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Singing Songs in a Strange Land: The Plight of Haitian Children in the Space of International Adoption.

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ARTICLE

SINGING SONGS IN A STRANGE LAND: THE PLIGHT OF HAITIAN CHILDREN IN THE SPACE OF INTERNATIONAL ADOPTION

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I. INTRODUCTION

Four years ago, I had the privilege of assisting a Maryland couple with the adoption of their young niece from the island nation of Grenada. This process, though lengthy and tedious, was a labor of love because in the end, I witnessed firsthand the joy of a little girl who had lost her mother and was now facing a bright future in the United States. More importantly, she would be joining a family of blood relatives, her birth

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mother's sister, with whom she not only shared familial ties, but also a culture.

After concluding that adoption case, an Ivorian couple hired me to assist them with the adoption of three children from Cote D'Ivoire (Ivory Coast). This couple wants to adopt the children of a relative whose husband died. This case has proved to be extremely difficult because of the hurdles the couple faced. Four years later the process is at a standstill because of the financial burden the couple endured in trying to navigate the complicated adoption process. Their case is the same as my previous client in that they too are adopting blood relatives who lost their mother. The difference is that the Ivory Coast couple is trying to adopt three children without being fully prepared for the economic reality of the adoption process.[1]

The stark truth is that the international adoption process can be cost prohibitive for well-meaning immigrants from the developing world, trying to adopt relatives who are facing dire poverty, civil wars, and natural disasters.[2] The Ivory Coast case demonstrates that international adoption laws favor the very rich and the highest bidder, while persons who are driven only by a primordial bond to adopt are ignored, leaving many children to languish in a system of "haves and have-nots."[3]

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1. *See Cost of International Adoption*, ADOPTION.ORG, http://www.adoption.org/ adopt/cost-of-international-adoption.php (last visited July 15, 2012) (discussing how international adoption is more expensive than domestic adoption due to the cost of travel, legal fees, and sometimes a mandatory philanthropic donation); Katherine T. Pratt, *Inconceivable? Deducting the Costs of Fertility Treatment*, 89 CORNELL L. REV. 1121, 1180 (stating that "[t]he Treasury Department estimates that, in 1998, the average couple adopting a foreign child was almost twice the cost of adopting a child from the United States.").

2. *See* Bernie D. Jones, *International and Transracial Adoptions: Toward A Global Critical Race Feminist Practice?*, 10 WASH. & LEE RACE & ETHNIC ANC. L.J. 43, 47 (2004) (explaining that "[c]hildren living in war-torn nations and those wracked by natural disasters and famine will continue to suffer as they lose their parents."); *see also* Press Release, UNICEF, *UNICEF's Position on Inter-Country Adoption*, (July 22, 2010), *available at* http://www.unicef.org/media/media_41918.html (asserting that "[t]he case of children separated from their families and communities during war or natural disasters merits special mention. Family tracing should be the first priority and inter-country adoption should only be envisaged for a child once these tracing efforts have proved fruitless, and stable in-country solutions are not available."); *see also* Andrew Morrison, *Transracial Adoption: The Pros and Cons and the Parent's Perspective*, 20 HARV. BLACKLETTER L. J. 167, 201 (2004) (stating that "[t]he cost of TRA (transracial adoption) is often much less than same-race adoption . . . all adoptions are expensive.").

3. *See* The Editors, *Room For Debate: Celebrity Adoptions and the Real World*, N.Y. TIMES OPINION PAGES (May 10, 2009, 8:00 PM), http://roomfordebate.blogs.nytimes.com/ 2009/05/10/celebrity-adoptions-and-the-real-world/ (explaining that the perception of international adoption is skewed by the numerous wealthy celebrities who adopt internationally); *see also* Lilia Khabibullina, *International Adoption in Russia: "Market," "Children for Organs," and "Precious" or "Bad Genes," in* INTERNATIONAL ADOPTION: GLOBAL INE-

The practice of "market-driven" adoption became a hot button issue in the United States after the 2010 earthquake in Haiti. The earthquake disaster in Haiti brought to light some of the stark realities that permeate the space of international adoption.[4] The plight of children in the aftermath of the quake brought to light the "commodification" of children from the developing world, and the *de facto* preclusion of adoption by blood relatives.[5] Because of the costs involved in the international adoption process, coupled with the immigration bureaucracy and adoption laws in the United States, blood relatives of orphaned or abandoned children from the Global South are swept aside as these children are hurtled into "foreign" cultures—severing all ties to their country of birth, and familial bonds.[6] This practice of plenary adoption contemplated in the current legal instruments that guide the process of transnational and international adoption is antithetical to the child-rearing traditions in many developing countries like Haiti.[7] Even developed countries like Russia have expressed disgust at what appears to be a wanton grab by foreigners to adopt children who should rightfully be adopted by Russian citizens.[8]

QUALITIES AND THE CIRCULATION OF CHILDREN 174–89, (Diana Marre & Laura Briggs eds., 2009) (positing that "market terms are seen as imposed by the West, and adoption practice is seen as contaminated by the foreign market").

4. *See* James Reinl, *Haiti, Home of a Million Orphans*, THE NAT'L, Jan. 23, 2010, at 2, http://www.thenational.ae/news/world/americas/haiti-home-of-a-million-orphans (asserting that the vast amounts of children from Haiti who were sent to the U.S. and other countries raised fears of "fast-track adoptions" similar to those of after the 2005 earthquake in Kashmir).

5. *See id.* (describing how difficult family tracing was and how adoption was a legitimate alternative).

6. *See id.* (arguing for the displaced Haitian children to be adopted by members of their own country). According to Christopher de Bono, from UNICEF, the children in Port-au-Prince "don't need to be plucked out of the country and taken away." *Id.*

7. *See* Wendy L. Hellerstedt et al., *The International Adoption Project: Population-Based Surveillance of Minnesota Parents Who Adopted Children Internationally*, 12 MATERNAL & CHILD HEALTH J. 162, *5, (2008), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2398719/ (explaining effects of international adoption on the adopted children).

> Families that are formed through international adoption thus may face specific challenges associated with the apparently opposite goals of acculturation and maintenance of cultural identity that could influence later psychological, physical, and social health. Internationally adopted children may also experience teasing or racial discrimination, both from others outside of their racial/ethnic group and from those who share their racial/ethnic background but were born in the U.S.

Id.

8. Lilia Khabibullina, *International Adoption in Russia: "Market," "Children for Organs," and "Precious" or "Bad Genes,"* in INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 174–89, (Diana Marre & Laura Briggs eds., 2009) (stating that the Russian media is sharply critical of the market in children, describing it with such negative adjectives as "disgusting").

Haiti is among several countries in the Global South that has not ratified the Hague Convention on Intercountry Cooperation with Respect to International Adoption (Adoption Convention) though it previously ratified the United Nations Convention on the Rights of the Child.[9] In 2011, Haiti signed the Adoption Convention, perhaps more as a response to international criticism of its treatment of orphaned children than a sign of adherence to international law. This Article will analyze some reasons for Haiti's reluctance to ratify the Adoption Convention and its general aversion to international adoption. The analysis will look at Haiti's history in the context of international legal relations to demonstrate a nexus to the country's resistance to the international legal order.

My thesis is that the best interests of children are not served by severing the familial bonds contemplated by international adoption law. The legal framework that guides international adoption needs to be revised to take into account the socio-cultural needs of children and the socio-economic repercussions of the sending countries. The system, as it currently exists, is at odds with principles of cultural identity, and the rights of self-determination embodied in existing international covenants.

Part II of this paper will provide a comparative analysis of the two legal instruments that are currently in force to govern the transnational movement of children. Part III will analyze the processes involved in international adoption. Part IV will provide an analysis surrounding the commodification of children based on the class discrimination that is inherent in the adoption process. Finally, Part V will conclude that the wealthier receiving countries must look to international adoption as a last resort, and honor their obligations under international human rights law to ensure that the bundle of rights for children entails the right to keep families intact.

II. OVERVIEW OF INTERNATIONAL ADOPTION LAW

The transnational movement of children is governed by international conventions created to guarantee that "the best interests of the child" are

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9. Jennifer Degeling, Press Release, Hague Conference on Private Int'l Law (HCCH), *Haiti Signs the Hague Intercountry Adoption Convention* (Mar. 3, 2011), *available at* http://www.hcch.net/upload/sign33ht_press.pdf. "Just over one year on from the catastrophic earthquake that devastated Haiti on 12 January 2010, the Hague Conference is pleased to announce that on 2 March 2011, Haiti signed the *Hague Convention of 29 May 1993 on the Protection of Children and Cooperation in respect of Intercountry Adoption.*" *Id.*; *see* Fernandez & Linda Tom, *UNICEF and Partners Help Child Domestic Workers in Haiti Regain Their Rights*, UNICEF, (Apr. 20, 2007), http://www.unicef.org/protection/haiti_39418.html (stating that Haiti ratified the Convention on the Rights of the Child in 1994).

met.[10] The United Nations Convention on the Rights of the Child (CRC) and the Hague Convention on the Protection of Children and Co-Operation in Respect of Intercountry Adoptions (Adoption Convention) are the two governing bodies of law that deal with international adoption.[11] Notably, a majority of countries in the Global South have not ratified the Adoption Convention.[12] Along with many scholars in the field, my analysis posits that countries in the Global South are reluctant to embrace international adoption treaties because these laws are built upon Eurocentric assumptions of family, identity, and kinship, and are not in the best interests of children or of the sending countries.[13] As with all aspects of international law-making, countries in the Global South are wary of laws that, as a practical matter, manifest themselves as agents of containment and co-optation.[14]

The first treaty, the CRC, was adopted unanimously by the United Nations General Assembly on November 20, 1989, and entered into force in September 1990.[15] The monitoring body, the United Nations Committee on Rights of the Child, consists of eighteen members.[16] The CRC applies to every person under age eighteen.[17] At its core, the CRC adopts a holistic approach in that it aims to reconcile colonial tensions, acknowledges the right to one's culture as a human right, and is concerned with economic disparities between the Global North and South.[18]

Included in the bundle of rights contemplated under the CRC, are the right to be free from discrimination because of race, ethnicity, religion,

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10. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, S. Treaty Doc. No. 105-51 (1998), 1870 U.N.T.S. 167; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456.

11. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456.

12. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10; Convention on the Rights of the Child, Status Table, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456, *available at* http://www.hcch.net/index_en.php?act=conventions.status&cid=69.

13. *See* Maria Grahn-Farley, *Neutral Law and Eurocentric Lawmaking: A PostColonial Analysis of the U.N. Convention on the Rights of the Child*, 34 Brook. J. Int'l L. 1, 8 (2008) (stating that "[a] detailed examination of States parties' objection to other States parties' reservations uncovers a colonial dynamic). "The colonial legacy of international law is not simply a matter of inclusion or exclusion . . . the colonial structure is still present, not in the substantive legal outcome, but in the legislative process itself." *Id.* at 3.

14. *See id.*

15. *Id.* at 5.

16. *Id.*

17. *Id.* at 14.

18. *Id.* at 10.

class and legal status, the child's right to be heard in all matters regarding the child given that the child is constituted as a legal subject, and most importantly, the child's right to life, a positive right that entails the right to survival, education, healthcare, and an adequate living.[19] State parties to the CRC must put all available resources towards implementing these principles. Most of the countries in the international system have ratified the CRC, except the United States and Somalia.[20] Although a signatory to the CRC, Haiti is far from being in compliance with its mandates.[21] Haiti's failure to create enabling legislation for the CRC demonstrates both a lack of political will and the role that scarce economic resources continue to play in the country.[22]

The most recent international legal instrument, the Hague Adoption Convention, was signed in 1995 and expanded the adoption pool for participating countries by taking a more liberal stance on the severance of parental rights.[23] Under the Adoption Convention, a child does not even have to be an orphan in order to qualify for adoption.[24] Obviously, this provision has expanded the number of potential adoptees in participating countries. However, in countries that have not ratified the Adoption Convention, the child must meet the traditional definition of orphan.[25] Countries that are signatories to the Adoption Convention permit two living birth parents to relinquish their parental rights by demonstrating that they lack the capacity to provide for the child.[26] The Adoption Convention's expanded definition of adoptable children provides participating countries with the option of releasing children who are functionally parentless.[27]

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19. *See generally* Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456.

20. UNICEF, *Frequently Asked Questions*, http://www.unicef.org/infobycountry/haiti_39418.html (last visited Nov. 30, 2005).

21. *See* Viviana Fernandez & Linda Tom, *UNICEF and Partners Help Child Domestic Workers in Haiti Regain Their Rights*, UNICEF, (Apr. 20, 2007), http://www.unicef.org/protection/haiti_39418.html (stating that Haitian children "remain vulnerable to violence, exploitation and abuse.").

22. Logan Todd, *Trying to Free Haitian Children*, THE TRAIL BLAZER, Nov.3, 2010, http://www.trailblazeronline.net/index.php?option=com_content&view=article&id=2141: trying-to-free-haitian-children&catid=42:news&Itemid=70.

23. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10.

24. *Id.*

25. Orphan–A child whose parents are dead; a child who has been deprived of parental care and has not been legally adopted; a child without a parent or guardian. *Black's Law Dictionary* (9th ed. 2009).

26. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10.

27. *Id.*

The United States formally adopted the Adoption Convention in October 2000 with the creation of the Intercountry Adoption Act of 2000.[28] The Adoption Convention requires potential adopting parents to show that their adopted child's two living birth parents are incapable of taking care of them, and that the birth parents gave their written irrevocable consent to terminate their legal relationship with their child.[29] For parents hoping to adopt children from countries that are not signatories to the Adoption Convention, the requirements that the child be an orphan—without living parents or parents with legal rights—are still enforced.[30] Haiti is the most recent nation to sign the Adoption Convention; however, until the treaty has been formally ratified, compliance with its provisions will not occur.[31] Haiti should not be pressured to ratify this Convention given that some of its provisions might be at odds with deeply rooted Haitian cultural traditions.

In the United States and most European countries, plenary adoption is the only legally recognized form of adoption.[32] The mainstay of plenary adoption is to sever all kinship ties to a child's birth family.[33] In recent years, transnational adoption laws developed towards enforcing the tenets of plenary adoption partly in response to the misuse and abuse of

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28. Intercountry Adoption Act of 2000, 42 U.S.C. § 14901 (2000), 2001 WL 36163587. Though the United States has passed this act, full implementation has not been achieved:

On October 6, 2000, the United States enacted the Intercountry Adoption Act of 2000 to approve the provisions of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention). However, the United States has not yet implemented the Hague Convention provisions. Implementation will occur only after the Immigration and Naturalization Service (INS) and the Department of State publish implementing regulations in the *Federal Register*. That is expected within the next two years.

Id.

29. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10 (describing how a formal adoption must first recognize the termination of the relationship between a child and his or her biological parent(s)).

30. Bureau of Consular Affairs, U.S. Dep't of State, *Non-Hague Adoption Process*, INTERCOUNTRY ADOPTION, http://adoption.state.gov/adoption_process/how_to_adopt/non hague.php.

31. Diana Boni, *The Hague for Haiti–A Dangerous Blessing?*, ALL BLESSINGS INT'L IN HAITI (Mar. 5, 2011, 8:09 AM), http://kashaiti.blogspot.com/2011/03/hague-for-haiti-dangerous-blessing.html; Nicole Skellenger, *Is Hague Best for Haiti's Children?*, MLJ ADOPTIONS, INC., (Apr. 4, 2011), http://mljadoptions.com/Media.aspx?articleid=195. *See generally* Press Release, Hague Conference on Private Int'l Law (HCCH), *Haiti Signs the Hague Intercountry Adoption Convention* (Mar. 3, 2011), *available at* http://www.hcch.net/upload/sign33ht_press.pdf.

32. Françoise-Romaine Ouellette, *The Social Temporalities of Adoption and the Limits of Plenary Adoption, in* INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 69, 72, 76 (Diana Marre & Laura Briggs eds., 2009).

33. *Id.* at 76.

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private adoption arrangements, where birth parents were coerced into selling their children, or at times lost their children because of misrepresentation and fraud.[34] Under the Adoption Convention, adoption agencies have replaced the private transactions customary in international adoption.[35] Further, the agencies through which these transnational adoptions are coordinated must be recognized as an accredited body or authority.[36] Under this scheme, societies that have traditionally engaged in customary adoptions—the transfer of children without the severing of kinship ties—are under threat of being converted to plenary adoptions, depending on the laws of the receiving countries.[37] This new practice, while more uniform in nature and a possible tool to decrease potential corruption, often serves to co-opt the laws of sending countries that are not parties to the Adoption Convention.[38] This preference for "arranged" adoption under the Adoption Convention diminishes the potential for intergenerational bridging because these adoptions are more likely to be cloaked in anonymity as far as biological relatives are concerned. The agency process, then, is a gatekeeper to prevent contact between biological parents, and other relatives, and the prospective adoptive parents. This aspect of the law is in direct conflict with CRC principles recognizing that it is in the best interest of children to "enjoy continuity in their ethnic, cultural, and linguistic affiliations."[39]

Although the current principles do not explicitly eschew the CRC's principles, the two bodies of law are, in many ways, at odds. To understand this tension, it is necessary to review the origins of the Adoption Convention. The 1993 version of the Adoption Convention sheds light on the genesis of the plenary adoption principle. The severing of kinship ties was a main point of contention among the represented states during

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34. *See* Anthony D'Amato, *Cross-Country Adoption: A Call to Action*, 73 NOTRE DAME L. REV. 1239, 1247 (1998) (illustrating the economic incentives of stealing children and its negative impact on the intercountry adoption process).

> As the price of adoptable children goes up, so does the temptation of theft. A sidewalk thief can steal a purse and be lucky if it contains fifty dollars; if instead he steals an infant from its mother's arms or from a baby carriage, and runs with it to a waiting car, he can sell it to a dishonest adoption agency for at least a thousand dollars. In poor countries, this kind of evil economic incentive can lead to tragedy for natural parents and popular pressure for shutting down intercountry adoptions.

Id.

35. Bureau of Consular Affairs, *supra* note 30.

36. *Id. See also* Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10 (delineating the roles of accredited entities in the intercountry adoption process).

37. Ouellette, *supra* note 32, at 69, 74.

38. *Id.*

39. *Id.* at 76.

the discussions leading to the 1993 Convention.[40] Article Four of the Adoption Convention calls for termination of the legal relationship between the child and their family of origin, and Article Six calls for a change in the child's permanent residence.[41] However, Article Sixteen stresses that "due consideration" is to be given to the child's ethnic, religious, and cultural background, and Article Thirty recognizes the need to preserve information concerning the child's origin.[42]

Notwithstanding the more kinship-friendly version of the current Adoption Convention rules, the legal language it employs again calls into question its commitment to strengthening kinship bonds.[43] Language such as "orphan" and "irrevocable relinquishment of parental rights" are antithetical to the child-rearing traditions in most developing countries. These words have no corollary in most non-western societies and so the language of this law has no significance to countries like Haiti.[44]

In most traditional societies of the developing world, there is an organic link between a child and their extended family. The unspoken mandate of continuity is inherent in most of these traditional societies. The death of someone's birth parent is not perceived as severing kinship because the extended family often steps into the role of parent. The word "orphan," which connotes abandonment, is the opposite of the cultural norms of child rearing in these societies.[45] The idea of "orphan-ness" is socially constructed to symbolize a movement away from familial attachment. The conventional meaning attached to the death of a parent in Eurocentric societies is, in linguistic terms, arbitrary in most traditional

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40. *See* Scott Christian, *Intercountry Adoption*, 1 U. PEACE L. REV. 52, 58 (2010) (highlighting specific language in the Adoption Convention to demonstrate the challenge of balancing different countries' cultural traditions and expectations regarding adoption: "Article 20 states, with respect to children deprived of their family environment that nations shall 'in accordance with their national laws' provide alternative care to ensure the wellbeing of the child.").

41. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10. *See also* Barbara Yngvesson, *Refiguring Kinship in the Space of Adoption*, *in* INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 109 (Diana Marre & Laura Briggs eds., 2009).

42. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *supra* note 10.

43. *See* Barbara Yngvesson, *Refiguring Kinship in the Space of Adoption*, *in* INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 103, 104 (Diana Marre & Laura Briggs eds., 2009) (claiming that The Hague Convention on Intercountry Adoption like domestic adoption law in many Euro-American nations, is premised on an exclusivist concept that William Duncan describes as the "clean-break model" of adoptive kinship).

44. *Id.*

45. *Id.*

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societies of the developing world.[46] Where the death of a parent may symbolize an abandoned existence in the developed countries of the West, the death of a birth parent in non-Eurocentric societies represents continuity of the parent's lineage by providing a nurturing relationship through the deceased parent's extended family.[47]

A. *Haiti's Resistance and the International Legal Order*

The praxis of resistance to international law that characterizes countries in the Global South has roots in the brutal history of the tripartite demon of slavery and its aftermath, colonialism, and imperialism.[48] Haiti's history provides insight as to the reasons for third world resistance to the ratification of certain Eurocentric applications of law, specifically the Adoption Convention.

Children in Haiti face an uncertain future.[49] Historically, Haiti and her people have been *presented* and *re-presented* to the world through the myopic lenses of media in the Global North.[50] Buoyed by mass media horror stories of Voodoo cults,[51] HIV/AIDS, and mass killings spurred by

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46. *See* Judith Schachter, *International Adoption: Lessons from Hawaii, in* INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 52, 56 (Diana Marre & Laura Briggs eds., 2009) (demonstrating that "[a]doption in an international arena exposes the cultural imperialism that determines relationships within and across societies . . . .").

47. *Id.*

48. *See* Kimani Waweru, *Commemorating Haiti: A Revolutionary History*, PAMBAZUKA NEWS (Apr. 30, 2009), http://www.pambazuka.org/en/category/enewsl/55997 (noting that despite Haiti's "remarkable success in being the first Latin American country to gain independence, the first post-colonial nation with a black leadership, and the only country to have gained independence through a successful slave rebellion . . . [c]olonialism, slavery, exploitation . . . and corruption . . . have permeated through [its] historical landscape" and have influenced the current state of being for Haitians.).

49. Jones, *supra* note 2, at 53.

50. *See Haiti, Power, and Voudou*, HAITIAN EDUCATIONAL INITIATIVES (Nov. 14, 2011, 10:02 PM), http://www.haiti-edu.org/haiti-power-and-voudou/ (discussing the unfortunate perception of Haiti: "Corruption, deceit, and what Westerners perceive as laziness and resistance to change seem to pervade every aspect of Haitian life."). *See generally* EDWARD W. SAID, CULTURE AND IMPERIALISM 9 (1993) (discussing the effect of imperialism and colonialism on the lexicon and perception of non-imperialist nations dating back several hundred years); Hillary L. Brown, *Representations of Haiti in Western News Media: Coverage of the January 2010 Earthquake in Haiti*, COMMUNICATION THESES (2012), *available at* http://digitalarchive.gsu.edu/cgi/viewcontent.cgi?article=1090&context=communication_theses (explaining how Western media has shaped the negative view in which non-Haitians perceive Haiti).

51. *See* Danielle N. Boaz, *Dividing Sterotype and Religion: The Legal Implications of the Ambiguous References to VooDoo in U.S. Courts Proceeding*, 14 SCHOLAR 251, 260 (2011) (discussing how stories of "barbaric" voodoo practices framed the world's view of Haiti).

military coups and political instability, the picture of Haiti seen through the lens of the Global North has remained distorted since that country's liberation from French colonization in 1804.[52] The impact of media coverage has led to cognitive dissonance on a mass scale.

The current crisis brings into focus the harsh realities that manifest themselves at the inter-subjective juncture of politics and human rights. The reluctance of Haiti and other developing countries in the southern hemisphere to ratify the Adoption Convention and other international legal instruments testifies to the ongoing mistrust that characterizes international relations between the Global South and North.[53] The current international adoption scheme is clearly unsuitable for developing countries like Haiti. The plenary nature of international adoption law is at odds with traditional child rearing in Global South societies.[54] From a human rights perspective, severing the conduit of kinship systems is not in the "best interest of the child."[55] Plenary adoption is not the remedy for the persistent poverty in developing countries.

While the historical argument of imperial domination does not, and should never, subsume the rights of children, the brutal history that created the fissures that have flourished into the gaping wounds is often the alibi for resistance to the international legal order. Thus, attempts to promote global harmony through international lawmaking will be viewed as suspect—an illusion of benevolence. As such, any analysis of international law-making for the Third World must engage with that region's history before these wounds can begin to heal. Thus, this Article rests on an overarching premise that the "best interests" of children must be analyzed within the socio-legal and socio-historical framework of the sending countries, and within the confines of human rights principles.

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52. *See* RANDALL ROBINSON, HAITI, FROM REVOLUTION TO THE KIDNAPPING OF A PRESIDENT: AN UNBROKEN AGONY 37 (2007) (acknowledging that Haiti was the world's first black republic, established in 1804).

53. *See* Grahn-Farley, *supra* note 13, at 31 (pointing out that CRC was drafted with the intention to avoid controversies that may arise, such as economic disparity, abortion, and freedom of religion).

54. *See* Chantal Collard, *The Transnational Adoption of a Related Child in Quebec, Canada, in* INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 124 (Diana Marre &Laura Briggs eds., 2009) (noting that in Haiti, "blood ties are very important and it is a family obligation to 'share' children with infertile family members."). Traditionally an infertile couple would ask a relative blessed with many children to relinquish one for adoption. *Id.* Today Haitian authorities continue to support this practice at the national and international level and strongly favor transnational family adoptions, provided they are in the best interest of the child. *Id.*

55. *See id.* at 125 (acknowledging the dominant view of the Hague Convention is that children are best left with their biological parents). Officials see adoption as in the child's best interest only when the biological parents are destitute. *Id.*

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International adoption law must be revised to take into account the traditional roles of kinship in the child rearing systems of developing countries. To begin this new dialogue, more empirical research is needed on (1) which children are in need of adoption, (2) the impact of intercultural adoption on adopted children, and (3) whether hybrid adoptions are a more viable option.

B. *The Genesis of International Adoption*

The field of international and intercultural adoption has always provided fertile ground for ideological debates over what to do with children born into poverty, or those abandoned by wars and natural disasters. From the "civilizing" missions of the United States and Australia towards the children of Native Americans and Aboriginals,[56] to the aftermath of the First and Second World Wars when the Red Cross rescued abandoned orphans in Europe and sailed them to Canada,[57] the practice of removing children from their homeland has led to the creation of municipal and international laws to govern that process.[58]

International adoption has always been a source of much debate. World War II "brought the uneven but gradual removal of most legal barriers to immigration," and essentially paved the way for foreign adoptions to become a real possibility.[59] Before this time persons tended to adopt children in their home country.[60] During these times the children that were adopted from other countries were seen only as foster children, who were to be returned to their parents at the end of whatever plight had caused them to leave their home country.[61] If their birth parents did not survive the ordeal, emphasis was placed on finding family members

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56. Diana Marre & Laura Briggs, *Introduction: The Circulation of Children*, in INTER-NATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 8 (Diana Marre & Laura Briggs, eds., 2009). *See also* Peter N. Jones, *The Legal Reasoning and Methods of Assimilation Employed in the Colonization of Indigenous Peoples: The Australian Aboriginal and Native American Example*, DAMS & WATER & INDIGENOUS PEOPLES (May 16, 2008), http://indigenouspeoplesissues.com/index.php?view=article&cat id=65%3Aindigenous-peoples-general&id=86%3Amethods-of-assimilation-aboriginal-australia-and-native-american-examples&option=com_content&Itemid=92.

57. *See* AMERICAN RED CROSS MUSEUM, *World War I Accomplishments of the American Red Cross*, EXPLORE OUR HIST., http://www.redcross.org/museum/history/ww1a.asp (last visited July 26, 2012) (mentioning that the Red Cross provided services to the civilian victims of war, especially the children of Europe).

58. *See* Marre, *supra* note 56, at 2–20 (Diana Marre & Laura Briggs, eds., 2009) (chronicling the history of transnational adoption and European war refugees).

59. *Id.* at 5.

60. *See id.* at 1 (acknowledging that "[t]ransnational adoption emerged out of war.").

61. *Id.* at 4. "These initial efforts on behalf of refugee children . . . were explicitly foster homes, not adoptive families. *Id.*

who would take the children in.[62] Traditionally adoption was seen as a temporary situation; it was so that a child could have a home but the goal was always to return the child to the family.[63]

With the advent of television, and the contemporary reaches of the Internet, the world is witness to the impact that natural disasters, wars, and poverty have on children around the globe, and many people feel morally compelled to assist.[64] In some situations, international adoption occurs within a profitable market-like system[65] where children are selected based on racial or ethnic characteristics.[66] Regardless of the motivation for international adoption, the practice is gaining increasing popularity in

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62. *See id.* (pointing out that "[w]hen parents died or disappeared, as happened with many Jewish children, international social service groups sought other surviving family members to raise the children.").

63. *Id.*

64. HOWARD ALTSTEIN & RITA J. SIMON, INTERCOUNTRY ADOPTION: A MULTINATIONAL PERSPECTIVE 2 (1991). The author posits the hypothetical question "[w]hat could be more humane . . . than to remove seemingly unwanted, even discarded, children from what appeared to be lives of misery and poverty and transplant them into an environment where material comfort and social opportunity abounded?" *Id.*

65. *See* Sara Dillon, *Making Legal Regimes for Intercountry Adoption Reflect 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, 188 (2003) ("The profitability of intercountry adoption has probably tended in some jurisdictions to bring children into the system who would not otherwise have been there. Such corruption has had the perverse effect of threatening the reputation and viability of transnational adoption in a much more general sense.").

66. *See, e.g.,* Mary Hora, *A Standard of Service That All Families Deserve: The Transformation of Intercountry Adoption Between the United States and the Russian Federation*, 40 BRANDEIS L.J. 1017, 1021 (2002) (discussing the impact that race has on transracial adoptions in the United States). "The issue of race permeates adoption in the United States . . . until recently, transracial adoption was discouraged . . . some white Americans have turned to Russia because they prefer to adopt a child that physically resembles them. *Id. See also* Peter Selman, *The Movement of Children for International Adoption: Development and Trends in Receiving States and States of Origin, 1998-2004, in* INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 32 (Diana Marre & Laura Briggs eds., 2009) (explaining the increase in adoptions from African states). "Until recently, the number of children adopted from . . . African states was very low . . . . The growing popularity of adoption from Ethiopia has been attributed to publicity surrounding the adoption of an Ethiopian child by Angelina Jolie . . . ." *Id.*

the United States.[67] Between 1999 and 2011 U.S. citizens adopted 233,934 children internationally.[68]

International adoption exposes the uncomfortable fact that families who live in perpetual cycles of poverty are forced to contend with a gross imbalance of power against potential adoptive parents from North America and Europe.[69] This reality begs the question of whether severing children from their country and family of origin is just—a consideration that is largely ignored in law making processes.[70] Instead, the incendiary rhetoric that a child born to poverty stricken parents is "functionally parentless" has guided the justification for international adoption.[71]

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67. *See* John Seabrook, *The Last Babylift: Adopting a Child in Haiti*, THE NEW YORKER, May 10, 2010, http://www.newyorker.com/reporting/2010/05/10/100510fa_fact_sea brook (discussing the evolving practice of intercountry adoptions).

> Korea was the first of the "sending" nations (a term borrowed from global import-export economics), followed by Vietnam. In April, 1975, in the final days of the Vietnam War, President Gerald Ford announced that some two thousand Vietnamese "orphans" would be brought to the U.S. for adoption, in a series of flights that became known in the press as Operation Babylift . . . . In the nineteen-eighties, Americans began obtaining children from Latin America, and, after the fall of the Berlin Wall, in 1989, from Romania, Ukraine, and Russia. China began dispatching orphans to the U.S. in the nineteen-nineties and by 2000 was sending five thousand children a year, more than any other nation. Next, Guatemala emerged as a major supplier of adoptive children—four thousand children came to the U.S. in 2006. Some African countries, which had long lacked the legal infrastructure to engage in international adoption, began to do so . . . In raw numbers, the U.S. is the largest of the receiving countries (although Spain and Norway adopt more children per capita). In 2004, the peak year of international adoptions, 22,884 adopted children from more than ninety nations came to the United States.").

Id.

68. Bureau of Consular Affairs, *supra* note 30.

69. Jones, *supra* note 2, at 43–44. *See generally* Peter Selman, *The Movement of Children for International Adoption: Development and Trends in Receiving States and States of Origin, 1998-2004, in* INTERNATIONAL ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 32, 32–49 (Diana Marre & Laura Briggs eds., 2009) (discussing the dynamics of international adoption).

70. *See* Jones, *supra* note 2, at 43.

71. *See* Seabrook, *supra* note 67 (raising ethical issues involved in international adoption and stating, "[t]he dividing line between an ethical adoption and a baby-buying scam generally falls on the issue of whether the birth mother has been coerced into giving up her child. It's one thing to pay a licensed adoption agency to pursue your adoption within legal channels; it's another thing to pay a poor woman for her baby.").

C. *The Adoption Crisis in Haiti*

The 2010 earthquake in Haiti focused a spotlight on the plight faced by that country's children.[72] In the aftermath of the disaster, many people flocked to Haiti's shores to offer help.[73] Some were guided by humanitarian concerns because of the massive casualties reported in the media.[74] Others had a more sinister motive—to remove children from the island *en masse* and make them available for adoption in the United States, France, Canada, and other countries.[75] This aspect of the disaster brought to light the stark truth that Haiti and her children were once again denied their fundamental rights on the international stage.

Haiti is the poorest country in the Western Hemisphere.[76] This inherent poverty has placed Haiti's children at great risk of shoddy adoption practices and even human trafficking.[77] In post-earthquake Haiti, the problems facing orphans have worsened.[78] Haiti now appears to be in urgent need of uniform adoption standards that will preserve the future of this nation, and the well-being of children.[79]

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72. *See* Sam Jones, *Too Early to Begin Adopting Haitian Children, Would-be Parents Told*, THE GUARDIAN, Jan. 18, 2010, http://www.guardian.co.uk/world/2010/jan/18/haiti-earthquake-orphans-adoption-warning (describing the interest of the United States, France, and Canada in adopting Haitian children following the earthquake).

73. Tyler Maltbie, *Haiti Earthquake: The Nations That Are Stepping Up To Help*, THE CHRISTIAN SCIENCE MONITOR (Jan. 14, 2010), http://www.csmonitor.com/World/Global-News/2010/0114/Haiti-earthquake-The-nations-that-are-stepping-up-to-help.

74. *See Haiti Quake: Death Toll May Be 200,000, US General Says*, BBC NEWS, Jan. 18, 2010, http://news.bbc.co.uk/2/hi/8465137.stm (describing the destruction caused by the earthquake and the estimated death toll, and stating that there were "43 search and rescue teams on the ground, with 1,700 people involved in the effort.").

75. *See* Tim Padgett & Bobby Ghosh, *Human Predators Stalk Haiti's Vulnerable Kids*, TIME SPECIALS, Jan. 27, 2010, http://www.time.com/time/specials/packages/article/0,28804,1953379_1953494_1957160,00.html (stating that many child traffickers "are exploiting the rush to get Haitian children out of the quake-ravaged country.").

76. CENTRAL INTELLIGENCE AGENCY, *The World FactBook: Haiti*, 2009, https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html.

77. *See* Padgett, *supra* note 75 (explaining that Haitian orphans are targeted by child traffickers). *See also* Lisa Belkin, *Questioning International Adoptions*, N.Y. TIMES, Apr. 12, 2010, http://parenting.blogs.nytimes.com/2010/04/12/questioning-international-adoptions/ (explaining the impact of adoption fraud on children).

78. Victoria Wylie, *Haiti, One Year After the Earthquake*, NAT'L GEOGRAPHIC ASSIGNMENT BLOG, (May 18, 2011), http://nationalgeographicassignmentblog.com/2011/05/18/haiti-one-year-after-the-earthquake/. "The earthquake has not changed this delay for orphans in Haiti. If anything, it's made it worse." *Haitian Orphans: Two Years Later, Still UNICEF'd*, RAGE AGAINST THE MINIVAN, http://www.rageagainsttheminivan.com/2012/01/haitian-orphans-two-years-later-still.html.

79. *See* Padgett, *supra* note 75 ("[T]he problem [of child trafficking] remains daunting, and it is exacerbated by the fact that children are not accorded much if any protection under Haitian law or culture.").

Since the 2010 earthquake, thousands of children have been separated from their families.[80] Yet, at the outset of the disaster, the Haitian government rushed to prevent the removal of its children to foreign countries, due to the looming risk of fraudulent conduct such as child trafficking.[81] At first blush, the intervention seemed justified because some of these parents were in the adoption process before the disaster. However, the ensuing "grab" for Haitian children in the midst of tremendous chaos led some potential adoptive parents to lawless behavior where they were willing not only to disregard Haitian law, but also the law of the United States, and the international laws governing adoption.[82] In some cases, this turned out to be detrimental for birth parents and children who were mistakenly or intentionally taken away from their families.[83]

In an effort to control the crisis, Haiti, at the urging of the United States and European countries, liberalized its adoption policies to allow for international adoption of children who had been relinquished by their birth parents after the earthquake.[84] This decision by the Haitian authorities has re-ignited the discussion on the perennial question regarding the "best interests of the child" in the transnational adoption setting.

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80. *See* Mary Beth Sheridan, *In Haiti, Struggles of Children Intensify*, WASH. POST, Jan. 19, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/01/19/AR2010 011902435.html ("But in the aftermath of the earthquake, officials fear thousands of children have been separated by their parents.").

81. Chris Francescani, *Adopting Children From Haiti, Your Questions Answered*, GOOD MORNING AMERICA (Jan. 29, 2010), http://abcnews.go.com/GMA/adopting-children-haiti-questions-answered/story?id=9693297.

82. *See Ten Americans Arrested in Haiti for Illegal Adoption: Hotel Room 'Orphanage,'* CHATTAHBOX.COM, http://chattahbox.com/world/2010/01/31/ten-americans-arrested-in-haiti-for-illegal-adoption-hotel-room-orphanage/ (describing the post-Haitian earthquake scandal of a evangelical group that attempted to transport thirty-three Haitian children with "no authorization from the Haitian government to take [them] out of the country . . . .").

83. *See International Rescue Committee says Foreign Adoptions of Haitian Children Are Still Premature As Aid Groups Continue to Reunite Families 6 Months After Earthquake*, INTERNATIONAL RESCUE COMM., http://www.rescue.org/news/international-rescue-committee-says-foreign-adoptions-haitian-children-are-still-premature-aid- (outlining the experiences of an international adoption agency that has "heard of many reports of children with living parents taken out of the country without proper consent." Also, that "[i]n some cases, parents were persuaded to give up their children with false promises that the adoptions were temporary or that they would still have contact with their child.").

84. "[R]ecognition of the Hague Convention implies a relaxation of Haitian law to allow full adoption . . . ." Dady Chery, *The Underside of International Adoption*, HAITI CHERY, http://www.dadychery.org/2012/03/02/the-underside-of-international-adoption-in-haiti/ (last updated June 11, 2012).

III. International Adoption Process

A. *United States of America*

The Immigration and Nationality Act (INA) Section 101(B)(1)(F) provides the criteria for an American to adopt a child overseas and bring them to the United States.[85] The law states that an eligible child must be under the age of sixteen at the time that the adopting parents file a petition on the child's behalf.[86] Furthermore, the child must either be an orphan or have only one surviving parent who is incapable of providing proper care for the child, and who has irrevocably released the child for emigration and adoption.[87] The United States' legal standards do not always apply in other countries, making classification procedures for adoption proceedings difficult. Specifically, the Haitian courts have an alternative method of classifying an orphaned or abandoned child, which may operate so that the Haitian child will be ineligible for adoption in the United States.[88]

B. *Republic of Haiti*

The process of adopting a child in Haiti is slightly different than the process in the United States.[89] The Department of State provides a comprehensive assessment of the Haitian adoption process:

> First, the prospective parents must obtain from the *Tribunal de Paix* (Justice of the Peace) having jurisdiction over the residence of the child the proper release (known as the *"Extrait des Minutes Greffes"*) from the surviving parents(s) or from whomever has legal custody of the child. Second, this legal document must be submitted to the IBESR, [*Institut du Bien Etre Social et de Research*, the governmental organization that provides authorization to adopt] which will investigate, among other things, the medical and psychological well-

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85. 8 U.S.C. § 1101(b)(2) (2012).

86. *Id.*

87. *Id.* In order for the child to be considered an "orphan" under the code provisions, they must be an orphan due to the "death or disappearance of, abandonment or desertion by, or separation or loss from, both parents . . . ." *Id.* The abandonment of a child must be unconditional; meaning an agreement to allow a specific person to adopt a child does not operate as unconditional abandonment. Embassy of the U.S., U.S. Dep't State, International Adoptions–Haiti, 5 (2005), *available at* http://haiti.usembassy.gov/uploads/images/QFRTyNSI2PtYrWcHppluYA/DEC05AdoptBrochure.pdf.

88. Embassy of the U.S., U.S. Dep't State, International Adoptions–Haiti, 5 (2005), *available at* http://haiti.usembassy.gov/uploads/images/QFRTyNSI2PtYrWcHpplu YA/DEC05AdoptBrochure.pdf.

89. *Id.* According to the United States Department of State, there are three steps to adopting a child in Haiti, which adoptive parents must follow to first complete the adoption in Haiti before taking the child out of the country. *Id.*

being of the prospective parents and child. If the IBESR approves the adoption, it will issue a document known as the *"Autorisation d'Adoption."* Note: only the IBESR office in Port-au-Prince can authorize an adoption; IBESR regional offices do not have this authority. Third, the adopting parents or their legal representative must present the authorization from the IBESR to the Tribunal Civil (Civil Court) having jurisdiction over the residence of the child, and obtain from that court a Haitian legal document known as the *"Acte d'Adoption,"* which serves as the official adoption decree.[90]

Meeting the adoption requirements of both countries is an onerous and intensive process because the goal, of course, is to keep Haitian children in Haiti, except where the circumstances merit otherwise.[91]

IV. COMMODIFICATION OF CHILDREN AND THE ADOPTION PROCESS

Historically, the adoption process has sought to place disadvantaged or parentless children in better homes.[92] Before the advent of intercountry adoptions, children were typically adopted by family members, sent to live with family members in other countries, or taken in by sympathetic neighbors.[93] If the biological parents were still alive, they were expected to play a part in the children's lives either through acknowledgment of

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90. *Id.* Generally, this process can take two to six months, or even more than one year. *Id.* Once an orphan has been adopted abroad, if the adoptive parents have had custody for less than two years, the United States requires an IR3 or IR4 immigrant visa for the child's entry. *Id.*

91. *Haiti Adoptions*, RAINBOWKIDS.COM, http://www.rainbowkids.com/countries/CountryGuideLines.aspx?id=68.

Although the need is great, the process can be very long to adopt from Haiti. The main reason for the long wait to adopt from Haiti is that the Haitian-government agency in charge of processing adoptions is highly influenced by UNICEF. UNICEF has a world-wide policy and political agenda that in theory sounds good, "International adoption as a last resort. Keep children in their cultures and countries." In reality this policy keeps tens of thousands of children institutionalized in Haiti (and a growing number of countries due to the political influence of UNICEF) for their entire childhoods.

Id.

92. "The primary purpose of adoption service is to help children who would not otherwise have a nurturing family of their own to become members of a family that can give them the care, protection, and opportunities essential for their healthy personal growth and development ([ ])." *Adoption*, SOUTH CAROLINA DEP'T OF SOCIAL SERVICES, https://dss.sc.gov/content/customers/adoptions/index.aspx.

93. JENNY KEATING, A CHILD FOR KEEPS: THE HISTORY OF ADOPTION IN ENGLAND, 1918-45 2–6 (2007). Many of the early adoptions, particularly in England, occurred due to the children being born out of wedlock and the shame of bearing illegitimate children during that time led to their adoption by relatives or neighbors. *Id. See* Tanvi Nagarsheth, *Crossing the Line of Color: Revisiting the Best Interests Standard in Transracial Adoptions,*

their parentage or by simply participating in the upbringing of the child.[94] It typically did take a village, or a whole family, to raise a child and kinship bonds were emphasized as important to the process of human growth in society.

World War II and the subsequent Cold War brought many children to the United States, as the wars weakened legal barriers to immigration.[95] Interest in intercountry adoption initially sprung from soldiers fathering children with local women in foreign countries, who then "adopt[ed]" the children and took them to the United States at the end of the war.[96] Even during this time, adoption was thought of as a familial concept where kinship ties should be respected. After the Korean War, however, the United States redefined adoption in order to make it easier for persons without any familial bond to an orphan to adopt the child.[97] Adoption was redefined as the permanent removal of children from their family, community, and country.[98]

The new structure of adoption created an arena where persons of different classes and races were vying for the same children. Black children, however, did not fare as well as Caucasian children in the adoption process; after the Korean War, the United States foster system experienced what has been called "the browning of child welfare."[99] As a solution, the United States began sending many Black orphans to other countries, commonly to the Netherlands.[100] It is counterintuitive that the United States, which sent many of its Black orphans to other countries, would relax the rules so that White Americans can easily adopt Haitian children.[101]

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8 SCHOLAR 45, 47 (2005) (stating that adoption practices placed children with relatives as early as the 1600s).

94. *Id.* Due to the informality of these secretive adoptions, the adoptive parents had no legal rights to the child and were subject to demands from the biological parents, years down the line, to return their child whom they may not have provided for nor even spent time with. *Id.*

95. Marre, *supra* note 56, at 5. Furthermore, the United States gained a more prominent place as a world power post-World War II, and therefore intercountry adoption became more common. *Id.*

96. *Id.*

97. *Id.* at 8. Previously, it was common for orphans to be placed in foster care or a similar agency, whereas the Korean War created an interest and movement towards legal adoptions. *Id.*

98. *Id.*

99. *Id.* at 9. The "browning of child welfare" was met with resistance push for change, leadings to the rising popularity of transnational adoptions in the 1970s. *Id.* As a result, Native and African-descended children became more likely to be adopted. *Id.*

100. *Id.*

101. Peter Selman, *The Movement of Children for International Adoption: Developments and Trends in Receiving States and States of Origin 1998-2004, in* INTERNATIONAL

A. *Haiti's Development Challenges*

As a small island country in the developing South, Haiti continues to recover from its history of oppression under colonial rule. Haiti has made efforts to recapture its own culture and identity since gaining its independence.[102] However, most of the efforts have been mired in betrayal and a lack of trust between Haiti's post-independence rulers and its people.[103] At its bedrock, the Haitian contemporary problems are firmly rooted in its history.[104] To understand the crisis Haitian children face today, it is crucial to engage with this country's social and political history on the international stage.

Since the earliest days of the Republic, the United States has treated the idea of a free Haiti with resistance. Present-day Haiti is still reeling from the repercussions meted out to it by Europe and the United States in gaining its reputation as the poorest nation in the Western Hemisphere.[105] As a result of the slave revolt, a global economic embargo was imposed on Haiti.[106] Altogether, it took Haiti well over 100 years to pay off its debts to America and France, and when the American loan was finally paid in 1947, Haiti was bankrupt and still has yet to recover from that severe financial burden.[107]

ADOPTION: GLOBAL INEQUALITIES AND THE CIRCULATION OF CHILDREN 29 (Diana Marre & Laura Briggs, eds., 2009) (describing the recent influx of impoverished children from nations such as Haiti and Brazil, representing a shift to adopting children categorized as "abandoned.").

102. *See* Naeesa Aziz, *Haiti to Join African Union*, BET.COM (Feb. 7, 2012, 5:34 PM), http://www.bet.com/news/global/2012/02/07/haiti-to-join-african-union.html (illuminating Haiti's desire to reconnect with its African roots by joining other African nations in working toward a more "prosperous and peaceful Africa."); *see also* Bryan Schaaf, *Long Distance Relationship: Haiti's Bid to Join the African Union*, HAITI INNOVATION (Mar. 2, 2012), http://haitiinnovation.org/fr/2012/03/02/long-distance-relationship-haitis-bid-join-african-union (explaining that by Haiti joining the African Union, the global community would recognize "Haiti's African roots . . . .").

103. *See* Siri Schubert, *Haiti: The Long Road to Recovery*, FRONTLINE WORLD: STORIES FROM A SMALL PLANET (May 22, 2009), http://www.pbs.org/frontlineworld/stories/bribe/2009/05/haiti-the-long-road-to-recovery.html (describing the extremely poor conditions of Haiti under corrupt government leadership, suggesting distrust of leaders by its constituents as their living conditions seem to be linked to lack of proper management).

104. Waweru, *supra* note 48.

105. ROBINSON, *supra* note 52. "The main cause of human trafficking is poverty." Enrique A. Maciel-Matos, *Beyond the Shackles and Chains of The Middle Passage: Human Trafficking Unveiled*, 12 SCHOLAR 327, 330 (2010).

106. *Id.* The embargo was then increased by France's demands for financial reparations for over $21 billion dollars. *Id.* Under the Treaty of Friendship, Haiti's government was obligated to pay 90 million francs to France, in addition to private bank payments with high interest rates, to meet their "original unjust obligation to France." *Id.* at 21.

107. *Id.* at 22.

The legacy of slavery in the Caribbean informs international perception of peoples from this region. Haiti, in particular, has suffered from the racist ideology that guided the policies of slavery and colonialism and the post-colonial era.[108] My analysis will draw upon historical narratives that are steeped in a European-derived epistemology that constructed the Caribbean identity. The Caribbean basin has been more thoroughly colonized than any other area in the world.[109] Throughout centuries of European colonialism, the Caribbean peoples were subject to the dehumanizing and emasculating effects of having transplanted values and laws imposed upon them, often through the most horrific means.[110] The *presentation* and *re-presentation* of peoples of color as belonging to a "lesser" world was centripetal to maintaining the twin demons of slavery and colonialism, and have remained embedded in the United States' notions of imperialism towards the Caribbean and its peoples ever since.[111]

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108. *See* Joseph Glatzer, *The Earthquake of Right Wing Racism Towards Haiti*, DAILY SUNDIAL (Feb. 23, 2010), http://sundial.csun.edu/2010/02/the-earthquake-of-right-wing-racism-towards-haiti/ (describing the romanticized stereotypes of Haitian culture such as VooDoo, "[t]elevangelist Pat Robertson imagined a Satanic explanation: Haitians 'swore a pact with the devil' to get freed from the French, and ever since 'they have been cursed by one thing after the other," that have hindered the nation of Haiti from being viewed through an unbiased lens).

109. Giselle Reid, *The Legacy of Colonialism: A Hindrance to Self-Determination*, 10 TOURO INT'L L. REV. 277, 279 (2000) (quoting ALVIN O. THOMPSON, THE HAUNTING PAST POLITICS, ECONOMICS AND RACE IN CARIBBEAN LIFE 3 (1997).

> The Commonwealth Caribbean region has been under colonial domination for the past 500 years. The legal, economic, educational and social structures established during colonial rule, are so engrained in the minds of some that they prefer to continue their dependence towards their former colonial power, rather than be truly independent. This colonial legacy is a hindrance to self-determination. No nation can be free to pursue their own economic and social development if its former colonial power continues to influence its legal affairs.

Id.

110. *Caribbean TimeLiner: Slavery in the Caribbean*, CARIBBEAN EDUC. ONLINE, http://www.caribbeanedu.com/odyssey/timeliner/slavery01.asp (last visited July 27, 2012). From the 16th through the 19th century, approximately eight to fifteen million Africans were kidnapped from their homes and transported across the brutal Middle Passage (the stretch of sea from Africa to the Caribbean islands). *Id.* If they survived the horrible conditions on the slave ships, they were sold to a plantation owner where they were worked to death. *Id.* The number of slaves on many islands far surpassed that of their owners resulting in a state of constant fear of revolt among the slave owning class. *Id.* In order to quell this possibility, slave owner's on the Caribbean islands were particularly harsh. *Id.*

111. EDWARD W. SAID, CULTURE AND IMPERIALISM 9 (1993), *available at* http://books.google.com/books?id=VBZKIiCGSNQC&pg=PR4&source=gbs_selected_pages&cad=3#v=onepage&q&f=false. "[T]he vocabulary of classic nineteenth-century imperial culture . . . is plentiful with words and concepts like 'inferior' or 'subject races.' Notions of 'subordinate people,' of 'dependency,' of 'expansion,' and 'authority.' Out of the imperial

The language employed during that era to maintain the twin demon of slavery and colonialism in the region still informs the social constructions of identity that permeates the rhetoric of "otherness" in the United States and other European jurisdictions today.[112] The immigration policies and attendant jurisprudence of these countries are instructive. The rhetoric that characterizes the debates surrounding immigration in both the U.S. Congress and the parliamentary houses of Europe is guided by the same rhetoric that informed slavery, colonialism, and systems of apartheid that pervaded the politics of these nations until recent years. For example, in a 1988 debate in the British House of Commons, members of the then-governing Conservative Party echoed the rhetoric of "otherness" from the playbook of their forebears.[113]

In the United States, anti-immigration rhetoric from policy-makers feeds the fear of the "dark" that plagues mainstream American society.[114] Political conservatives have demonstrated appeals to racial

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experiences, notions about culture were clarified, reinforced, criticized, or rejected." *See also Caribbean TimeLiner, supra* note 110 (describing the three prongs of the triangular slave trade and the conditions that Africans kidnapped into slavery faced at every prong). In particular, once they arrived at their destination slave masters employed numerous tactics to keep the expansive slave population under tight control:

> The planters lived in a state of terror about the possibility of a revolt and were ruthless in their suppression of the slaves. This went further than the use of branding, whipping and chains: slaves were effectively imprisoned on their masters' estates, they were forbidden to speak their own language, forbidden to practise [sic] their native religion, and forbidden to assemble without permission. Families were routinely and arbitrarily split up. At one point an entire island in the Eastern Caribbean was used as a farm for breeding slaves, and sold its product all over the Caribbean and the USA .... Female slaves were at the disposal of their masters, and by the time slavery was abolished in 1838, a substantial proportion of the Caribbean population was racially mixed.

Id

112. *See* SAID, *supra* note 111 (discussing how culture was used as a tool by colonists and imperialists to exert control on distant lands and peoples).

> [N]either imperialism nor colonialism is a simple act of accumulation and acquisition. It's not just a matter of going out there and getting a territory and sitting on it. Both of these practices are supported and perhaps even impelled by impressive cultural formations, that include ideas that certain people and certain territories require and beseech domination.

Id.

113. 27 July 1988, PARL. DEB., H.C. (1988) 418–43 (U.K.). Hon. Tony Marlow, "Ours is a society which, in a negation of democracy, has had its identity threatened in the past by a massive invasion of tribes and cultures which it neither willed nor supported." *Id.* Hon. Christopher Gill, "[M]any people . . . are almost exiles in their own country because of the way in which the character of our towns and cities has been altered . . . ." *Id.* Hon. Jim Janman, "[T]he invaders . . . are indeed invaders . . . . Is he aware that one in three children born in Greater London is of ethnic extraction?" *Id.*

114. *See* Patrick J. Buchanan, *A.D. 2041—End of White America?*, CNSNEWS.COM, Oct. 18, 2011, *available at* http://cnsnews.com/blog/patrick-j-buchanan/ad-2041-end-white-

prejudice; in particular, Pat Buchanan rallied under the banner that White people will become a minority and non-European immigration will swamp us.[115] Against this backdrop, it is difficult to imagine that Haitian children will be viewed as an integral part of the fabric of these western countries, given the racist perceptions that have been ingrained into the collective consciousness of such societies.

B. *Impact of 2010 Earthquake on Haitian Adoption Process*

After the earthquake, many developed countries impressed upon Haiti the need to adopt the Hague Convention in order to speed up the adoption process.[116] The United States, together with other countries and international and non-governmental organizations, supported Haiti's efforts to initiate adoption reform consistent with the Hague Adoption Convention.[117] There was a lot of confusion about the laws regarding adoption, prompting people to rush to aide what they perceived as suffering homeless people in need of their help.[118] The government in Haiti began to report that children were being abducted and trafficked.[119] This culminated with thirty-three Baptist missionaries being charged with child abduction for taking children from parents they thought were incapable of properly caring for them.[120]

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america (arguing that the end of a primarily White America will bring about the end of the Republican National Party, result in a national economic crisis, and expand the education gap).

115. *Id.* "The Census Bureau has now fixed at 2041 the year when whites become a minority in a country where the Founding Fathers had restricted citizenship to 'free white persons' of 'good moral character.'" *Id.* Buchanan asked, "Can Western civilization survive the passing of the European peoples whose ancestors created it and their replacement by Third World immigrants? Probably not, for the new arrivals seem uninterested in preserving the old culture they have found." *Id.*

116. Press Release, State Dep't, Special Advisor for Children's Issues Ambassador Susan Jacobs Travels to Haiti to Discuss Intercountry Adoption, (June 21, 2011) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*).

117. *Id.*

118. Marc Lacey, *Haiti Charges Americans With Child Abduction*, N.Y. TIMES, Feb. 5, 2010, at A1 (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*). "The Americans and members of their churches have said that they are innocent of any wrongdoing, and described the case as a misunderstanding. In an interview this week, Ms. Silsby said the group had come to Haiti to rescue children orphaned by the earthquake, and that 'our hearts were in the right place.'" *Id.*

119. *Id.*

120. *Id.* "Ten Americans who tried to take 33 Haitian children out of the country last week without the government's consent have been charged with child abduction and criminal conspiracy, as Haitian officials sought to reassert judicial control after the Jan. 12 earthquake." *Id.*

At the same time, in the United States, Congress passed special adoption measures, known as the Help Haiti Act, to assist in the accelerating the adoption of Haitian children, who were either already in the process of being adopted or who had suddenly found themselves parentless due to the natural disaster.[121] Members of Congress pushed this measure because they wanted to make it easier for families to adopt Haitian children.[122] Most likely, they hoped that their proactive stance on the plight of Haitian orphans would transfer into votes at election time. Their exact motivations for accelerating the adoption of Haitian orphans are unclear, but the result was mixed.

Many well-meaning persons adopted children who will probably have a better life because of the Help Haiti Act.[123] However, there are also sto-

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121. Help Haitian Adoptees Immediately to Integrate Act of 2010 (Help Haiti Act), Pub. L. No. 111-293, § 2, 124 Stat. 3175.

§ 2. Adjustment of Status for Certain Haitian Orphans. (a) In General.–The Secretary of Homeland Security may adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien–(1) was inspected and granted parole into the United States pursuant to the humanitarian parole policy for certain Haitian orphans announced by the Secretary of Homeland Security on January 18, 2010, and suspended as to new applications on April 15, 2010; (2) is physically present in the United States; (3) is admissible to the United States as an immigrant, except as provided in subsection (c); and (4) files an application for an adjustment of status under this section not later than 3 years after the date of the enactment of this Act. (b) Numerical Limitation.–The number of aliens who are granted the status of an alien lawfully admitted for permanent residence under this section shall not exceed 1400. . . . (d) Visa Availability.–The Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) for any alien granted the status of having been lawfully admitted for permanent residence under this section. (e) Aliens Deemed to Meet Definition of Child.–An unmarried alien described in subsection (a) who is under the age of 18 years shall be deemed to satisfy the requirements applicable to adopted children under section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)) if–(1) the alien obtained adjustment of status under this section; and (2) a citizen of the United States adopted the alien prior to, on, or after the date of the decision granting such adjustment of status. (f) No Immigration Benefits for Birth Parents.–No birth parent of an alien who obtains adjustment of status under this section shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this section or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

Id.

122. *See* Ginger Thompson, *After Haiti Quake, the Chaos of U.S. Adoptions*, N.Y. TIMES, Aug. 3, 2010, http://www.nytimes.com/2010/08/04/world/americas/04adoption.html?_r=1&pagewanted=all (indicating how Louisiana senator Mary L. Landrieu "pushed administration officials to help bring Haitian children [to the United States] after the quake."). In an interview regarding the search and rescue efforts, Senator Landrieu stated "I wouldn't be the least surprised if there are some errors that were made." *Id.*

123. *Id.*

ries that cause one to question the utility of the Act and whether it did more harm than good. Potential adoptive parents were able to adopt children who were previously not qualified for adoption for various reasons, even where one parent refused to consent to the adoption.[124] This included a new immigration program called Humanitarian Parole,[125] under which U.S. citizens could adopt children without going through the rigors of screening that were previously required; children could be taken from parents who could not care for them even though they had not relinquished their parental rights.[126]

According to the U.S. State Department, however, the earthquake in Haiti has made adoptions more difficult due to the influx of children who may not legally be classified as orphans.[127] In 2009, there were 330 Haitian orphans adopted, compared to only 133 in 2010, the year the earthquake occurred.[128] This statistic raises a red flag as to whether the thousands of children reportedly adopted were ever documented as entering the United States.[129] If there was no accountability through docu-

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Many [adoptees] now live in the kind of quiet, scenic towns depicted in Norman Rockwell paintings. They are enrolled in school for the first time. They have grown inches, gotten eyeglasses and had their cavities filled. And they are learning what it feels like to have a mother and father wake them up every morning and tuck them into bed every night.

Id. However, child protective advocates believe that these end-results do not justify the means in this situation. *Id.* One advocate believes that "[e]xpediting adoptions in countries like Haiti—where it is not uncommon for people to turn children over to orphanages for money—violates children's rights and leaves them at risk for trafficking . . . ." *Id.*

124. *Id.*

125. *See id.* (noting how one family whose petition for adoption was initially denied was able to adopt following the earthquake).

126. *Id.*

Under a sparingly used immigration program, called humanitarian parole, adoptions were expedited regardless of whether children were in peril, and without the screening required to make sure they had not been improperly separated from their relatives or placed in homes that could not adequately care for them. Some Haitian orphanages were nearly emptied, even though they had not been affected by the quake or licensed to handle adoptions. Children were released without legal documents showing they were orphans and without regard for evidence suggesting fraud. In at least one case, two siblings were evacuated even though American authorities had determined through DNA tests that the man who had given them to an orphanage was not a relative.

Id.

127. Bureau of Consular Affairs, *supra* note 30.

128. *Id.* Moreover, a drastic reduction occurred in 2011, with only thirty-three Haitian children being adopted by families from the United States that year. *Id.*

129. *See* Thompson, *supra* note 122 (noting how some Haitian children brought to the United States "face years of legal limbo because they have arrived with so little proof of who they are, how they got there and why they have been placed for adoption."). One such family is hoping to adopt a daughter with no documentation at all. *Id.* They are

mentation, we might learn too late that human traffickers took children who were airlifted to the United States or supposedly "adopted."

The Haitian government has tried to maintain some command over the adoption process throughout the crisis.[130] The government has teamed up with various IGOs to ensure that children are accounted for and are not put in situations where they could be stolen from their parents and families, trafficked, or worse.[131] In particular, UNICEF has done a lot to ensure that children are reunited with their families.[132] They have aided Interagency Child Protection actors, including IBESR, to register over 7,000 separated children, and have helped reunite over 2,000 children with their families.[133]

In theory, it is very hard to adopt a child from Haiti. Potential parents have to qualify in several ways. For instance, a prospective adoptive parent must be older than thirty-five years of age.[134] "For married couples, one prospective adoptive parent may be under age thirty-five, provided the couple has been married for ten years and has no biological children together."[135] There have been instances in which potential parents who do not qualify, seek to adopt children with special permission simply because they feel a connection to the child.[136] Admittedly, it is hard to go to a country with so many of its children in orphanages without feeling compelled to help at least a few of them by adopting them and taking them into your family.[137]

However, as noted by government officials, Haiti's goal through this crisis is not to send all her children away through adoption, but to try and

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planning on going to court, telling the judge who the little girl is, and hoping the judge believes them. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. Suzanne Suh et al., *UNICEF Haiti Monthly Report: July-August 2011*, UNICEF, July–Aug. 2011, at 1, 6, *available at* http://www.unicefusa.org/work/emergencies/Haiti/UNICEF-Haiti-Monthly-Report-July-Aug2011_opt.pdf. *See* Thompson, *supra* note 122 (indicating that a group of advocates led by UNICEF "have refused to place children who have lost their parents or been separated from them in some foreign-run orphanages, fearing they would be improperly put into the adoption pipeline before they had the chance to be reunited with surviving relatives.").

134. Bureau of Consular Affairs, *supra* note 30.

135. *Id.* "The adoptive parent must be at least nineteen years older than the child they intend to adopt." *Id.* Moreover, those prospective parents who have children of their own, "will need to obtain a waiver from the President of Haiti. This requirement is commonly waived." *Id.*

136. *See* Thompson, *supra* note 122 (explaining how one couple who was volunteering in an orphanage in Haiti fell in love with two of the children and decided to adopt).

137. *Id.*

reconnect them with their families.[138] The fact that many American couples have tried to gain special permission to adopt these children instead of trying to help reconnect children with their parents, perhaps through volunteering in the country, shows the lack of value that is placed on the kinship bonds of Haitian children with their Haitian families.[139] There are many children in America who find themselves in similar circumstances as Haitian orphans, but they are not even considered as an option for some American families.[140]

V. CONCLUSION

The wealthier receiving countries must look to international adoption as a last resort and honor its obligations under international human rights law to ensure that the bundle of rights for children entails the right to keep their families intact. Intercountry adoption is a complex political issue regarding the perennial legal question of whether the best interest of the child is really served when there is an adoption outside the child's country of origin. As more children are left homeless and pauperized because of wars, famine, and natural disasters the question becomes more politicized.

On one side of the debate are the pro-adoption advocates who view intercountry adoption as a panacea for the problems that plague developing countries. On the other side are those who believe that intercountry adoptions should be a last resort.[141] The argument that critics of intercountry adoptions are driven by ideological winds and must give way to universal principles of human rights, ignores the basic human right of a child to enjoy a sense of kinship, and remain intact with its primordial attachments. Instead of arguing for the creation of universal principles in

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138. *See Ordeal for Haiti Quake Orphans Endures* (CBS television broadcast Jan. 12, 2012), *available at* http://www.cbsnews.com/8301-505266_162-57357695/ordeal-for-haiti-quake-orphans-endures/ (noting how many of the orphaned children do in fact have parents, but Haitian moms and dads believe that adoption services are the best possible option for their children).

139. *See* Thompson, *supra* note 122 (discussing a court that awarded legal custody after the earthquake to a couple without even mentioning their previously denied petition and the biological father's prior objections).

140. *See Domestic vs. International Adoption*, AMERICAN ADOPTIONS, http://www.americanadoptions.com/adopt/domestic_international (last visited July 27, 2012) (noting the media attention international adoption has received due to celebrities' interest in intercountry adoption).

141. *Ordeal for Haiti Quake Orphans Endures, supra* note 137. Arrielle Jeantry, head of Haiti's social services agency, believes international adoption should be the last possible resort for orphaned children in Haiti. *Id.* She is fearful of child trafficking and worries that if all of the young people are adopted, Haiti will lack the next generation of future leaders. *Id.*

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intercountry adoptions, the argument must remain focused on the long-term effects that such adoptions have on the children who are being adopted. In Haiti, almost fifty percent of the population is younger than the age of twenty.[142] As noted above in the requirements for adoption in the United States, the maximum age a child may be adopted at is sixteen.[143] This would mean that if intercountry adoptions were allowed without checks and balances—as many well-meaning people would like in Haiti—nearly half the population would be susceptible to loss through adoption.[144] Within the context of post-colonial societies like Haiti, Eurocentric assumptions of kinship—identity and security—are embedded in international adoption law, but this premise is inadequate to solve the problems inherent in intercountry adoptions. The response to the adoption crisis should not be a push to "save" children from their native countries, but rather to force these countries to care for their children. International law is the law of nations, and must therefore be enforceable against nations. If the only solution is to remove these children from their government, then the world is releasing that government from its obligations under international law to protect the most vulnerable within its borders.

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142. *At a Glance: Haiti*, UNICEF, http://www.unicef.org/infobycountry/haiti_2014.html (last updated Jan. 23, 2010).

143. 8 U.S.C. § 1101(b)(2) (2012).

144. *At a Glance: Haiti*, UNICEF, *supra* note 142.