

Emergency Alert: This is NOT a Test! An International Disaster Relief Plan for Protecting Children and Families

Cynthia R. Mabry

Howard University School of Law, cmabry@law.howard.edu

Follow this and additional works at: http://dh.howard.edu/law_fac



Part of the [Law Commons](#)

Recommended Citation

Mabry, Cynthia R., "Emergency Alert: This is NOT a Test! An International Disaster Relief Plan for Protecting Children and Families" (*).* *School of Law Faculty Publications*. Paper 2.
http://dh.howard.edu/law_fac/2

This is brought to you for free and open access by the School of Law at Digital Howard @ Howard University. It has been accepted for inclusion in School of Law Faculty Publications by an authorized administrator of Digital Howard @ Howard University. For more information, please contact lopez.matthews@howard.edu.

Emergency Alert: This is NOT a Test!
An International Disaster Relief Plan for Protecting Children and Families

Cynthia R. Mabry¹

There are more than 132,000,000 orphans worldwide.² Natural disasters in the United States and other countries are separating and uprooting families. As a result, the number of orphans has increased. In August 2005, the City of New Orleans in Louisiana was flooded after Hurricane Katrina struck. More than 5000 children were reported missing or displaced when they were separated from their parents or guardians when Hurricanes Katrina and Rita struck the Gulf Coast. Family members were scattered as they were sent to more than forty different states and moved from shelter to shelter. The National Center for Missing & Exploited Children, the FBI, Federal Emergency Management Agency, the U.S. Postal Service and the Red Cross worked together to help children find their families.

One administrator admitted, however, that there was some confusion.³ Some children were not reunited with their family members for seven months⁴-an eternity for a child. One woman was devastated when a bus that she was about to board drove off to an unknown destination. The woman had handed her infant child to an adult on that bus. As she reached back to gather up another child who was a toddler, the bus operator drove off leaving the infant's mother and sibling on the roadside without any information about where the infant had gone or who had taken her from her mother's arms.⁵

On January 12, 2010, a disastrous earthquake erupted on the island of Haiti. More than 200,000 Haitians perished as a result of injuries they received or were separated from their families. Many of those who perished or were missing were parents of minor, dependent children.⁶

Before the earthquake, the number of Haitian orphans was estimated at 380,000.⁷ In 2009, the year before the earthquake, parents in the United States adopted more than 300 (330) Haitian children.⁸ Nine hundred more adoptions by prospective parents who lived in the United States were pending before the earthquake. After the earthquake, the United Nations Children's Fund (UNICEF) registered hundreds of thousands of children who lived in more than sixty Haitian orphanages after many of them had been separated from their parents or guardians.⁹

In March 2011, two disasters struck Japan. First, a massive earthquake followed by a tsunami followed the earthquake. In its wake, more than 100,000 children may have been orphaned.¹⁰

When there is a natural disaster, many prospective parents, especially those from the United States, often rush to adopt children who may have been orphaned by the event. Similarly, as they watched news about the tragic aftermath of these natural disasters, many prospective parents from a few countries including the United States, offered to adopt children from Haiti. As a result, Haitian children were placed in different countries around the world. Eleven hundred fifty were brought to the United States.¹¹ Eventually, Haitian children who were airlifted to the United States landed in Georgia, Indiana, Illinois, Kansas, Minnesota, Pennsylvania, Tennessee, Texas and West Virginia. Other Haitian children were placed in homes in Ireland, the Netherlands, France, Canada and Spain.¹² In the chaos that followed the Haitian earthquake, many more children may have been removed from the island that have not been accounted for yet and they were separated from their families needlessly.

These adults wanted to adopt a child from Haiti for a variety of reasons. Some adopted Haitian children because they wanted to do something to help children whose forlorn and helpless faces appeared on television screens throughout the United States as broadcasters

relayed their stories on national news.¹³ Other families already had decided to adopt children from Haiti before the earthquake, had visited the country and had connected with a particular Haitian child.¹⁴ However, some children's rights experts questioned the prospective parents' motives. Professor David Smolin asked, for example, whether this rush to adopt Haitian children was "a humanitarian act of good will or a neo-colonialist child grab."¹⁵

This article addresses contemporary intercountry adoption issues that arise when prospective adoptive parents rush to adopt children who may be orphaned after a disaster. To address these points, this article will focus on what happened to Haitian children and their families after the January 2011 earthquake. American prospective parents' willingness to adopt orphaned children is a testament to their warm-heartedness and caring nature. However, when intercountry adoption is not in a particular child's best interests, rushing to remove that child from her family and homeland may be unnecessary and unwarranted under international and national laws that are supposed to protect children and their families. The Joint Council on International Children's Services opined that "while both airlifts and new adoptions are based on valid concerns and come from an obviously loving heart, neither option is considered viable by any credible child welfare organization."¹⁶

This article examines international conventions, statutes, and guidelines that emphasize children's rights and their family members' rights as well as options, including intercountry adoption, which should protect children and their family members' rights when a natural disaster occurs. For this purpose, family members include biological parents and immediate as well as extended family members but also may include adults who have been acting as family members.¹⁷ It concludes that both interests must be protected and that a universal plan of action

must be vetted, established, implemented and publicized expeditiously before the next disaster occurs.

II. U.S. FEDERAL AND INTERNATIONAL LAWS PROTECTING CHILDREN'S RIGHTS

A few federal and international laws govern when children may be brought to the United States for the purpose of adoption. Most children who legally enter the United States enter as adoptees or prospective adoptees because they are classified as orphans in the country of origin. The United States Citizenship and Immigration Services (USCIS) defines an orphan as a child who is under sixteen years old and is parentless “because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing proper care and has in writing irrevocably released the child for emigration and adoption ...”¹⁸ Moreover, the USCIS will decide whether a child will be admitted to the United States and allowed to reside here permanently.¹⁹

As an additional requirement, when the United States is the receiving country, the USCIS must determine that the prospective adoptive parents are eligible and suitable for adoption. That means that the prospective parents must be qualified to adopt an orphan.²⁰ Therefore, before a child is removed to the United States, Hague Convention requirements must be met when citizens of the United States are adopting children from another Convention state. This section discusses relevant parts of laws that protect children's rights in the intercountry adoption process when a child is orphaned, abandoned or deserted after a disaster.

A. Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption

The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (the Hague Convention)²¹ governs intercountry adoptions involving

countries that are signatories to the Convention. Presently, eighty-three countries, including the United States, are contracting states.²² U.S. President William Jefferson Clinton signed the Hague Convention in 1994. On December 12, 2007, the United States finally ratified the Hague Convention with implementing regulations.²³ It was fully implemented on April 1, 2008.²⁴

The purpose of the Hague Convention is to “ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children.”²⁵ The Hague Convention on Intercountry Adoption provides: “(1) The Convention shall apply where a child habitually resident in one Contracting State (“the State of origin”) has been, is being, or is to be moved to another Contracting State (“the receiving State”) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.”²⁶

The Hague Convention sets forth certain procedures for protecting children. First, proper authorities in contracting states must verify that the child is adoptable, that efforts were made to place the child in the child’s country of origin before placements outside the country are sought, and, that intercountry adoption is in the child’s best interests.²⁷ Then the Hague Convention further requires consideration of a child’s wishes and opinions about the adoption.²⁸ If the child is old enough to express her wishes and desires, the child also must provide voluntary and written consent to the adoption.²⁹

The Hague Convention also recognizes that “for the full and harmonious development of his or her personality, a child should grow up in a family environment, in an atmosphere of happiness, love and understanding.”³⁰ Thus, intercountry adoption is a viable and preferable alternative to living in an orphanage.³¹

In addition to the child's recognized right to have a "safe, loving and permanent" home life in a family setting in a family setting, the child's cultural and ethnic heritage must be respected. In the United States, ninety-two percent of intercountry adoptions are by white parents. Eighty-four percent of these adoptions also are transracial.³² Most of the parents who adopted Haitian children who came to the United States were white citizens. Thus, not only are there racial differences between the parents and the adoptee in these adoptions, there are cultural differences. When a child is adopted legally by parents whose habitual residence is in a different country and they have different cultures and do not have an appreciation for the child's culture, some children suffer psychologically and socially.³³

B. Non-Hague Adoption Procedures in Haiti

Regarding its applicability to non-Hague countries, non-Hague procedures also protect children's interests. Haiti is not a signatory to the Hague Convention. Although it made some progress in February 2011, when it signed the Hague Convention, its signature alone does not obligate it to uphold the Convention's adoption provisions.³⁴ Therefore, the Hague Convention does not govern adoptions in Haiti.³⁵

On the other hand, certain Hague Convention requirements should be followed regardless of whether the sending country is a Hague Convention signatory, certain protections should be implemented for all parties. For example, the best interests of the child should be paramount in all adoptions not just Hague Convention adoptions and children should not be taken from their homeland before they comply with all adoption procedures.

The sending countries' laws, in this case, Haiti, must be considered. Haiti's adoption procedure now requires, *inter alia*, completion of specified paperwork, documented parental consent and obtaining permission for travel from the proper Haitian authority.³⁶ Like the Hague

Convention, however, Haiti's laws require multi-layered assurances through documentation from the sending state and the prospective parents in the United States that the child is an orphan and that the person or persons who seek to adopt the child are suitable for adopting a particular child.³⁷ The Institut du Bien Etre Social et de Recherches (IBESR) is Haiti's designated adoption authority. It established Haiti's adoption procedures.

To summarize the process briefly, each child must meet the USCIS's definition of orphan and Forms 600 and 600-I—A must be completed. In addition, birth parents must appear before the Justice of the Peace in Haiti to provide their consent to the adoption. The IBESR must approve the adoption and issue an Authorization of Adoption. That Authorization must be presented to the Tribunal Civil- the proper civil court that has jurisdiction over the area where the child resides. That court will issue an Adoption Act.³⁸

During the adoption process in Haiti, several documents must be produced. They include identification photos for the child and the prospective parents, a Certificate of Abandonment or a relinquishment of parental rights, the child's social history and birth certificate, the parent's birth certificate, financial statements, home assessment, criminal background clearances, references and psychological and medical evaluations for the child and the prospective parent.³⁹ If appropriate, the parent must produce a marriage certificate.⁴⁰

This process will take approximately eighteen months. After the adoption is finalized, the adoptive parents must apply for a Haitian passport for the child. They must submit to a visa interview and pay required fees that include court fees and expenses and medical examinations that may be up to \$3000.⁴¹

C. The Importance of the Protecting a Child's Family Life

The Families for Orphans Act of 2009,⁴² is a bill that was drafted to protect children's rights globally. It proposes that the child has a "basic human right" to grow up in a safe, loving and permanent loving relationship."⁴³ The emphasis on finding a permanent home for orphans as paramount is quickly understood when family life and life in an orphanage is compared. The Families for Orphans bill announced findings, in part, that "lack of stimulation and consistent caregivers, suboptimal nutrition and physical/sexual abuse all conspire to delay and sometimes preclude normal development, speech acquisition and attainment of necessary social skills. Children lose one month of linear growth for every three months in an orphanage."⁴⁴ Infants who are not touched, held, and stimulated fail to thrive and may suffer life-affecting physical and emotional stressors, if not death.⁴⁵ Compared with growing up in an orphanage, the U.S. Congress found that "[t]he family provides the natural framework for the emotional, financial, and material support essential to the growth and development of its members, particularly infants and children."⁴⁶ Many children who live in orphanages do not receive this lifesaving human contact.

In Haiti, hundreds of thousands of children are living in orphanages. Many lived there before the earthquake. Then after the earthquake that number tripled. One Haitian caregiver reported that she supervised eight children before the earthquake and that the number of children in that orphanage rose to twenty-nine after the earthquake.

D. United Nations Convention on the Rights of the Child⁴⁷

The United Nations Convention on the Rights of the Child (UNCRC) also promotes the wellbeing of children and their rights. Like the Hague Convention, the UNCRC provides that in "all actions concerning children . . . [whether in or by] courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."⁴⁸ The

UNCRC also provides that [s]tate Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration.”⁴⁹ Like the Hague Convention, the UNCRC also emphasizes the child’s right to “due consideration of “ethnic, religious and cultural background.” More specifically, the UNCRC provides that “States shall . . . ensure alternative care for [] a child [when a parent, guardian, or relative is not available]. Such care could include, adoption . . . When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”⁵⁰

Paragraph 3 of Article 9 of the Convention on the Rights of the Child calls for respect for a child’s right to maintain family ties when the child is separated from her parents. It provides that “Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interests.”⁵¹

Under the UNCRC for children who are placed for adoption, placement in the child’s country of origin must be considered before the intercountry adoption alternative.⁵² Competent authorities must authorize the adoption after they have considered all applicable information and ensured compliance with the nation’s adoption laws that must be equivalent to adoption laws for in-country adoptions.⁵³ In addition, assurances that financial gain is not realized must be in place.⁵⁴ This means that the sending country must endeavor to ensure that the child who departs her country is an orphan. If a child does not have a parent or guardian, to maintain stability in the child’s life, her background should be considered when placement decisions are made. Prospective adoptive parents should be required to affirm that they will respect a child’s culture and heritage before they take the child to live with them.⁵⁵

Some recent adoptive parents have made a more concerted effort to maintain their children's Haitian identity and experience their culture. Already, they have organized trips and events for Haitian adoptees to play and associate with other Haitian children who were brought to the United States after the earthquake.⁵⁶ This is an important step. These children have an opportunity to bond with and form lasting relationships with children from their homeland and with children who suffered in the same way that they did before leaving their beloved homeland, friends and family members. Social events like these will help these children to cope with all of the life experiences that occurred in just a few months and precipitated a drastic, sudden and permanent change in their lives.

Adoptive parents should also be encouraged to take their children on at least one homeland tour when they believe that the child is ready to make the trip to their country of origin. Homeland tours are designed to help the adoptee as well as their adoptive family members to appreciate and learn about the child's culture and heritage. On these trips, adoptees often visit the orphanage from which they were adopted and they reconnect with caregivers and family members (whether immediate or distant relatives).⁵⁷

The Convention further requires that Parties seek the child's views and to give children the opportunity to express their views freely. The child's views should be received directly or indirectly through a representative.⁵⁸ Article 12 specifically provides that "[p]arties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child given due weight in accordance with the age and maturity of the child."⁵⁹

This Convention became effective on September 2, 1990. More than 193 nations have become parties to it. However, although the United States signed the Convention in 1995,⁶⁰ it

has not become a party.⁶¹ The United States has become a party to the Hague Convention. Many of the principles announced in the Convention on the Rights of the Child are the same as those announced in the Hague Convention. Moreover, the Convention on the Rights of the Child's principles are ones that the United States does and should embrace already. The United States should move forward to ratify this Convention.

E. The European Convention on Human Rights

At Article 8(1), The European Convention on Human Rights, provides that “[e]veryone has a right to respect for his private and family life, his home and his correspondence.”⁶² Children and their family members need to be protected from unscrupulous adopters and others who intend to exploit children and their families. At least thirty-three children were about to be removed from Haiti illegally by the Idaho 10 - a group of adults from Idaho when their bus was intercepted. Many of the children were taken without following proper paperwork and lack of compliance with Haitian adoption procedure. The Idaho 10 also misled birth parents about what their rights would be after the children left the island. It is unreasonable, for example, for them to tell these poor parents that they could visit their children anytime that they wanted to and that the children could return to their parents whenever they wanted to return. After several months in prison, the leader of the Idaho 10 was convicted of arranging illegal travel.⁶³ These so-called “missionaries” certainly did not show respect for Haitian family life or for Haitian adoption laws and the penalty did not reflect the magnitude of the crime committed.

This Convention requires it. Some Haitian children were removed or attempted to be removed from their homeland before an adequate search for relatives or other adults who could adopt them or provide long-term care in Haiti- their country of origin- is made. In respect for family life, whenever possible, a search for relatives who are ready and willing to adopt children

in their homeland must be made.⁶⁴ For example, not all people in Haiti are poor. People who want to adopt children may exist even in very poor countries like Haiti. For children who do not have relatives who are able and willing to adopt them, during a multi-layered search for prospective adoptive parents in the child's homeland, other adults who share the child's heritage and culture, but are not relatives, also may be identified. Some relatives may be outside of the affected country. One child would be reunited with her aunt in the United States.⁶⁵

In the United States, Congressional legislators have recognized that relatives are an important source for placement and adoption of children. In the United States, for example, for decades now, on an annual basis, relatives have adopted thirty-two percent of the children who are eligible for adoption with assistance from public adoption agencies. The 2011 report showed that relatives adopted 15,714 of the 52,891 children who were adopted from the child welfare system by September 2010.⁶⁶ In some states, adoption by suitable relatives are preferences for suitable relatives to adopt a parentless child.⁶⁷

F. Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (Declaration on Social and Legal Principles)⁶⁸

The General Assembly of the United Nations adopted this non-binding declaration in 1986. Among other stated interests, the General Assembly expressed a concern that a large number of orphaned and abandoned children exists due to a number of social and economic situations including natural disasters.⁶⁹ The General Assembly announced twenty-four "universal" principles that should be considered when states are drafting procedures for foster care and adoption. The child's best interests must be paramount.⁷⁰ The best interests criteria include the child's need for affection, "right to security and continuing care."⁷¹

The Declaration on Social and Legal Principles emphasizes the child's right to care by his or her "own parents." For those children who cannot be raised by their parents, relative care is presented as an option that should be considered.⁷² In addition, these parentless children should have a permanent family,⁷³ in the "most appropriate environment."⁷⁴ When a child's nationality differs from her perspective parents, the child's cultural and religious background and interests must be considered along with the laws of the prospective parent's state and the laws of the child's country of origin.⁷⁵

The child's suitable placement in foster care or adoption in her country of origin is preferable over the intercountry adoption alternative.⁷⁶ Intercountry adoption should not be an option unless the States involved in a particular child's adoption have "establish[ed] policy, legislation and effective supervision" for that child's protection.⁷⁷ Whenever a child is adopted, however, she is entitled to be recognized "as a member of the adoptive family and enjoy all the rights pertinent thereto."⁷⁸ Like the Hague Convention, the Declaration on Social and Legal Principles calls for competent authorities' supervision of the intercountry adoption process in accordance with standards and safeguards that are equivalent to a country's in-country adoption process. It specifically warns against placements that involve exchanges of money for a child or a parent's consent.⁷⁹ Other procedures that must be followed include ensuring that the child is "legally free" for adoption and that competent authorities have provided their consent, and that the child will be able to migrate to the receiving state and obtain the prospective parent's nationality.⁸⁰

F. Activating Special Humanitarian Parole Programs for Children

Usually, prospective parents must comply with a complex system of state, federal and international laws to bring a child to the United States for adoption. To transfer Haitian children

to a safe place quickly, and for planned adoptions, the Department of Homeland Security announced a Humanitarian Parole Program for Haitian Orphans (the humanitarian parole program) to allow specific Haitian children to be brought to the United States. The goals of the humanitarian parole program were: 1) to prevent child trafficking; 2) to ensure that the adoptee was well cared for upon arrival in the United States; and, 3) to allow ordinarily inadmissible children to enter the United States because of an urgent humanitarian reason.⁸¹

In 2010, in Haiti, there was “an urgent humanitarian reason” for some Haitian children to come to the United States. The humanitarian parole program set forth limitations and requirements for removing Haitian children from Haiti; but, the program only affected specific children. The U.S. Department of Homeland Security’s Secretary, Janet Napolitano, authorized activation of this special program to allow two groups of Haitian children to enter the United States. First, children legally confirmed as orphans who were deemed *eligible* for intercountry adoption before the earthquake had permission to travel to the United States. The second group of orphans was those identified as eligible for intercountry adoption and *matched* with prospective parents before the earthquake. Individualized decisions were supposed to be made about whether each child was eligible to travel to the United States as compared with a generalized determination that all unaccompanied Haitian children were eligible.⁸² As a result, most of the hundreds of thousands of orphans in Haiti were ineligible for transfer to the United States.

Specific evidence of a child’s eligibility for parole also was required. Meaningful and appropriate precautions had to be undertaken to determine whether a child was an orphan. For example, an adoption decree or a custody grant had to be produced for each child who was

considered an orphan who was eligible for transfer.⁸³ The difficulty with that provision was that many of the children's documentation was buried in the rubble and could not be recovered.⁸⁴

The humanitarian parole program for Haitian children began for adoption of Haitian children on January 18, 2010.⁸⁵ Accordingly, just six days after the earthquake, thousands of children were airlifted out of Haiti. The program also emphasized the importance of reunification of children with their family members and relatives as a preference before a child was cleared for intercountry adoption. The humanitarian parole program ended on April 14, 2010 when the Haitian government requested discontinuation of the program. Haiti declared a moratorium on adoptions.⁸⁶ No new adoption petitions were accepted for weeks. Later, after Haiti changed its adoption procedures, the moratorium was lifted.⁸⁷ On April 29, 2010, Haiti announced that it had resumed processing new applications for adoption.⁸⁸

As an added precaution, regardless of the category that a Haitian child was placed in, prospective parents were required to submit substantial evidence to prove that they were the intended parents for a child and that they were suitable to adopt that child. Specific evidence of the prospective parents' suitability included complete security background checks and be fingerprinting.⁸⁹ If a prospective parent's fingerprint clearance had expired, the fingerprints automatically would be rerun. In addition, before a child would be released to them, prospective parents were required to provide specified documents such as a custody order from the Haitian government or specific substitute documents if the processed documents had been lost or destroyed.⁹⁰

Children were checked before and after they left Haiti at central locations. Under the parole program, the only entrance to the United States was through Miami, Florida-the only recognized port of entry for Haitian children. When the children arrived in Miami, the Office of

Refugee Resettlement's Division of Unaccompanied Children's Services, which retained legal custody of the children until they were adopted, provided interim care.⁹¹ When a child arrived in the United States, a prospective parent's identification information, verification documents and the child's identification documents were checked for a match to ensure correct placements.⁹² Each child's admission to the United States still had to satisfy USCIS requirements before he or she could receive an immigrant visa. Moreover, prospective parents who had not formally adopted a child in Haiti (most were in that category) still had to follow adoption laws in their home state to formalize the adoption.⁹³

After the humanitarian parole program was discontinued in Haiti, additional protections against child trafficking were established to protect Haitian children and their families. The IBESR, the Haitian Adoption Authority, had to approve each child for travel outside the country. Haitian government officials also examined all documents for all minors who left Haiti.⁹⁴ This procedure is consistent with the Hague Convention's requirement that a Central Authority in the sending country must approve an adoption before a child is transferred from one country to another for adoption.⁹⁵

Some commentators expressed concerns that the humanitarian parole program may have allowed prospective parents to adopt children without compliance with applicable adoption laws.⁹⁶ However, if the program procedure had been followed, it would have provided further assurances that the prospective parent was suitable for adopting a particular child and that the prospective parent would not usurp adoption laws that other prospective parents must comply with on a regular basis.

Under the circumstances, the specific details of the program were adequate to address these concerns. However, abuses and life-altering serious mistakes were documented. Notably,

at least twelve children were brought to the United States who were not orphans or otherwise eligible to travel to the United States under the humanitarian parole program. Moreover, there was no plan for those children because they erroneously were placed on a plane destined for the United States.⁹⁷ For at least six months, these children lived at the Holy Family Institute - a center for troubled youth in a Pittsburgh, Pennsylvania suburb. Supposedly, they were segregated from children who were sentenced to live at the center for criminal misconduct while the Haitian government and the International Red Cross were trying to decide whether the children should be placed for adoption or returned to Haiti to live with their relatives.⁹⁸ After the children arrived, Claims that relatives had relinquished their rights emerged but those protestations had to be verified and those relatives had to be counseled about the consequences of the relinquishments.⁹⁹ Still, however, children who had been taken from their homeland and families were kept in a facility where juvenile delinquents are sent for punishment. Because these children were held in a place that is designed to punish and segregate delinquent youth, the Haitian refugees were being punished too.

The humanitarian parole policy had been used before in 2007 when the USCIS offered the Cuban Family Reunification Parole Program.¹⁰⁰ The urgent humanitarian reason for that program was to “expedite family reunification through safe, legal and orderly channels of migration to the United States and to discourage dangerous and irregular maritime migration.”¹⁰¹ Program beneficiaries were allowed to petition for parole for specific family members.¹⁰² Although humanitarian parole programs scarcely are used to expedite adoptions as it was used after the earthquake in Haiti, after efforts to reunite children with their family members are unsuccessful, humanitarian parole is a valuable policy that protects the child’s interests and the child’s families’ interests.

G. United Nations General Assembly's International Guidelines

The United Nations General Assembly adopted *Guidelines for the alternative care of children* (the Guidelines) in November of 2009—just a few months before the Haitian earthquake.¹⁰³ The Guidelines establish a protocol for caring for children when emergencies like the Haitian earthquake arise. Among other stated purposes, the Guidelines “support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption . . . [and to] ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child’s full and harmonious development. . . .”¹⁰⁴

The Guidelines also proposed that states make maximum efforts to locate family members and reunite children with their family members before any other permanent alternatives are considered. The Guidelines further require registration of children who are unaccompanied and separated and family-based care while children are waiting to be reunified with their family members. Using residential facilities like foster care for long-term care is prohibited.¹⁰⁵

Under the Guidelines, while the search for a family member is conducted, the state is responsible for protecting the rights of the child [] ensuring appropriate alternative care , . . . and [] ensur[ing] the supervision of the safety, well-being and development of any child placed in alternative care. . . .”¹⁰⁶ The Guidelines also promote care for very young children in a family-based setting.¹⁰⁷ For some of these children, when they cannot be reunited with family members, intercountry adoption will be the best alternative for them.

The Better Care Network announced its Interagency guiding principles on unaccompanied and separated children (the Interagency guidelines) in 2004.¹⁰⁸ Its principles are

similar to the United Nation's General Assembly's guidelines. The Interagency guidelines promote family reunification, diligent efforts to trace family members, and does not favor intercountry adoption.¹⁰⁹

Although these guidelines offer a flexible outline for caring for children in emergencies, they do not provide enough detail to help families and country administrators to prepare for reunifying children with their families after disaster. Suggestions for enhancing the recommendations in the guidelines in a way that most countries could adopt are included in section IV of this article.

Also, these Guidelines have not been adopted widely. They should be widely adopted with more detailed instructions and implemented immediately by all countries regardless of Hague affiliation. Before a poor country like Haiti experiences a disaster, the country should pledge that in the event of a disaster, a designated percentage of the millions of dollars that pour into the country from philanthropists will be set aside to reunite children and their families and to provide care for the children until appropriate placements can be identified.

In the paper in which it described how it helped to reunify Rwandan children with their family members, the International Committee of the Red Cross listed a more detailed three-pronged approach to a reunification program that involved ten offices and more than 600 staff members working together.¹¹⁰ Its first priority was to provide care for the children. Then it established a systematic reunification plan. Staff members used standardized forms and were trained to follow "clear procedures for data gathering and data handling."¹¹¹ The plan involved: identification of children who had been separated from their families, registering and interviewing those children, tracing their parents and relatives, and facilitating reunifications.¹¹² It showed respect for family life by refusing to assume that a child was an orphan "until all

possible attempts to identify parents or other close family members had been exhausted.”¹¹³ Children were grouped in accordance with their place of origin and information about them was taken to the communities and villages from which they came. Many children were reunited when they were taken to their place of origin and relatives identified them.¹¹⁴ Once the database was set up, 3,495 reunifications occurred when information about registered children was matched with tracing requests.¹¹⁵ Other parents were able to find their children by consulting the database themselves as some Rwandan parents did.¹¹⁶

Though the ICRC’s program celebrated colossal successes with reuniting 56,984 children with their families,¹¹⁷ it was not without error. Firstly, the time between registering a child and inputting the child’s information in the database took from two to seven months!¹¹⁸ That time must be shortened. Either more personnel must be assigned to input data or the persons who are assigned must be trained to work more efficiently. Secondly, although a reported 119,577 children were registered, the number of registrants was not accurate because some children’s information was registered more than once.¹¹⁹ The program should be designed to recognize if a child with the same name and identifying information already is registered. Thirdly, some staff members were not registering children in accordance with agency criteria.¹²⁰ Article 6 of the Declaration on Social and Legal Principles provides that “[p]ersons responsible for . . . adoption procedures should have professional or appropriate training.”¹²¹ The same principle must apply when reunification of a child with her family is the person’s charge.

Moreover, for some children the matching and reunification process for Rwandan families would take years.¹²² Certainly, representatives who are responsible for matching families and children must follow procedure and assure that the person who is claiming a child really is that child’s parent or relative, but efforts must be made to decrease the length of time

from years to a few months. Setting up the program before there is a disaster and testing it would help to work out some of the deficiencies identified in the current program.

III. PROTECTING FAMILIAL RIGHTS

Some of the same laws that protect children's rights also protect the children's families' rights. Children's best interests are and should be paramount in the adoption process. Yet, when floods, tornadoes, earthquakes and Tsunamis strike, as state officials strive to care for children and meet their immediate needs, they also must consider and protect the families' interests. For example, DNA tests showed that one man who offered two Haitian children for adoption was not a relative as he had represented himself to be.¹²³ He was not respecting the families' rights. One eight-year-old, who was in the bus full of children that the Idaho 10 tried to drive away to to the Dominican Republic border, said that she was not an orphan and that her parents were alive in Haiti.¹²⁴

Four conventions - the Hague Convention, the UNCRC, the European Convention and the Convention on Jurisdiction –declarations and guidelines, mandate that the child's parent or guardian must give their consent to adoption voluntarily and that they should receive counseling if they need it. This section addresses families' rights that should be honored and protected when disasters occur so that children routinely are not separated from family members. For these reasons and others presented in this section, children who are wrongfully removed must be returned to their parents.¹²⁵

A. The Families for Orphans Bill

The Families for Orphans bill calls for a "global strategy for the preservation and reunification of families and the provision of permanent parental care for orphans . . ." When the bill was introduced, the United States Government pledged to "build global awareness of the

need for the preservation and reunification of families and the provision of permanent parental care for orphans.”¹²⁶ As of August 2011, however, this important bill had not passed. In the United States, the bill should become law to ensure that Americans keep their commitment to give priority to preservation and reunification of families.

B. The Hague Convention’s Respect of Family Relationships

The Hague Convention announced a few requirements for protecting children’s rights. It also requires that countries “take, as a matter of priority, appropriate measures to enable the child to remain in his or her family of origin.”¹²⁷ In the United States, relatives adopt thousands of children from the child welfare system.¹²⁸ For those children who do not have family of origin and they cannot be placed with a family in their country of origin, intercountry adoption offers a permanent family in another country as an alternative.¹²⁹ Moreover, the Hague Convention sets forth requirements to ensure that parental consent complies with Convention requirements. For example, the consent for adoption must be given freely, “in the required legal form, and expressed or evidenced in writing”¹³⁰

To fulfill those requirements, the Hague Convention requires competent state authorities to ensure that “the persons, institutions and authorities whose consent is necessary for adoption, have been counseled as may be necessary and duly informed of the effects of their consent” It provides, for example, that parents must be informed about “whether [] an adoption will result in the termination of the legal relationship between the child and his or her family of origin”¹³¹ The provision means that when states implement the Hague Convention, the laws must include assurances that the parent or guardian who places a child for adoption voluntarily consents to the child’s adoptive placement. The child’s parent or guardian should receive

counseling regarding the consequences of such placement including the fact that their parental rights will be terminated permanently.

Hague Convention provisions make further efforts to prevent or curtail baby selling and child trafficking. Accordingly, Article 29 forbids contact between the prospective adoptive parents and the child's parents during the initial stages of the adoption process. Under the United States' Intercountry Adoption Act of 2000,¹³² only accredited adoption agencies may facilitate adoptions. Under Hague Convention provisions, no one who is involved in the adoption process may realize inappropriate financial gains from the adoption such as charging excessive agency fees and costs for adoption expenses.¹³³ Further, in an effort to avoid exploitation of birth parents, the Central Authority must ensure that the consents were not purchased from the parents or revoked before the child was placed for adoption.¹³⁴

Accordingly, Haitian parents should have been informed of the legal consequences of the child's departure from Haiti. As the Idaho 10 did in Haiti, birth parents in some countries have been misled to believe that their children can return anytime the children want to go home and that the parents may visit the children anytime. They did not understand that if the children were placed for adoption, their rights would be terminated – permanently.¹³⁵

C. United Nations Convention on the Rights of the Child¹³⁶

Like the Hague Convention, the United Nations Convention on the Rights of the Child (UNCRC) promotes protection of family rights just as it strives to protect children's rights. To protect family rights, the same article of the UNCRC that protects children's rights applies. Following this Convention's provisions will ensure that children who are not orphans are not taken from their families. Article 7, in particular, promotes the best interests of the child and family preservation. It provides that "[t]he child ... as far as possible, [shall have] the right to

know and be cared for by his or her parents.” Article 21 of the UNCRC further provides, in pertinent part, that the child must be eligible for adoption: “[Parties] shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians . . .”¹³⁷

Article 21 of the UNCRC also ensures that parents who are considering relinquishment of their parental rights will do so with a full understanding of what that relinquishment means. It provides, in pertinent part, that:

[s]tate Parties . . . shall: (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that . . . the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;

This provision ensures that parents give informed consent for adoption after they are apprised of the consequences of their decision. In addition, it ensures that responsible adults receive appropriate counseling before children are placed for adoption. Haiti’s law requires, for example, that parents appear before a justice of the peace to confirm that they are voluntarily providing consent.¹³⁸

D. Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions

Another Convention, the Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions¹³⁹ also emphasizes the importance of receiving parents’ consent for adoption. The purpose of this 1965 Convention is “to establish common provisions on jurisdiction, applicable law and recognition of decrees relating to adoption ...”¹⁴⁰ To fulfill that

purpose, the Convention on Jurisdiction also stresses adherence to adoption procedure for obtaining a guardian's or parent's consent in Article 5. That article provides that "the national law of the child relating to consents and consultations, other than those with respect to an adopter, his family or his or her spouse" applies.¹⁴¹ Therefore, under this Convention, as the child's country of origin, Haiti's laws on obtaining parental consent apply.

E. Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (Declaration on Social and Legal Principles)¹⁴²

Just as it poses principles to protect children's rights, the Declaration on Social and Legal Principles addresses birth parents concerns and rights. First, it acknowledges that priority must be given to the child's family and for a child "to be cared for by his or her own parents."¹⁴³ It recognizes an important link between the child's welfare and the family: "[c]hild welfare depends upon good family welfare."¹⁴⁴ It promotes counseling for family members and enough time to think about decisions that they make about the child's future. Parents should have "sufficient time and adequate counseling" when making decisions about their children's future.¹⁴⁵

IV. CONCLUSION AND ANALYSIS

In the United States and other countries, there have been a few major disasters in the past six years that have separated children from their families. Too often, those who provide services to children and those who are obligated to care for children have not been prepared to address children's needs and to reunify them with their parents, guardians, and relatives after the disaster occurs. Because more disasters are certain to occur, states in the United States and other

countries must act immediately to establish multilayered plans for protecting children and their families.

For Hague Convention signatories, the Hague Convention already requires that its eighty-three Contracting States designate a Central Authority to manage adoptions.¹⁴⁶ That designated official often is a department of human services official. That department would be a likely place for a centralized repository of information about children and families for reunification purposes. For non-Hague countries like Haiti, the office that normally is responsible for child welfare should be the designated official.

A. Registering Children Before and After a Disaster

Right away, as many children as possible must be registered in their homeland before a disaster. Registration could occur at hospitals, libraries, firehouse, churches, schools, anywhere where large numbers of children may be found. Photographs and vital information should be stored with the designated Central Authority. In large countries like the United States, state representatives could aid in this process but the process should be uniform throughout the country. Children's fingerprints, photographs and identifying information such as a Social Security or other identification number, birth date, birthplace, and distinguishing characteristics such as birthmarks should be recorded electronically and stored in a protected format.

Electronic storage that is protected is vital so that trained representatives will be able to access that information efficiently and quickly when it is needed and even if the building where the designated Central Authority is located is destroyed. Massive amounts of information could be stored in a contemporary mode such as Amazon's Cloud¹⁴⁷ so that it will be accessible from anywhere. At the same time, this personal information must be protected from hackers and those who want to commit adoption fraud or crimes against children such as trafficking.

At the same time that a parent registers a child, the parent may also indicate preferences for the child's placement with a certain relative or other person in the country of origin) if the parent and the child become separated or the parent is unable to care for the child. The relative's personal information including a description of the relative and the relative's contact information should be provided. After a disaster, the search team should focus on searching for parents first. Then, if the parent is not located, within a few days, the designated relative should be contacted.

Before the next disaster, Public Service Announcements on radios, televisions, electronic postings and other media should be utilized to notify families that this free service would be available and where family members who are looking for a child should conduct an online search and in person visits to find a child. In countries where they already exist, computerized monitors and billboards on roadways may be utilized. If a building is designated for storing this information, a backup site should be identified in the event that that particular building, which should be fortified, is affected in a disaster situation. After the disaster, priority should be placed on making that service operable for families as soon as possible.

An emergency hotline and call center should be set up before and after a disaster. The hotline and call center could be operable at all times to ensure its operability and to train workers throughout the year. It can be used when other children are separated from their parents during a festival, carnival, or some other event. Even in very poor countries, many people have cellular telephones. Similar to the 911 and 411 systems that exist in the United States, a telephone number designated solely for the purpose of locating children. People with missing children could call that number and receive information about a child's potential location. In addition, someone who finds an unaccompanied child can use the same communication to discover where they can take the child. Parents and guardians should be advised that in the event that cell towers

prevent calls, which often happens after disasters because they are overwhelmed with several calls at one time, to notify them that they can text a certain number. In addition, local officials should send text messages about how to find a child to masses of people who sign up for such texts to be transmitted to their cellular phones. These messages would describe the reunification process and sites where reunifications may occur.

As soon as possible after a disaster occurs, unaccompanied children should be taken to a designated location or locations and registered. The International Committee of the Red Cross (ICRC) was responsible for maintaining the database that contained names and other information about Rwandan children when an effort was made to reunite them with their parents and other relatives.¹⁴⁸ Countries should designate a Central Authority for registering children in orphanages or wherever they are found and transmitting that information to a centralized database where other trained persons with the proper clearance will attempt to match parents and relatives with missing children. Missing children reports that parents and guardians have filed on standardized forms that field agents complete with the same agency will be examined to find a match.¹⁴⁹

Like the American Red Cross and other emergency responders do in the United States, volunteer responders like UNICEF,¹⁵⁰ should be trained before a disaster and dispatched to the scene soon as the area is stabilized solely for the purpose of registering unaccompanied children. College students who are technologically savvy could register thousands of children a day before or after a disaster. Corporations could pay their travel and living expenses for this community service. In turn, they could receive college credit for community service.

B. Providing Aid for Biological Parents to Care for Their Children

Another social issue that arose in Haiti after the earthquake was that some Haitian birth parents were overwhelmed because they did not have resources to care for their children after the earthquake. For them, the way to ensure that their children would be fed, clothed and educated was abandonment or voluntary relinquishment of their parental rights. Parents abandoned their children or voluntarily consented to their adoption because they did not have the means to care for the children.¹⁵¹ Provisions for supporting families must be an essential part of any disaster relief program so that families should remain intact. Adults who are caring for children should be notified about where they can go to obtain necessities for their children.¹⁵²

C. Locating Relatives to Care for Unaccompanied Children

To preserve families, before children are removed from their homeland, a diligent search for relatives who are willing and able to care for and/or adopt them must be made. Efforts to locate relatives must be documented. The length of time that this search would last should be approximately sixty days.¹⁵³ While the search is conducted, notices and photographs of the child should be publicized online, in newspapers, on television and other popular media in the area where the children had lived before the disaster.¹⁵⁴ In poor or rural countries where birth parents and relatives may not have access to these modes of communication, posting information at designated posts may be sufficient. In remote regions of an affected country, representatives may be required to go from door to door to inquire about a child's relatives.

As Rwandans did after the massacre and mass exodus from that country resulted in separation of children from their families there, information including photographs and other identifying information could be posted at a particular website¹⁵⁵ so that parents and guardians would know where they could go to find children. When the child's information is posted, certain identifying details about a child such as birthmarks or nicknames should be withheld as

further assurances that the person who comes to claim the child truly is the child's relative. Otherwise, DNA testing should be done before a child is released.

The Congressional Coalition on Adoption Institution has concluded that: "It is all but universally accepted that the best place for a child to be raised is in their own biological family. An effort to adopt a child whose family is both willing and able to care for them is never in their best interest. These principles are no less true in a time of crisis."¹⁵⁶

D. Finding Suitable Accommodations

During the search for a child's family members, children's basic needs must be met. Suitable and safe accommodations should be provided for the unaccompanied child within a family-based care system. These placements should be temporary and not long term care options.¹⁵⁷ Children's medical needs also should be met. Their medical needs are different from those of an adult. Pediatricians and other child specialists should be deployed to the site. Children also should have proper food and clothing.¹⁵⁸

An orphanage should be a placement of last resort but when a child must be placed in one, the place should be clean and properly equipped with food, clothing, medical supplies, toys, sleeping quarters, and other supplies that children usually need. As soon as possible after the country is stabilized after a disaster, a list of orphanages or other sites where children have been placed should be published.

When possible, social workers, guardians *ad litem* or a child's attorney should be assigned to individual or small groups of children to ensure that the children's needs are met at these facilities.¹⁵⁹ In countries where these professionals are not available in the numbers that are needed, volunteers may be recruited to provide services for children. To ensure that no child

is left without an advocate and falls through the cracks, the advocate/child ratio should be as low as possible.

E. Planning Ahead to Care for Children after a Disaster

Everyone who normally cares for children should be apprised of emergency preparedness procedures and what to do after the incident when they have children in their care. This group may consist of day care providers, teachers and administrators at schools, pediatricians, emergency personnel and hospital personnel. Caregivers who are “culturally competent and familiar with the challenges youth face with separation from families, acculturation, adjustment . . .”¹⁶⁰ should have an active role in the planning and implementation stages. They should participate in the planning process because they are experts in child care; they know what children will need; and, they know how children will react when they experience a traumatic occurrence. They should be trained about providing temporary care for children, procedures of locating parents, and where unaccompanied children should be taken.

Having children to wait in a classroom for several days is not a favorable solution. For days after the tsunami in Japan, thirty Japanese children waited in their classroom for their parents to retrieve them.¹⁶¹ In Haiti, a teacher took her car keys and left children in the school.¹⁶² The educators and administrators at those schools were unprepared to deal with those situations. A universal emergency plan that included training would have prepared them.

F. The Intercountry Adoption Alternative

For some children, intercountry adoption will be the best option. That process should comply with Hague Convention or non-Hague Convention adoption procedure. Children should not be stolen from their parents or their homeland. They should not be bought. Parents should

not be coerced into placing their children for adoption or selling their children as they sometimes have been in Guatemala and China.¹⁶³

Although the humanitarian parole program was designed to transport children to the United States either who were eligible for adoption or adoption was pending; concerns about the humanitarian parole program linger. In emergencies, adoption procedures may be modified appropriately to move children to safety quickly. For children who already were involved in the adoption process with either prospective parents who had been matched with specific children or those children who already had been identified as orphans available for adoption, those adoptions can be processed as soon as possible.

Under those circumstances, a program such as the humanitarian parole program may be utilized to expedite those adoptions. As Haiti did after much turmoil arose, a central person, “a sole authority” should be designed to approve all intercountry adoptions. Some adoption advocates object, but, to ensure that children are placed with the right prospective parents, a longer waiting period of thirty to sixty days may be needed before an adoption is finalized. That extra time may be utilized to ensure that the child is an orphan and that the prospective parents are suitable for adopting a child.

A deliberate and thoughtful process must be implemented. The consequences of chaotic and streamlined adoption procedures can be dire. Hasty decisions to remove children only six days after a disaster may cause families to be separated unnecessarily. In some situations, reasonable efforts were not made to place some children in Haiti or to reunite families as the Hague Convention and the Families for Orphans Act bill require. Unknown numbers of children and their families may have been exploited in Haiti just as the Idaho 10 did.

One parole program requirement for releasing a child to a prospective parent was that the adult must have visited the child in Haiti and established a bond with the child before the earthquake. Others were voluntarily or involuntarily abandoned by adults who loved them. Some prospective parents will be ill-equipped and culturally insensitive to parent traumatized and physically sick children who were buried alive. Some children had gone for days without food and water, nearly drowned and starving.

Because the child has suffered through a catastrophic incident, many prospective parents received a traumatized child—a different child from the one whom he/she met on a prior trip to Haiti to meet the child before January 2010.¹⁶⁴ Some children have had tantrums and others have been wetting their beds.¹⁶⁵ Others were suffering from feeling of being rejected and unwanted because they were in orphanages for several years and watched other children leave because they were chosen for adoption and other children were left behind.¹⁶⁶ Those children's needs would be different from those of the carefree children whom they had met months before the earthquake. Measures should be taken to provide extra services to these children and their prospective families. Adoption service providers should educate prospective parents to address the child's physical and psychological needs when they take the child home with them. Post adoption services for the family and the child including family and individual counseling should be made available after the parents are informed about warning signs that their child may need extra care. Post adoption services for those parents and children who report challenges would help to avoid dissolutions.¹⁶⁷

Some prospective parents may be willing but unable to provide sufficient care for these children. In that regard, there should be a plan for placements that disrupt after a child comes to the United States because a prospective parent does not want a sick or traumatized child. Some

Haitian children were held in limbo in the custody of the Department of Health and Human Services' Office of Refugee Resettlement in a refugee foster care system.¹⁶⁸ Whichever process is established, children should not be re-victimized such as placement in a juvenile detention center because they are removed from their homeland without a plan for permanency.

G. Postadoption Reporting

Postadoption reporting involves incremental reports from the adoptive parents to the appropriate officials in the child's country of origin and one or more home visits. In the report, the parent's oral representations must be supported by other concrete evidence of compliance.¹⁶⁹ Some countries, including China and the Ukraine already require written postadoption reports and at least one home visit.¹⁷⁰

Haiti's adoption procedure does not require post-adoption reports. This is a necessary part of the intercountry adoption process to ensure that prospective parents are diligent about finalizing the adoption in the receiving country and for protection of the children (in case the placement is not working out for the child or the prospective parent).¹⁷¹ Also many birth parents that do provide proper consents want and need to know that the child is well cared for and safe. They often do not want the child's return because they want the child to have a better life.¹⁷² However, they do want information about the child's progress and an occasional photograph.

For children for whom no adoption plan exists, after it has been declared that the child indeed is an orphan and no relative is available to adopt the child, priority should be given to in-country adoption.¹⁷³ As the Hague Convention and the UNCRC prescribe, appropriate consideration should be given to a child's culture, heritage and ethnic background. A child's ability to stay in her homeland and to maintain her culture is important to the child's development and adjustment to adoption. However, concerns that are raised about domestic

adoptions must also be addressed. For example, in Haiti, hundreds of thousands of children have been enslaved as *restaveks* by wealthier Haitians.¹⁷⁴

H. Preparing Prospective Parents to Parent Traumatized Children

When children are chosen for intercountry adoption, disruption and dissolution procedures must be explained to prospective parents. Some children already have been rejected by prospective parents in the United States. Of the 1150 Haitian children who were brought to the United States, twenty disruptions have been reported thus far.¹⁷⁵ First, as a preemptive move, prospective parents should receive express instructions about services to seek to help to avoid dissolution or disruption when they adopt these children with special needs even when those needs are temporary. When they do not want to parent a child, new adoptive parents should know what to do and how to ensure that the child will receive another placement and another plan for care. When disruptions do occur, there should be a plan that includes re-adoption when the child is eligible for re-adoption. Sending a child back to her homeland, as one parent did in early 2010 when she sent her child back to Russia, whether on a plane by himself or accompanied by an adult,¹⁷⁶ is not an option.

In sum, there is a concern about whether some children need to be rescued by prospective parents from another country and if they did were their best interests served by quick transfers to another country. A detailed and systematic plan for reuniting children with their families and proper interim care while they are waiting for reunification must be a priority with each State. To respect the children's rights and their families' rights, reunification plans must be strengthened. While airlifting and adoption may be the best plans for some children, it will not be the best plan for most of the children who are separated from their families during an emergency. Then, intercountry adoptions that are in their best interests may be arranged. The ICRC

concluded, for example, that “adoption or placement in institutional care, for which there were popular calls, would not have been an appropriate emergency response. Adoption might eventually be appropriate for only a small minority of children initially identified as unaccompanied, and such a decision can be taken only after careful, time-consuming and labour-intensive tracing.”¹⁷⁷

Before the next natural or man-made disaster happens, international plans should be implemented for protecting children and their families and ensuring that children are orphans before they are adopted. Since these disasters are occurring more frequently all over the world, an international plan that is flexible enough for variation when a particular country needs it should be implemented at once.

¹ Cynthia R. Mabry, J.D., 1983, Howard University School of Law; LL.M., 1996, New York University School of Law. I am grateful to Professor Jennifer Wriggins and her colleagues at the University of Maine School of Law on May 25, 2011 and attendees, including Professor Barbara Starks, at the International Society of Family Law’s Annual Conference at Lyon, France on July 18, 2011 for their comments, suggestions and general support.

² UNICEF Data on Orphans by Region to 2010 [Chart], <http://chnm.gmu.edu/cyh/primary-sources/293> (last visited September 6, 2011); United Nations Children’s Fund, UNICEF, Children without Parental Care, www.unicef.org/protection/index_orphans.

³ *All Missing Hurricane Kids Found*, http://www.cbsnews.com/2102-500487_162-1430442.html (last visited August 17, 2011) (indicating that many children were found with relatives but other children arrived at shelters unaccompanied by a parent or guardian).

⁴ *Id.*

⁵ HODA KOTB, HODA – HOW I SURVIVED WAR ZONES, BAD HAIR, CANCER, AND KATHIE LEE (2010) (describing how a woman and her child were separated but they were reunited after a police officer intervened and learned that the child had been taken to a Texas, a neighboring state).

⁶ Families for Orphans Act of 2009, <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3070.IH>, at § 2, ¶ 7.

⁷ Florida Immigrant Advocacy Center, *After the Earthquake: Haitian Children Seeking Safety in the United States*, at 2 (Jan. 11, 2011) (hereinafter FIAC Report); The Annie E. Casey Foundation, *After the Earthquake: A Bulletin for Child Welfare Organizations Assisting Haitian Families in the United States* at 4 (July 10, 2010) (hereinafter *After the Earthquake*). *But see* Jessica Ravitz, *Haiti’s orphans: Why they remain in limbo*, [cnn.com](http://edition.cnn.com/2010/LIVING/01/27/haiti.orphans.overview/index.html) (Jan. 27, 2010), <http://edition.cnn.com/2010/LIVING/01/27/haiti.orphans.overview/index.html> (reporting about the parents’ custom of leaving children in an orphanage temporarily because they cannot care for them and aid groups’ warning that “hasty adoptions could break up families that may still have a chance of coming together again”).

⁸ Haiti Yearly Adoptions, http://adoption.state.gov/about_us/statistics.php (reporting that there were only 133 adoptions in 2010). *See also* Department of State, FY 2010 Annual Report on Inter-country Adoptions (December 2010), http://adoption.state.gov/content/pdf/fy2010_annual_report.pdf.

⁹ *See* Guy Hubbard, *Helping Haiti’s orphaned and separated children find their families*, (January 29, 2010), http://www.unicef.org/infobycountryhaiti_52642.html?q. *See also* Haiti, Country Information, <http://www.adoption.state.gov/country/haiti.html> (describing Haiti’s normal adoption policies and procedures); Joint

Council on International Children's Services, <http://www.jcics.org/haiti.htm> (providing a timeline of events after the earthquake).

¹⁰*Schoolchildren Wait But May Never See Mom and Dad Again*, http://www.orphanrelief.net/news.cfm/news_id/17356 (predicting that at least 100,000 children were left homeless).

¹¹ Ginger Thompson, *After Haiti Quake, the Chaos of the U.S. Adoptions*, New York Times (August 3, 2010), <http://www.nytimes.com/2010/08/04/world/americas/04adoption.html?>; David Crary, *Wariness and uncertainty as Haiti adoptions resume*, <http://www.google.com/hostednews/ap/article> (May 17, 2010) (receiving ten times the usual number of inquiries to adopt a child). See also Wendy Koch and Calum MacLeod, Adoption agencies report swell of interest in earthquake orphans, USA TODAY, at 9A (May 29, 2008) (intending to give in country adoption priority over intercountry adoption).

¹² Joe Raedle, *Humanitarian Parole for Haiti's Orphans but Stop Seeking New Adoptions*, January 21, 2010; Staff Writer, *Orphaned Haitian children to be allowed into US*, BBC News, January 19, 2010; David Crary, *Wariness and uncertainty as Haiti adoptions resume*, <http://www.google.com/hostednews/ap/article> (May 17, 2010) (interview prospective and adoptive parents in several states in the United States). See also Haitian Adoption Files In & Out of IBESR, Haiti Quake Info, <http://www.iadopt.info/tracking/IBESR.php> (last visited August 16, 2011) (listing the child's name, the child's family, the orphanage and where the child was sent).

¹³ Ron Allen, *Haitian children adjust to new life in American* (Aug. 2, 2010), <http://www.thegrio.com/news/haitian-children-adjust-to-america>.

¹⁴United States Citizenship and Immigration Services, <http://www.uscis.gov>. See also Kathleen Strotman, *Renewed Promise: the Welfare of Children in Haiti-Reflections and Recommendations on the One Year Anniversary* at 3 (January 12, 2011), available at info@ccainstitute.org (explaining the humanitarian parole process).

¹⁵ David Smolin, *A False Dilemma*, <http://roomfordebate.blogs.nytimes.com/2010/02/01s>.

¹⁶*US Opens door for Haitian orphans*, BBC NEWS, <http://news.bc.co.uk/go/pr/ft/-/2/hi/americans/8465392.stm>.

¹⁷ Sally F. Goldfarb, *Disasters, Families, and the Law*, 28 WOMEN'S RTS. L. RPTR. 35 (2007) (including a broad definition of family but cautioning that reunification with some family members may not be in a child's best interests).

¹⁸ 8 U.S.C. § 1101(b)(1)(F)(i) (2011). See also Cynthia R. Mabry, *Looking Beyond The United States: How Other Countries Handle Issues Related To Unwed Fathers In The Adoption Process*, 36 CAP. U. L. REV. 363, 378-79 (2007) (identifying children who are eligible for adoption internationally).

¹⁹ See 8 C.F.R. § 204.3 (2011).

²⁰ *Id.*

²¹ 32 I.L.M. 1134-46 (1993).

²² Hague Convention, *supra*, at Preamble 2; Intercountry Adoption Act of 2000, 42 U.S.C.A. §§ 14901-14954 (2011). See also 8 C.F.R. § 204.3(e) (2011).

²³Status Table-33: Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69. See also Intercountry Adoption Act of 2000, 42 U.S.C.A. §§ 14901-14954 (2011); 8 C.F.R. § 204.3(e) (2011). See generally implementation speeches and other materials at the Department of State's official web site: http://travel.state.gov/family/adoption/convention/convention_3902.html.

²⁴Status Table-33: Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69.

²⁵Hague Convention, *supra*, at art. 2. The Hague Convention applies when a child who is a habitual resident of one State is transferred to another State for adoption purposes.

²⁶ *Id.*

²⁷ *Id.* at Preamble. See *id.* at art. 5. See generally http://travel.state.gov/family/adoption/convention/convention_462.html.

²⁸ *Id.* at art. 4.

²⁹ *Id.* at art. 4(d).

³⁰ *Id.* at Preamble.

³¹ *Id.* at art. 16. See also Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47, 56-57 (2010).

³² S. Vandivere, K. Malm, L & Radel, *Adoption USA: A Chart Book Based on the 2007 National Survey of Adoptive Parents* 13 (Washington, D.C.: The U.S. Department of Health and Human Services Office of the

Assistant Secretary for Planning and Evaluation 2009), available at <http://aspe.hhs.gov/hsp/09/NSAP>. These parents adopt most of their children from China, Russia, Ethiopia, and Guatemala. CYNTHIA R. MABRY AND LISA KELLY, ADOPTION LAW-THEORY, POLICY AND PRACTICE 412-13 (2010) (hereinafter MABRY AND KELLY).

³³ MABRY AND KELLY, *supra*, note 32, at 447-52. See also The Evan B. Donaldson Adoption Institute, *The Historical Context of International Adoption of Korean Children* (2004) (describing the impact of intercountry and transracial adoptions on Korean children who were adopted by U.S. parents) and Myrna L. Friedlander, et al., *Bicultural Identification: Experiences of Internationally Adopted Children and their Parents*, 47 J. COUNSELING PSYCHOL. 187-98 (2000).

³⁴ D. MARIANNE BLAIR & MERLE H. WEINER, FAMILY LAW IN THE WORLD COMMUNITY 34 (2003) (describing the signatory process). See also MABRY AND KELLY, *supra*, note 30, at 416 (explaining the ratification process).

³⁵ Status Table-33: Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69 (listing the status of member contracting states and non-members).

³⁶ Haiti-Intercountry Adoption, http://adoption.state.gov/country_information/country_specific_info.php?country-select=haiti (last visited September 5, 2011).

³⁷ MABRY AND KELLY, *supra*, note 32, at 424-26 (explaining how children and prospective parents are certified when the sending country is not a Hague Country). See also Non-Hague Adoption Process, <http://adoption.state.gov/about/how/nonhague.html> (explaining a complex documentation system for both countries).

³⁸ Non-Hague Adoption Process, <http://adoption.state.gov/about/how/nonhague.html>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² The Families for Orphans Act of 2009, <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3070.IH>.

⁴³ *Id.* § 2.

⁴⁴ *Id.* at § 2, ¶ 4.

⁴⁵ *Id.* See also John MacCormack, *For adoptees from Haiti, Texas is “Disney World,”* http://www.mysanantonio.com/news/local_news (referencing “unseen struggles” and other consequences of living in an orphanage for five years).

⁴⁶ United Nations Programme for the International Year of the Family (1994). See also Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflection Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Intercountry Adoption*, 21 B.U. INT’L L.J. 179, 235-43 (2003).

⁴⁷ 28 I.L.M. 1448 (1989).

⁴⁸ *Id.* at art. 21.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.* at art. 9, ¶3.

⁵² *Id.* at art. 21(b).

⁵³ *Id.* at art. 21(a) and (c).

⁵⁴ *Id.* at art. 21(d).

⁵⁵ See Declaration on Social and Legal Principles, *supra* note 64, at art. 9 (recognizing the child’s background).

⁵⁶ See John MacCormack, *For adoptees from Haiti, Texas is “Disney World,”* http://www.mysanantonio.com/news/local_news (organizing a gathering in San Antonio, Texas for Haitian children who had found new homes in that Texas metropolitan area).

⁵⁷ Visit the Barker Foundation’s website for information about Homeland Tours and other postadoption support for the entire adoptive family, www.barkerfoundation.org.

⁵⁸ *Id.* at art. 12, ¶ 2.

⁵⁹ *Id.* at art. 12, ¶1. See also Committee on the Rights of the Child, General Comment on the Right of the Child to be Heard, www2.ohchr.org/english/bodies/crc/comments.htm (explaining what Article 12 requirements).

⁶⁰ 28 I.L.M. 1448 (1989). See also Jonathan Todres & Howard Davidson, *The U.S. View of the Convention on the Rights of the Child-Time for Reconsideration*, Vol. 9 CHILDREN’S RIGHTS 1 (Fall 2006) (advocating that the United States should ratify the UNCRC).

48 D. MARIANNE BLAIR AND MERLE H. WEINER, INTERNATIONAL FAMILY LAW: CONVENTIONS, STATUTES, AND REGULATORY MATERIALS 170 (2d. ed. 2010) (reprinting the Convention on the Rights of the Child).

⁶² 213 U.N.T.S. 222 (1953).

⁶³ *6 months after airlift, 12 Haitian kids remain in legal limbo outside Pittsburgh*, <http://www.foxnews.com/us/2010/07/27months-airlift-haitian-kids> (waiting for the children's parents to provide consent for their adoption).

⁶⁴ See U.S. Department of State, Children Affected by the earthquake in Haiti (Jan. 22, 2010), http://adoption.state.gov/news/children_affected_by_natural_disasters_conflict.html?css=p. (collaborating with UNICEF and other organizations to ensure that children receive proper care while diligent efforts are made to reunite them with their relatives).

⁶⁵ FIAC Report, *supra* 7, at 16 (telling the story of an aunt's willingness to adopt and that the aunt lived in the United States).

⁶⁶ U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau,

http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report18.htm. See also *In re Adoption of A.*, 893 N.Y.S.2d 751 (N.Y. Fam. Ct. 2010) (allowing a paternal grandmother and an aunt to adopt a child together). See generally Cynthia R. Mabry, *Joint and Shared Parenting: Valuing All Families and All Children in the Adoption Process with an Expanded Notion of Family*, 17 AM. UNIV. J. GENDER, SOC. POL'Y & L. 659 (2009) (advocating for two or more family members to adopt children who need permanent homes even if the prospective parents are not in an intimate relationship). Cf. *Adoption of a Child by Nathan*, 934 A.2d 64, 68 (N.J. Super. 2006) (denying the married maternal grandfather and his daughter's petition to adopt his granddaughter).

⁶⁷ See, e.g., CAL. FAM. CODE § 8710 (2011); MINN. STAT. ANN. § 259.29(2) (2011) (making consideration of a relative placement mandatory). *But see In re T.L.A.*, 677 N.W.2d 438, 431-32 (Minn. 2004) (avoiding blind or mechanical applications of relative preferences).

⁶⁸ 26 I.L.M. 1096 (1987).

⁶⁹ *Id.* at Preamble.

⁷⁰ *Id.* at art. 5.

⁷¹ *Id.*

⁷² *Id.* at 4 (proposing other substitutes such as foster care, adoption or institutional care as additional alternatives).

⁷³ *Id.* at art. 13 (making providing the child with a permanent family when his or her parents cannot care for the child).

⁷⁴ *Id.* at art. 14.

⁷⁵ *Id.* at art. 24.

⁷⁶ *Id.* at art. 17.

⁷⁷ *Id.* at art. 18 and 19 (including policies that prohibit abduction and "illicit placement").

⁷⁸ *Id.* at art. 16.

⁷⁹ *Id.* at art. 20.

⁸⁰ *Id.* at art. 22. See *id.* at art. 23 (ensuring that the adoption will be valid legally).

⁸¹ United States Citizenship and Immigration Services, <http://www.uscis.gov>. See also Kathleen Strottman, *Renewed Promise: the Welfare of Children in Haiti-Reflections and Recommendations on the One Year Anniversary* at 3 (January 12, 2011), available at info@ccainstitute.org (explaining the humanitarian parole process).

⁸² United States Citizenship and Immigration Services, Special Humanitarian Parole Program or Haitian Orphans Draws to a Close at Request of Haitian Government, <http://www.uscis.gov/humanitarianparole>. See also United States Citizenship and Immigration Services, <http://www.uscis.gov/adoptions>.

⁸³ U.S. Citizenship and Immigration Services, Questions & Answers: Information for U.S. Citizens in the Process of Adopting a Child from Haiti, <http://www.uscis.gov/portal/site/uscis/template> (explaining the adoption process for adoptive and prospective adoptive parents).

⁸⁴ *US Opens door for Haitian orphans*, BBC NEWS, <http://news.bc.co.uk/go/pr/ft/-/2/hi/americans/8465392.stm> (losing "vital paperwork" in the wreckage).

⁸⁵ U.S. Citizenship and Immigration Services, Questions & Answers: Information for U.S. Citizens in the Process of Adopting a Child from Haiti, <http://www.uscis.gov/portal/site/uscis/template>

⁸⁶ United States Citizenship and Immigration Services, Special Humanitarian Parole Program or Haitian Orphans Draws to a Close at Request of Haitian Government, <http://www.uscis.gov/> (updated April 7, 2010).

⁸⁷ See Haiti, Country Information, <http://www.adoption.state.gov/country/haiti.html> (describing Haiti's normal adoption policies and procedures); Joint Council on International Children's Services, <http://www.jcics.org/haiti.htm> (providing a timeline of events after the earthquake).

⁸⁸ *Id.* See also IBESR Accepting New Adoption Cases, http://adoption.state.gov/news/haiti_notice.html.

⁸⁹ *Id.*

⁹⁰ U.S. Citizenship and Immigration Services, Questions & Answers: Information for U.S. Citizens in the Process of Adopting a Child from Haiti, <http://www.uscis.gov/portal/site/uscis/template> (explaining the adoption process for adoptive and perspective adoptive parents).

⁹¹ The Office of Refugee Resettlement's Division of Unaccompanied Children's Services is an agency of the U.S. Department of Health and Human Services. It is responsible for providing care for unaccompanied minors who are in the United States' custody. <http://www.acf.hhs.gov/programs/orr/>.

⁹² U.S. Citizenship and Immigration Services, Questions & Answers: Information for U.S. Citizens in the Process of Adopting a Child from Haiti, <http://www.uscis.gov/portal/site/uscis/template> (explaining the adoption process for adoptive and perspective adoptive parents).

⁹³ See, e.g., N.C. GEN. STAT. § 48-2-205 (2011). See also MABRY AND KELLY, *supra* note 32, at 436-44 (discussing state law requirements of comity or readoption). See also Letter from R. Michael Key, President, National Council of Juvenile and Family Court Judges to State Family Court Judges (July 28, 2010) (urging judges to examine documents regarding legal custody and adoption expeditiously).

⁹⁴ U.S. Citizenship and Immigration Services, Questions & Answers: Information for U.S. Citizens in the Process of Adopting a Child from Haiti, <http://www.uscis.gov/portal/site/uscis/template>.

⁹⁵ Hague Convention, *supra*, at art. 17(c).

⁹⁶ See generally Ginger Thompson, *After Haiti Quake, the Chaos of U.S. Adoptions*, <http://www.nytimes.com/2010/08/04/world/americas/04adoption> (Aug. 3, 2010).

⁹⁷ U.S. Department of Health & Human Services, Statement from HHS Secretary Kathleen Sebelius on Haitian Children in Pittsburgh (January 3, 2011) (hoping that the children would be adopted) (available at <http://www.hhs.gov/news/press/2010pres/01/20100121s.html>) (last visited August 17, 2011).

⁹⁸ *6 months after airlift, 12 Haitian kids remain in legal limbo outside Pittsburgh*, <http://www.foxnews.com/us/2010/07/27months-airlift-haitian-kids> (waiting for the children's parents to provide consent for their adoption); *Fate uncertain for 12 Haitian kids airlifted to US*, <http://www.thegrio.com/news/fate-uncertain-for-12-haitian-kids-airlifted-to-us.hp?> (last visited August 17, 2011).

⁹⁹ *Fate uncertain for 12 Haitian kids airlifted to US*, <http://www.thegrio.com/news/fate-uncertain-for-12-haitian-kids-airlifted-to-us.hp?> (last visited August 17, 2011).

¹⁰⁰ U.S. Citizenship and Immigration Services, Office of Communications, Cuban Family Reunification Parole Program, <http://www.uscis.gov> (November 21, 2007) (describing the program and answering questions).

¹⁰¹ *Id.*

¹⁰² See 8 U.S.C. § 1182(d)(5)(A)(2011); 8 C.F.R. § 212.5(c) and (d)(2011) (excluding immediate relatives, those convicted of serious crimes and those who failed security checks).

¹⁰³ SOS Children's Villages International and International Social Service, *Guidelines for the alternative care of children* (November 20, 2009), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NO9/470/35/PDF/NO947035.0df?OpenElement>.

¹⁰⁴ *Id.* at 6.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (making the State responsible for the child's wellbeing).

¹⁰⁷ *Id.* at 8 (making an exception when siblings would be separated).

¹⁰⁸ Better Care Network, *Interagency guiding principles on unaccompanied and separated children* (2004), <http://www.crin.org/bcn/details.asp?id+9253&themeID+1005&topicID=1031>.

¹⁰⁹ *Id.*

¹¹⁰ Maarten Merkelbach, International Committee of the Red Cross, *Reuniting children separated from their families after the Rwandan crisis of 1994: the relative value of a centralized database*, at 1, <http://www.icrc.org/eng/resources/documents/misc/57jqhh.htm>.

¹¹¹ *Id.* at 2 (training forty expatriates and 600 nationals to collect and handle data).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 3 (taking some children to their former villages, communities or refugee camps and making “on the spot” reunifications).

¹¹⁵ *Id.* at 5.

¹¹⁶ *Id.* (reporting that 9,547 children were reunited with parents who conducted their own search of the database).

¹¹⁷ *Id.*

¹¹⁸ Merkelbach, *supra* note 112, at 2.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 6-7 (finding that some agencies were concerned about their presence and the availability of assistance for children in their care so numbers were distorted).

¹²¹ 26 I.L.M. 1096 at art. 6 (1987).

¹²² Merkelbach, *supra* note 112, at 1.

¹²³ Ginger Thompson, *After Haiti Quake, the Chaos of U.S. Adoptions*, <http://www.nytimes.com/2010/08/04/world/americas/04adoption> (Aug. 3, 2010) (using DNA to identify relatives).

¹²⁴ Derrick Henry and Jack Healy, *10 Americans Arrested in Haiti Await Charges*, THE NEW YORK TIMES (Feb. 2, 2010), available at <http://www.nytimes.com/2010/02/02/world/americas/02missionaires.html?hp>.

¹²⁵ *Guadarrama-Garcia v. Acosta*, 217 F.Supp.2d 802 (S.D. Tex. 2002) (ordering the return of a child to Mexico). See also Larry Kaplow, *Guatemala mother searched 5 yrs for adopted girl*, Associated Press (August 6, 2011), available at <http://news.yahoo.com/guatemala-mother-searched-5-years-adopted-girl-062524589.html> (reporting that a Guatemalan judge had ordered the return of a child who had been adopted by U.S. parents after she had been stolen from Guatemalan birth parents).

¹²⁶ Families for Orphans Act, *supra*, at § 2, ¶13.

¹²⁷ Hague Convention, *supra*, at Preamble.

¹²⁸

¹²⁹ Hague Convention, *supra*, at art. 4.

¹³⁰ Hague Convention, *supra*, at art. 4(d)(3).

¹³¹ *Id.* at art. 4(c). See also Uniform Adoption Act, § 2-401, 9 U.L.A. 28 (1994).

¹³² Intercountry Adoption Act of 2000, 42 U.S.C.A. §§ 14901 – 14954 (2011).

¹³³ Hague Convention, *supra*, at art. 5.

¹³⁴ *Id.* at art. 4 (preventing baby-selling).

¹³⁵ See Thompson, *supra* note 11, at 6 (interviewing one biological father who revoked his consent after he had placed the children for adoption thinking that they would be educated then allowed to return to Haiti).

¹³⁶ 28 I.L.M. 1448 (1989).

¹³⁷ *Id.* at art. 21.

¹³⁸ Non-Hague Adoption Process, <http://adoption.state.gov/about/how/nonhague.html>.

¹³⁹ 4 I.L.M. 338 (1964).

¹⁴⁰ *Id.* at Preamble.

¹⁴¹ *Id.* (requiring registration of a contracting state’s consent and consultation laws with the Ministry of Foreign Affairs of the Netherlands).

¹⁴² G.A. Res. 41/85, U.N. GAOR, 41st Sess., Supp. No. 53, at 265, U.N. Doc. A/Res/41/85 (1986).

¹⁴³ *Id.* at art. 1 and 3.

¹⁴⁴ *Id.* at art. 2.

¹⁴⁵ *Id.* at art. 15.

¹⁴⁶ Hague Convention, *supra*, at art. 6.

¹⁴⁷ Amazon Cloud Drive, <https://www.amazon.com/clouddrive/learnmore> (offering space for uploading documents).

¹⁴⁸ Merkelbach, *supra* note 112, at 1.

¹⁴⁹ *Id.* at 2 (describing how the ICRC’s Standard 4 software was used to gather information and match family members).

¹⁵⁰ UNICEF, <http://www.unicef.org/>.

¹⁵¹ Merkelbach, *supra* note 112, at 3 (placing children in centers voluntarily so that the children would receive food and other necessities).

¹⁵² Kathleen Strotzman, *Renewed Promise: the Welfare of Children in Haiti-Reflections and Recommendations on the One Year Anniversary* at 1 (Jan. 12, 2011), available at info@ccainstitute.org. See Merkelbach, *supra* note 112, at 5 (reporting that some children were under great pressure not to return to Rwanda so they refused to return).

¹⁵³ But see Cindy Saine, *US Lawmakers Call for Legislation to Promote Adoptions of Haitian Orphans*, VOA NEWS.COM, <http://www1.voanews.com/english/news/US-Lawmakers-Call-for-Legislation-to-Promote-Adoptions-of-Adoptions-of-Haitian-Orphans-82778522.html> (concluding that children cannot wait for help).

¹⁵⁴ Thompson, *supra* note 11, at 2 (broadcasting information about a child on Haitian radio).

¹⁵⁵ Merkelbach, *supra* note 112, at 1 (explaining how unaccompanied children were reunited with their families).

¹⁵⁶ Strotzman, *supra* note 150, at 2.

¹⁵⁷ *Id.* (noting sources that advocate against long-term institutionalization).

¹⁵⁸ Staff Writer, *Orphaned Haitian children to be allowed into US*, BBC News, January 19, 2010 (calling for emergency aid and protection before removing children or starting the adoption process).

¹⁵⁹ See Declaration on Social and Legal Principles, *supra* note ____, at art. 8 (declaring that children should have a legal representative at all times in foster care and adoption proceedings); FIAC Report, *supra* note 7, at 17 (recommending pro bono representatives for unaccompanied children). See generally American Bar Association, Standards for the Custody, Placement and Care: Legal Representation and Adjudication of Unaccompanied Alien Children in the United States at 3 (August 2004).

¹⁶⁰ After the Earthquake, *supra* note 7, at 14.

¹⁶¹ *Schoolchildren Wait But May Never See Mom and Dad Again*,

http://www.orphanrelief.net/news.cfm/news_id/17356 (waiting for their parents but not knowing whether they will come).

¹⁶² FIAC Report, *supra* note 7, at 6 (telling the story and expressing her anger at being abandoned).

¹⁶³ *Guatemalan army stole children for adoption, report says*, <http://www.cnn.com/2009/WORLD/americas/09/12/guatemala.child.abduction/index.html>; Barbara Demick, *Chinese babies stolen by officials for foreign adoption*, <http://www.latimes.com/news/nationworld/world/la-fg-china-adopt20-2009sept20,0,3191>; Larry Kaplow, *Guatemala mother searched 5 yrs for adopted girl*, Associated Press (August 6, 2011), available at <http://news.yahoo.com/guatemala-mother-searched-5-years-adopted-girl-062524589.html> (telling the story of how a mother's two-year-old daughter was snatched and placed for adoption in the United States).

¹⁶⁴ See, e.g., Ron Allen, *Haitian children adjust to new life in America*, <http://www.thegrio.com/news/Haitian-children-adjust-to-america> (Aug. 2, 2010) (reporting that some new families were having great days and difficult days and that one child appeared older than the records indicated); FIAC Report, *supra* note 7, at 3, 6 (describing the results of suffering through the disaster and being pulled from the rubble, their flight and being separated from their families).

¹⁶⁵ *Fate uncertain for 12 Haitian kids airlifted to US*, <http://www.thegrio.com/news/fate-uncertain-for-12-haitian-kids-airlifted-to-us.hp>? (last visited August 17, 2011).

¹⁶⁶ John MacCormack, *For adoptees from Haiti, Texas is "Disney World,"* http://www.mysanantonio.com/news/local_news (watching other children leave while being rejected for years).

¹⁶⁷ See, e.g., Child Welfare Information Gateway, Postadoption Services (2006), available at http://www.childwelfare.gov/pubs/f_postadoption.cfm (describing services that are available and providing resource). See also *See How to Prevent Adoption Disasters*, Room for Debate, THE NEW YORK TIMES (Apr. 16, 2010) (discussing how disruptions and dissolutions can be prevented) available at <http://roomfordebate.blogs.nytimes.com/2010/04/15/how-to-prevent-adoption-disasters/>?

¹⁶⁸ Diane B. Kunz, *Letter to the New York Times, Response to August 3, 2010 Article "After Haiti Quake, the Chaos of U.S. Adoptions"* by Ginger Thompson; Ginger Thompson, *After Haiti Quake, the Chaos of U.S. Adoptions*, <http://www.nytimes.com/2010/08/04/world/americas/04adoption> (Aug. 3, 2010) (reporting that a psychologist had decided not to adopt a Haitian child after the child arrived in the United States).

¹⁶⁹ MABRY AND KELLY, *supra* note 32, at 421 (describing reporting requirements in some sending countries and U.S. parents' failure to comply with the requirement).

¹⁷⁰ MABRY AND KELLY, *supra* note 29, at 421. See also U.S. Department of State, Post-Adoption Reporting Requirements, <http://www.travel.state.gov/family/> (last visited August 22, 2011). But see Nili Luo & David Smolin,

Intercountry Adoption and China: Emerging Questions and Developing Chinese Perspectives, 35 CUMB. L. REV. 597, 609 (2004-05) (indicating that some U.S. parents do not comply with this requirement).

¹⁷¹ MABRY AND KELLY, *supra* note 32, at 421.

¹⁷² Joel Millman, Jeffrey Ball and Mark Schoofs, *Missionary Stumbles on Road to Haiti*, THE WALL STREET JOURNAL (Feb. 3, 2010) (signing over parental rights to their children).

¹⁷³ Hague Convention, *supra*, at art. 4(b). *See also* Staff Writer, *Draft bill favors local adoption for children*, VIETNAM NEWS, Vietnam News Agency (Aug. 22, 2009).

¹⁷⁴ *See generally* JEAN-ROBERT CADET AND CYNTHIA NASSANO CADET, RESTAVEK: FROM HAITIAN SLAVE CHILD TO MIDDLE CLASS AMERICAN (1998) (telling the story of his enslavement). *See also* FIAC Report, *supra* note 7, at 1-2 (decrying a return to Haiti because of lack of food, shelter and protections from crime and reporting that more than 200,000 children had been restaveks); After the Earthquake, *supra* note 7, at 4.

¹⁷⁵ Thompson, *supra* note 11, at 2 (placing rejected children in foster care in the United States); FIAC Report, *supra* note 7, at 13 (reporting that a few adoptions failed).

¹⁷⁶ Nataliya Vasilyeva, *Adopted boy returned to Russia alone*, <http://www.washingtontimes.com/news/2010/apr/09/adoption-freeze-urged-after-boy-returned>. *See also* *How to Prevent Adoption Disasters*, Room for Debate, THE NEW YORK TIMES (Apr. 16, 2010) (discussing how disruptions and dissolutions can be prevented) available at <http://roomfordebate.blogs.nytimes.com/2010/04/15/how-to-prevent-adoption-disasters/>?

¹⁷⁷ Merkelbach, *supra* note 112, at 7 (reporting that nearly 48% of unaccompanied children were reunified with their families).