NOTE
POST-CRISIS ACTIONS TO AVOID INTERNATIONAL CHILD TRAFFICKING

Ian Atzet *

I. INTRODUCTION

Is $50 a good price for a twelve-year-old sexual and domestic slave? This was the price negotiated by Benjamin Skinner on October 6, 2005, on the streets of Port-au-Prince; as well as the price offered to Noel Ismonin, a pastor working in Haiti following the January 12, 2010 earthquake.1 While these transactions violate international human trafficking laws,2 they exist in Haiti as common practices, and generally take the form of restaveks3 or “kidnap gangs” that pull Haitian children from the streets.4

Perhaps in stark contrast are the “good” intentions of Laura Silsby of the New Life Children’s Refuge (NLCR).5 The NLCR is an Idaho charity whose membership consists mostly of American Southern Baptists “dedicated to rescuing, loving and caring for orphaned, abandoned and impoverished Haitian and Dominican children, demonstrating God’s love and helping each child find healing, hope, joy, and new life in Christ.”6 Originally, NLCR attempted to raise funds sufficient to build an orphanage in Magante, Dominican Republic.7 However, following the earthquake its mission became to “rescue Haitian orphans abandoned on the streets, makeshift hospitals or from collapsed orphanages in

* © 2010 Ian Atzet, Junior Staff Member, Journal of Law & Family Studies, J.D. candidate 2011, S.J. Quinney College of Law, University of Utah.


3 “Restaveks” literally means “stay-withs” and refer to children sold as domestic “slaves” in Haiti. See Skinner, supra note 1.


5 Id.


7 Id.
Port-au-Prince and surrounding areas, and bring them to [a refuge] in Cabarete, Dominican Republic.”8

Haitian officials apprehended Silsby and nine members of the NLCR at the border between Haiti and the Dominican Republic with thirty-three Haitian children between the ages of two and twelve.9 Many of the children were without the necessary paperwork and had living parents or close relatives.10 The NLCR members were charged with child abduction and criminal conspiracy.11 While the NLCR members claim the arrest interrupted a rescue attempt, the Haitian Social Affairs Minister, Yves Christallin stated, “[t]his is an abduction, not an adoption.”12 As of the completion of this Note, Haitian Judge Bernard Saint Vil had released all NLCR members, except for Silsby.13 The U.S. Department of State (USDOS) will allow the Haitian authorities to prosecute the NLCR members.14

As one commentator has noted, “[t]he association of child trafficking with intercountry adoption will likely strike some readers as obvious, others as offensive.”15 Equating NLCR members rescuing children from demolished orphanages with a child being sold into slavery on the streets of Port-au-Prince depends solely on the difficult task of establishing the NLCR members’ intent.16 Further, the conduct of the NLCR members viewed in combination with the experiences of Mr. Skinner and Mr. Ismonin demonstrate how a catastrophe enhances the problems of intercountry adoption. Following the January 12, 2010 earthquake, Haiti exemplified a country where economic circumstances fostered an illegal adoption market, and the earthquake placed those who were previously vulnerable into a dire state.

To explore this problem, section II introduces the regulations pertaining to legal Haitian adoption. Section III identifies examples of international comparative situations in which black-markets for adoption thrive and the remedies implemented by both the source countries and the receiving countries in response

8 Id.
10 Id.
11 Id.
16 See Cook & Sidner, supra note 13 (“Saint-Vil released the eight others, but Silsby and Coulter remained in custody because the judge wanted to learn more about their motives.”).
II. THE INTERNATIONAL HAITIAN ADOPTION PROCESS

The process of adopting a child varies greatly depending on the child’s and adoptive parents’ countries of origin. This is due to the existence of a plethora of bilateral agreements and international treaties. Generally, adoption by a United States citizen of a foreign child involves two certifications: (1) certifying the parents are suitable; and (2) certifying that the child is an orphan. The United States Citizenship and Immigration Services (USCIS) requires that the adopting parents meet certain age, marital, and intent criteria, which are ascertained through a criminal background check, fingerprints, and a home study. The USCIS has an independent verification and qualification process for determining whether a child is an orphan. The United States prohibits direct or indirect payments from the adoptive parents or their agent to the biological parents for placement, consent, relinquishment, or any other performance. One important criterion is that the biological parents cannot abandon the child to the prospective parents directly. Finalizing the family relationship and immigration process involves multiple forms and fees not relevant here.

These general requirements are similar in Haiti, however, the Haitian adoption authority (IBESR) requires that the adoptive parents and the children meet slightly different standards. In addition, the prospective adoptive parent(s) must obtain consent from the child’s surviving legal guardian under the Justice of the Peace that presides over the jurisdiction in which the child lives. If the child’s

---

17 Here, the United States’ process is discussed. However, it is representative of the general international process.
19 Id.
21 See 8 C.F.R. §§ 204.304(a) (West 2009).
23 Id.
24 Institut du Bien Etre Social et de Recherches (translated to mean “Wellness Institute of Social Research”) is the official name of the Haitian adoption authority. For ease of reference, it is referred to by the acronym that corresponds to its official French title (IBESR).
25 See Haiti Country Information, supra note 22.
26 Extrait des Minutes du Greffe du Tribunal de Paix (translated to mean “extract from the minutes of the registry of the Court of Peace”) is the official name of the document that describes the proceeding in which the adoptive parents and biological parents agree to the adoption. See id.
parents are deceased or the child has been abandoned, the IBESR requires either an “extract of the death certificate” or a statement of the child’s social history indicating “how the child became an abandoned child.” The IBESR prohibits any direct payments by the prospective adoptive parent(s) or the agents to the child’s birth parent(s) or guardian(s). In total, to complete an intercountry adoption, adoptive parent(s) must meet specific requirements under the IBESR and the USCIS.

There are three international agreements generally relevant to intercountry adoption, including the Hague Intercountry Adoption Convention; the Convention on the Rights of the Child (CRC); and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (Optional Protocol). Each agreement will be addressed in turn. However, none of the agreements fully regulate adoptions in Haiti.

The Hague Convention directly implements the policies of the CRC, sets forth detailed regulations, and establishes regulatory bodies to maintain the standards of the Hague Convention. The Hague Convention only regulates adoptions between member countries. Because Haiti is not a member the regulations and enforcement of intercountry adoptions are carried out through the use of bilateral agreements and assistance from local law enforcement.

The CRC provides general policies related to child trafficking. Specifically, it encourages other multinational agreements and sets up measures to prevent trafficking and regulate the financial aspects of adoption. Somalia and the United States are the only United Nations member countries that have not ratified the CRC.

---

27 *Extrait de l’ Acte de Décès* (translated to mean “extract of the death certificate”) is the official name of the certificate of death for the birth parents.


29 Id.


32 Id. at 383.


The Optional Protocol imposes criminal, civil, or administrative punishments for intermediaries who encourage child trafficking. The Optional Protocol also requires member states to cooperate with the prosecutions of intermediaries. The organization that promotes and carries out the Optional Protocol is the United Nations Children’s Fund (UNICEF), which is actively involved in the Haitian relief effort working in Haiti.

While these conventions serve as a basis for regulating child trafficking and intercountry adoption in countries where they are recognized, they have had limited success in curbing problems in poor countries that lack the resources to implement the provisions or have not yet ratified them.

III. AN INTERNATIONAL COMPARATIVE ANALYSIS

Throughout this section, the perils of post-crisis adoption will be analyzed within two frameworks. The first is Judge Richard Posner’s “open market for adoption” theory, which discusses the transfer inherent in adoption within an economic framework. That is, adoption is subject to the same pressures as any economic market such as supply, demand, quality controls, etc. While Judge Posner’s framework has been criticized for advocating the commodification of human beings, it provides a useful model for analyzing the issues pertaining to adoption.

The second related adoption framework presents two “triads” that illustrate the interests of the parties involved. The first triad is between the child, the adoptive parents, and the biological parents. The second triad portrays the additional interest involved in international adoption. These are the interests of the adoptive child, the country of origin, and the receiving country. With the interest of the various parties involved in intercountry adoption as the backdrop, this section highlights circumstances where “market pressures” spurred a black-market for adoption and the remedies implemented to curb that market.

Four situations are presented below to illustrate the problems associated with adoption during times of crisis. These are: (A) an increase in supply of children whose status as orphans is non-certifiable; (B) an increase in the demand for children due to exposure; (C) difficulty in assessing the intent of the adoptive

---

38 Blair, supra note 32, at 384-85.
39 Id.
42 Id. (Both articles provide an economic analysis of adoption.).
43 Smolin, supra note 15, at 284.
44 Id.
45 Id.
parties; and (D) the crisis environment that is created when the first three factors are present.

A. Romania: The Issue of Supply

Romania in the early 1990s illustrates how the supply of available children and poor economic conditions can lead to a black market for adoption.\(^{46}\) Between 1966 and 1989, the Romanian President, Nicolae Ceausescu, outlawed abortion and contraception and required women to undergo monthly medical examinations in order to increase fertility.\(^{47}\) During this period, the number of orphans swelled to approximately 100,000.\(^{48}\) The new Romanian government\(^ {49}\) attempted to address this problem with a formal and comprehensive adoption process\(^ {50}\) which, among other provisions, required parental consent (from both parents—even for illegitimate children), except in extreme circumstances.\(^ {51}\) The consent requirement “spurned a lucrative and burgeoning black-market.”\(^ {52}\) Romanian parents simply sold their consent to brokers rather than bother with legal formalities.\(^ {53}\) “In one unbelievable case, Romanian nuns persuaded unwed mothers to relinquish their parental rights, and then sold their children for upwards of $15,000.”\(^ {54}\)

The Romanian government responded with four changes to its adoption process. First, all state agency adoptions were banned, leaving only private agencies with authority to perform adoptions.\(^ {55}\) Second, criminal punishments were imposed for violations of adoption procedures.\(^ {56}\) Third, abandoned children were required to wait six months prior to becoming eligible for adoption.\(^ {57}\) Lastly, adopting a child directly from his or her biological parents was prohibited.\(^ {58}\)

\(^{46}\) Notably, the issues in Romania in the early 1990s have also been analyzed as a problem of high demand. See Kate O’Keeffe, The Intercountry Adoption Act of 2000: the United States’ Ratification of the Hague Convention on the Protection of Children, and its Meager Effect on International Adoption, 40 Vand. J. Transnat’l L. 1611, 1619 (2007).


\(^{48}\) Id. Notably, the total population was only about 23 million.

\(^{49}\) Ceausescu was executed on December 25, 1989. Id. at 604.

\(^{50}\) A full description of the process is outlined. Id. at 605-09.

\(^{51}\) Id. at 608.

\(^{52}\) Id.

\(^{53}\) Id. at 609.

\(^{54}\) O’Keeffe, supra note 48, at 1619.

\(^{55}\) Bogard, supra note 49, at 609.

\(^{56}\) Id. at 609-10.

\(^{57}\) Id. at 610.

\(^{58}\) Id.
B. Cambodia Issues of High Demand

Cambodia, on the other hand, exemplifies conditions in which demand creates a black-market. Following the September 11th terrorist attack, twelve U.S. adoptive parents who were visiting Cambodia to pick up “their” child were unexpectedly delayed for a month in Cambodia by the Cambodian immigration agency. The agency noticed significant inconsistencies in the parents’ documentation for the children leaving the country, including age, birth date, gender, etc. This discovery launched a full-scale investigation of Cambodian adoptions by the USDOS, the U.S. Immigration Service, and the Cambodian government. Additionally, the U.S. Immigration and Customs Enforcement Office (ICE) conducted a criminal investigation into possible U.S. involvement in the adoptions. Under search warrants issued in 2002, and carried out in the following years, the ICE uncovered the industry of intercountry adoption in Cambodia. This industry included “baby recruiters,” “baby buyers,” and false documents; a highly organized, multi-layered system to acquire children from their parents. The investigation resulted in the criminal prosecutions of two sisters, Lauryn Galindo and Lynn Devin, who illegally transferred about 700 Cambodian children through a U.S. adoption agency and netted approximately $8 million. The ICE charged the sisters with visa fraud, conspiracy to launder money, and structuring to which they pled guilty. Despite the investigation and subsequent convictions, the United States continues to prohibit intercountry adoptions from Cambodia. In addition, “France, the Netherlands, Switzerland, Belgium, Canada, and the United Kingdom have suspended adoptions from Cambodia due to the corrupt practices there.”

---

59 O’Keeffe, supra note 48, at 1622-23.
60 Maskew, supra note 18, at 621-22.
61 Id. at 622.
62 O’Keeffe, supra note 48, at 1622.
63 Id.
64 Maskew, supra note 18, at 624-25, 632-35.
65 Id. at 633-35.
66 Id. at 632-33.
67 Id. at 632.
69 O’Keeffe, supra note 48, at 1623.
C. Zoe’s Ark—Some Precedence Punishing “Good” Intentions

The NGO Zoe’s Ark\(^{70}\) was founded following the 2004 Tsunami by Eric Breteau.\(^{71}\) In 2007, six French members of Zoe’s Ark were among seventeen adults arrested for attempting to fly 103 African children from the border regions between Sudan and Chad.\(^{72}\) These children were alleged to be orphans of the Darfur\(^{73}\) conflict, which had resulted in 200,000 deaths, and more than 2.5 million people displaced and living in refugee camps.\(^{74}\) However, after detaining the Zoe charity workers, officials found many of the children were not Sudanese but Chadian, and had parents who entrusted their children to the group under the impression that the children would be educated at a project in Chad.\(^{75}\)

The group was warned in advance that this course of action was illegal and would result in prosecution.\(^{76}\) Following a four-day trial in Ndjamea, the six Zoe charity workers were sentenced to eight years of hard labor and fined $9 million dollars.\(^{77}\) Evidence presented against the group included the following: UNICEF reports indicating the Zoe charity workers bandaged the children to portray them as victims of the war; reports of French families having paid up to $9,000 towards adoption of these children; and testimony that Zoe charity workers lured the children with candy, money, and food to abduct them.\(^{78}\) The officials involved speculated as to the ultimate motive of these workers; some described them as a “ring of pedophiles” while others accused them of “arrogant European colonialism[.].”\(^{79}\)

\(^{70}\) “L’Arche de Zoé” (translated to mean “Zoe’s Ark”) is the official name of the organization.


\(^{73}\) It should be noted that Darfur is a region in Sudan.

\(^{74}\) Associated Press, supra note 71.

\(^{75}\) Angelique Chrisafis, Chad President Pardons French Charity Workers, THE GUARDIAN (UK), Apr. 1, 2008, available at http://www.guardian.co.uk/world/2008/apr/01 /france.internationalaidanddevelopment.

\(^{76}\) See Profile: Zoe’s Ark, supra note 70.


\(^{78}\) Id.

\(^{79}\) Id. Interestingly, these six Zoe charity workers did not serve hard labor in Chad but instead served a few months in a French prison before Chadian President, Idriss Déby, pardoned them. See Chrisafis, supra note 74.
D. Following the 2004 Tsunami

The situation in Southeast Asian countries affected by the tsunami on December 26, 2004, incorporates the circumstances in subsections (A) through (C) above and provides a meaningful comparison to Haiti following the 2010 earthquake. Due to the 2004 tsunami, nearly 216,000 people died throughout Asia and Africa leaving unknown sums of orphans and children displaced from their families. After televised images were released, the United States’ public sought to provide aid to these children. One potential adoptive parent, Katherine Hart, decided to adopt a child from Thailand instead of Guatemala, after viewing the tsunami footage. She stated, “I know these kids are going to have some trauma to go through, but these kids need to be loved on [sic] now.”

However, during this period of desperation, the inability to identify and control adoption in the tsunami’s aftermath led to many of the affected countries shutting down their borders. The ban on intercountry adoption in this region was not entirely radical. India, Sri Lanka, and Thailand already had strict adoption policies to slow sexual child trafficking; Indonesia and Malaysia rarely allowed adoptions to non-Muslims; and Bangladesh essentially prohibited intercountry adoption. In parallel action, the USDOS and many Western European nations temporarily prohibited adoptions from the affected nations. To assist, UNICEF set up “safe spaces” which are temporary orphanages to hold and register potential orphans, eventually reuniting 90% of children with relatives.

IV. RECOMMENDATIONS: TEMPORARY STATUS, SUSPENSION, AND CONSEQUENCES

After the January 12th earthquake, the relevant Haitian government adoptive agencies were physically destroyed and inoperable. In addition, the three conditions discussed above heightened the potential for intercountry adoption abuse. The supply of potential orphan children increased because parents were

80 O’Keeffe, supra note 48, at 1612.
82 Id.
83 Id.
84 Id.; O’Keeffe, supra note 48, at 1612.
85 O’Keeffe, supra note 48, at 1613.
86 Sims, supra note 80.
87 Id.
killed or separated from their children,\textsuperscript{90} and due to dismal conditions, abandonment became more attractive.\textsuperscript{91} The demand for these children also increased due to media coverage of the miserable circumstances.\textsuperscript{92} And, determining the intent of the trafficking parties operating in Haiti, such as the NLCR members, became difficult.\textsuperscript{93}

Unlike the Southeast Asian countries, accompanying the chaos of orphanages crumbling and a government in ruins, the United States and European nations relaxed immigration requirements for pending adoptions.\textsuperscript{94} The USDOS allowed the progress of pending adoptions with loosened restrictions for children who were in dire conditions.\textsuperscript{95} However, the USDOS clearly stated that the adoption of Haitian orphans was still subject to the laws in force prior to the earthquake.\textsuperscript{96} In addition, the Haitian government stated that any child taken from the country is subject to inspection and documentation requirements.\textsuperscript{97}

Despite the existence of these U.S. and Haitian policies, over 100 Haitian children were taken to the Netherlands, forty of whom had improper or no documentation.\textsuperscript{98} In addition, the arrest of the NLCR members clearly illustrates that these traffickers either lack an understanding of the regulations in place, or they blatantly disregard them.

Drawing on comparative circumstances, the following steps should be implemented in order to maintain control of the adoption market following a crisis. First, the children already involved in adoption proceedings may be allowed to leave the country conditional upon a follow-up certification once the regulating bodies become functional. Once the infrastructure is reestablished, those elements that were temporary could be made permanent or the orphans could be returned to the claiming parents. Second, criminal prosecutions of individuals involved in intercountry trafficking should be heightened following a crisis. In addition,

\begin{enumerate}
\item See Wingfield-Hayes, supra note 4.
\item See, e.g., Cook & Sidner, supra note 13 (“Some parents said they placed their children in Silsby’s care because that was the only way they knew to ensure a better quality of life for them.”).
\item See, e.g., Cook & Sidner, supra note 13 (“Sibly and Coulter remained in custody because the judge want to learn more about their motives.”).
\item UN: Children Taken Out of Haiti Without Legal Procedures, EARTH TIMES, Jan. 22, 2010, available at http://www.earhtimes.org/articles/show/305303,un-children-taken-out-of-haiti-without-legal-procedures.html; see also Children Affected by the Earthquake in Haiti, supra note 92 (“Together with the Department of Homeland Security, the State Department is processing and evacuating as quickly as possible those orphans who were identified for adoption by American citizens before the earthquake.”).
\item Children Affected by the Earthquake in Haiti, supra note 92.
\item Id.
\item Haiti Arrests US Nationals Over Child ‘Abductions,’ supra note 12.
\item UN: Children Taken Out of Haiti Without Legal Procedures, supra note 93.
\end{enumerate}
without resolution to existing child trafficking issues, international moratoria should be imposed.

A. Pending Adoptions Made Temporary and Otherwise a Total Suspension

One fear by members of society following a crisis is that children who have already proceeded through the majority of the adoption process will remain in the dangerous environment rather than moved through the remaining administrative steps. The fear is well founded, especially in light of the devastation facing the Haitian people. However, all placements made in conjunction with this loosened administrative oversight should be temporary and contingent on immigration officials following up on the placement. For example, the United States enacted a parole system for Haitian children already in advanced positions in the adoption process that allows temporary custody and immigration status with follow-up certifications. However, it only applies to the children who were certified orphans prior to the earthquake.

Outside of this narrow exception, as in Romania and Southeast Asia after the 2004 tsunami, permanent adoption should be suspended and children should remain in country. The Romanian government required all children to wait six months before becoming available for adoption. In times of crisis, a similar waiting period is appropriate. Further, UNICEF “safe spaces” have proven successful in reuniting children with family members and create a sufficient orphanage ad interim.

B. Prosecutions and Moratoria

The Cambodian situation described above demonstrates the effectiveness of international governmental prosecutions. “The idea that a significant number of people are lurking about who if given the chance would buy babies for criminal

99 See, e.g., Secretary of State Clinton’s statement, “There are several hundred Americans in the United States who were already in the process of adopting Haitian children before the earthquake. As a mother, I share the anxiety that they must be feeling as they wait for word about their children’s safety, and we are doing everything possible to locate these children and then expedite their arrival in our country.” United States Department of State, Office of Children’s Issues, Intercountry Adoption: Haiti, available at http://adoption.state.gov/news/parents_with_pending_haitian_adoption_cases.html (last visited May 8, 2010).

100 See Press Release, Department of Homeland Security, Secretary Napolitano Announces Humanitarian Parole Policy for Certain Haitian Orphans Fact Sheet (Jan. 18, 2010), available at http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f3e66f614176543fed1a/?vgnextoid=9c22546ade146210VgnVCM100000082ca60aRCRD&vgnextchannel=68439c7755cb9010VgnVCM100000045f3d6a1RCRD.

101 Id.

102 UNICEF has established “safe spaces” in Haiti. See Westcott, supra note 87.
purposes is a bogeyman.”

This statement is probably true, but the intent of parties involved can be difficult, if not impossible, to determine in the wake of a crisis. The similarities between the NLCR members and the Zoe charity workers illustrates that even with relatively convincing circumstantial evidence, the intent is difficult to discern. However, if the borders were closed as proposed in subsection A, intent becomes a non-issue.

The number of prosecutions may increase in areas of crisis, potentially encumbering an already troubled government, but the evidentiary burden would substantially decrease. Additionally, any punishments resulting from convictions should be augmented for parties who exploit the crisis.

Without a complete ban of international adoptions in crisis environments, an alternative would be increased prosecutions for conduct ancillary to human trafficking violations. An example of the effectiveness of this type of prosecution was the convictions of Galindo and Devin in Cambodia based solely on visa fraud, conspiracy to launder money, and structuring; not human trafficking violations.

Finally, regardless of the results of individual prosecutions, if the accompanying investigations produce evidence of significant corruption unaddressed by the source country, the international community should impose a moratorium. This protects potential adoptive parents from adopting children with questionable orphan status and may incentivize local enforcement within the source country to have this moratorium lifted.

V. CONCLUSION

Economic and criminal issues plague intercountry adoption. During a crisis, the supply of available children increases, the demand for those children increases, and the intentions of those transporting the children is difficult, if not impossible, to assess. Allowing adoptions to take place under these conditions propagates the parade of horrors which the Hague Convention and Optional Protocol were created to avoid. Under these situations, the restrictions on intercountry adoption should be heightened and transportation of children should cease, while the number of criminal investigations and penalties for child trafficking should be increased.