haiti Earthquake and Intercountry Adoption of Children (Jan. 20, 2010).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. Press Release, Inter-Am. Comm’n on Hum. Rts., IACHR Welcomes Haiti’s Ratification of The Hague Convention on Int’l Adoptions (June 26, 2012) [hereinafter Inter-Am. Comm’n on Hum. Rts.].

into force on April 1, 2014.⁸⁹ The Inter-American Commission on Human Rights influenced the ratification of the Hague Convention.⁹⁰ The Commissioner visited Haiti and discovered that no clear legal framework was implemented for intercountry adoptions.⁹¹ It strongly urged Haiti to ratify the Hague Convention and update its laws to conform to the Hague principles.⁹²

B. *Sierra Leone*

During the Sierra Leone Civil War in the 1990s, parents brought their children to the Help a Needy Child International (“HANCI”) center in the city of Makeni to protect them from the violence occurring within the country.⁹³ Created in 1994, HANCI sought to provide shelter for children separated from their parents during the war.⁹⁴ HANCI employees visited the homes of poor families in Makeni and offered to house, feed, and educate their children “up to university level.”⁹⁵

One mother brought her five-year-old child to the center and visited HANCI regularly for two years before never seeing her child again.⁹⁶ In 1998, HANCI brought the children to Sierra Leone’s capi-

89. U.S. Dep’t of State, *Haiti*, TRAVEL.STATE.GOV., <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Haiti.html> (last visited Mar. 27, 2023) [hereinafter U.S. Dep’t of state, *Haiti*].

90. Inter-Am. Comm’n on Hum. Rts., *supra* note 88.

91. *Id.*

92. *Id.*

93. Nina DeVries, *Sierra Leone Parents Say Children Adopted Without Consent*, VOA (July 23, 2012, 8:53 AM), <https://www.voanews.com/a/sierra-leone-parents-say-children-adopted-without-consent/1443499.html>.

94. *Help a Needy Child International (HANCI)*, POUND PUP LEGACY, <http://poundpuplegacy.org/node/9308> (last visited Nov. 22, 2022).

95. E.J. Graff, “*That Was the Last Time We Ever Saw These Children*”, SLATE (Aug. 9, 2011, 10:55 PM), <https://slate.com/human-interest/2011/08/that-was-the-last-time-we-ever-saw-these-children.html> [hereinafter Graff, “*That Was the Last Time We Ever Saw These Children*”].

96. Clarence Roy-Macaulay & Carley Petesch, *Sierra Leone Parents Seek Answers in Adoption Case*, SAN DIEGO UNION-TRIB. (June 3, 2010, 9:05 AM), <https://www.sandiegouniontribune.com/sdut-sierra-leone-parents-seek-answers-in-adoption-case-2010jun03-story.html>.

tal for medical examinations and never returned.⁹⁷ In 2004, the parents of twenty-nine children discovered that American families adopted their children and brought them to the United States.⁹⁸ The children's biological parents never consented to these adoptions.⁹⁹ HANCI's director and two employees faced charges of conspiracy to violate adoption laws.¹⁰⁰ Nothing came of the charges, and the court dropped the case.¹⁰¹ Enraged by what happened to their children, many of the parents traveled over 100 miles to the social welfare minister's office and demanded the government help them communicate with their children.¹⁰² Over a decade after the adoptions, Sierra Leone's government set up a national commission of inquiry to re-examine the HANCI case.¹⁰³ The families did not want financial compensation; they just wanted their children back.¹⁰⁴

Conversely, the American adoptive families believed they were saving these children's lives.¹⁰⁵ As previously mentioned, Judi Mosley was one of these parents.¹⁰⁶ For twelve years she raised a boy she believed was an orphan, when in reality, he was stolen from his birth parents.¹⁰⁷ After this discovery, Judi reviewed the adoption documents and realized they were falsified.¹⁰⁸ Other parents realized that their documents were falsified but assumed they were forged to get the child out of the country quicker.¹⁰⁹ The American adoption agency, Maine Adoption Placement Services ("MAPS"), claimed it did not know about HANCI's wrongdoing.¹¹⁰ MAPS trusted HANCI because it was very well respected by Sierra Leone's Ministry of Social Wel-

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. DeVries, *supra* note 93.

105. Graff, *Sierra Leone*, *supra* note 17.

106. Graff, "That Was the Last Time We Ever Saw These Children" , *supra* note 95.

107. *Id.*

108. *Id.*

109. *Id.*

110. Roy-Macaulay & Petesch, *supra* note 96.

fare.¹¹¹ The MAPS director became horrified by what she witnessed after flying to Sierra Leone to visit refugee centers.¹¹² Once she arrived to the village, families begged her to take their babies to keep them alive.¹¹³ After this visit, MAPS agreed to support HANCI's child welfare center and find homes for orphan children.¹¹⁴ MAPS director stated that the alternative was to "let all the children die."¹¹⁵ HANCI contends that the families knowingly and willingly relinquished their children for adoption, stating "[t]here was no selling, there was no buying, and we have not stolen any child."¹¹⁶

In 2012, HANCI officials faced twenty-two counts of conspiracy to traffic, two counts of trafficking, and seven counts of perjury.¹¹⁷ This case slowly crumbled due to the unduly delays of the attorneys on both sides.¹¹⁸ Ultimately, Magistrate Kamanda ruled that "there is no compelling evidence for this matter to be committed to the High court."¹¹⁹ The case was also reported to Interpol Sierra Leone, where the three HANCI officials faced twenty-three counts of conspiracy to commit a felony and child stealing contrary to section 56 of the Offences against the Persons Act 1861.¹²⁰ However, this case was dismissed for want of prosecution,¹²¹ and ultimately removed from the court's docket because of the plaintiff's failure to pursue the case diligently toward completion.¹²²

111. Graff, "That Was the Last Time We Ever Saw These Children", *supra* note 95.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *The HANCI Child Adoption Case: Undermining the Ends of Justice?*, POLITICO SL (Nov. 13, 2013, 3:59 PM), <https://www.politicosl.com/articles/hanci-child-adoption-case-undermining-ends-justice>.

118. *Id.*

119. Adeyemi Paul, *HANCI Adoption Case Goes High Court*, SIERRA EXPRESS MEDIA (Feb. 5, 2014), <https://sierraexpressmedia.com/?p=65063>.

120. *The HANCI Child Adoption Case: Undermining the Ends of Justice?*, *supra* note 117.

121. *Id.*

122. *Dismissed for Want of Prosecution*, BLACK'S LAW DICTIONARY (11th ed. 2019).

The HANCI case is precisely why dispute resolution cannot rest solely on the individual country.¹²³ When a government engages in fraudulent activity, who is left to regulate and impose punishments? There must be a neutral international body that imposes civil, criminal, and administrative remedies specifically related to intercountry adoption.

C. Guatemala

Guatemala ratified the Hague Convention on November 26, 2002.¹²⁴ Multiple countries such as Canada, Germany, the Netherlands, Spain, and the United Kingdom, objected to Guatemala joining the Convention.¹²⁵ These countries stopped engaging in adoption proceedings with Guatemala due to illegal and unethical practices.¹²⁶ However, because the United States did not become a Contracting Party to the Hague Convention until 2008, adoptions between the U.S. and Guatemala continued.¹²⁷ In 2007, Guatemala sent a staggering 4,728 children to the United States,¹²⁸ making it the second largest source of adoption for American families behind China.¹²⁹ China sent 5,453 children to the United States that same year.¹³⁰ These numbers are shocking because of the population difference between the two countries. For example, at the time, China's population of approximately 1.3 billion is significantly larger than Guatemala's population of approximately 13 million.¹³¹ An investigation revealed that Guatemala's adoption process turned into a business due to its fragile

123. Sierra Leone does have legislation regarding adoption; however, it only applies to domestic adoptions between Sierra Leonean citizens. See The Adoption Act (Dec. 29, 1989), <http://clr.africanchildforum.org/country/51>.

124. Brandeis Univ., *Adoption: Guatemala*, SCHUSTER INST. FOR INVESTIGATIVE JOURNALISM (Mar. 8, 2012), <https://www.brandeis.edu/investigate/adoption/guatemala.html>.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. Associated Press, *Guatemala Passes Stricter Adoption Rules*, CBS NEWS (Dec. 11, 2007, 2:52 PM), <https://www.cbsnews.com/news/guatemala-passes-stricter-adoption-rules/>.

130. Brandeis Univ., *supra* note 124.

131. *Id.*

laws.¹³² The Guatemalan government used the adoption system to profit off the illegal sale of children since the 1980s.¹³³ This trail of fraud can be linked to the country's civil war which lasted thirty-six years from 1960 to 1996.¹³⁴ During the war, children were separated from their families and never returned home.¹³⁵ Guatemala profited \$200 million in adoptions over the years.¹³⁶ The country ceased international adoption practices on January 1, 2008, to reform its system after years of illicit adoption practices.¹³⁷ Upon ratification in 2008, the U.S. State Department declared that intercountry adoption between Guatemala would not be possible until the country had a Convention-compliant process in place.¹³⁸ Guatemala has yet to reform the adoption system and resume international adoptions.¹³⁹ Thus, this could be an opportunity for Guatemala to initiate intercountry adoption reform if its system is reestablished with new, stronger forms of legislation, setting an example for other countries to follow.

D. *The United States*

In 2021, an Ohio-based international adoption business, European Adoption Consultants (“EAC”), faced felony conspiracy and fraud charges for facilitating illegal adoptions.¹⁴⁰ Margaret Cole founded the company in 1991.¹⁴¹ Over its twenty-five years of service, the busi-

132. Nicole Acevedo, *A Painful Truth: Guatemalan Adoptees Learn They Were Fraudulently Given Away*, NBC NEWS (Dec. 8, 2019, 8:20 AM), <https://www.nbcnews.com/news/latino/painful-truth-guatemalan-adoptees-learn-they-were-fraudulently-given-away-n1095066>.

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. Brandeis Univ., *supra* note 124.

138. U.S. Dep't of State, *Guatemala*, TRAVEL.STATE.GOV., <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Guatemala.html> (last visited Mar. 27, 2023) [hereinafter U.S. Dep't of State, *Guatemala*].

139. *Id.*

140. *See generally* United States v. Cole, 569 F. Supp. 3d 696 (N.D. Ohio 2021).

141. *Who is Margaret?*, JUSTICE4ADOPTION, <http://www.justice4adoption.com/#/> (last visited Mar. 27, 2023).

ness homed over 8,000 children throughout the country.¹⁴² EAC operated intercountry adoption programs in China, Poland, India, Colombia, Bulgaria, Uganda, Ukraine, the Democratic Republic of Congo, Honduras, and Haiti.¹⁴³

Cole admitted to conspiring with her co-worker Debra Parris to deceive U.S. authorities in connection with the adoption of a Polish child.¹⁴⁴ EAC's client was set to adopt two Polish sisters, because the Polish government would only allow the sisters to be adopted together.¹⁴⁵ After meeting the children, the client decided they could only adopt one child.¹⁴⁶ Cole and Parris arranged to have the older sister transferred to Parris's relatives who were not approved for intercountry adoption.¹⁴⁷ This improper transfer was hidden from the United States and Polish authorities.¹⁴⁸ As a consequence of Cole and Parris concealing this transfer, adoption officials did not vet the family, and the husband's domestic violence conviction was not discovered.¹⁴⁹ Subsequently, the older sister was brutally raped by her caregiver.¹⁵⁰

In 2016, EAC was issued a notice of temporary debarment "to immediately cease engaging in intercountry adoptions."¹⁵¹ The debarment canceled EAC's accreditation with the Hague Convention.¹⁵²

142. Eur. Adoption Consultants, Inc. v. Pompeo, No. 18-CV-1676, 2020 WL 515959, at *1 (D.D.C. Jan. 31, 2020).

143. *Id.*

144. Press Release, Dep't of Just., Office of Pub. Aff., Former Executive Director of International Adoption Agency Pleads Guilty to Fraudulent Adoption Scheme (Feb. 4, 2022), <https://www.justice.gov/opa/pr/former-executive-director-international-adoption-agency-pleads-guilty-fraudulent-adoption> [hereinafter Dep't of Just.].

145. Adam Ferrise, *Ex-Strongsville Adoption Agency Owner Sentenced for Fraudulent Adoption of Polish Girl, who was 'Brutally' Raped*, ADVANCED LOC. MEDIA (May 20, 2022, 10:32 AM), <https://www.cleveland.com/court-justice/2022/05/ex-strongsville-adoption-agency-owner-sentenced-for-fraudulent-adoption-of-polish-girl-who-was-brutally-raped.html>.

146. *Id.*

147. Dep't of Just., *supra* note 144.

148. *Id.*

149. Ferrise, *supra* note 145.

150. *Id.*

151. U.S. v. Cole, 569 F. Supp. 3d 696, 699 (N.D. Ohio 2021).

152. Eur. Adoption Consultants, Inc. v. Pompeo, No. 18-CV-1676, 2020 WL 515959, at *1 (D.D.C. Jan. 31, 2020).

The State Department investigated further and proved that EAC committed fourteen violations of 42 U.S.C. § 14944 and 22 C.F.R. § 96(f).¹⁵³ The Ohio Attorney General filed a civil suit against EAC alleging that EAC failed to refund clients and transfer records under federal regulations.¹⁵⁴

The FBI began investigating EAC after the civil suit.¹⁵⁵ This investigation led to a criminal case against three defendants, including Margaret Cole.¹⁵⁶ Cole was charged with the following crimes: Conspiracy to Defraud the United States, 18 U.S.C. §371; False Statement to the Council on Accreditation, 18 U.S.C. § 14944; and False Statement to the Polish Central Authority, 18 U.S.C. §14944.¹⁵⁷ The FBI also discovered that Parris bribed judges and welfare officials in Uganda between 2013 and 2016 to secure adoptions.¹⁵⁸ Cole was sentenced to only three months in prison, one year of house arrest after her release, and a payment of \$7,500.¹⁵⁹ Assistant U.S. Attorney, Chelsea Rice, stated Cole's actions had "far-reaching damage" and that "[t]he inter-country adoption system is based on trust, and foreign authorities relied on the trust of Ms. Cole."¹⁶⁰ Rice went on to say that "[i]nternational relations have been damaged between the U.S. and Poland because of this."¹⁶¹

During the hearing, Adam Davis, the father of a Ugandan adoptee, shared that after a year of caring for his adopted child, he discovered the child's family in Uganda did not want her to be adopted.¹⁶² Davis returned the child to the family in Uganda.¹⁶³ Understandably frustrated, Davis stated, "Margaret Cole is not just guilty. Those willing to exploit the poor and commoditize the children of the poor in the pur-

153. *Cole*, 569 F. Supp. 3d at 699.

154. *Id.*

155. *Id.* at 699–700.

156. *Id.*

157. *Who is Margaret?*, *supra* note 141.

158. Dep't of Just., *supra* note 144.

159. Ferrise, *supra* note 145.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

suit of wealth belong in their own nefarious category of inhumanity.”¹⁶⁴

Although Cole and EAC have some enemies, they also have many supporters.¹⁶⁵ These supporters argue that Cole was denied her due process rights.¹⁶⁶ They believe this one bad incident should not taint the thousands of successful adoptions that Cole and EAC have facilitated.¹⁶⁷

The commitment of the U.S.A. in ratifying the Hague Convention on international adoptions was to seek “the best interest of the child,” but these actions against Margaret and EAC have hurt the chances of hundreds or thousands of orphans for finding a loving family.¹⁶⁸

This case illustrates the importance of the safeguards implemented by the Hague Convention and the IAA. Without safeguards, fraudulent adoptions are left unrecognized. It also demonstrates that the issue is not with the Hague Convention but its implementation. A three-month prison sentence and a \$7,500 fine is not an adequate punishment for the severity of the crime. The strength of the treaties and statutes should not only be at the forefront (i.e., prevention); there must be equal attention given to the remedial side after such illicit adoptions occur. The implementation of an independent dispute resolution body within the Hague Convention to handle remedial matters could help solve this imbalance.

III. EXISTING FRAMEWORKS TO PREVENT AND PUNISH FRAUD IN THE UNITED STATES

Within the United States, the federal government and state courts have implemented minimal intercountry adoption-specific acts of legislation.¹⁶⁹ The IAA creates slight uniformity for intercountry adop-

164. *Id.*

165. *See Who is Margaret?, supra* note 141.

166. *Id.*

167. *Id.*

168. *Id.*

169. *See* 42 U.S.C. §§ 14901–14954.

tion, but it only applies to Hague Convention adoptions.¹⁷⁰ The marginally recognized tort of “wrongful adoption” varies by state and is mainly used in the context of domestic adoptions.¹⁷¹ Families ultimately have limited recourse for post-adoption legal matters.

A. *The Intercountry Adoption Act of 2000*

The IAA did not go into effect until April 2008, when the United States ratified the Hague Convention.¹⁷² It has three stated purposes:

- (1) To provide for implementation by the United States and the Convention;
- (2) To protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children’s best interest; and
- (3) To improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.¹⁷³

Section 14911 designates the Department of State (“The Department”) and the Secretary as Central Authorities for the United States as defined in Article 6 of the Hague Convention.¹⁷⁴ In accordance with the Hague Convention and the IAA, The Department submits annual reports on intercountry adoption to Congress.¹⁷⁵ These reports provide data on adoption rates throughout the year, including detailed charts organized by origin country and receiving states within the

170. *Id.*

171. *Wrongful Adoption Litigation & Practice*, ADOPTIVE AND FOSTER FAM. COAL. (Oct. 17, 2019), <https://affcn.org/wrongful-adoption-litigation-practice/>.

172. *See generally* Katie Rasor et al., *Imperfect Remedies: The Arsenal of Criminal Statutes Available to Prosecute International Adoption Fraud in the United States*, 55 N.Y.L. SCH. L. REV. 801 (2010).

173. 42 U.S.C. § 14901(b).

174. *Id.* § 14911.

175. U.S. DEP’T OF STATE, ANNUAL REPORT ON INTERCOUNTRY ADOPTION, *supra* note 5.

United States.¹⁷⁶ These reports also include information on non-convention countries even though the IAA and the Hague Convention do not govern those countries.¹⁷⁷ The Department's goal is to enhance the viability of intercountry adoption within the United States.¹⁷⁸ The Office of Children's Issues ("OCI") partakes in policymaking, public outreach, engagement with foreign and U.S. stakeholders, as well as oversight of the accrediting entity.¹⁷⁹ OCI created information pages on The Department website specifically discussing relevant travel, health, and safety information for specific adoption countries.¹⁸⁰ The website also contains a guide on the intercountry adoption process between the United States and Hague Convention countries.¹⁸¹ The Department expanded its network to a wider range of adoption stakeholders to bring awareness to OCI's recent efforts.¹⁸² Based on the 2021 Report on Intercountry Adoption, the United States focused on education and advertisements to increase intercountry adoption rates and prevent illegal practices.¹⁸³

In 2019, the Intercountry Adoption Information Act amended the IAA.¹⁸⁴ The Secretary of State is now required to report on intercountry adoptions from countries with significantly reduced adoption rates involving immigration to the United States.¹⁸⁵ The Central Authority must report on the efforts to resume the stalled or halted adoptions.¹⁸⁶ The report must contain information on the country's "policies, procedures, resources, and safeguards the country lacks, or other shortcomings or circumstances that caused the action to be carried out."¹⁸⁷

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *See id.*

184. Intercountry Adoption Information Act of 2019, Pub. L. No. 116–184, 134 Stat. 897.

185. *Id.*

186. U.S. DEP'T OF STATE, *supra* note 5.

187. 42 U.S.C. § 14914(b)(13).

The IAA imposes civil and criminal penalties for violations and fraudulent activity.¹⁸⁸ Civilly, violators “shall be subject to a civil money penalty of no more than \$50,000 for the first violation, and not more than \$100,000 for each succeeding violation.”¹⁸⁹ Criminally, willful violations and fraudulent practices are punishable by “a fine of not more than \$250,000, imprisonment for five years, or both.”¹⁹⁰ The Attorney General may bring a civil action to enforce these penalties against any person in federal court.¹⁹¹

However, the IAA only governs adoptions between the United States and Hague Convention countries.¹⁹² Therefore, suing non-convention countries under this Act is not possible because they are not held to the same standards.¹⁹³ In these instances, cases of international adoption fraud are prosecuted using preexisting statutes such as visa fraud, money laundering, mail fraud, and wire fraud.¹⁹⁴ Without the assistance of the IAA, aggrieved parties must prosecute adoption fraud using alternative statutes within their local court system.¹⁹⁵

B. *Wrongful Adoption*

Only some state courts in the United States recognize the tort of “wrongful adoption,”¹⁹⁶ and even fewer recognize international wrongful adoption.¹⁹⁷ However, because there is no universally recognized cause of action related to adoption, most aggrieved families sue for negligence, fraud, or breach of contract in civil court.¹⁹⁸

188. See 42 U.S.C. § 14944(a)–(c).

189. *Id.* § 14944(a).

190. *Id.* § 14944(c).

191. *Id.* § 14944(b)(1).

192. *Id.* § 14901(a).

193. *Razor et al.*, *supra* note 172, at 807.

194. *Id.* at 808.

195. *Id.* at 810–14. For example, statutes such as the Foreign Corrupt Practices Act, The Travel Act, and the visa fraud statute. *Id.*

196. Harriet Dinegar Milks, Annotation, “*Wrongful adoption*” *Causes of Action Against Adoption Agencies Where Children Have or Develop Mental or Physical Problems That are Misrepresented or Not Disclosed to Adoptive Parents*, 74 A.L.R.5th 1, § 3(a) (1999).

197. *Wrongful Adoption Litigation & Practice*, *supra* note 171.

198. *Id.*

Wrongful adoption cases usually involve misrepresenting the child's physical and mental health history.¹⁹⁹ Cases are referred to as "negligent misrepresentation in the adoption context,"²⁰⁰ thus making "wrongful adoption" more of a legal term of art rather than a cause of action.

The tort of wrongful adoption was first recognized in the 1986 case of *Burr v. Board. of County. Commissioners of Stark County*.²⁰¹ The plaintiffs, Mr. and Mrs. Burr alleged that they were fraudulently misled to their detriment by an adoption agency regarding their son Patrick's background and condition.²⁰² The complaint was captioned "Wrongful Adoption," but stated a cause of action for fraud.²⁰³

The Burrs adopted Patrick when he was seventeen months old.²⁰⁴ The agency told them that Patrick's birth mother was an eighteen-year-old unwed mother that surrendered her child for adoption.²⁰⁵ Several years later, Patrick began displaying multiple physical and mental problems and was eventually diagnosed with Huntington's Disease.²⁰⁶ The Burrs obtained Patrick's sealed records for the time before the adoption, where they discovered that the information received from the county case worker was all false.²⁰⁷

The documents revealed that Patrick's mother was a thirty-one-year-old mental patient who was diagnosed as having a "mild mental deficiency, idiopathic, with psychotic reactions."²⁰⁸ Expert testimony established that Patrick was at risk for Huntington's Disease based on his familial background, but that information was never shared with the Burrs when they adopted Patrick.²⁰⁹ At trial, the Burrs testified

199. Jose Rivera, *Wrongful Adoption or Adoption Fraud Law*, LEGALMATCH (June 3, 2021), <https://www.legalmatch.com/law-library/article/wrongful-adoption-lawyers.html>.

200. Milks, *supra* note 196.

201. *Burr v. Bd. of Cnty. Comm'rs of Stark Cnty.*, 491 N.E.2d 1101 (Ohio 1986).

202. *Id.* at 1102.

203. *Id.*

204. *Id.* at 1103.

205. *Id.*

206. *Id.*

207. *Id.* at 1103–04.

208. *Id.* at 1104.

209. *Id.*

that they never would have adopted Patrick if they knew the truth about his background.²¹⁰ The Supreme Court of Ohio concluded that the Burrs established a cause of action for fraud and affirmed the appellate court's judgment awarding \$125,000 in damages.²¹¹ The Court commented on its decision:

In no way do we imply that adoption agencies are guarantors of their placements. . . . It is not the mere failure to disclose the risks inherent in this child's background which we hold to be actionable. Rather, it is the deliberate act of misinforming this couple which deprived them of their right to make a sound parenting decision and which led to the compensable injuries.²¹²

Burr established the necessary precedent that allows adoptive parents to sue adoption agencies for fraud, provided they meet all the elements of fraud.²¹³ However, this case also highlights the transactional aspect of adoption that often fails to recognize the rights of the children during the adoption process. The UNCRC solved this issue by distinguishing and recognizing the individual rights of children.²¹⁴ In addition, the Hague Convention established safeguards related specifically to adoption so that agencies like the one in *Burr* must meet standards to avoid illegal activity.²¹⁵ Nevertheless, domestic adoptions in the United States are not subject to the Hague Convention provisions.²¹⁶ While the tort of wrongful adoption may be sufficient to compensate domestic families for their injuries, it is not enough for the intercountry adoption system.

210. *Id.* at 1106.

211. *Id.* at 1108.

212. *Id.*

213. *See id.* at 1105.

214. *See* Convention on the Rights of the Child, *supra* note 10, at art. 21.

215. *See* Hague Convention, *supra* note 10, at 5.

216. "The Convention applies to all adoptions by U.S. citizens habitually resident in the United States of children habitually resident in any country outside of the United States that is a party to the Convention." U.S. Dep't of State, *Understanding the Hague Convention*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html> (last visited Apr. 5, 2023).

IV. COMPARATIVE ANALYSIS OF PROPOSED SOLUTIONS—THEIR BENEFITS & SHORTCOMINGS

Even after implementing the UNCRC, the Hague Convention, and the IAA, fraudulent adoptions still occur.²¹⁷ Over the years, scholars, parents, and governmental bodies called for changes to the current systems and recourse for victims of wrongful adoptions.²¹⁸ For example, in the article “*Imperfect Remedies: The Arsenal of Criminal Statutes Available to Prosecute International Adoption Fraud in the United States*,” Katie Rasor discusses the lack of adoption-specific criminal statutes to prosecute wrongdoers.²¹⁹ Additionally, international organizations held multiple conferences discussing intercountry adoption and ways to combat illicit adoption practices.²²⁰ Unfortunately, these conferences and press releases amounted to nothing more than mere suggestions for states and countries. Likewise, there is no enforcement by the Hague Convention because there is no independent committee monitoring and managing disputes between the Contracting Parties.

A. Amendments to the IAA

Rasor argues for amending the IAA to enable a more effective prosecution of illegal intercountry adoption.²²¹ The author proposes two ways of amending the IAA: (1) amending the scienter²²² require-

217. See *supra* Part II for an in depth discussion of fraudulent adoption practices.

218. Rasor et al., *supra* note 172, at 804; see also Hum. Rts. Council, *supra* note 60, at 21–24.

219. Rasor et al., *supra* note 172, at 808–09.

220. See Press Release, U.N. Human Rights, *Illegal Adoptions: States Must Tackle the Pressure of Demand and Ensure Redress for Victims* (Mar. 7, 2017), <https://www.ohchr.org/en/press-releases/2017/03/illegal-adoptions-states-must-tackle-pressure-demand-and-ensure-redress?LangID=E&NewsID=21308> [hereinafter U.N. Human Rights].

221. Rasor et al., *supra* note 172, at 808–09.

222. “Knowledge of the nature of one’s act or omission or the nature of something in one’s possession that is often a necessary element of an offense.” *Scienter*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/scienter> (last visited Nov. 27, 2022).

ment and (2) removing the need for Hague-country involvement.²²³ First, regarding the scienter requirement, Rasor proposes defining the term “knowingly” to eliminate the practice of conscious disregard.²²⁴ As with most criminal statutes, the intent element is one of the hardest to prove.²²⁵ Lowering the standard would help account for those who ignore illegal acts and escape prosecution due to ignorance.²²⁶

For the second change, Rasor argued that expanding the IAA to all adoptions involving the United States would be a more effective enforcement mechanism for *any* illegal intercountry adoptions, not just Hague Convention adoptions.²²⁷ The IAA expansion would warrant an increase in the criminal penalties imposed because the current five-year imprisonment and \$250,000 fine, are insufficient to deter fraud.²²⁸ Both of Rasor’s recommendations would significantly improve the prosecution of fraudulent adoption facilitators. However, removing the need for Hague-country involvement would benefit the domestic adoption system more than the intercountry adoption system. Because of international law’s complexity, fraudulent intercountry adoption proceedings require a more intensive system.

B. *Suggestions of the United States Government*

On March 7, 2017, the Special Rapporteur of the United Nations made a statement containing recommendations for combatting illegal adoptions.²²⁹ The Special Rapporteur criticized governments for their lack of adequate response to the victims of fraudulent adoptions.²³⁰ One suggestion by the Special Rapporteur was to make illicit adoptions a separate offense with sanctions reflecting the gravity of the

223. Rasor et al., *supra* note 172, at 808–09.

224. *Id.* For example, Rasor discusses broadening the definition of knowledge to include awareness of a “high probability” or “substantial certainty.” *Id.* at 809. “[T]he inclusion of an additional willfulness requirement would seem to undercut the lowered element of intent needed in the more expansive definition of knowledge.” *Id.*

225. See David Crump, *What Does Intent Mean?*, 38 HOFSTRA L. REV. 1059, 1081 (2010) (discussing the definition of intent and the difficulty of proving intent).

226. Rasor et al., *supra* note 172, at 808–09.

227. *Id.* at 809.

228. *Id.*

229. U.N. Human Rights, *supra* note 220.

230. *Id.*

crime.²³¹ As noted above, this is lacking within the United States and international law.²³² In addition, there is no uniformity among the laws regarding intercountry adoptions.²³³ Hague Convention countries are required to follow the safeguards implemented by the Hague Convention, but punishment for non-compliance varies from country to country.²³⁴ This can lead to inconsistencies among the remedies ordered in local courts. The Hague Convention and the UNCRC greatly protect children's rights before and during adoption; however, not all adoptions are 100% successful.²³⁵ When problems arise, current federal and state laws are insufficient to remedy the horrible effects that families face.²³⁶ As illustrated in the personal accounts above, the people's own government fails to remedy the situation.

The Special Rapporteur emphasized that “[s]tates must acknowledge their responsibility with regard to illegal adoptions by anticipating strategies and adopting comprehensive measures to redress victims.”²³⁷ Moreover, “[t]hey must facilitate access to adoption records and tracing services and support reunifying families that were separated by forced or illegal adoption.”²³⁸ Since these suggestions were made, no change in legislation within the United States regarding illegal adoptions has occurred.

V. DESIGNATED DISPUTE RESOLUTION AGENCY WITHIN THE HAGUE CONVENTION

The Hague Convention creates safeguards and regulations but designates the Central Authorities to impose and enforce.²³⁹ Unlike the UNCRC, no independent group of experts is responsible for moni-

231. *Id.*

232. *See supra* notes 196–216 and accompanying text.

233. *See* Hague Convention, *supra* note 10, arts. 1–2 (implementation of the Hague Convention is left to the Contracting parties).

234. *See* Hague Convention, *supra* note 10 (within the U.S., some states have recognized the tort of “wrongful adoption.”). *See also supra* notes 196–216 and accompanying text.

235. *See Wrongful Adoption Litigation & Practice, supra* note 171.

236. *See* Rasor et al., *supra* note 172, at 822.

237. U.N. Human Rights, *supra* note 220.

238. *Id.*

239. *See* Hague Convention, *supra* note 10, arts. 1–2.

toring and enforcing the safeguards.²⁴⁰ Instead, the Central Authorities regulate intercountry adoption for their own country, using local legislation methods.²⁴¹ Each country is tasked with creating legislation that imposes criminal and civil penalties, such as fines and imprisonment.²⁴² This system is counteractive and causes problems with implementation. Fraud can easily occur within a country because supervision is only internal; no external, neutral body supervises how legislation is implemented within a Hague Convention country. Countries like Guatemala that have turned their adoption system into a business for profit could not hide their corruption if they were required to report to an outside agency instead of their government. That is why a neutral body of experts that operates as an agency under the Hague must be implemented to oversee intercountry adoption proceedings.

There is no middle ground when it comes to international post-adoption disputes. The highest level of recourse is the International Criminal Court (“ICC”) which prosecutes the world’s most egregious crimes.²⁴³ Regarding children, the ICC focuses on crimes such as child recruitment or use, which includes enlistment, conscription, and use of children under the age of fifteen years to participate actively in hostilities (forcible transfer of children, and child trafficking).²⁴⁴ Most post-adoption disputes, however, do not amount to this level of severity. The ICC is too extreme for basic fraud cases such as document forging and misrepresentation. On the contrary, in cases involving child selling and coercion, the local State and Federal court system is not enough. A neutral dispute agency would act as the middle ground for such cases that do not fall within either category.

The Hague Convention should apply to the adoption process and contain adoption-specific penalties and remedies for those who participate in illicit practices. A legally recognized agency would enforce these penalties. The penalties, such as fines and imprisonment, should

240. *Id.* at arts. 6–9.

241. *Id.* at arts. 6–9.

242. *See* 42 U.S.C. §§ 14901–14954. *See also* Hague Convention, *supra* note 10.

243. *About the Court*, INT’L CRIM. COURT, <https://www.icc-cpi.int/about/the-court> (last visited Mar. 11, 2023).

244. Office of the Prosecutor, *Policy on Children*, INT’L CRIM. COURT at 6 (Nov. 2016), https://www.icc-cpi.int/sites/default/files/20161115_OTP_ICC_Policy-on-Children_Eng.PDF.

reflect the gravity of the crime committed. The penalties in the current IAA are not proportionate to the crimes committed internationally.²⁴⁵

Adoptive parents will feel safer adopting from foreign countries, knowing they can seek the assistance of the Hague rather than turning to their country's government and court system. Birth parents will experience comfort knowing that a dedicated agency within the Hague will help them get their children back or provide recourse if needed. There has been a recent wave of government mistrust; therefore, people no longer rely on the government system to support them. Government officials are sometimes involved in fraudulent adoptions, as shown in Sierra Leone and Guatemala. This corruption causes individuals to refrain from seeking redress, leaving parents and children with no recourse when they discover fraud. Creating an independent body of qualified individuals to monitor intercountry adoption matters would eliminate this problem. A neutral body will hold all Contracting Parties accountable for following the safeguards outlined in the Hague Convention, as the Committee does within the UNCRC.

Expanding the Hague Convention to incorporate post-adoption matters, including penalties for illicit practices and adding a dispute resolution body to handle the conflicts, will create a more uniform system for intercountry adoption. All legislation will come from one source—the Hague Convention—rather than from the Convention, the origin country's laws, and the receiving country's laws. One uniform source of legal authority will decrease the level of subjectivity given to each case.

This solution may be difficult to achieve because the persons who make up the new committee or agency need to have the legal authority to impose criminal, civil, and administrative penalties. However, this solution could be modeled after other administrative agencies, such as the Environmental Protection Agency and the Federal Trade Commission.²⁴⁶ Such a model would also be similar to how each state has a State Bar system for attorneys that operates as an administrative arm of the state's highest court,²⁴⁷ the intercountry adoption agency would

245. See *supra* Part III A, at notes 188–190 and accompanying text.

246. See, e.g., U.S. ENV'T PROT. AGENCY, <https://www.epa.gov/> (last visited Mar. 12, 2023); FED. TRADE COMM'N, <https://www.ftc.gov/> (last visited Mar. 12, 2023).

247. See, e.g., STATE BAR OF CAL., <https://www.calbar.ca.gov/> (last visited Mar. 12, 2023).

likewise operate as an administrative arm of the Hague Convention. The agency's Board would comprise experts elected by each Contracting Party. Separate committees within the agency would handle specific problem areas of intercountry adoption; for example, a committee on child trafficking and a committee on medical misrepresentation. Depending on the crime's severity and remedy, the post-adoption dispute can be brought to a country's local court system or handled by the agency. The external agency would create another layer of protection for parents and children while providing a safe, neutral outlet for families affected by fraudulent adoptions.

A substantial expansion of the Hague Convention requires approval from all Contracting Parties. All Contracting Parties need preexisting legislation regarding intercountry adoption; if the Hague expansion encompasses these forms of legislation, approval should not be difficult to obtain. However, this will take time; reform will not occur overnight. The cases and personal accounts contained in this Comment display that legislative attention of this magnitude is required to solidify the intercountry adoption system. Amendments to the current, minimal intercountry adoption-specific legislation are not enough.

CONCLUSION

While the Hague Convention and the UNCRC may not have increased the number of adoptions, they have increased the number of *safe* adoptions.²⁴⁸ Both Conventions have inspired notable changes in human rights, specifically children's rights.²⁴⁹ However, even with these two treaties, fraudulent adoptions still occur.²⁵⁰ The problem is not the Hague Convention itself, but the implementation. Families all over the globe are greatly affected by illicit adoption practices and

248. Ryan Hanlon, *Reflection: Ten Years After the U.S. Joins the Hague Convention*, NAT'L COUNCIL FOR ADOPTION (Apr. 1, 2018), <https://adoptioncouncil.org/publications/adoption-advocate-no-118/>.

249. See Gary Reinbold, *Effects of the Convention on the Rights of the Child on Child Mortality and Vaccination Rates: A Synthetic Control Analysis*, BMC INT'L HEALTH AND HUM. RTS. (2019). See also Hanlon, *supra* note 248.

250. See *supra* Part II for an in depth discussion of fraudulent adoption practices.

there is no uniform system in place to aid them.²⁵¹ The lack of post-adoption dispute legislation and procedure deters families from adopting internationally, ultimately leaving more children in orphanages and foster care.²⁵² Intercountry adoption gives children the opportunity to exercise their right to a loving home. The negative aspects of intercountry adoption cannot outshine the extensive benefits that adoption has on children and the world. Providing necessary reform to existing intercountry adoption laws will bring attention to gaps such as post-adoption matters and hopefully create a trend of safe, legal adoptions.

The Hague Convention should not only pertain to the adoption process but must extend further to post-adoption matters. Post-adoption disputes are overlooked because they may not arise until years after the adoption of a child, as demonstrated by the Makeni children from Sierra Leone.²⁵³ Time gaps make pursuing legal action even more challenging, creating statute of limitations conflicts. These problems will not subside as time passes; they will only increase. Expanding the preexisting intercountry adoption legislation may encourage the United States to ratify the UNCRC. Ratification will create another safeguard for families looking to adopt and for children seeking homes.

Ultimately, the Hague Convention requires expansion to include criminal, civil, and administrative penalties for those who participate in illicit adoptions. A neutral agency should be implemented to monitor and handle post-adoption disputes between Contracting Parties. These proposals will create a more uniform system for intercountry adoption benefitting birth parents, adoptive parents, and most importantly, children.

251. Because there is no universal cause of action for intercountry adoption fraud, prosecutors are tasked with using other state and federal statutes that are not adoption specific. *See* Rasor et al., *supra* note 172, at 810–14.

252. Hanlon, *supra* note 248.

253. *See supra* notes 93–123 and accompanying text.