International Adoptions and Overlooked Abuse: Hawai‘i’s Role in Marshallese Adoptions

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ABSTRACT

The United States entered the Compact of Free Association (“COFA”) with the Republic of the Marshall Islands (“RMI”) to atone for U.S. World War II nuclear testing among the islands. Under COFA, the Marshallese people were provided with an easier path to immigrate to the United States. As a result of COFA and the Hawaiian islands’ location within the Pacific, the state stands between individuals who reside in the contiguous United States who wish to adopt and children in the RMI. Unfortunately, historically, these adoptions have not prioritized the best interests of the children involved, leading to human trafficking and cultural deterioration.

Pinpointing the exact cause behind the dubious adoption practices calls for a multifaceted analysis. This Comment focuses specifically on Hawai‘i’s role as a transit point, arguing that the failure of the current agreements to regulate Marshallese adoptions both exemplifies the general shortcomings of the current international adoption system and compounds the effects of such shortcomings in the specific context of Marshallese children adopted by parents in the contiguous United States in two ways.

First, the operation of COFA facilitates problematic adoption processes because it permits Marshallese children to be removed from

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their homeland with excessive ease under the court's radar. Second, current Hawai'i adoption laws and regulations provide insufficient protections for Marshallese children.

With the end of phase two of COFA in 2023, this Comment proposes new guidelines for both the United States and Hawai'i – an approach which combines new considerations that Hawai'i family court judges must consider to ensure that adoption recommendations align with international best practices.

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I. INTRODUCTION

A Hawai'i family law attorney came under fire in 2019 when it was discovered that she had been facilitating Marshallese baby selling[1] in Hawai'i since at least 2017.[2] The scheme involved flying pregnant, soon-to-be mothers from the Republic of the Marshall Islands ("RMI") to Hawai'i where they would give birth and almost immediately relinquish their parental rights.[3] The attorney worked with a local woman who would care for the children until the attorney arranged placement with high-paying adoptive parents on the contiguous United States.[4] Many of the adoptive parents were on long domestic waitlists until suddenly, the process was expedited by the Hawai'i attorney.[5] Often, the adoptive parents were flown to Hawai'i to meet their new child within a matter of days of "placement."[6] For most of the adoptive parents flown to Hawai'i, suspicions about the process were not triggered until they were taking their new baby back home with them to the

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[1] *See, e.g.*, Jonathan G. Stein, *A Call to End Baby Selling: Why the Hague Convention on Intercountry Adoption Should Be Modified to Include the Consent Provisions of the Uniform Adoption Act*, 24 T. JEFFERSON L. REV. 39, 45 (2001). The term "baby selling" is used in scholarly work to describe the camouflaged practice of children being sold by their birth parents to adoptive parents for large sums of money in order to receive the child. *See id.*

[2] John Hill, *This Honolulu Lawyer Has Run a Marshallese Baby Business with Impunity*, HONOLULU CIV. BEAT (Nov. 20, 2019), https://www.civilbeat.org/2019/11/this-honolulu-lawyer-has-run-a-marshallese-baby-business-with-impunity/ [hereinafter Hill, *This Honolulu Lawyer Has Run a Marshallese Baby Business with Impunity*].

[3] *Id.* United Nations Convention Against Transnational Organized Crime and the Protocols Thereto define human trafficking as:

> The recruitment, transportation, transfer, harbouring [sic] or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

G.A. Res. 55/25, Annex II Part I, art. 3(a) (Nov. 15, 2000).

[4] Hill, *This Honolulu Lawyer Has Run a Marshallese Baby Business with Impunity*, *supra* note 2.

[5] *Id.*

[6] *Id*.

contiguous U.S. without government approval[7] and in potential violation of both RMI and U.S. laws.[8]

The Hawai'i attorney's actions are not the only instance of unethical adoptions out of the RMI coming under scrutiny since the creation of the Compact of Free Association ("COFA").[9] Around the same time as the Hawai'i scandal, another Marshallese adoption fixer was arrested in Arizona while transporting two Marshallese women, one pregnant and the other a new mother, to the United States for purposes of giving up their children in exchange for money they were promised.[10] These cases took the Marshallese community by surprise because it revealed that baby-selling continued to plague the island nation despite historical efforts to stop these practices.[11] Seeking to combat human trafficking and baby selling, the RMI passed an adoption act[12] in the early-2000s and amended COFA with the United States to restrict visa-free travel for adoptions.[13] Recent cases, however, reveal that

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[7] *See id.*

[8] *See generally* Ahilemah Jonet, *International Baby Selling for Adoption and the United Nations Convention of the Rights of the Child*, 7 N.Y.L. SCH. J. HUM. RTS. 82 (1989) (exploring international law and policies related to the protection of children).

[9] Compact of Free Association of 1985, Pub. L. No. 99-239, 99 Stat. 1770 (1986) (establishing that Marshallese citizens were allowed into the United States without a visa as long as it was not for permanent immigration). COFA was created to grant the RMI independence from the United States and to compensate RMI citizens for U.S. World War II nuclear testing damage. *Id.*

[10] Hilary Hosia & Ben Doherty, *The Baby-Selling Scheme: Poor Pregnant Marshall Islands Women Lured to the US,* THE GUARDIAN (Jan. 7, 2021, 10:00 PM), https://www.theguardian.com/world/2021/jan/08/the-baby-selling-scheme-poor-pregnant-marshall-islands-women-lured-to-the-us. Former Arizona elected official Paul Petersen pleaded guilty to human smuggling, conspiracy to smuggle illegal aliens, and fraud in a U.S. federal court for adoptions he facilitated in both Utah and Arizona out of the Marshall Islands. *Id.* There were dozens of victims involved in this baby selling and brazen human trafficking. *Id.* The scheme involved luring pregnant Marshallese women to the United States with the promise of a new life in America and large sums of money, in exchange for giving up their children to American families. Prosecutors believe at least seventy babies were adopted this way – "sold" for up to $40,000 each. *Id.*; *see* John Hill, *Well-Known Adoption Fixer Charged with Human Trafficking*, HONOLULU CIV. BEAT (Mar. 25, 2019), https://www.civilbeat.org/2019/03/well-known-adoption-fixer-charged-with-human-trafficking/ [hereinafter Hill, *Well-Known Adoption Fixer Charged with Human Trafficking*]; United States v. Peterson, 22 F.4th 805, 806 (8th Cir. 2022).

[11] Hosia & Doherty, *supra* note 10; John Hill & Emily Dugdale, *Marshallese Adoptions Fuel a Lucrative Practice for Some Lawyers*, HONOLULU CIV. BEAT (Nov. 28, 2018), https://www.civilbeat.org/2018/11/marshallese-adoptions-fuel-a-lucrative-practice-for-some-lawyers/.

[12] Adoptions Act 2002, 26 M.I.R.C., ch. 8 (2002) (creating a prohibition against solicitation and processes for establishing "adoptable" children and gaining adoption consent).

[13] Compact of Free Association Amendments Act of 2003, Pub. L. No. 108-188, 117 Stat. 2720, 2761 (2003) (prohibiting persons "coming to the United States pursuant to an adoption

the current laws do not adequately address unethical adoptions in practice.

The RMI has a long, troubling history[14] as a "baby market" due to its ethnic and cultural vulnerability.[15] The RMI's vulnerability at the hands of the United States dates back decades before the most recent instances of baby selling to a strategic war period.[16] Seeking to atone for its World War II nuclear testing in the pacific region, the United States entered into COFA with the RMI.[17] Under COFA, the Marshallese people were compensated and provided with an easier path to immigrate to the United States.[18] As a result of COFA's migration ease, individuals who reside in the contiguous United States often adopt Marshallese children.[19] Situated between the RMI and North America, Hawai'i has become a transitory stop for many Marshallese children en route to their final adoptive homes on the contiguous United States.[20] Unfortunately, most of the adoptions of Marshallese children by U.S. families do not prioritize the best interests of the children involved.[21]

The prevalence of baby selling, especially in the context of the RMI, is largely a consequence of the profoundly under-regulated global twenty-first century practice of international adoptions.[22] Children of color are at the

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outside the United States, or for the purpose of adoption in the United States . . . [from] admission under the Compact," essentially revoking visa-free travel when an adoption was involved).

[14] *See generally* (discussing how the internationalization of selling babies from one country to parents of another country has reached epidemic proportions). The evidence of such activity can be found in many sources including United Nations reports. *Id.*

[15] Jessica Terrell, *Black Market Babies*, HONOLULU CIV. BEAT, https://www.civilbeat.org/projects/black-market-babies/ (last visited Nov. 17, 2023); *see also* Julianne M. Walsh, *Adoption and Agency: American Adoptions of Marshallese Children* (Ctr. for Pac. and Islands Stud. conf. "Out of Oceania: Diaspora, Community, and Identity," 1999) [hereinafter Walsh, *Adoption and Agency*]. Due to a lack of government regulation, baby selling became so prevalent that in the 1990s the remote island nation had the highest per-capita adoption rate in the world. Walsh, *Adoption and Agency, supra* note 15.

[16] Walsh, *Adoption and Agency*, *supra* note 15, at 2 (discussing the breadth of Marshallese adoptions from 1996 through 1999).

[17] *See infra* Section II.B.

[18] Compact of Free Association of 1985, Pub. L. No. 99-239, 99 Stat. 1770 (1986).

[19] *See infra* note 57.

[20] The Marshall Islands are a widely scattered cluster of atolls located just above the equator north of New Zealand in the Micronesian hemisphere. The islands sit between Japan and Hawai'i. *See infra* Section II.B.

[21] *See infra* Section IV.B.

[22] Asif Efrat et al., *Babies Across Borders: The Political Economy of International Child Adoption*, 59 INT'L STUD. Q., 615, 626–27 (2015). International adoptions have proven to be bureaucratically complex and often corrupt. *See* KAREN A. BALCOM, THE TRAFFIC IN BABIES: CROSS-BORDER ADOPTION AND BABY-SELLING BETWEEN THE UNITED STATES AND CANADA,

greatest risk of falling victim to the exploitative international adoption system.[23] Problems related to wealth and inequality in the treatment of children of color in international adoptions are nothing new.[24] Indeed, the current international adoption regime can be largely traced back to the sharp increase in such adoptions in the wake of racial tensions during World War II.[25] Following World War II, thousands of children were trafficked across State lines to be placed in new homes as a result of the humanitarian crisis created by the war.[26] Many non-white children from Europe who were left parentless were given up for international adoption due to the local racial prejudice against them.[27] The wars triggered a novel prevalence of transracial adoptions.[28] Between 1950 and 1960, Black and Native American children were targeted for adoptions in United States, revealing a form of racial

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1930-1972, at 232–35 (2015). Because international adoptions require two countries' laws and systems to work together, this complex jurisdictional nature can lead to oversight and gaps in the laws on international adoptions. *See id.*

[23] Richard Tessler et al., *The Many Faces of International Adoption*, 10 CONTEXTS 34, 36 (2011) (highlighting that the most prominent "sending" countries are China and Korea, and that Latin American and African countries follow closely behind). The United States Department of State has stated:

> The anti-trafficking efforts outlined in the updated National Action Plan to Combat Human Trafficking are directly linked to the Administration's broader efforts to address inequities for marginalized groups. These communities often experience overlapping social and economic inequities, and individuals may suffer multiple forms of abuse. As a result, individuals from these communities may be more vulnerable to becoming victims of human trafficking.

U.S. Dep't of State, Submission to the Committee on the Rights of the Child on Measures to Give Effect to its Obligations under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Doc. CRC/C/OPSC/USA/5 at 3 n.1 (Jan. 23, 2022).

[24] *See infra* Section II.A (discussing treatment of Black German children in the context of international adoptions).

[25] *See* discussion *infra* Section II.A.

[26] *See generally* RACHEL RAINS WINSLOW, THE BEST POSSIBLE IMMIGRANTS: INTERNATIONAL ADOPTION AND THE AMERICAN FAMILY (2017) (providing an ambitious and wide-ranging analysis of the rise of international adoption from the 1940s to the 1970s).

[27] *See generally* Von Stephanie Siek, *Germany's 'Brown Babies': The Difficult Identities of Post-War Black Children of GIs*, SPIEGEL INT'L (Oct. 13, 2009, 4:48 PM), https://www.spiegel.de/international/germany/germany-s-brown-babies-the-difficult-identities-of-post-war-black-children-of-gis-a-651989.html (discussing a 1968 study that estimated that up to 7,000 Black German children were adopted by Americans). This was in large part due to the racial tensions within German society between White Germans and non-White individuals. *Id.*

[28] *See infra* Section II.A

exploitation and control.[29] Many non-white children are victims of differential treatment in the adoption system.[30] This differential targeting and treatment of children of color in post-war adoptions extends to the context of the United States and RMI relationship.[31]

The aftermath of World War II led to the United States' trusteeship over the Marshall Islands.[32] As one of its first acts of "international oversight," the United States selected the Marshall Islands as the Pacific site for testing nuclear weapons.[33] As a result, the Marshallese people were the first population to be exposed to nuclear fallout, even though the effects were still not yet known.[34] Additionally, the people of the Marshall Islands were displaced and forced to relocate due to the testing.[35] Ultimately, this led to COFA,[36] which allowed Marshallese individuals to immigrate to the United

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[29] Ashley Albert & Amy Mulzer, *Adoption Cannot Be Reformed*, 12 COLUM. J. RACE & L. 557, 574 (2022) ("The late 1950s and 1960s marked the beginning of a period of significant growth in the transracial adoption of both Black and Native children by white parents, as well as the rise of the contemporary family regulation system. Both of these developments began as explicit means of racial control."); *see* David Ray Papke, *Transracial Adoption in the United States: The Reflection and Reinforcement of Racial Hierarchy*, MARQ. U. L. SCH. LEGAL STUDS. RSCH. PAPER SERIES, July 2012, Rsch. Paper No. 11–15 at 24.

[30] Ronald Hall, *The US Adoption System Discriminates Against Darker-Skinned Children*, The Guardian (Feb. 21, 2019, 4:45 PM), https://theworld.org/stories/2019-02-21/us-adoption-system-discriminates-against-darker-skinned-children (quoting Professor Kimberly Jade Norwood who noted, "In the adoption market, race and color combine to create another preference hierarchy: white children are preferred over nonwhite.").

[31] *See infra* Section IV.B.

[32] Advisory Comm. on Hum. Radiation Experiment, Final Report of the Advisory Committee on Human Radiation Experiments (1995) [hereinafter ACHRE]; *see infra* Section II.B.

[33] ACHRE, *supra* note 32; *see infra* Section II.B.

[34] *The Legacy of U.S. Nuclear Testing and Radiation Exposure in the Marshall Islands*, U.S. EMBASSY IN THE REPUBLIC OF THE MARSHALL ISLANDS (Sept. 15, 2012), https://mh.usembassy.gov/the-legacy-of-u-s-nuclear-testing-and-radiation-exposure-in-the-marshall-islands/. According to the United States:

> The United States conducted 67 nuclear explosive tests in the Marshall Islands between 1946 and 1958 . . . . Twenty-three tests were conducted on Bikini Atoll, and 44 were conducted on or near Enewetak Atoll. The hydrogen bomb test on March 1, 1954, code-named Castle Bravo, far exceeded the size expected by scientists. This factor, combined with shifting wind patterns, sent some of the radioactive fallout over the inhabited atolls of Rongelap and Utrik. Within 52 hours, the 86 people on Rongelap and 167 on Utrik were evacuated to Kwajalein for medical care.

Id.

[35] *Id.*

[36] 48 U.S.C. § 1901.

States without visas[37] and required the United States to provide compensation[38] to certain populations for the harmful effects the nuclear weapons caused to their health and livelihood.[39] In the years since, COFA has made traveling to and settling in the contiguous United States accessible for people from the Marshall Islands.[40] Agreements between these nations eased some of the oversight previously required for such movement, however, at the expense of exacerbating existing holes within international law governing adoptions.[41]

Children's rights have been on international legal advocates' minds long before COFA considerations.[42] These rights were first expressed as Declarations and later as Conventions that States were encouraged to sign on

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[37] The United States grants immigrant visas based on family ties, adoption, employment, special immigration categories and offers visas for individuals eligible for the diversity visa. *U.S. Visas: Immigrate*, U.S. DEP'T OF STATE – BUREAU OF CONSULAR AFFS., https://travel.state.gov/content/travel/en/us-visas/immigrate.html (last visited Nov. 6, 2023). Essentially all visa categories require some person or agency to sponsor an individual's immigration. *See id.* COFA, however, granted persons who were Marshallese citizens on November 2, 1986, who acquired citizenship by birth, on or after the effective date of the Constitution of the Federated States of Micronesia, or who were a naturalized citizens, or who were an immediate relative of a person from the previous three categories to be exempt from provisions within the United States' Immigration and Nationality Act, which require possession of a valid visa or border crossing identification card for admission. *Id.*; *see* Compact of Free Association of 1985, Pub. L. No. 99-239, § 141, 99 Stat. 1770 (1986).

[38] *The Legacy of U.S. Nuclear Testing and Radiation Exposure in the Marshall Islands*, U.S. EMBASSY IN THE REPUBLIC OF THE MARSHALL ISLANDS (Sept. 15, 2012), https://mh.usembassy.gov/the-legacy-of-u-s-nuclear-testing-and-radiation-exposure-in-the-marshall-islands/. ("Among other programs, this compensation included direct financial settlement of nuclear claims, resettlement funds, rehabilitation of affected atolls, and radiation related health care costs."). "The Department of Energy Special Medical Care Program and the Environmental Monitoring Program continue to provide services to the affected atolls." *Id.*

[39] *Id.*

[40] *See generally* U.S. Gov't Accountability Off., GAO-20-491, Compacts of Free Association: Populations in U.S. Areas Have Grown, with Varying Reported Effects (2020) (describing estimated migration populations and recent trends in compact migration). More than 94,000 COFA migrants live and work in the United States and its territories, according to Census Bureau data. *Id.* Data from Census Bureau surveys spanning nearly fifteen years show that the COFA migrant populations in the United States grew by an estimated sixty-eight percent, from about 56,000 to about 94,000. *Id.* Historically, many COFA migrants have lived in Hawai'i, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). *Id*.

[41] *See* Terrell, *supra* note 15; Walsh, *Adoption and Agency, supra* note 15.

[42] *E.g.*, *History of Child Rights*, UNICEF, https://www.unicef.org/child-rights-convention/history-child-rights (last visited Oct. 30, 2023).

to and incorporate.[43] As early as 1924, the League of Nations[44] recognized and affirmed the existence of rights specific to children and the responsibility of adults towards children.[45] International efforts were not focused on children's rights again until 1989 when the United Nations adopted the International Convention on the Rights of the Child ("CRC").[46] The international community, however, quickly realized that the previous conventions did not stop baby selling.[47]

In 1993, the Hague Conference on Private International Law[48] formed a

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[43] *International Adoption*, U.S DEPT'T OF STATE – BUREAU OF CONSULAR AFFS., https://travel.state.gov/content/travel/en/Intercountry-Adoption.html (last visited Nov. 13, 2023) ("Intercountry adoption is the process by which you adopt a child from a country other than your own through permanent legal means and then bring that child to your country of residence to live with you permanently."); *see infra* Part III.

[44] *The League of Nations*, THE UNITED NATIONS OFF. AT GENEVA, https://www.ungeneva.org/en/about/league-of-nations/overview (last visited Sept. 18, 2023). The League of Nations, which existed from 1920 to 1946, was the first intergovernmental organization established "to promote international cooperation and to achieve international peace and security." *Id.* It was the predecessor of what we now know of today as the United Nations. *Id.* Its founding document – the Covenant of the League of Nations – was drafted during the peace negotiations at the end of the First World War. *Id.*

[45] *Declaration of the Rights of the Child - 1923*, CHILD RTS. INT'L NETWORK (Mar. 27, 2001), https://archive.crin.org/en/library/un-regional-documentation/declaration-rights-child-1923. The fundamental needs of children were summarized in five points. *Id.* The document discusses the well-being of children and recognized their right to development, assistance, relief, and protection. *Id.*; *see infra* Section III.A.

[46] Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]. The CRC Preamble states that the members of the convention adopted this treaty recognizing children's rights because they:

> Recall[ed] that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance, [were] [c]onvinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community, [and recognized] that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. . . .

Id. According to the Congressional Research Center, the CRC defines a child as "any human being under the age of 18," and calls on Parties to take all appropriate measures to ensure that children's rights are protected – including the right to a name and nationality; freedom of speech and thought; and freedom from exploitation, torture, and abuse. CONG. RSCH. SERV., R40484, The United Nations Convention on the Rights of the Child 11 (2015); *see infra* Section III.B.

[47] Stein, *supra* note 1, at 73.

[48] *See infra* Section III.C.

committee to review international adoption practices in order to develop a workable international scheme to prevent baby selling, which became known as *The Hague Conference on Private International Law: Final Act of the Seventeenth Session, Including the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption*.[49] During the conference, the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption* ("Hague Convention") was drafted to provide the international community with a novel *best interest of the child* framework in hopes that by focusing on the child, a reduction in baby selling would ensue.[50]

The United States did not fully incorporate the Hague Convention into its domestic adoption laws until 2008.[51] Four years later, the Universal Accreditation Act of 2012[52] required that every international adoption service provider comply with the Hague Convention requirements.[53] The United States, however, has failed to ratify many of the other conventions which protect children, including the CRC.[54] Because of this, many holes still exist within U.S. federal adoption law, especially when it comes to implementing international standards for adoption decisions based on the *best interest of the child.*[55]

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[49] Hague Conference on Private International Law: Final Act of the Seventeenth Session, Including the Convention on Protection of Children and Co-Operation in Respect of International Adoption, May 29, 1993, *reprinted in* 32 INT'L LEGAL MATERIALS, 1134, 1134 [hereinafter Hague Convention].

[50] *Id.*; Stein, *supra* note 1, at 73–74.

[51] *What is the Hague Adoption Convention?*, CONSIDERING ADOPTION, https://considering adoption.com/internationaladoption/international-adoption-processesand-resources/hague-adoption/ (last visited Feb. 24, 2023) [hereinafter *What is the Hague*]. The Hague requires states to establish several procedural safeguards around international adoptions. *Id.* While some of the Hague Convention's provisions entered into force upon the United States' signing, full ratification required the accreditation of adoption agencies and systems put in place for approving persons who could provide adoption services. *See* Mary Helen Carlson et al., *International Family Law*, 36 INT'L L. 665, 668 (2002).

[52] Intercountry Adoption Universal Accreditation Act of 2012, Pub. L. 112-276, 126 Stat. 2466, (2013) (implementing regulations for "any person offering or providing international adoption services").

[53] *What is the Hague Adoption Convention?*, *supra* note 51.

[54] *UN Treaty Body Database*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en (last visited Sept. 18, 2023). The United States signed the CRC February 16, 1995, but has yet to ratify the treaty. *See* CONG. RSCH. SERV., R40484, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 4–5 (2015).

[55] *See* U.S. DEP'T OF STATE, SUBMISSION TO THE COMMITTEE ON THE RIGHTS OF THE CHILD ON MEASURES TO GIVE EFFECT TO ITS OBLIGATIONS UNDER THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY 25 (2022). While the United States has general regulations

Although Hawaiʻi has focused its adoption policies on the *best interest of the child* standard, this has not been enough to address the baby selling concerns.[56] In the early 2000s,[57] after it was discovered that Hawaiʻi was at the center of unethical adoptions out of the Marshall Islands,[58] the RMI passed a 2002 Adoptions Act aimed at better regulating the adoption of Marshallese children.[59]

In addition to RMI legislation targeting adoption practices, the RMI government also made attempts to address the problem with Hawaiʻi

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providing that accredited agencies and approved persons must ensure that international adoptions take place in the best interests of the child, most of its efforts are primarily focused on outreach and education rather than implementing standards that will better facilitate ethical adoptions that focus on the child's best interest. *See id.*

[56] *See In re* AK, 151 Hawaiʻi 15, 508 P.3d 289 (App. 2022) (ruling that the Family Court properly granted Department of Human Services' petition for adoption by Resource Caregivers to adopt children, and denied appellants' petition to adopt children, under Hawaiʻi Revised Statutes section 578-8(a), because, in part, the court's adoption decision was based on its analysis of the best interests of children in light of numerous factors); *see also In re* Ask, 152 Hawaiʻi 123, 522 P.3d 270 (2022) (finding that the Family Court did not abuse its discretion in granting adoption to foster parents who had been caring for young children for more than two years and denying adoption by children's aunt and uncle because the court properly considered Hawaiʻi Revised Statutes section 571-46(b) factors and other evidence to determine which adoption served children's best interests).

[57] *See* Samuel F. McPhetres et al., *Micronesia in Review: Issues and Events*, *1 July 1999 to 30 June 2000*, 13 CONTEMP. PAC. 200, 214 (2001). The RMI government became increasingly alarmed by the previous years' growing number of Marshallese children adopted to American families. Julianne M. Walsh, *Political Review of the Marshall Islands: Issues and Events, 1 July 1999 to June 2000*, 13 CONTEMP. PAC. 211, 214 (2001). In the last days of the 1999 congressional session, RMI Minister of Foreign Affairs Phillip Muller proposed Bill 159, attempting to halt adoptions until the appropriate legislation was designed and implemented. *Id.* Dr. Julianne M. Walsh is the Associate Specialist of the University of Hawaiʻi at Mānoa's Center for Pacific Islands Studies. *Julianne Walsh*, Univ. Haw. at Manoa CPIS, https://hawaii.edu/cpis/people/core-faculty/julie-walsh/ (last visited Nov. 14, 2023). Dr. Walsh's research interests include Marshallese models of leadership and authority, RMI-US relations, Marshallese histories, Micronesian traditions and politics, COFA migrant experiences, RMI-US adoptions, indigenizing education, and public anthropology. *Id.*

[58] Emily Dugdale & John Hill, *Why A Crackdown on This Growing Adoption Pipeline Just Hasn't Worked*, HONOLULU CIV. BEAT (Nov. 27, 2018), https://www.civilbeat.org/2018/11/why-a-crackdown-on-this-growing-adoption-pipeline-just-hasnt-worked-2/. Just before RMI legislators took up the adoption issue, word spread among the community that a five-year-old Marshallese boy was dragged by a representative of a large American adoption agency kicking and screaming on the concrete floor of Amata Kabua International Airport on Majuro. OFFSHORE, *The Adoptions*, HONOLULU CIV. BEAT, at 0:01–2:30 (Apr. 12, 2018), https://soundcloud.com/civilbeat/s3-episode-1-the-adoptions. The airport scene, coupled with the fact that the number of mothers traveling to Hawaiʻi to birth children in Honolulu accelerated, was the alarm awakening the community to the gravity of the issue. *Id.*

[59] Adoptions Act 2002, 26 M.I.R.C. (2002).

specifically. Letters between the RMI's Minister of Cultural and Internal Affairs and then Hawai'i First Circuit Senior Family Judge Catherine Remigio confirmed that efforts were to be made from both sides to ensure that the child's best interest was prioritized in all adoptions between the RMI and Hawai'i.[60] The RMI was deeply concerned that intercountry adoptions were arranged directly between private individual facilitators[61] and adoptive parents in the United States.[62] Yet these practices have continued. Furthermore, a large hurdle to ensuring the protection of Marshallese women and children from exploitation in the intercountry adoption process with the United States is that the language of adoption laws in both countries is too broad, leading to abuse of the system, negligent oversight, and ineffective enforcement.[63]

There are also significant criminal implications involved in the discussions of baby selling and human trafficking.[64] Pinpointing the exact cause behind the dubious practices associated with the adoptions between the United States and RMI calls for a multifaceted analysis. While it is beyond the scope of this Comment to outline a multifaceted analysis, this Comment focuses on the recommendations by Hawai'i Family Court judges to address consent

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[60] Letter from Amenta Matthew, Minister of Cultural and Internal Affs. Republic of Marsh. Is., to the Hon. Catherine H. Remigio, Senior J. of Haw. Fam. Ct. (Nov. 6, 2017) (on file with author) [hereinafter Letter to Hon. Judge Remigio].

[61] *See Professional and Vocational Licensing*, DEP'T. OF COM. AND CONSUMER AFF. PRO. & VOCATIONAL LICENSING DIV., https://cca.hawaii.gov/pvl/ (last visited Nov. 7, 2023) (listing all licensed vocations in the state, which does not include "adoption facilitator"). Adoption facilitators are not licensed or monitored. *Id.* Because facilitators are not credentialed, they are not required to meet any standards involving education, experience, insurance, or personnel. *See e.g.*, Ben Winslow, *Bill to Regulate Adoption 'Facilitators' May Make a Comeback After Human Smuggling Case in Utah*, FOX13 (Oct. 11, 2019, 2:56 PM), https://www.fox13now.com/2019/10/10/bill-to-regulate-adoption-facilitators-may-make-a-comeback-after-human-smuggling-case-in-utah. Facilitators typically charge a substantial amount of money for advertising and "matching" prospective adoptive parents with a birth mother. *See id.* Once facilitators match adoptive parents with a mother, they are no longer involved. *See* Jeremy Loudenback, *California Bans 'Adoption Facilitators' Known to Engage in Questionable Practices*, THE IMPRINT (July 27, 2023, 3:29 PM), https://imprintnews.org/adoption/california-bans-adoption-facilitators-known-to-engage-in-questionable-practices/243297#:~:text=But%20they%20face%20little%20oversight,tens%20of%20thousands%20of%20dollars. Facilitators do not provide counseling, legal advice, nor procedural oversight to make sure the adoption plan is followed and finalized. *Id.* ("These [adoption facilitators] sometimes encourage expectant mothers to disregard legal issues, such as the rights of birth fathers, payments for living expenses, post-adoption contact and the requirement to acknowledge Indigenous lineage to ensure adoptions comply with the federal Indian Child Welfare Act.").

[62] *See id.*; *infra* Section IV.A.

[63] WINSLOW, *supra* note 26.

[64] *See generally* Rana M. Jaleel, *The Wages of Human Trafficking*, 81 BROOKLYN L. REV. 563 (2016) (providing an in-depth discussion of the human trafficking network and U.S. criminal laws on human trafficking).

issues, which have cultural underpinnings, and the application of international best practices to highlight how Hawaiʻi, as a transit point for Marshallese adoptions, can change its family laws to better prevent the exploitation of Marshallese individuals.

This Comment argues[65] that the current Hawaiʻi-RMI agreements pertaining to the regulation of the adoption of Marshallese children fail to adequately protect against questionable adoption practices. This failure to protect Marshallese children both exemplifies the general shortcomings of the current international adoption system and compounds the effects of such shortcomings in the specific context of Marshallese children adopted by mainland parents in the United States in two ways.

First, the operation of COFA facilitates problematic adoption processes because it permits Marshallese children to be removed from their homeland with excessive ease under the court's radar.[66] Second, current Hawaiʻi adoption laws and regulations provide insufficient protections for Marshallese children.[67] These dynamics have resulted in a system wherein the major flaws in the current international adoption regime are exacerbated when it comes to Marshallese children because of the historical structural factors that have made RMI residents increasingly subject to exploitation.[68]

With COFA's 2023 renewal, many terms are still being negotiated for its next phase; this Comment proposes new guidelines for the U.S.-RMI adoption process. In doing so, it recommends an approach which combines re-emerging adoption considerations for Hawaiʻi Family Court judges with international best practices. This Comment argues that Hawaiʻi should implement a consent hearing for birth parents[69] and advocates for a focus on a *best interest of the child* standard which incorporates the child's right to their identity. This can be accomplished by taking extensive steps to keep children with families who share cultural origins.

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[65] Some of the claims made by this Comment are necessarily difficult to establish, given the nature of the conduct in question. Those who traffic, buy, or steal children for processing through the adoption system do not advertise their illicit activities. Indeed, considerable effort is made to conceal or ignore such conduct. Hence, this Comment draws from an array of academic fields and sources to highlight the issues apparent with the current intercountry adoption system and how those issues effect Marshallese communities.

[66] *See infra* Section IV.B.

[67] *See infra* Section IV.B.

[68] *See infra* Section IV.B.

[69] *See* G.A. Res. 55/25, *supra* note 3. Because the UN definition of human trafficking includes the transportation of persons by deception, coercion, or payment for consent, consent hearings are necessary to ensure that Marshallese mothers have not been induced into their consent by coercion or deception, in violation of international law. *See id.*

Part II of this Comment discusses the war-torn history and humanitarian crisis that led to the modern international adoption system, particularly within the context of the U.S.-RMI relationship. Part III focuses on the evolution of international law regarding the rights of children, particularly as recognized by the international community and established in the *Geneva Declaration on the Rights of the Child 1924*[70] (Geneva Declaration), CRC, and the Hague Convention.

Part IV discusses the evolution of the United States' domestic laws in the adoption system. Part IV also focuses on the United States' historical attitude toward adoptions and how that has influenced the relationship and dynamics of adoption law between the State of Hawai'i and the RMI. Part IV further explores how the current international adoption system fails Marshallese children, many of whom are sold to adoptive parents who have no knowledge or intention[71] of creating an environment that fosters the children's ethnic and cultural identities. The dismissal of cultural identity[72] in the *best interest of the child* considerations leads to harmful effects for both Marshallese parents and adopted children.[73] This Comment argues that the United States should amend its agreements with the RMI to apply the principle of subsidiarity.[74]

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[70] *See* Resolution on Child Welfare, Sept. 26, 1924, League of Nations Doc. 39047 (1924) (endorsing the Declaration of the Rights of the Child) [hereinafter Geneva Declaration].

[71] M. Elizabeth Vonk, *Cultural Competence for Transracial Adoptive Parents*, 46 SOC. WORK 246, 247–48 (2001). It is not enough for adoptive parents to be aware of the functional impacts of race and culture; these individuals must also be committed to understanding the effects of racism and mechanisms of oppression. *See id.* One framework of cultural competence stresses the importance of transforming adoptive parents' attitudes, knowledge, and skills into their approach for meeting their transracial adoptive child's unique racial and cultural needs. *Id.*

[72] *See, e.g.*, *id.* at 248. "Racial identity" refers to "one's self-perception and sense of belonging to a particular group . . . includ[ing] not only how one describes and defines oneself, but also how one distinguishes oneself from members of other ethnic groups." *Id.* (citing R.G. McRoy, *Attachment and Racial Identity Issues: Implications for Child Placement Decision Making*, 3 J. MULTICULTURAL SOC. WORK, 59–74 (1994). "'Cultural identity' is related to, but separate from racial identity; it is 'determined by the particular society to which the individual belongs [and includes] behaviors, beliefs, rituals, and values.'" *Id.* (citing ROBBIE J. STEWARD & AMANDA L. BADEN, THE CULTURAL-RACIAL IDENTITY MODEL: UNDERSTANDING THE RACIAL IDENTITY AND CULTURAL IDENTITY DEVELOPMENT OF TRANSRACIAL ADOPTEES (1995)).

[73] *See id.* When transracially adopted children are raised in homogenous or ethnocentric White culture, it makes it difficult for them to identify with and take pride in their race, ethnicity, or birth culture. *Id.* Indeed, some research has shown that children raised in these environments "would prefer to be white," feel a sense of shame about their appearance and origins, and actively seek to avoid people of their same ethnic or cultural origins. *Id.* at 248, 251.

[74] *See* CRC, *supra* note 46, at Preamble. The principle of subsidiarity, as applied to child welfare, states that it is in the best interest of children to be raised by family or kin. *See id.* If

The Hawai'i State Legislature should also adopt a law that incorporates the 2004 recommendations of the Hawai'i Family Court judges and international best practices into its adoption regulations. In doing so, the focus would be on children's right to heritage and a rich ethnic cultural upbringing, which is fundamental to the *best interest of the child* standard used to assess the necessity of adoption placements.[75] This Comment concludes by analyzing the benefits and possible shortcomings with this proposal, but ultimately concludes that these changes aid in protecting vulnerable populations like Marshallese women and children.

II. THE WORLD WAR II HUMANITARIAN CRISIS: BIRTHING THE INTERNATIONAL ADOPTION SYSTEM AND IMPOVERISHING THE MARSHALL ISLANDS

In the 1940s, overt institutional racism was rampant around the world, evidenced by Germany's mission to wipe out the Jewish "race" [76] and America's Jim Crow era.[77] Racial discrimination plagued all aspects of

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immediate family/kin are unable, or unavailable, domestic placement with a foster or adoptive family is the next best option. *See id*. Finally, if neither of these alternatives is viable, then permanent placement with an appropriate family in another country through intercountry adoption is best. *See id.*; *see also infra* Section III.B.

[75] CRC, *supra* note 46, at art. 4(b).

[76] *Antisemitism in History: Nazi Antisemitism*, U.S. HOLOCAUST MEMORIAL MUSEUM, https://encyclopedia.ushmm.org/content/en/article/antisemitism-in-history-nazi-antisemitism (last visited Sept. 20, 2023). Before World War II, the Nazi party rose to power in Germany and gained popularity by utilizing antisemitic rhetoric that painted Jewish people as the source of a variety of Germany's social, political, and economic problems. *World War II*, HISTORY (Jun. 27, 2023), https://www.history.com/topics/world-war-ii/world-war-ii-history. World War II began when Nazi Germany invaded Poland in 1939. *Id.* ("Among the people killed were 6 million Jews murdered in Nazi concentration camps as part of Hitler's racists and diabolical 'Final Solution,' now known as the Holocaust.").

[77] *See, e.g.*, *Jim Crow Laws*, HISTORY (Sept. 11, 2023), https://www.history.com/topics/early-20th-century-us/jim-crow-laws. ("The roots of Jim Crow, separate but equal, laws began as early as 1865 at the end of the Civil War and immediately following the ratification of the 13th Amendment, which abolished slavery in the United States"). Black codes were strict local and state laws that outlined how formerly enslaved people could work, which effectuated indentured servitude, taking away voting rights and controlling where formerly enslaved people lived and how they traveled. *Id.*; *see also* Paru Shah & Robert S. Smith, *Legacies of Segregation and Disenfranchisement: The Road from Plessy to Frank and Voter ID Laws in the United States*, 7 *RUSSELL SAGE FOUN. J. SOC. SCIENCES*, 134, 136 (2021); STETSON KENNEDY, JIM CROW GUIDE TO THE U.S.A.: THE LAWS, CUSTOMS AND ETIQUETTE GOVERNING THE CONDUCT OF NONWHITES AND OTHER MINORITIES AS SECOND-CLASS CITIZENS (2011).

society, including the American family[78] and Germany's post-World War II treatment of "Brown Babies."[79] This racism, and the resultant international humanitarian crisis involving thousands of European children orphaned by the war gave rise to the modern international adoption system.[80] This same racist war history is also what impoverished the RMI and made it vulnerable to exploitation within the larger international adoption system.[81]

A. *The War History That Led to the Adoption Dilemma in Europe and Beyond*

World War II was the largest and most violent war in history.[82] "Official casualty sources estimate battle deaths at nearly 15 million military personnel and civilian deaths at over 38 million."[83] Post-World War II international adoptions gave Americans an opportunity to respond to the needs of European children, mainly from Germany, who were orphaned by the war.[84] Between 1948 and 1953, United States families adopted approximately 5,814 European children, most of whom were White.[85] Though most of the children who were adopted abroad were orphaned by World War II, other children

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[78] *See* Wesley Hiers, *Party Matters: Racial Closure in the Nineteenth-Century United States*, 47 SOC. SCI. HIST., 255, 282 (2013). During the Reconstruction Era, local governments and the national Democratic Party thwarted equality efforts, effectuated by Black codes blending into Jim Crow laws. *Id.* These Jim Crow laws separated Blacks and Whites in all aspects of American public and private life. *Jim Crow Laws*, HISTORY (Sept. 11, 2023), https://www.history.com/topics/early-20th-century-us/jim-crow-laws.

[79] Around World War II, Black mixed-race children with German mothers were called Negermischlinges or "Brown Babies." *See infra* Section II.A.

[80] Leslie Doty Hollingsworth, *International Adoption among Families in the United States: Considerations of Social Justice*, 48 SOC. WORK J. 209, 210 (2003).

[81] *See* LAUREN HIRSHBERG, SUBURBAN EMPIRE: COLD WAR MILITARIZATION IN THE US PACIFIC 2 (Earl Lewis et al. eds. 2022) (describing the "continual quest for security for those coming under the realm of an expanding base empire – the relational insecurities produced by this security project – and the historic and ongoing US attempts to erase those costs.") (emphasis omitted).

[82] *Conflict Casualties: World War II*, DEFENSE CASUALTY ANALYSIS SYSTEM, https://dcas.dmdc.osd.mil/dcas/app/conflictCasualties/ww2 (last visited Jan. 19, 2024) [hereinafter *WWII Conflict Casualties*].

[83] *Id.*

[84] The casualties from the war were roughly 6,600,000–8,800,000 Germans, 2,600,000–3,100,000 Japanese, 24,000,000 Russians, 5,600,000 Polish, and 2,067,600 French. *Research Starters: Worldwide Deaths in World War II*, NAT'L WWII MUSEUM NEW ORLEANS, https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-worldwide-deaths-world-war (last visited Nov. 20, 2023). In order to respond to the catastrophically large number of children orphaned by the war, in 1948, following World War II, U.S. Congress passed a loose immigration policy known as the Displaced Persons Act, which allowed more than 200,000 European refugees and orphans to emigrate from their countries to the United States. BARBARA MOE, ADOPTION: A REFERENCE HANDBOOK 50 (1998).

[85] *See WWII Conflict Casualties*, *supra* note 82.

were not orphans; instead, they were products of foreign Black soldiers who had relations with German women in spite of racial tensions that persisted long after the end of the war.[86]

After the Allied Forces defeated Germany in World War II, the United States occupied West Germany.[87] Although American soldiers were tasked with promoting peace and democracy to a country ravaged by fascism, Black soldiers themselves were subject to discrimination by White soldiers as the Jim Crow laws prevailed in the U.S. military.[88] During the war, the Allied nations deployed between 30,000 and 40,000 segregated Black soldiers to regions within Germany.[89] The Germans viewed the occupation by Black soldiers as a particular "disgrace to the honor and worth of the German people and the White race."[90] But nothing escalated racial tensions more than relationships between African American soldiers and White German women.[91]

By the middle of the twentieth century, approximately 68,000 children of German women and Allied occupation troops were in the occupied zones of West Germany, many of which were fathered by Black soldiers.[92] The mixed-race Black children were called *Negermischlinges* or "Brown Babies."[93] The new generation of Black children in Germany led German scientists to, once again,[94] examine and interpret the allegedly "problematic" nature of these children within German society.[95] In 1951, Walter Kirchner's dissertation was one of two studies commissioned by the Berlin mayor to research the "Negro" problem.[96] Using an analytical framework and social

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[86] *See* Yara-Collette Lemke Muniz de Faria, *Black German 'Occupation' Children: Objects of Study in the Continuity of German Race Anthropology*, *in* CHILDREN OF WORLD WAR II: THE HIDDEN ENEMY LEGACY 249, 260 (Kjersti Ericsson & Eva Simonsen eds., 2005).

[87] *Id.*

[88] Alexis Clark, *Why Mixed-Race Children in Post-WWII Germany Were Deemed a 'Social Problem'*, HISTORY (June 3, 2021), https://www.history.com/news/mixed-race-babies-germany-world-war-ii.

[89] Muniz de Faria, *supra* note 86.

[90] *Id.*

[91] *Id.* at 249.

[92] *Id.*

[93] *Id.*

[94] *Id.* at 254. Black German children born after 1945 were neither the first German-born occupation children, nor the first mixed-race occupational children. *Id.* During the Rhineland occupation about 500 children were born of German women and African soldiers used in the French occupation from Morocco, Algeria, Tunisia, Madagascar, and Senegal following World War I. *Id.*

[95] *Id.*

[96] *Id.*

anthropological lens,[97] Kirchner concluded that "Afro-German children represented a potential social problem because of the disharmony which could be expected as a result of their racial mixture."[98] His dissertation continued earlier racist World War I anthropology research into heredity and eugenics.[99] Kirchner's study, and many other similarly problematic studies conducted during this period, portrayed biracial Black children as isolated problems, and completely ignored the effects of children's social environment on their behavior.[100]

As can be expected from such damaging "scientific" conclusions, in the mid to late 1950s, efforts were made[101] for many of these German "Brown Babies" to be put up for adoption in the United States.[102] A 1968 study estimated that "up to 7,000 Black German children were adopted by Americans."[103] Many of these babies would grow up to never know that they were adopted, or German for that matter.[104] Children of this era were only the catalyst to what we know of as the vagrant dangers of cultural wiping as a result of the international adoption system.

The treatment of these children, unfortunately, paved the way for continued problematic treatment of minority children. *Nguyen v. Kissinger* was one of the first cases that signaled there were questionable practices underlying the international adoptions system, specifically with children of color during wartime.[105] The case was a class action brought against the

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[97] *Id.*

[98] *Id.* at 257. The studies suggested that biological change, caused by what German's perceived as colonial forced racial mixing, "influenced the intellectual capabilities and mental constitution of a given social group and, therefore, required practical social strategies and responses. Here theories of heredity and racial anthropology combined to form a biologist model of society bringing together pseudo-objective scientific methods and socio-political assumptions." *Id.* at 250.

[99] *Id.* at 250, 255–56. ("[A] review of [German] anthropological and genetic interpretations from the first half of the century shows that the social and mental 'inferiority of racially mixed people' came to be taken for granted as the result of genetic deficiencies assumed to result from racial mixture.").

[100] *Id.* at 257–58.

[101] *Id* at 259. Because the mixed-race German children were labeled as "other," this implied they were "not really German." *Id*. "[E]ducators and private individuals pleaded for a complete separation of the children from their white German social contacts through adoption into foreign countries." *Id*.

[102] Von Stephanie Siek, *Germany's 'Brown Babies': The Difficult Identities of Post-War Black Children of GIs*, SPIEGEL INT'L (Oct. 13, 2009), https://www.spiegel.de/international/germany/germany-s-brown-babies-the-difficult-identities-of-post-war-black-children-of-gis-a-651989.html. The U.S. Army had a policy of not acknowledging paternity claims brought against its soldiers stationed abroad. *Id.*

[103] *Id.*

[104] *Id.*

[105] WINSLOW, *supra* note 26, at 16; Nguyen Da Yen v. Kissinger, 528 F.2d 1194, 1194 (9th Cir. 1975).

United States government for their role in airlifting thousands of Vietnamese children out of South Vietnam in 1975 during the Vietnam War.[106] The plaintiffs, children abducted following the war,[107] sued the United States Immigration and Naturalization Service asserting that the involuntary detention of Vietnamese children in the United States in the custody of persons other than their parents violated their fundamental human rights and Fifth Amendment rights.[108] The plaintiffs sought the compilation and production of information concerning children paroled[109] into the United States from Vietnam under 8 U.S.C.A. § 1182(d)(5)[110] so that due diligence could be conducted in locating their families.[111]

The plaintiffs highlighted the problematic nature of the children being immediately placed for adoption once they were in the United States:

> From plaintiffs' assertions, it appears that some of the children have a living parent, and were merely left in orphanages for safekeeping (Vietnamese orphanages allegedly serve some of the functions of day care centers). The parent(s) may or may not know.[112]

For the plaintiffs, these harrowing scenarios invoked key questions regarding proper consent and care.[113] The court held that jurisdiction was proper under the court's habeas corpus power because the suit challenged the legality of the children's custody.[114] Finally, it granted the plaintiffs

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[106] WINSLOW, *supra* note 26, at 16.

[107] Cindy Trieu, *Litigation, Legislation, and Lessons: "Operation Babylift" and International Adoption*, 2014 PROCEEDINGS OF GREAT DAY 26, 38 (2015), https://knightscholar.geneseo.edu/cgi/viewcontent.cgi?article=1125&context=proceedings-of-great-day.

[108] *Nguyen Da Yen*, 528 F.2d at 1197.

[109] *Id.* at 1198. The Immigration and Nationality Act ("INA") authorizes the Attorney General to exercise discretion to temporarily allow certain noncitizens to physically enter or remain in the United States if they are applying for admission but do not have a legal basis for being admitted. Immigration and Nationality Act § 212(d)(5)(A); 8 U.S.C.A. § 1182(d)(5). The Department of Homeland Security may only grant parole if the agency determines that there are urgent humanitarian reasons for the person to enter the United States. Immigration and Nationality Act § 212(d)(5)(A); 8. U.S.C.A. §1182(d)(5).

[110] *Nguyen Da Yen*, 528 F.2d at 1198; Immigration and Nationality Act § 212(d)(5)(A); 8 U.S.C.A. § 1182(d)(5) governs the temporary admission or "parole" of nonimmigrants to the United States for humanitarian or public benefit reasons. Immigration and Nationality Act § 212(d)(5)(A); 8 U.S.C.A. § 1182(d)(5).

[111] *Nguyen Da Yen*, 528 F.2d at 1197.

[112] *Id.*

[113] *Id*.

[114] *Id.* at 1202.

expanded discovery rights, but only to information necessary to determine each child's custody status.[115]

More importantly, *Nguyen* underscored the growing distrust in the humanitarian motivation for "child saving," and it demonstrated the power of private individuals who facilitated the evacuation of children from the orphanages of Saigon.[116] As such, it became evident to the international community that foreign policy and welfare laws needed to be scrupulously reexamined.[117] This case also illuminated the vulnerability that children of color face due to exploitative practices by Western countries and the White perception of their role as "child savers,"[118] a phenomenon still occurring today.[119] This fact is particularly evident in the context of American adoptions out of the RMI.[120]

Post-war, international adoptions succeeded as a long-term solution to child welfare, not because it was in the interest of any one particular group in the world, but rather because the humanitarian crisis of the wars awakened the international community to the idea that child welfare was in the interest of all. The international adoption system emerged through the work of governments (national, state, and foreign); social welfare professionals; volunteers (social entrepreneurs, religious humanitarians, and NGOs); national and local media; adoptive parents; and prospective adoptive parents working collaboratively to find new solutions to century-old problems.[121] These combined efforts contributed to the making of a system that would embrace adoption as a response to a host of overseas social welfare

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[115] *Id.* at 1205.

[116] WINSLOW, *supra* note 26, at 16.

[117] *See* Trieu, *supra* note 107, at 39 (discussing the impact of Nguyen Da Yen v. Kissinger).

[118] *See* Makau Mutua, *Savages, Victims, and Saviors: The Metaphor of Human Rights*, 42 HARV. INT'L L.J. 201, 201 (2001). Within human rights scholarship, rhetoric around racial relations highlight this notion of "savages-victims-saviors (SVS)." *Id.* The connotations of such roles reinforce the global racial hierarchy where "savages and victims are generally non-White and non-Western," while saviors are largely Western White societies. *See id.* at 207.

[119] *See generally,* MATTHEW HUGHEY, THE WHITE SAVIOR FILM: CONTENT, CRITICS, AND CONSUMPTION (2014) (discussing the "white savior trope" in American cinema which depicts messianic characters in unfamiliar or hostile settings discovering something about themselves and their culture in the process of saving members of other races from terrible fates through examining the Hollywood constructed images of idealized White Americans).

[120] David M. Smolin, *Intercountry Adoption and Poverty: A Human Rights Analysis*, 36 CAP. U. L. REV. 413, 413 (2007) [hereinafter Smolin, *Intercountry Adoption and Poverty*]. Adoption proponents commonly view intercountry adoption as an appropriate response to the extensive poverty that exists in many developing nations. *Id.* Intercountry adoption is perceived as a humanitarian act that transfers a child from extreme poverty and its vulnerabilities and limitations to the wealth, comfort, and opportunities of developed nations. *Id.* The extreme nature of poverty in developing countries underscores the impetus to rescue children from its harsh effects. *Id.*; *see infra* Section IV.C.

[121] WINSLOW, *supra* note 26, at 12.

emergencies.[122] In this regard, international adoption law melded cultural, social, and economic political projects.[123] War-orphaned children provoked the necessary political discourses that led to revisions in immigration and social welfare laws as evidenced by "[c]ongressional records, hearings, federal immigration and child protection policies, state-based social welfare records, and NGO and agency accounts[.]"[124]

Efforts of Western private organizations and individuals succeeded in persuading federal agencies at various levels and stages to facilitate international adoptions through liberalized immigration policies by reclassifying child refugees as immigrants, making them subject to neither quotas nor ceilings.[125] While volunteers worked behind the scenes in many countries to engage in policymaking, the absence of a well-developed body of laws governing both the international and domestic adoptions encouraged the growth of unethical baby-taking.[126]

B. *Impoverishing a Nation: The RMI, the First Guinea Pig for Post-WWII Nuclear Testing and the Creation of COFA*

The Marshall Islands are a widely-scattered cluster of atolls located just above the equator north of New Zealand in Oceania.[127] The Micronesian islands were designated as the first and only Strategic Trusteeship[128] territory

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[122] *See generally*, J. Boyd, The Suspension of Inter-country Adoption of Children Orphaned as a Result of Natural Disaster (2021) (M.A., mini-dissertation, North West University) (discussing a variety of disasters that led to international adoptions and the necessary safeguards that need to be implemented in the context of South Africa). International adoptions have become the solution to many natural disasters and emergencies that cause children to become orphaned or unaccompanied. *Id.*

[123] WINSLOW, *supra* note 26, at 19.

[124] *Id*.

[125] *Id.* at 15.

[126] Many accounts of adoptions that happened during this period reveal just how prevalent baby selling was across the globe – so much so that the U.N. thought it important to address. *See, e.g.*, BALCOM, *supra* note 22, at 237–42; Jonet, *supra* note 8.

[127] *Federated States of Micronesia*, ONE WORLD NATIONS ONLINE, https://www.nationsonline.org/oneworld/micronesia.htm (last visited Nov. 20, 2023).

[128] *See* U.N. Charter art. 75. Article 75 of the Charter of the United Nations provides for the establishment of "an International Trusteeship System for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements." *Id.*; Patsy Mink, *Micronesia: Our Bungled Trust*, 6 TEX. INT'L L. F. 181, 182 (1971) ("After the United States entered World War II in 1941, the Trust Territory assumed vital importance in the Pacific campaign."). The United States retained the RMI as a strategic trust territory because American leaders insisted that Japan would not have been successful in attacking Pearl Harbor if it were not for their control over the islands leading up to and during World War II. *Id.*

by the United Nations (UN) in 1947.[129] These islands extend "from the equator near eastern Indonesia some 1,300 nautical miles toward Japan, and extend from a point 600 miles east of the Philippines some 2,000 nautical miles east toward Hawai" and the United States.[130]

Prior to World War II, the islands were under the control of Japan, which facilitated relative prosperity for the islands.[131] The Micronesians and Japanese reaped economic gain from fisheries, sugar and alcohol production, the pearl shell industry, and the construction of roads and ports.[132] World War II, however, destroyed Micronesia's budding economy.[133] By the end of the war, the Japanese left the islands and the United States assumed their role as occupiers.[134] After the United Nations granted the right to control Micronesia to the United States under the trusteeship, the United States not only destroyed some of the islands with their nuclear testing, but also permitted other islands to "decay through indifference" and lack of economic and social investment.[135] Following World War II, the United States selected the

[129] S.C. Res. 21, art. 2 (Apr. 2, 1947); *see* ACHRE, *supra* note 32, at 367.

[130] Mink, *supra* note 128; U.N. Geospatial Information Section, Trust Territory of the Pacific Islands [cartographic material]: Itinerary of the United Nations Visiting Mission to the Trust Territory of the Pacific Islands (Apr. 1961), https://digitallibrary.un.org/record/3807460?ln=en.

[131] *See generally* FRANCIS X. HEZEL, STRANGERS IN THEIR OWN LAND: A CENTURY OF COLONIAL RULE IN THE CAROLINE AND MARSHALL ISLANDS 186–241 (1995) (discussing Japan's colonial rule between World War I and World War II over Micronesian islands, including the Marshall Islands). As one of the allied countries in World War I (WWI), Japan sent military forces to the RMI which had been under German control. Mink, *supra* note 128, at 184–85. After the defeat of Germany in WWI, on December 17, 1920, the Council of the League of Nations confirmed a mandate for the former German islands north of the Equator to Japan, to be administered in accordance with Article 22 of the Covenant of the League of Nations. S.C. Res. 21, pmbl. ¶ 3 (Apr. 2, 1947); Mink, *supra* note 128, at 185.

[132] Ronron Calunsod, *Occupation Legacy: Marshall Islands Residents Use Japanese Term for Traditional Handicrafts*, JAPAN TIMES (Dec. 20, 2017) https://www.japantimes.co.jp/news/2017/12/20/national/occupation-legacy-marshall-islands-residents-use-japanese-term-traditional-handicrafts/; Mink, *supra* note 128, at 184–85.

[133] *See* Letter from Warren R. Austin, Rep. of the U.S., to the Sec'y-Gen., U. N. (Feb. 18, 1949) (transmitting a report on the first year of the administration of the Trust Territory of the Pacific Islands under the Trusteeship Agreement of July 18, 1947). Coconut palm plantations were destroyed, small industries and shops in the large centers were devastated, and the war caused disruption of ordinary trade channels, reducing the efforts of most of the native peoples to struggling for survival. *Id.*; Mink, *supra* note 128, at 185.

[134] *See* Jonathan M. Weisgall, *Micronesia and the Nuclear Pacific Since Hiroshima*, 5 SAIS REV. 41, 42 (1985) ("Toward the end of the war, there was little doubt that Micronesia would remain under U.S. control. The only debate was whether to annex the islands or place them under the trusteeship system of the new United Nations.").

[135] Mink, *supra* note 128, at 184, 196.

Marshall Islands as the site of the Pacific Proving Grounds[136] to test nuclear weapons.[137] Nuclear testing began on July 1, 1946, with Operation Crossroads, which involved two tests at Bikini Atoll.[138] Operation Crossroads sought to investigate the effect of nuclear weapons on naval warships.[139] In preparation for this operation, Bikinians were evacuated in March 1946.[140] The first detonation in Operation Crossroads did not lead to any immediate radioactive exposure to the island population.[141] However, further underwater detonations led to radioactive exposure and caused significant contamination issues[142] in the atoll itself, causing a delay in the return of the local population to their homes. [143]

"In 1948, the U.S. government forced residents of Enewetak Atoll to evacuate due to expanded nuclear testing with Operation Sandstone."[144] Although the Marshallese filed a complaint about the thermal fusion testing with the United Nations, the United States was permitted to continue its testing over the objection of the Marshallese Congress Hold-Over Committee, Japan, and India.[145]

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[136] *See* Aimee Bahng, *The Pacific Proving Grounds and the Proliferation of Settler Environmentalism*, 11 J. TRANSNAT'L. AM. STUD. 45, 52 (2020) (describing the securitization ideology prompting the United States' selection of the Marshall Islands as a "laboratory" for nuclear testing).

[137] U.N. Charter art. 83, Repertory of Practice (Supp. 2, vol. III, 1955-1959) https://legal.un.org/repertory/art83/english/rep_supp2_vol3_art83.pdf (noting that both the Soviet Union and India filed requests for hearings concerning nuclear tests in the Trust Territory of the Pacific Islands).

[138] ACHRE, *supra* note 32.

[139] *Marshall Islands*, THE NAT'L MUSEUM OF NUCLEAR SCI. & HIST.: ATOMIC HERITAGE FOUND., https://ahf.nuclearmuseum.org/ahf/ location/marshall-islands/ (last visited Nov. 20, 2023) [hereinafter *Marshall Islands*].

[140] ACHRE, *supra* note 32, at 367.

[141] *Id.*

[142] *Id.*

[143] *Id.* (noting that when the Bikinians returned in 1969, it was believed that the known radioactive contamination would be mitigated by restrictions on the consumption of certain native foods and reliance on imported foods).

[144] *Marshall Islands*, *supra* note 139; Letter from Warren R. Austin, Rep. of the U.S., U.N., to J.A.L. Hood, President, Sec. Council of the U.N. (Dec. 2, 1947). On December 2, 1947, the United States notified the UN Security Council that, "effective December 1, 1947, Eniwetok [sic] Atoll in the trust territory of the Pacific Islands, [was] . . . closed for security reasons, in order that the United States Government, acting through its Atomic Energy Commission, [could] conduct necessary experiments relating to nuclear fission." *Id.*

[145] Note from W.B. McCool, Sec'y, Atomic Energy Comm'n of the U.N., to the Atomic Energy Comm'n, U.N. (Apr. 3, 1956) (regarding the petitions of the Marshallese and related UN actions). On March 8, 1956, the Mission held a meeting at Majuro with the members of

A week after another test called Castle Bravo[146] caused dangerous levels of radioactive fallout upon the populated atolls of Rongelap and Utirik, the United States launched a medical study of the Marshallese, which included providing medical treatment to individuals they believed were exposed to radiation.[147] Labeled Project 4.1, this study is criticized by modern researchers and scholars as unethical for many reasons.[148] First, the U.S. government lacked informed consent as the Marshallese people did not knowingly agree to be exposed to such radiation.[149] Second, the U.S. government was subjecting the Marshallese people to a study they did not know was being conducted.[150] The Marshallese people later expressed that they felt as though they were "used as '*guinea pigs'* in a 'radiation experiment.'"[151]

After years of Project 4.1 research in the RMI, the United States realized its unethical treatment and exploitation of the region.[152] To remedy the harm, the United States created a joint agreement, the Compact of Free Association, which was signed into effect in 1986 and granted the RMI independence from the United States.[153] In the agreement, the United States acknowledged the gravity of radiation exposure their nuclear testing created, its detrimental effects on the health of the Marshallese, and the long-term environmental impacts on the RMI.[154] Thus, the agreement had two main purposes.[155] First, it created a $150 million fund to compensate the Marshallese people for

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the Marshallese Congress Hold-Over Committee. *Id.* The Committee stated that the people of the Marshall Islands had been informed officially that further nuclear tests would take place in the near future in the Trust Territory. *Id.* The Committee wished to go on record before the Visiting Mission that they reiterated the position they had taken when they presented their petition in April 1954, namely that nuclear explosion tests in the Marshalls be discontinued. *Id.*

[146] *Marshall Islands*, *supra* note 139 ("Bravo was the first test of a deliverable hydrogen bomb."). "Castle Bravo," the second test of a hydrogen bomb, was detonated over Bikini Atoll, used lithium deuteride as its fuel. *Id*.; CONG. RSCH. SERV. RL32811, REPUBLIC OF THE MARSHALL ISLANDS CHANGED CIRCUMSTANCES PETITION TO CONGRESS (2005).

[147] Marshall Islands, *supra* note 139.

[148] *Id*.

[149] *Id*.

[150] *Id*.

[151] ACHRE, *supra* note 32, at 368.

[152] *See id.*; CONG. RSCH. SERV., RL32811, REPUBLIC OF THE MARSH. IS. CHANGED CIRCUMSTANCES PETITION TO CONGRESS (2005). "Some experts argue that the nuclear tests, in addition to rendering the four atolls of Bikini, Enewetak, Rongelap, and Utrik uninhabitable or dangerously irradiated, caused high incidences of birth defects, miscarriage, and weakened immune systems as well as high rates of thyroid, cervical, and breast cancer." *Id.* Experts additionally "contend that more than a dozen Marshall Islands atolls, rather than only four, were seriously affected." *Id.*

[153] *See*, ACHRE, *supra* note 32, at 376.

[154] *Id*.

[155] *Id*.

damage done by the United States' nuclear testing program.[156] Second, due to the uncertainty of the long-term effects of radiation on the natural environment combined with the RMI's environmental cultural practices, such as planting and harvesting of native species and fishing in surrounding ocean water for food consumption, the agreement permitted Marshallese citizens to immigrate from the islands to the United States without needing to obtain a visa.[157]

Unfortunately, it did not take long for the United States to find that the free movement of the Marshallese people to the United States made them particularly vulnerable to exploitive practices related to baby selling and human trafficking.[158] By 2003, there was a joint resolution to amend COFA and, among other things, change the immigration provision to bar parents who were giving their children up for adoption in the United States from using the visa-free immigration process.[159] The amended agreement to provide immigration safeguards for mothers traveling to the United States for the purpose of adoption was ultimately adopted by both the United States and the RMI.[160] In making this change, the United States emphasized that COFA was founded upon respect for human rights and fundamental freedoms for all and that the current practices violated those principles and hindered them from becoming realized.[161] However, the exploitive history between the United States and the RMI once again emerged between the regulations and into the current adoption practices.[162]

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[156] *Id*.

[157] *See The Legacy of U.S. Nuclear Testing and Radiation Exposure in the Marshall Islands*, *supra* note 38.

[158] Letter to Hon. Judge Remigio, *supra* note 60, at 2–3; *see infra* Section IV.B.

[159] Compact of Free Association Amendments Act of 2003, H.R.J. Res. 63 108th Cong. Art. IV § 141 (2003) (enacted).

[160] *Id.* COFA was changed in late 2003 to provide procedural safeguards in adoptions. *Id.* Under the newly amended Compact, a visa is required for Marshallese citizens traveling into the U.S. for purposes of adoption, made retroactive to March 1, 2003. *Id*. Whether this visa requirement applies to only the child already born in the Marshall Islands or also to the pregnant birthmother who travels into the U.S. and delivers the baby on U.S. soil is unclear. *See id*.

[161] *Id.* at §104; *see* Status of Citizens of the Freely Associated States of the Federated States of Micronesia and the Republic of the Marshall Islands, U.S. DEPARTMENT OF HOMELAND SECURITY-U.S. CITIZENSHIP AND IMMIGRATION SERVICES (Sept. 2020) https://www.uscis.gov/sites/default/files/document/fact-sheets/FactSheetVerifyFASCitizens.pdf .

[162] Hill, *This Honolulu Lawyer Has Run a Marshallese Baby Business with Impunity*, *supra* note 2.

III. THE INTERNATIONAL ADOPTION SYSTEM: AN OVERVIEW OF HOW WE SHOULD BE THINKING ABOUT CHILDREN

The issues presented by the United States-RMI dynamic are not novel.[163] Indeed, for nearly a century, the international community has remained committed to the welfare of children, developing legal frameworks that not only ensure the rights of children are recognized and affirmed, but also seek to provide children with an environment needed to flourish into the next generation of altruistic adults.[164] What follows is an overview of the evolution of international law, from general recognition of children's rights to protections specific to international adoptions.

A. *The First Declaration to Recognize Children*

Global politics and war have been two of the biggest factors driving the creation of new international laws or changing existing ones.[165] After witnessing the horror of World War I,[166] Ms. Eglantyne Jebb, a British social reformer and activist, realized that children needed special protection.[167] In 1919, Ms. Jebb established the Save the Children Fund in London which provided a wide-range of assistance such as spreading awareness of the impacts of the war on children, raising money, and feeding and educating starved children, which was all aimed at protecting and caring for the children

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[163] *See* BALCOM, *supra* note 22.

[164] *See infra* Section III.A.

[165] *See* James Marten, *The History of the Declaration of the Rights of the* Child, OUPBLOG, (Nov. 5, 2018) https://blog.oup.com/2018/11/history-declaration-rights-of-the-child/. The 1924 Geneva Declaration of the Rights of the Child was drafted in response to the famine caused by WWI blockades. *Our History*, SAVE THE CHILDREN, https://www.savethechildren.org.uk/about-us/our-history (last visited Nov. 20, 2023); G.A. Res. 1386 (XVI) at 7 (Nov. 20, 1959). The Universal Declaration of Human Rights (UDHR) was passed in 1948 along with all four of the Geneva Conventions. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) https://www.un.org/en/about-us/universal-declaration-of-human-rights (last visited Sept. 23, 2023). These declarations and conventions have paved the way for the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels. *See*, *e.g.*, INT'L COMM. RED CROSS, https://www.icrc.org/en (last visited Sept. 23, 2023); Eugene A. Korovin, *The Second World War and International Law*, 40 AM. J. INT'L L. 724, 751 (1946) ("The new international law and order that is being born after the Second World War presupposes maximum strengthening of the force and significance of international treaties, as the chief foundation for the entire postwar system of international law.").

[166] *See, e.g., Our History*, SAVE THE CHILDREN, https://www.savethechildren.org.uk/about-us/our-history (last visited Nov. 20, 2023) ("After the First World War ended, Britain kept up a blockade that left children in cities like Berlin and Vienna starving. Malnutrition was common and rickets were rife.").

[167] *Declaration of the Rights of the Child – 1923*, CHILD RIGHTS INTERNATIONAL NETWORK (Mar. 27, 2001), https://archive.crin.org/en/library/un-regional-documentation/declaration-rights-child-1923.

who had lived through the war.[168] With the support of the International Committee of the Red Cross ("ICRC"),[169] in 1920, the Save the Children Fund was organized and structured around the International Save the Children Union ("ISCU").[170] With fewer emergencies to respond to, ISCU was able to shift their primary focus to political campaigning and drafting laws recognizing the responsibility all adults have to the wellbeing of children.[171]

ISCU's efforts launched new considerations into the western international discourse. On February 23, 1923, ISCU adopted the first version of the Declaration of the Rights of the Child during the ICRC's fourth general assembly.[172] The Declaration of the Rights of the Child represented the first contemplation of children's rights within international law.[173] In response, on September 26, 1924, the League of Nations adopted the declaration recognizing basic children's rights and titled it the *Geneva Declaration*.[174]

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[168] *Geneva Declaration of the Rights of the Child, 1924*, HUMANIUM, https://www.humanium.org/en/geneva-declaration/ (last visited Nov. 20, 2023).

[169] The ICRC is an independent and neutral organization, stemming from the Geneva Conventions of 1949. *Who We Are*, INT'L COMM. RED CROSS, https://www.icrc.org/en/who-we-are (last visited Sept. 23, 2023) ("The ICRC operates worldwide, helping people affected by conflict and armed violence and promoting the laws that protect victims of war.") ICRC efforts include creating access to education, addressing sexual violence, addressing climate change and conflict, building economic security, and more. *What We* Do, INT'L COMM. RED CROSS, https://www.icrc.org/en (last visited Nov. 20, 2023).

[170] SAVE THE CHILDREN, *supra* note 165.

[171] *Id*.

[172] *Id.* Ms. Jebb sent the draft declaration to the League of Nations, stating that she believed "we should claim certain rights for the children and labor [sic] for their universal recognition." *Id.* The draft was later ratified during the fifth general assembly, on February 28, 1924. *Geneva Declaration of the Rights of the Child, 1924*, HUMANIUM, https://www.humanium.org/en/geneva-declaration/ (last visited Nov. 20, 2023).

[173] *Geneva Declaration of the Rights of the Child, 1924*, HUMANIUM, https://www.humanium.org/en/geneva-declaration/ (last visited Nov. 20, 2023).

[174] Geneva Declaration, *supra* note 70. The Geneva Declaration recognized five basic principles:

> (1) the child must be given the means requisite for its normal development, both materially and spiritually.
>
> (2) The child that is hungry must be fed, the child that is sick must be helped, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succored.
>
> (3) The child must be the first to receive relief in times of distress.

B. *Modern Protection for and Recognition of Children on the International Scale*

The ambiguity of the modern international *best interest of the child* standard has led to its erratic enforcement.[175] However, to understand what the standard should incorporate in its use, it is important to look at its development and the international goals that surrounded its creation. While the Geneva Declaration only recognized five idealistic goals, it set a major precedent among the international community in the way children should be viewed and protected.[176]

Nothing significantly related to children's rights was internationally recognized again until 1986 when the UN General Assembly acknowledged by declaration that social and legal rights associated with the welfare of children needed to be engrained in foster and adoption placements for children on both the national and international scale.[177] To promote this, key provisions of the declaration realize that the first priority is for a child to be cared for by his or her own parents and that child welfare depends upon good family welfare.[178] Just three years later, the United Nations recognized

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> (4) The child must be put in a position to earn a livelihood and must be protected against every form of exploitation.
>
> (5) The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

Id.; Declarations in international law are typically not binding. *Glossary*, UNTC, https://treaties.un.org/pages/overview.aspx?path=overview/glossary/page1_en.xml (last visited Jan. 24, 2024) ("The term 'declaration' is used for various international instruments. However, declarations are not always legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations."). The General Assembly of the League of Nations once again approved the Geneva Declaration. *Geneva Declaration of the Rights of the Child, 1924*, HUMANIUM, https://www.humanium.org/en/geneva-declaration/ (last visited Jan. 24, 2023). Although the signatories promised to incorporate the principles of the document into their national laws, they were not legally bound to do so. *Id.*

[175] Nigel Cantwell, *Are 'Best Interests' a Pillar or a Problem for Implementing the Human Rights of Children?*, *in* THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: TAKING STOCK AFTER 25 YEARS AND LOOKING AHEAD 61, 61–69 (Ton Liefaard & Julia Sloth-Nielsen eds., 2016) (discussing the problematic nature of the vague "best interest" standard as a consequence of not having a reference point or similar standard for its application).

[176] Office of the U.N. High Commissioner for Human Rights, *Legislative History of the Convention on the Rights of the Child*, 3 U.N. Doc. HR/PUB/07/1 (2007), https://www.ohchr.org/sites/default/files/Documents/Publications/LegislativeHistorycrc1en.pdf (last visited Nov. 19, 2023); *see* Geneva Declaration, *supra* note 70.

[177] United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally, G.A. Res. 41/85 (Dec. 3, 1986) [hereinafter Protection and Welfare of Children].

[178] *Id.* at arts. 2, 3.

human rights for children in the Convention on the Rights of the Child.[179] The CRC recognizes that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding," which emphasizes the international appreciation of child identity development.[180] Article 29 of the CRC provides:

> States Parties agree that the education of the child shall be directed to . . . [t]he development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.[181]

This emphasizes some of the crucial considerations in children's rights. Article 3 of the CRC explicitly prioritizes the *best interest of the child*, which obligates State compliance within both private and public social welfare spheres.[182] This consideration has been incorporated into many States' laws, however, the CRC does not define the term *best interest of the child*.[183] Thus, States have wide discretion in determining how they will ensure they adhere to best interest of the child.[184]

As of July 1, 2020, all Member States of the United Nations, except the United States, have ratified or acceded to the CRC.[185] In addition, "170 States [have] ratified or acceded to the Optional Protocol[186] on the involvement of

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[179] *See* CRC, *supra* note 46, at Preamble.

[180] *See id.* The CRC article 8 requires that "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference," and that "where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing his or her identity." *Id*. at art. 8.

[181] *Id*. at art. 29(1)(c).

[182] *Id*. at art. 3(1).

[183] *See id.* at arts. 3, 9, 18, 21, 40.

[184] *See* MICHAEL FREEMAN, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, ARTICLE 3: THE BEST INTERESTS OF THE CHILD 25–31 (2007).

[185] U.N. Secretary-General, *Status of the Convention on the Rights of the Child*, ¶ 3, U.N. Doc. A/75/307 (Aug 12, 2020).

[186] Optional Protocols are treaties that typically provide additional procedures regarding a human rights treaty or further addresses issues of previously enacted treaties. *What is an Optional Protocol?*, U.N. ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN, https://www.un.org/womenwatch/daw/cedaw/protocol/whatis.htm (last visited Dec. 27, 2023).

children in armed conflict;[187] [and] 176 States [have] ratified or acceded to the Optional Protocol on the sale of children, child prostitution, and child pornography."[188] The CRC monitoring committee[189] observed that a majority of States have reviewed their domestic legislation to ensure that it complies with the CRC.[190] However, as described above, the United States has yet to ratify the CRC and is therefore not bound by its principles, including the principle that States should take more measures to identify children in vulnerable or marginalized situations.[191]

In 2022, the United Nations stated that illegal international adoptions violate human rights.[192] In particular, such adoptions violate the sale of or trafficking in children[193] and the right for every child to preserve their identity,[194] leading to devastating consequences on the lives and rights of victims.[195] The *United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally* was adopted by the UN General Assembly in 1986.[196] It was the first international agreement to recognize the principle of subsidiarity, which provides that an international adoption should only take place when suitable adoptive parents cannot be identified in the child's country of origin.[197]

The CRC also emphasizes the principle of subsidiarity, stating that "inter-country adoption may be considered as an alternative means of child's care, if the child . . . cannot in any suitable manner be cared for in the child's country of origin."[198] Many countries have incorporated the international best practice of subsidiarity by classifying international adoption as an *exceptional measure*, contemplated only after all attempts to realize a

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[187] U.N. Secretary-General, *Status of the Convention on the Rights of the Child*, ¶ 3, U.N. Doc. A/75/307 (Aug 12, 2020).

[188] *Id*.

[189] The monitoring committee is in charge of reviewing State's reports for monitoring compliance to the conventions. *Id.*

[190] *Id.* at ¶ 5.

[191] *Id.* at ¶¶ 3, 6.

[192] U.N. Human Rights Office of the High Commissioner, *Illegal Intercountry Adoptions Must Be Prevented and Eliminated: UN Experts* (Sep. 29, 2022), https://www.ohchr.org/en/press-releases/2022/09/illegal-intercountry-adoptions-must-be-prevented-and-eliminated-un-experts#:~.

[193] *See* Livia Ottisova et al., Psychological Consequences of Human Trafficking: Complex Posttraumatic Stress Disorder in Trafficked Children, 44 BEHAVIORAL MEDICINE 234 (2018).

[194] CRC, *supra* note 46, at art. 29(1)(c).

[195] U.N. Human Rights Office of the High Commissioner, *supra* note 192.

[196] Protection and Welfare of Children, *supra* note 177.

[197] *Id.* at art. 17.

[198] CRC, *supra* note 46, at art. 21(b).

domestic adoption are exhausted first.[199] Sometimes this is done by enforcing a period during which the adoption agency must find a suitable domestic placement before they can begin looking internationally.[200] Other States require that priority be given to their nationals abroad if the State is unable to find a domestic placement for the child.[201]

The international community has prioritized the subsidiarity principle for many reasons.[202] First, States and scholars have recognized that children should not be separated from their families, especially on a permanent basis because families are the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.[203] Scholars have argued that the permanency of guardianships or third-party community members serves the child interests at least as well, if not better than an international adoption would.[204] Second, it is also now recognized that children have a right to their identity,[205] including knowing and respecting their parents, culture, language, and values of the country from which they come.[206] Since international adoptions sever the rights of birth parents legally and culturally, children lose the right to their identity under systems that do not prioritize the subsidiarity principle.[207]

C. *A Flawed Attempt to Regulate Intercountry Adoptions*

In 1993, thirty-eight Hague Conference Member States came together to draft the Hague Convention.[208] In response to the novel large-scale migration of children across large geographical distances, the Hague Convention established standardized safeguard practices for international adoptions.[209] The drafting was inspired by news reports of atrocities involving

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[199] U.N. Department of Economic and Social Affairs/Population Division, *Child Adoption: Trends and Policies*, at 42, U.N. Doc. ST/ESA/SER.A/292 (2009).

[200] *Id*.

[201] *Id*.

[202] David M. Smolin, *The Case for Moratoria on Intercountry Adoption*, 30 S. CAL. INTERDISC. L.J. 501, 504–05 (2021).

[203] *Id.* at 504*;* CRC, *supra* note 46, at Preamble.

[204] *See, e.g.*, Albert & Mulzer, *supra* note 29, at 560.

[205] CRC, *supra* note 46, at art. 8.

[206] *Id.* at art. 29.

[207] Joseph M. Isanga, *Surging Intercountry Adoptions in Africa: Paltry Domestication of International Standards*, 27 BYU J. PUB. L. 229, 240–41, 253 (2012); CRC, supra note 46, at art. 29.

[208] Hague Convention, *supra* note 49, at 1134.

[209] *Id.* at Preamble.

international adoption practices out of Romania after the fall of Ceausescu.[210] The number of foreign adoptions skyrocketed between 1990 and 1991, just after the end of the Ceausescu regime, with more than 10,000 adoptions to foreigners registered by Romanian NGOs.[211] "In those early days, Bucharest had little control, let alone oversight, of the adoption process, much of which was conducted underground on what would become a thriving black market."[212] These incidents highlighted the need for adoption regulations, especially in countries that are destabilized after armed conflicts. [213]

By the 1990s, intercountry[214] adoption had become a controversial issue for many States who had a stake in the outcome of emerging law.[215] Many of the States involved in the convention drafting process were States such as Mexico, Brazil, and Romania, whose children were frequently made available for intercountry adoption.[216] Many States held serious reservations about the implications of the Hague Convention, whether attributable to first-hand knowledge of abusive adoption practices, beliefs that children's best interests were served by adoptions within the local community and culture, concerns over exploitation by wealthier nations, or all of the above.[217]

Ultimately, the Hague Convention drew on the underlying principles that Convention States *did* agree upon in their understanding of adoptions – that protections were needed for children, the birth parents, and the adoptive parents involved in intercountry adoptions.[218] The Hague Convention

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[210] Holly C. Kennard, Comment, *Curtailing the Sale and Trafficking of Children: A Discussion of the Hague Conference Convention in Respect of International Adoptions*, 14 U. PA. J. INT'L BUS. L. 623, 631 (1994); Sara Dillon, *Making Legal Regimes for Inter-country Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Inter-country Adoption*, 21 B. U. INT'L L.J. 179, 248 (2003) (discussing how former president of Romania Ceaucescu's actions led to many unwanted children and overflowing orphanages).

[211] Anna Maria Ciobanu, *'I Was Definitely Trafficked': Romanians Adopted as Kids Now Seek Justice, Answers as Adults*, RADIO FREE EUROPE RADIO LIBERTY (Jan. 7, 2023), https://www.rferl.org/a/32213639.html.

[212] *Id.*

[213] Kennard, *supra* note 210, at 631.

[214] There is no difference between the terms "intercountry" and "international" adoptions. The terms can be used interchangeably. *See International Adoption*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/immigrantrefugeehealth/adoption/index.html (last visited Oct. 30, 2023).

[215] Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47, 55 (2010).

[216] Hague Convention, *supra* note 49, at 1134.

[217] Estin, *supra* note 215 (discussing how controversy surrounding the Hague Convention arose due to the fear that poorer nations would lose their children to wealthier nations).

[218] Hague Convention, *supra* note 49, at 1134–35; Proceedings of the Seventeenth Session 10 to 29 May 1993; J.H.A. van Loon, *Note on the Desirability of Preparing a New Convention on International Co-operation in Respect of Intercountry Adoption in* HCCH, PROCEEDINGS OF THE SIXTEENTH SESSION, MISCELLANEOUS MATTERS, TOME I 165 (1987).

reinforced the shared belief that children "should grow up in an atmosphere of happiness, love, and understanding."[219] In doing so, the Hague Convention encompasses parts of the CRC, such as Article 21, which expresses that suitable care in a child's country of origin is preferable to international adoptions.[220]

The Hague Convention's provisions are largely procedural in nature rather than taking a holistic stance or providing factors of consideration for each international adoption being facilitated.[221] Chapter I of the Hague Convention states that to ensure a child's fundamental rights – mainly those outlined in the CRC – are protected, the *best interest of the child* standard must be applied to all transactions involving the transfer of children.[222] The rest of the Hague Convention outlines requirements for sending and receiving States in intercountry adoptions, essentially distributing responsibility between the two States to ensure oversight of such transactions.[223] Most of the requirements are largely procedural, such as establishing central authorities to regulate relevant transactions.[224] The Hague Convention also includes a general prohibition on "improper financial or other gain" from adoptions and activities related to adoptions.[225] Article 14 explicitly requires States to facilitate an intercountry adoption through an accredited body so that all international adoptions can have Central Authority oversight, ensuring the facilitated agreements meet the Hague Convention requirements.[226]

Furthermore, although Chapter VI of the Hague Convention mainly contains provisions of general application, these provisions have an enormous impact on the child.[227] For example, Article 29 prohibits any contact between prospective adoptive parents and the child's biological

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[219] Hague Convention*, supra* note 49, at 1134–35.

[220] Estin, *supra* note 215, at 56; *see* Hague Convention, *supra* note 49, 1134–35 (citing CRC, *supra* note 46, at art. 3) (affirming that a child, "for the full and harmonious development of [their] personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding," and by doing so indicated that adoption is preferential to institutional care even if it requires that a child be taken out of their home country because it may provide a more permanent family solution).

[221] *See generally* Estin, *supra* note 215 (providing a historical overview of the Hague Conferences on international family law and the largely procedural conventions that arose from those debates and discussions).

[222] Hague Convention, *supra* note 49, at 1135.

[223] Kristina Wilken, *Controlling Improper Financial Gain in International Adoptions*, 2 DUKE J. GENDER L. & POL'Y 85, 89 (1995).

[224] *See id.* at 89–90.

[225] Hague Convention*, supra* note 49, at 1140, 1143.

[226] *See id.* at 1135–36.

[227] *See* Stein *supra* note 1, at 73.

parents or any person who has care over the child.[228] Articles 30 and 31 also preserve information concerning the child's origin, parents, and medical history, which may provide the child with information they need to trace their origins in the future.[229] While some of these provisions have a positive impact, others, like the discretion to permit payment for "reasonable professional fees" in Article 32(2), have negative consequences.[230]

Although the Hague Convention provides a framework to help the international community reduce baby selling, its provisions are not strong enough to end it.[231] Notably, the Hague Convention does not require countries to ban baby selling, and, worse, it does not punish baby sellers.[232] Furthermore, while the Hague Convention outlines the procedures that States must comply with to be approved as member States, there is nothing that induces or encourages States to comply with such safeguards.[233]

The lack of an enforcement mechanism in the Hague Convention is especially problematic when it comes to private parties who have been accredited[234] by an *authority*.[235] Private professionals involved in international adoptions, including lawyers, facilitators, doctors, and social

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[228] Hague Convention, *supra* note 49, at 1136.

[229] *Id*.

[230] *See infra* Section IV.A.

[231] Stein, *supra* note 1, at 73.

[232] *Id.* at 76.

[233] *See* Hague Convention, *supra* note 49; Stein, *supra* note 1, at 76.

[234] Hague Convention Articles 10–12 provide that "[a]ccreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted. Hague Convention, *supra* note 49. Articles 11–12 state that an accredited body shall (a) pursue non-profit objectives, (b) be managed and staffed by persons with training of ethical standards, and (c) be under State supervision; it shall also only be permitted to act in another Contracting State, if both the sending and receiving state authorize it to do so. *Id.*

[235] A CRC Contracting State is obligated to designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities. Hague Convention *supra* note 49, art. 9. The Central Authorities' jobs are to:

> (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
> (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
> (c) promote the development of adoption counselling and post-adoption services in their States;
> (d) provide each other with general evaluation reports about experience with intercountry adoption;
> (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Id.

welfare employees, "can easily hide illegal payments because it is difficult to distinguish a legitimate payment for professional services from a questionable payment" to induce mothers into selling their babies.[236] Even if a questionable payment is discovered, there are no punishment mechanisms in the Hague Convention that would incentivize States to take strong measures to ensure transactions are not repeated by the next private professional.[237] Hence, why the United States' intercountry adoptions have historically been and continue to be overlooked today.[238]

IV. ADDRESSING THE PROBLEMS THAT HAVE LED TO THE EXPLOITATION OF THE INTERNATIONAL ADOPTION SYSTEM

Most of the estimated one million intercountry adoptions completed since the rise in this practice in 1950 represent chronic violations of basic ethical principles codified in international law.[239] Intercountry adoption is a multifaceted process which requires the cooperation of numerous jurisdictions and agencies.[240] Thus, understanding how adoption practices between the United States and the RMI have conjured issues of exploitation requires understanding the United States' attitude toward adoptions generally, its practices in intercountry placements, and the pertinent international law governing the dynamic.

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[236] Stein, *supra* note 1, at 76–77.

[237] *See* Hague Convention, *supra* note 49.

[238] *See generally* GONDA VAN STEEN, ADOPTION, MEMORY, AND COLD WAR GREECE: KID PRO QUO? (2019) (revealing the hidden history of post-Cold War intercountry adoptions and how adoptions of Greek children to the United States far outpaced even those of Korean children on a per capita basis). Van Steen's book highlights how even individual intercountry adoption cases contribute to an emerging "collective subjectivity among Greek adoptees" that is also prevalent among adoptees from other countries because of the congruity in the black-market adoption structure. *Id.* at 239.

[239] Nicola Smith et al., *Lies, Love and Deception: Inside the Cut-throat World of International Adoption*, THE TELEGRAPH, (Dec. 6, 2022) https://www.telegraph.co.uk/global-health/climate-and-people/international-adoption-scandal/; *see* U.N. Hum. Rts. Special Proc. Joint Statement on Illegal Intercountry Adoptions, 1–2, (Sept. 29, 2022) https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf

[240] The Hague Convention was created at the international level precisely to address this issue. *See The Hague Convention & Why it Matters*, FIRST LEGAL (Sept. 27, 2023), https://www.firstlegal.com/the-hague-convention-why-it-matters/ ("The Hague Service Convention stands as a beacon of international legal cooperation, uniting 83 member countries under its guiding principles.").

A. *The United States' Attitude Toward International Adoptions: Finding Children for Homes, Not Homes for Children*

While domestic adoptions have existed within the United States since the nineteenth century,[241] international adoptions are a relatively new practice in the United States.[242] International adoptions gained popularity only after World War II, as a result of the first modern humanitarian crisis of mass amounts of parentless children in war-torn regions.[243] For many years, domestic adoptions developed alongside a "black market" of adoptions outside of the limited domestic family law framework.[244] "In 1851, Massachusetts passed the Adoption of Children Act, the first law in the United States acknowledging that the needs of children should take precedence in the adoption process."[245] The Act "instructed judges to ensure that adoption arrangements were handled appropriately."[246] However, "appropriately" was just as vague as it sounds; the Act did not give parameters of what was considered an "appropriate" adoption arrangement.[247]

As a result of such a vague law, "the first black market babies appeared in the United States in the 1920s" when a shortage of state-run orphanages led to an overcrowding dilemma.[248] Even though some adoption laws considering the welfare of children existed,[249] "state regulations to prevent baby selling were non-existent," which led to greater numbers of babies

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[241] *See Uniform Adoption Act of 1994,* ENCYCLOPEDIA.COM, https://www.encyclopedia.com/social-sciences/applied-and-social-sciences-magazines/uniform-adoption-act-1994 (last visited Nov. 20, 2023) [hereinafter *Uniform Adoption Act*] ("In 1851, Massachusetts passed the Adoption of Children Act, the first law [in the United States] acknowledging that the needs of children should take precedence in the adoption process. The law instructed judges to ensure that adoption arrangements were handled appropriately.").

[242] WINSLOW, *supra* note 26, at 24 ("[I]n 1948, Child Welfare League members admitted that 'adoption as a professional service is still very young,' indicating the novel nature of the adoption procedures and structures in the postwar era.").

[243] *Id.* at 18–19.

[244] *Id.*

[245] *Uniform Adoption Act*, *supra* note 241.

[246] *Id.*

[247] *See id*.

[248] Stein, *supra* note 1, at 50 (discussing how in the 1920s, social changes and the absence of state-run orphanages provided fertile ground for the emergence of black market adoption as a means to place babies with adoptive parents); M. Haviland, *Black Market Adoption*, https://www.angelfire.com/fl2/colebaby/story.html (last visited Sept. 24, 2023). ("In the early 1900s, private secular and religious groups began the permanent residential care of orphaned children, but were ill equipped to handle the multitude of America's orphans.").

[249] *See Uniform Adoption Act*, *supra* note 241.

being sold.[250] At the time, baby selling began domestically.[251] However, within less than a decade, the problem was exacerbated when babies started to also be trafficked and sold across international borders with Canada.[252] Babies were sold largely by doctors and lawyers to parents who did not want to go through the "complex domestic regulations"[253] or stay on a long waiting list for a child to become available.[254] This practice was seen across the United States at the time, especially in Tennessee, Florida, and the Northeast.[255] This domestic trend slowly dwindled as adoption consent laws began to emerge[256] and made the practice between states more difficult.[257] Meanwhile, war abroad simultaneously created the perfect solution for obtaining new children to feed the adoption machine amid the United States' tightening of adoption laws.[258]

Formal adoption agencies were first created during the early twentieth century, offering support to adoptive parents and working to make the process easier for those wishing to give up a child for adoption.[259] Historically, adoptions were facilitated through individuals, and even as agencies began to emerge, many adoptions were still completed through

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[250] Stein, *supra* note 1, at 50; Wilken, *supra* note 223, at 87 ("U.S. adoption laws devote insufficient attention to improper profiting from international adoptions. In particular, they fail to regulate payments made by the adoptive parents of a child to the child's birth parent or to an adoption intermediary.").

[251] Stein, *supra* note 1, at 50.

[252] BALCOM, *supra* note 22, at 3–4.

[253] Stein, *supra* note 1, at 50–51. As children's welfare was brought to the forefront of the American consciousness, states began to require agencies to vet potential adoptive parents' histories and socioeconomic statuses. *Id.* at 49.

[254] *Id.* at 50–51, 64 ("Prospective adoptive parents may wait up to ten years for a domestic adoption . . . [while] couples adopting internationally generally only wait approximately six months to two years.").

[255] *Id.* at 51–52.

[256] *Id.* at 49–50 (detailing the four state consent statutes that emerged requiring birth parent consent to the adoption and allowed for revocation).

> The first kind of consent statute allows revocation at any time before the adoption is finalized . . . . The second type of consent statute permits revocation at any time as long as revocation furthers the best interest of the child. The third type of statute provides only a limited time to revoke consent. Finally, the last type of statute prohibits revocation, without regard to any time limit, unless there is a showing of fraud or duress in obtaining consent.

Id.

[257] *Id.* at 52.

[258] *See supra* Section II.A.

[259] *Uniform Adoption Act*, *supra* note 241.

private placements – birth mothers and their families arranging adoptions directly with the families which the children would be placed with.[260] Before 1950, adoptive parents, often childless and wealthy,[261] "requested children of their own race and without major health problems."[262] However, "a 1958 initiative[263] encouraged adoption of Native American orphans,[264] and in 1961 Congress [amended] [the Immigration and Nationality Act][265] specifically setting conditions for the adoption of international children by U.S. citizens."[266] The Urban League and other domestic agencies began promoting adoption for children of color and attempted to encourage adoptions of children with physical or mental disabilities.[267] Even though previous adoptions were severely discriminatory against children with disabilities and children of color, the Vietnam War in the 1960s opened the hearts of Americans to help the perceived war-torn children abroad, thereby cultivating extensive efforts to expand placement options for other children.[268] This rhetoric in the U.S. was merely an absorption of the international rhetoric surrounding warn-torn children in Europe post-World War II.[269] What is evident is that the false *savior industrial complex*[270] has been and continues to be at the core of many foreign adoption placements in

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[260] *Id*.

[261] WINSLOW, *supra* note 26, at 21–22.

[262] *Uniform Adoption Act*, *supra* note 241.

[263] Albert & Mulzer, *supra* note 29, at 574–75. In 1958, the federal Bureau of Indian Affairs worked with the Child Welfare League of America – a national organization of child welfare and adoption agencies – to create the Indian Adoption Project, designed to place Native children from sixteen western states into homes with white families in the East. *Id.*

[264] *Id.* Forced Native American adoptions led to similar culture erasure as with Marshallese adoptions. *See id.* The history of the United States' treatment of Native Americans is beyond the scope of this manuscript.

[265] Pub. L. No. 87-301, 75 Stat. 2237; *see The Origins of Adoption in America*, PBS, https://www.pbs.org/wgbh/americanexperience/features/daughter-origins-adoption-america/ (last visited Sept. 24, 2023) ("The Immigration and Nationality Act incorporates provisions for orphans adopted from foreign countries by American citizens."); Albert & Mulzer, *supra* note 29, at 575–76 ("Around the same time, in the early 1960s, as the Civil Rights Movement began to make inroads against de jure segregation," the complex racial momentum paved an expansion of rights for people of color in the United States).

[266] Uniform Adoption Act, *supra* note 241.

[267] Albert & Mulzer, *supra* note 29, at 575–76. Prior to the National Urban League's push, Black families were prohibited from adopting children through agencies. *Id.* Because there were no Black adoptive families in the agencies' systems, Black birth mothers were also prohibited from using agencies to relinquish their children to adoptive parents. *Id.*

[268] *See generally* Nguyen Da Yen v. Kissinger 528 F.2d 1194, (9th Cir. 1975) (concerning air-lifting children out of Vietnam).

[269] *See supra* Section II.A.

[270] *See generally* Mutua, *supra* note 118.

the United States.[271] To this end, the Western American adoption system prioritizes finding children for childless parents rather than finding homes for parentless children, all while disguising American adoption as a heroic humanitarian effort.[272] With the United States seeing roughly 6,500 adoptions of children from abroad in 1992, the dubious practices[273] that continually popped up in these adoptions illuminated the considerable work required to reform the United States' adoption laws.[274] By 1994, as many as 10,000 adoptions involved foreign children adopted by American families.[275] While it was apparent from the volume of adoption cases in the United States that the adoption process "had made great strides, both in terms of its [social] acceptance and in the number of children being helped, numerous legal headaches still plagued the process."[276] One such legal headache was the vast array of varying state laws.[277]

The increased number of adoptions and the differences in adoption laws from state to state made the adoption procedure for intercountry and domestic adoptions difficult and remarkably cumbersome.[278] In an effort to integrate divergent standards and encourage adoption, the National Conference of Commissioners on Uniform State Laws, a century-old agency dedicated to integrating state laws across the nation, proposed the Uniform Adoption Act

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[271] 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, 1612–13 (2007). In 2004, an earthquake off the coast of Indonesia caused a tsunami tidal wave that devastated countries across Southeast Asia. Id. There were an estimated 216,000 deaths and "the U.S. Department and international adoption organizations fielded calls pouring in from U.S. families interested in providing homes to orphaned children." Id. However, "the need to identify and reunite [children with] family members [and] the variance in adoption procedures in different countries" led "many of the countries to shut down their borders to international adoptions altogether." *Id.*

[272] Kennard, *supra* note 210, at 625–26. "In the United States and Western Europe, declining birth rates and the largest number of infertile couples in history have created a situation where the demand for children exceeds the supply. *Id.* As a result, childless couples have turned to intercountry adoptions [in] impoverished, war-torn countries" to provide western parents with the children they desire. *Id.*

[273] *Id*. at 627 (explaining that prospective adoptive parents often choose "independent agents over licensed agencies because of the independent agents' ability to circumvent bureaucratic channels).

[274] Elizabeth Bartholet, *International Adoption: Current Status and Future Prospects*, 3 THE FUTURE OF CHILDREN 89, 91 (1993).

[275] *Uniform Adoption Act*, supra note 241.

[276] *Id*.

[277] *Id.*

[278] *Id*.

of 1994 ("UAA").[279] Inspired by the Hague Convention, the drafters highlighted the need to protect the child's best interest.[280]

One of the main ways that the UAA's drafters attempted to prioritize the child's best interest was by creating consent requirements for individuals placing a child up for adoption.[281] As ambitious and idealistic as the UAA was, a huge problem existed – none of the states incorporated the UAA into its laws and it eventually died.[282] Legislators went back to the drawing board and by 2000, it was much easier to get consensus because the United States now had an obligation to ratify and incorporate the Hague Convention.[283] As such, the Intercountry Adoption Act of 2000 ("IAA") was passed.[284]

Throughout the process of building the new international family law, the United States continually showed its support and even participated in the Hague Conference.[285] In March 1994, the United States signed the Hague Convention, demonstrating its intent to become a party member.[286] Many of the concerns that resonated in the drafting of the Hague Convention pertained to issues and testimonies of coerced or induced consent to adoptions, abductions, and an unregulated adoption system that created an incentive for

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[279] Joel D. Tenenbaum, *Introducing the Uniform Adoption Act*, 30 FAM. L.Q. 333, 333–34 (1996) [hereinafter UAA].

[280] Stein, *supra* note 1, at 53.

[281] *Id*. at 53–55.

[282] By 2006, only the state of Vermont had adopted the UAA. *Uniform Adoption Act*, *supra* note 241.

[283] By signing the Hague Convention, the United States consented to uphold its principles. *See* ALAN BOYLE & CHRISTINE CHINKIN, THE MAKING OF INTERNATIONAL LAW 41 (2007) (States enter into binding agreements in the form of treaties). The United States is a dualist country when it comes to international law. *See* Giuseppe Sperduti, *Dualism and Monism: A Confrontation to be Overcome*, 3 ITALIAN Y.B. INT'L L. 31, 38 (1977). As a dualist country, the United States is not bound by a treaty upon signing. Instead, after signing a treaty, Congress must adopt new legislation which incorporates the principles of the treaty into domestic law. *Id.* Only after such legislation becomes law is a treaty or convention considered to be ratified by the United States. *Id.* Yet, the Vienna Convention on the Law of Treaties obligates States to refrain from acts which would defeat the object and purpose of a treaty when they have become signatories but have not ratified the treaty. Vienna Convention on the Law of Treaties art. 18, Jan. 27, 1980, 1155 U.N.T.S. 331.

[284] Intercountry Adoption Act of 2000, Pub. L. No. 106–279, 114 Stat. 825 (codified as 42 U.S.C. § 14901).

[285] Scheduling Proposal from Melanne Verveer, Assistant to the President, to Stephanie Streett, Assistant to the President (Jan. 20, 2000) NAT'L ARCHIVES CATALOG, https://catalog.archives.gov/id/24494037 (last visited Sept. 25, 2023) ("On May 29, 1993 the United States and 65 other countries came together to negotiate and sign the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption."); *see* GLOBALIZATION OF CHILD LAW: THE ROLE OF THE HAGUE CONVENTIONS VII-IX (Sharon Detrick & Paul Vlaardingerbroek eds., 1999).

[286] *See Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, U.N. Treaty Collection, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800ac2f9&clang=en (last visited Nov. 20, 2023).

significant financial gain.[287] Thus, when drafting the IAA, U.S. Congress sought to address these concerns.[288] Testimony before the House International Relations Committee and the Senate Foreign Relations Committee focused on problems that U.S. citizens encountered during the international adoption process.[289] One of these problems included the large number of children with undiagnosed medical conditions and psychological disabilities coming into the country through adoption.[290] Testimony also highlighted the exorbitant fees paid to facilitators, [291] and the lack of recourse

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[287] Trish Maskew, *The Failure of Promise: the U.S. Regulations on Intercountry Adoption Under the Hague Convention*, 60 ADMIN. L. REV. 487, 491 (2008) (listing improper financial gain as one of the issues that prompted the establishment of the Hague Convention on Intercountry Adoption); *see* Elisabeth J. Ryan, *For the Best Interests of the Children: Why the Hague Convention on Intercountry Adoption Needs to Go Farther, As Evidenced by Implementation in Romania and the United States*, 29 B.C. INT'L & COMP. L. REV. 353, 355 (2006) (highlighting that in November 2004, undercover investigators in Romania found parents willing to sell their babies outright for as little as 500 Euros, or approximately $663, within minutes).

[288] *See* Intercountry Adoption Act of 2000, Pub. L. No. 106–279, 114 Stat. 825 § 2(b)(2).

[289] *See* Implementation of the Hague Convention on International Adoption: Hearing Before the H. Comm. on Int'l Rel., 106th Cong. 35 (1999).

[290] *See id.* (providing testimony that the American Academy of Pediatrics' most significant concerns include inadequate or unavailable information released to parents about the health and well-being of children being considered for adoption). Before international adoptions became common place in the United States, white American families sought to adopt white children with no disabilities or other developmental issues. *See, e.g.*, Devon Brooks, Sigrid James & Richard P. Barth, *Preferred Characteristics of Children in Need of Adoption: Is There a Demand for Available Foster Children?*, 76 SOC. SERV. REV. 575, 578–79 (2002). The current international adoption system, which places orphans with health or psychological concerns with American families, illustrates the lack of information provided to prospective parents about the health and well-being of the child they are adopting. *See* Implementation of the Hague Convention on International Adoption: Hearing Before the H. Comm. on Int'l Rel., 106th Cong. 35 (1999). In fact, there are numerous instances of adoptive parents killing their adopted children due to undisclosed behavioral or developmental issues. Theresa Vargas, *N.C. Woman Admits Killing Adopted Russian Daughter Death of Russian Child Could Imperil Future Adoptions*, WASH. POST, (Mar. 2, 2006), https://www.washingtonpost.com/archive/local/2006/03/02/nc-woman-admits-killing-adopted-russian-daughter-span-classbankheaddeath-of-russian-child-could-imperil-future-adoptionsspan/a22d4bb5-4661-447f-b2a2-05613c504485/ ("Adoptive parents . . . are given little preparation for what to expect [when children they have adopted have behavioral and developmental problems.]").

[291] *See* 146 CONG. REC. H6395 (July 18, 2000) (statement of Rep. William Delahunt) ("Documented abuses [in international adoptions] range from the charging of exorbitant fees by . . . 'facilitators' . . . to child kidnapping, baby smuggling and [coercing birth parent consent].").

against adoption agencies and facilitators who abuse the system.[292] The signing of the IAA, which came into effect October 6, 2000, solidified the United States' commitment to addressing these problems by upholding the Hague Convention's principles[293]

Upon completion of the IAA, the stated purposes turned out to be a compromise of competing private and public interests. As such, the IAA states that its purpose is:

> (1) to provide for implementation by the United States of the [Hague] Convention;
>
> (2) to protect the rights of, and prevent abuses to adoptions subject to the birth families, and adoptive parents involved in adoptions subject to the Convention, and to ensure that such adoptions are in the children's best interests; and
>
> (3) to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad[.][294]

Working together, the Hague Convention and the IAA seek to guard against the abduction, sale, and trafficking of children by establishing procedural norms that allow different national legal systems to work

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[292] *See id.* (describing the problem of information being "improperly held from adoptive families with regards to the child's medical and psychological condition"); David M. Smolin, *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*, 52 WAYNE L. REV. 113, 194 (2006) (discussing how agencies "are known to include broad waivers of liability in their contracts with parents . . . designed to allow . . . agencies to avoid accountability for their failures.") [hereinafter Smolin, *Child Laundering*]; Smolin, *Intercountry Adoption and Poverty*, *supra* note 120, at 118. ("The person at the top of this criminal conspiracy may receive [up to] $20,000 for each child who is placed for adoption overseas, with funds coming from purportedly legitimate adoption fees and 'orphanage donations.'").

[293] Intercountry Adoption Act of 2000, 42 U.S.C. § 14901(a). Congress recognizes:

> (1) the international character of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at The Hague on May 29, 1993); and
>
> (2) the need for uniform interpretation and implementation of the Convention in the United States and abroad, and therefore finds that enactment of a Federal law governing adoptions and prospective adoptions subject to the Convention involving United States residents is essential.

Id.; O'Keeffe, *supra* note 271, at 1629.

[294] *Id.* at § 14901(b)(1)-(3).

collaboratively to facilitate intercountry adoptions.[295] However, the IAA includes problematic terms and definitions, specifically pertaining to who can facilitate intercountry adoptions.[296] Given the United States' historic exploitation of the RMI, the U.S. Department of State's ("State Department") supplemental regulations[297] and the IAA further exacerbate the intercountry adoption system's flaws in the context of the United States-RMI adoptions.[298]

The Hague Convention requires a central authority be designated in each country to oversee cooperation and compliance with the convention regulations, and therefore, the U.S. Congress designated the State Department as the central authority.[299] As the central authority, the U.S. State Department oversees the accreditation of organizations and people designated to facilitate adoptions and sometimes issues reporting guidelines when required by the sending country.[300] Notwithstanding the undoubted importance of international conventions and each State's work to implement

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[295] *See* 42 U.S.C. § 14901(b)(3) (listing the purpose of the Act, including improving the government's ability to assist citizens of contracting parties seeking to adopt from abroad); Hague Convention, *supra* note 49, art. 1(b) (declaring the establishment of a system of cooperation among contracting states as an objective of the Convention). Hague Convention party members are subject to the same procedures and recognition of other countries' adoption systems. *See Understanding the Hague Convention*, U.S. DEP'T. OF STATE, https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html#:~:text=The%20Convention%20establishes%20a%20framework,best%20interests%20of%20the%20child (last visited Oct. 30, 2023).

[296] *See* H.R. 2909, 106th Cong. (1999). As introduced, the term ''qualified entity'' meant only "a nonprofit private entity that has expertise in developing and administering standards for entities providing child welfare services and that meets such other criteria as the Secretary may by regulation establish . . . .". *Id.* The Senate however, also added to this definition, "a public entity (other than a Federal entity), including an agency or instrumentality of State government having responsibility for licensing adoption agencies," thereby expanding the scope of who is qualified to perform intercountry adoptions. *Id.* While both are still subject to the approval by the central authority, the public entity may collect profits from the facilitation of adoptions. *Id.*

[297] *See infra* note 307.

[298] *See supra*, Section II.B.

[299] *See* 42 U.S.C. § 14911(a)(1) (designating the U.S. Department of State as the central authority, pursuant to art. 6(1) of the Hague Convention). The State Department did not publish its final regulations until 2006, which meant that the IAA and the Hague Convention were not implemented in the United States until 2006. 22 C.F.R. §§ 96.1–111 (2011). The Department of Homeland Security also released regulations concerning the immigration aspects of the Hague Convention on October 4, 2007. Maskew, *supra* note 287, at 488.

[300] 42 U.S.C. § 14925; 22 C.F.R. §§ 96.51, 96.14 (2006).

them into domestic law,[301] the IAA is based on the Hague Convention's *minimum* standards for regulating intercountry adoptions and therefore does not provide sufficient protection for families of color.[302]

Because virtually all U.S. adoption placement agencies and private individuals contract with independent adoption facilitators abroad,[303] facilitators stand at the core of the problem with intercountry adoptions.[304] In regulating these facilitators, the IAA requires that:

> Except as otherwise provided in this title, no person may offer or provide adoption services in connection with a Convention adoption in the United States unless that person—
>
> (1) is accredited or approved in accordance with this title; or
>
> (2) is providing such services through or under the supervision and responsibility of an accredited agency or approved person.

This language requires that anyone performing adoptions either be accredited or work under the supervision of an accredited entity.[305] Although

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[301] DETERMINING THE BEST INTERESTS OF THE CHILD, CHILD WELFARE INFORMATION GATEWAY 1 (2020) (stating that "all States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have statutes" requiring that the *child's best interests* be considered whenever specified types of decisions are made regarding a child's custody, placement, or other critical life issues).

[302] *See* Leslie Doty Hollingsworth, *Does the Hague Convention on Intercountry Adoption Address the Protection of Adoptees' Cultural Identity? And Should It?*, 53 SOC. WORK J. 377, 377–78 (2008) (discussing that while the Hague Convention calls for preservation and access to an adoptee's origin and background, and "preparation of a report by receiving countries [on the] potential adoptive parents' identities, [family] . . . suitability to adopt, [and] background," cultural identity is not mentioned specifically in the IAA. Attention to it in decisions, counseling, and training appears left to the discretion of adoption agencies) (internal quotation marks omitted).

[303] *See, e.g.*, D. Marianne Blair, *Safeguarding the Interests of Children in Intercountry Adoption: Assessing the Gatekeepers*, 34 CAP. U.L. REV. 349, 355–75 (2005) (discussing "baby buying" scams through facilitators or "baby recruiters" whot have been uncovered in Cambodia, India, and Guatemala, among many other countries). Although difficult to statistically calculate due to the nature of criminality involved with adoption facilitators, numerous instances of baby selling that have been brought to light all involved foreign facilitators. *See id.*; O'Keeffe, *supra* note 271, at 1620. In a story involving the nomadic Lambada tribe in India, women were induced by facilitators to relinquish their babies for fifteen to forty-five dollars. O'Keeffe, *supra* note 271, at 1620. Facilitators then sold the babies to orphanages "for between $220 and $440, and the orphanages would receive anywhere between $2000 and $3000 when those children were placed with foreign adoptive parents." *Id.*

[304] *See infra* Section IV.B.

[305] 42 U.S.C. § 14921 (a)–(b).

this language seemingly offers legal safeguards for children in adoptions processes, exceptions to the IAA diminish its protectionary significance.

The State Department regulations require accredited U.S. adoption providers to take legal responsibility for the actions of their overseas facilitators or agents.[306] However, the State Department created an *exception* and didn't require agency supervision over foreign providers that obtain consent from a birth parent.[307] Instead, the State Department regulations allow the adoption service provider to decide *if* they will supervise their foreign contact who obtains consent directly from the birth parents.[308] Rather than explicitly requiring that the adoption service provider be legally responsible for *all* agents, the final rules merely threaten to revoke accreditation if the U.S. adoption service provider engages in unethical or illegal activity.[309] This is the largest loophole within the IAA because obtaining consent from a birth parent represents the stage with the greatest opportunity for birth parent exploitation, and where human trafficking is more likely to occur due to the misrepresentation of the Western adoption system.[310]

Because intercountry adoptions deal with the permanent relocation of a child from one country to the jurisdiction of another, immigration laws are typically coupled with family or adoption laws.[311] Accordingly, the U.S. Immigration and Nationality Act[312] is also a key facet of the intercountry adoption dilemma. The INA currently allows adoptive parents to make reasonable payments to the child's parents for "necessary" activities.[313] While the INA explicitly prohibits adoptive parents giving money to a child's

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[306] Intercountry Adoption Accreditation of Agencies and Approval of Persons, 22 C.F.R. §96 (2024); Preservation of Convention Records, 22 C.F.R. § 98.2.

[307] *See* 22 C.F.R. § 96.14(c)(3) (2015).

[308] *See* 22 C.F.R. § 96.

[309] *Id.*

[310] *See* Maskew, *supra* note 287, at 503–04. Numerous stories indicate that birth parents are told lies about the adoption process and Western legal systems, such as: parents still having legal rights to their child, that parents could visit their child, that the wealthy families their children were being placed with would continuously send the parents money, and that the adoptee, upon the age of majority, could petition for their birth parents to join them in their receiving country. *See, e.g.*, *id.* at 502–04; Blair, *supra* note 303, at 357.

[311] *See, e.g.*, Stephanie Zeppa, "*Let Me In, Immigration Man": An Overview of Intercountry Adoption and the Role of the Immigration and Nationality Act*, 22 HASTINGS INT'L & COMP. L. REV. 161 (discussing the growth of intercountry adoption within the context of the United States' immigration legal regime).

[312] Immigration and Nationality Act 8 U.S.C.A Ch. 12 (2023).

[313] 8 C.F.R. § 204.3(i) (2023) (stating that child-buying is a ground for denial in a petition for adoption). However, § 204.3(i) also states that nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities. *Id.*

birth parents, either directly or indirectly, as payment for relinquishing the child, the term "necessary" has been read broadly due to the Department of State's regulations that expanded the categories of allowable expenses.[314] These categories include reasonable payments that may be necessary to compensate "activities related to adoption proceedings," months of parental care, and even payment for the mother's care directly preceding and following the birth of the child.[315] Thus, while these regulations state that money must not be exchanged as a payment for the relinquishment of a child, they offer no specific standard that would distinguish between what payments are truly reasonable in light of procedural aspects of adoptions versus payments that are prohibited due to their potential to be coercive in inducing relinquishment of the birth parent's parental rights.[316]

Because payment has become commonplace in adoptions between the United States and the RMI, it is virtually impossible to adequately control and monitor such transactions.[317] The current system, therefore, not only incentivizes facilitators to find adoptive families for a child, but also incentivizes mothers to "conceiv[e] children for the purpose of placing them for adoption."[318] As a result of the provisions regulating intercountry adoption and the lack of agency oversight, facilitators and birth parents are practically guaranteed to receive a "reasonable" amount of money upon relinquishing a child.[319] Without an improvement to this system, individual facilitators will keep finding creative loopholes, as they have, to continue the profitable practice of baby selling.[320]

The hasty facilitation of international adoptions being prioritized over the subsidiarity principle's assurance of safeguarding a child's identity leads to

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[314] 22 C.F.R. § 96.36 (2023).

[315] 22 C.F.R. § 96.36(a).

> If permitted or required by the child's country of origin, an agency or person may remit reasonable payments or activities related to the adoption proceedings, pre-birth and birth medical costs, the care of the child, the care of the birth mother while pregnant and immediately following birth of the child, or the provision of child welfare and child protection services generally.

Id.

[316] *See* 8 C.F.R. § 204.3(i).

[317] *See Comparing the Costs of Domestic, International and Foster Care Adoption*, AM. ADOPTIONS, https://www.americanadoptions.com/adopt/the_costs_of_adopting (last visited Oct. 30, 2023) (providing an estimated cost breakdown of intercountry adoption costs by country).

[318] Maskew, *supra* note 287, at 505.

[319] *Id.*

[320] *See id.* at 505–06.

devastating consequences.[321] The implications of this are not only violations of the United States' international treaty obligations,[322] but also the potential harm to the child involved.[323] In the United States, when intercountry adoptions are prioritized over a sending State's domestic options for a child, they almost always sever parental rights and deprive the child of their cultural and ethnic identity.[324] As a result, the current system not only preys on vulnerable birth parents, but it does so at the expense of the children involved.[325] Thus, to better protect children from intercountry exploitation and to uphold adoptees' best interests, the United States' focus must shift to keeping children within their origin States, rather than creating weak regulations within the intercountry adoption process that unilaterally serve childless American parents.[326]

B. *How the American Attitude Toward Intercountry Adoptions Contributes to the Hawaiʻi-RMI Adoption Problem*

In late 2016, Hawaiʻi once again saw an influx of Marshallese women being trafficked to the United States to sell their unborn babies to adoptive

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[321] *See supra* Section II.A.

[322] *See supra* Part III. The CRC and the Hague Convention prohibit the abduction, the sale of, or traffic in children. *Id.* Processes that encourage such practice are violations of these international laws. *Id.*

[323] Aurélie Harf et al., *Cultural Identity and Internationally Adopted Children: Qualitative Approach to Parental Representations*, 10 PLOS ONE, Mar. 16, 2015 at 1, 3 ("[S]ome studies have found that ethnic and cultural identity can play an important role in the promotion of self-esteem and positive [coping skills].").

> [C]ultural competence of adoptees in their culture of birth is developed through their participation in cultural activities: learning the language, participating in holidays, in meals where the traditional food of the country of birth is served, developing awareness of traditions, listening to music and seeing films from that country, and becoming conscious of one's physical resemblance to people of the same ethnic and cultural group.

Id. Adoptions that do not prioritize a child's right to their culture leave these children under-served. *Id.*

[324] *See* Hollingsworth, *supra* note 302, at 387; Estin, *supra* note 215, at 56. The IAA has no requirement for adoptive parents to ensure cultural enrichment for their adopted child. *Id.* at 83–84.

[325] Harf et al., *supra* note 323.

[326] Kristen Cheney, *'Giving Children a Better Life?' Reconsidering Social Reproduction, Humanitarianism and Development in Intercountry Adoption*, 26 EUR. J. DEV. RSCH. 247, 248 (2014) ("Rhetoric about 'giving children a better life' thus drives both demand for adoption and relinquishment of children by poor families.").

families.[327] Local physicians noticed that pregnant Marshallese women came to Hawai'i in "small groups assisted by the same Marshallese facilitator, who handle[d] translation and power of attorney services and accompanie[d] them to their medical appointments."[328] The women's medical paperwork listed the same local address for many of them.[329] Additionally, it seemed as though the women were coached on how to "answer questions in ways that would minimize suspicions and circumvent regulations meant to prohibit unethical adoptions."[330]

"'The question is whether these women really understand what they're doing, that the babies may never come back to them,' said Barbara Tom, a retired public health nurse who heads the advocacy committee Nations of Micronesia . . . ."[331] Based on interviews with native Marshallese individuals and anthropological studies conducted in the islands, it is likely that these vulnerable mothers are not giving informed consent.[332] "[T]he social and economic marginalization of [Marshallese] birth parents in the hierarchical and economically dependent nation is a [profound] factor in the relinquish[ment] of [Marshallese] children to American [adoptive] parents."[333]

Most native Marshallese individuals barely speak English.[334] There is not

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[327] Michael Walter, *Unscrupulous Adoption Practices Abuse Marshallese Mothers, Families*, HONOLULU STAR-ADVERTISER (June 4, 2017), https://www.staradvertiser.com/2017/06/04/editorial/island-voices/unscrupulous-adoption-practices-abuse-marshallese-mothers-families.

[328] Rob Perez, *Marshallese Adoptions Raise Some Suspicions*, HONOLULU STAR-ADVERTISER (July 5, 2017), https://www.staradvertiser.com/2017/07/05/hawaii-news/marshallese-adoptions-raise-some-suspicions/.

[329] *Id*.

[330] *Id*.

[331] *Id*.

> The Nations of Micronesia Committee (NOM) was initially formed by Public Health Nurses back in 1997 when they recognized the need to learn about the cultures of our newest migrant group from the Compact of Freely Associated States. The group met to develop a resource manual of cultural information to help nurses in their practice.

History, NATIONS OF MICRONESIA (June 13, 2009, 1:11 AM), https://nationsofmicronesia.wordpress.com/.

[332] Hill & Dugdale, *supra* note 11; Kathryn Joyce, *"Do You Understand That Your Baby Goes Away and Never Comes Back?"*, NEW REPUBLIC (Apr. 21, 2015), https://newrepublic.com/article/121556/do-understand-baby-goes-away-never-comes-back; Walsh, *Adoption and Agency*, *supra* note 15.

[333] Walsh, *Adoption and Agency*, *supra* note 15.

[334] Kajin Aelōñ Kein refers to the Marshallese language and it is the official language of the RMI. REPUBLIC OF THE MARSHALL ISLANDS, MARSHALL ISLAND PUBLIC SCHOOL SYSTEM: LANGUAGE EDUCATION POLICY 2–4 (2015) [hereinafter LANGUAGE EDUCATION POLICY];

a word for adoption in Marshallese,[335] although it is extremely common in Marshallese culture for children to live in homes with extended kin or village elders, not with their birth parents.[336] In 2012, twenty-six percent of children under fifteen years old were adopted by other Marshallese families, and ninety percent of households include someone adopted in or out.[337] It is a common practice in the RMI for women who are able to have children themselves to adopt others' children into their homes.[338] In some instances, cultural practices dictate that parents give away their first-born child to other family members.[339] Typically, the children still regularly interact with their biological family and even return when they are adolescents.[340] Child-sharing

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Robert C. Kiste, *Marshall Islands*, BRITANNICA (Nov. 3, 2023), https://www.britannica.com/place/Marshall-Islands. While the English language was introduced to the islands after the U.S. gained trusteeship following WWII, opportunities to learn English vary across the islands. Ingrid L. Naumann, Addressing the Literacy Needs of Marshallese Adolescents 1–2 (May 2015) (Master thesis, University of Nebraska) (on file with author). As of 2015, Kajin Aelõñ Kein was the medium of learning, at 100 percent, in grades K-6th. LANGUAGE EDUCATION POLICY, *supra* note 334, at 3. It was not until 2015 that the educational language policies shifted to increase English competency. *See generally id*. (developing the language policy of the Marshall Islands to "facilitate the development of functional bilingualism in Kajin Aelõñ Kein and English"). This means that for those old enough to be mothers, fluency in English was not a government priority and many still struggle with the language. Naumann, *supra*, at 2–4.

[335] Perez, *supra* note 328.

[336] Elise Berman, Holding On: Adoption, Kinship Tensions, and Pregnancy in the Marshall Islands, 116 AM. ANTHROPOLOGIST 578, 579 (2014); see also Dejo Olowu, The Legal Regime of Child Adoptions in the South Pacific and the Implications of International Regulatory Standards, 19 SRI LANKA J. INT'L L. 109, 138 (2007) (researching intercountry adoptions in the South Pacific Islands).

> [T]he definition of 'child adoption' was not clear to most respondents as most of the people interviewed tended to confuse child adoption with 'child guardianship' or 'child fostering' which are very common phenomena in most indigenous cultures around the world. [In addition,] the customary laws on child adoption vary greatly from one ethnic community to another (even within the same South Pacific country).

Id.

[337] Berman, *supra* note 336, at 579.

[338] *Id*. at 580.

[339] RMI children are overwhelmingly adopted by kin, often by their birth parents' siblings (aunts and uncles) or parents (grandparents). *Id.* at 579–80. These exchanges of kinship (what we call adoption) are often initiated by a request or demand on the part of kin and thus occur not because parents cannot care for their children, but rather, because other kin want children. *Id*. In contrast to Western adoptions, adopted children maintain connections to their birth family and the adoption process is viewed as additive to the child's network of support, not substitutive. *See id*.

[340] Perez, *supra* note 328.

practices like these are not only common in the RMI, but also across Micronesia.[341] The notion that a mother can sign away her relationship with her child is not a concept that exists within their culture.[342]

The American adoption system, which prioritizes finding a child for a family and not a family for a child, combined with the cultural differences in understandings of adoption practices, leads to the exploitation of vulnerable Marshallese mothers.[343] The gravity of and extent to which Marshallese mothers are relinquishing their parental rights to American adoptive parents differs significantly from the existing cultural norms, emphasizing the importance of *informed* consent.[344] Recognizing the exponential rate at which non-White birth mothers are exploited, both the United States and the RMI implemented adoption regulations that require birth mother consent.[345] For the United States, this was done through the IAA.[346] For the RMI, this was executed in the Adoptions Act of 2002.[347]

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[341] Berman, *supra* note 336, at 579–80.

[342] Jini L. Roby, *Understanding Sending Country's Traditions and Policies in International Adoptions: Avoiding Legal and Cultural Pitfalls*, 6 J. L. & FAM. STUD. 303, 304 (2004).

[343] *Id.* at 309–10.

[344] *Id*. at 304 (discussing a Marshallese mother who "'voluntarily' relinquished all parental rights in her children") ("Had she known that adoption meant something entirely different in the Western world from her own knowledge of adoption, she may not have considered it an option. In fact, the notion that a mother can sign away her relationship with her children had never been a concept in her culture."); Perez, *supra* note 328.

[345] Roby, *supra* note 342, at 310.

[346] 42 U.S.C.A. § 14902 (stating that adoption service providers must secure "necessary consent to termination of parental rights and to adoption"). Section 14944 imposes civil penalties on a person who

> makes a false or fraudulent statement, or misrepresentation, with respect to a material fact, or offers, gives, solicits, or accepts inducement by way of compensation, intended to influence or affect in the United States or a foreign country . . . [in] the relinquishment of parental rights or the giving of parental consent relating to the adoption of a child in a case subject to the [Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption].

42 U.S.C.A. § 14944.

[347] Adoptions Act 2002 § 813.

> (1) Unless consent is specified as unnecessary under respective subsections hereof, a petition to adopt a child may be granted only if the following consents have been obtained. (a) consent of the natural parents(s); (b) if the child to be adopted is not in the custody or care of either parent, consent of the person(s) who have primary guardianship or custody of the child pursuant to a court Order or to Marshallese culture.

Id.

The RMI Adoption Act states:

> §814. Duty to Advise natural parents/guardians.
>
> (1) The Court shall ensure that the person(s) whose consent is required, *fully understand(s) the consequences of the adoption*.
>
> (2) In all phases of the adoption process, the natural parent(s) or guardian(s) shall be entitled to the services of the Central Adoption Authority.
>
> (3) The Central Adoption Authority may however recommend legal representation for the natural parent(s) or guardians(s) of the child depending on the circumstances of each case.
>
> (4) *In all phases of representation the natural parent(s) or guardian(s) of a child shall have interpretation of the proceedings into their primary language.*
>
> (5) All documents presented to the natural parent(s) or guardian(s) shall be *translated into their primary language*. If the natural parent(s) or guardian(s) are illiterate, they shall have a thorough explanation of the contents of the documents, *including the consent documents*, by an officer of the Central Adoption Authority or an attorney, prior to signing any such document. The Head of the Central Adoption Authority or his designee, shall attest to this fact in the affidavit referred to in section 812 (3) (d) above.[348]

In fact, the language of the RMI Adoptions Act is much stronger than the consent provisions of the IAA, which simply refer to the need for consent.[349] However, the reoccurrences of baby selling over the past four decades make it clear that even the RMI Adoptions Act is insufficient, especially when facing private facilitators, who act as interpreters to gain the birth mothers' consent to relinquish their children forever.[350] Under Marshallese law, a child

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[348] *Id.* § 814 (emphasis added).
[349] *Compare* Adoptions Act 2002 §§ 813–814 *with* 42 U.S.C.A. § 14902.
[350] *See supra* Section IV.A.

born in the RMI may only be placed for adoption through a Marshallese court.[351] To avoid this, baby sellers transport pregnant mothers internationally to give birth abroad.[352] As a result, Marshallese babies born in the United States may be adopted in any U.S. court, while normally these babies, if born in the RMI, would fall within the cooperative jurisdiction of both countries.[353] Private facilitators[354] are bypassing the RMI court system by bringing Marshallese mothers to the United States to give birth.[355]

The excessive ease with which facilitators are bringing Marshallese women to the United States with passports as their sole form of documentation is alarming. The story of Kookie Gideon is just one of hundreds that highlight this issue.[356] She boarded a plane from Majuro, the capital of the RMI, nine months pregnant and with her newly printed passport in hand.[357] She was unaware that she was embarking on an illegal journey[358] to give up her parental rights to her soon-to-be newborn child to an American

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[351] Adoptions Act 2002 § 804.

[352] Dugdale & Hill, *supra* note 58.

[353] *Id*.

[354] Private facilitators often "prey on low-income women facing unplanned pregnancies and in dire financial situations, often through online advertising." Jeremy Loudenback, *California Bans 'Adoption Facilitators' Known to Engage in Questionable Practices*, IMPRINT (July 27, 2023, 3:29 PM), https://shorturl.at/hpKNX. These facilitators use enticement and pressure tactics to push doubtful birth parents to go through with adoptions. Tik Root, *The Baby Brokers: Inside America's Murky Private-Adoption Industry*, TIME (June 3, 2021, 6:00 AM), https://time.com/6051811/private-adoption-america/. Adoption entities may obligate birth parents to repay adoption-related expenses if a match fails. *Id*. Generally speaking, private facilitators come from lower-income neighborhoods and might know of pregnant womenwho, at the outset of pregnancy, express a desire to give the baby away. *Id.* Living in the working-class neighborhoods where most mothers who relinquish children reside, facilitators sit in a unique position to not only furnish useful information to mainland agents, but also to know which conditions will likely convince mothers to relinquish their babies. *Id.* In the context of the RMI, facilitators have been both male and female Marshallese citizens of similar profile. *Id.*

[355] The RMI Adoptions Act does not allow adoptions through private facilitators. Adoptions Act 2002 §806. Thus, the legal process of intercountry adoption between the U.S. and RMI would require the use of the RMI Central Adoption Authority and judicial approval of the adoption petition itself. *See id.*

[356] Dugdale & Hill, *supra* note 58.

[357] *Id.*

[358] Adoptions Act 2002 §808 ("The adoption of children in any manner other than as provided for under this Chapter [through the use of the RMI Central Adoption Authority or an adoption taking place within the Marshallese community under customary law], shall not be valid."). This type of human trafficking is also a violation of the United Nations Convention against Transnational Organized Crime and the Protocols. *See* Convention Against Transnational Organized Crime and the Protocols Thereto, G.A. Res. 55/25, Annex I, art. 3(a) (Nov. 15, 2000).

family.[359] She spoke no English.[360] Passing easily through the airport immigration checkpoint in Honolulu, she made her way to Arkansas where she gave birth to her baby just a few weeks later.[361] The Marshallese mother's parental and legal rights were then passed on with the infant in a secluded Arkansas field – "without [her] ever speaking to a lawyer, judge, or a social worker."[362]

For these types of adoptions, the RMI Adoption Act of 2002 provisions do not apply because the child's birth certificate is issued in the United States.[363] Therefore, the RMI court never has jurisdiction over the child in these cases.[364] U.S. customs officials and adoptive parents alike are either failing to notice the red flags pervading how these adoptions are facilitated or actively turning a blind eye to their suspicions.[365] Because there is – rightfully – no immigration red tape constraining Marshallese individuals' movement in United States, Marshallese birth parents remain vulnerable to strong coercion by facilitators, who likely misrepresent the western adoption system to gain consent,thereby sidestepping the supervision provisions under the IAA.[366] The U.S. adoption professionals' use of foreign facilitators to carry out Marshallese baby selling is but another iteration of the United States' exploitation of the RMI as the facilitators cunningly induce Marshallese mothers to permanently relinquish their parental rights.[367]

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[359] Dugdale & Hill, *supra* note 58.

[360] *Id*.

[361] *Id.*

[362] *Id*.

[363] *See* Adoptions Act 2002 §804. ("The High Court of the Republic of Marshall Islands shall have original and exclusive jurisdiction to grant adoption pursuant to this Chapter."). Therefore, adoptions that bypass the RMI court system undermine the RMI's jurisdictional authority over its citizens. *See id*.

[364] According to the U.S. Constitution, all persons born in the United States are U.S. citizens. U.S. CONST. amend. XIV, § 1, cl. 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."). This is the case regardless of the tax or immigration status of a person's parents. *See id*. Although the RMI's citizens are birthing children, RMI loses jurisdiction over these children when they are U.S. born, effectuating a gap in regulating international adoptions. *See id.*

[365] "Airport immigration agents could have stopped the three women — or the man escorting them. But they didn't. Instead, Gideon passed easily through the checkpoint." Dugdale & Hill, *supra* note 58.

[366] *See* Accreditation of Agencies; Approval of Persons, *supra* note 303. The State Department's exception for foreign providers that obtain consent from a birth parent undermines the agency's supervisory role. *See supra* Section IV.A.

[367] Similar to how the post WWII nuclear testing was conducted by the United States without consent, let alone informed consent of the impacts and consequences, the U.S.-RMI adoption pipeline continues to be along this vein. *See supra* Section II.B.

The vastly different cultural understandings of adoptions and increasing economic pressures entice Marshallese mothers to sell their children for financial gain.[368] The average GDP per capita in the Marshall Islands for 2022 was roughly $6,000 per year[369] compared to $10,000–$40,000 for a single adoptive placement.[370] It is therefore easy to see why Marshallese mothers, who already feel ill-prepared economically to raise a child, feel that their best choice is to give their baby up in exchange for what is considered a small fortune in comparison to the average lifestyle in the RMI.[371]

Furthermore, many agree that poverty is the major determining factor in a sending country's intercountry adoption policies.[372] Historically, child welfare practices have mirrored the trends of the State's economy.[373] Additionally, Western culture has historically viewed parents in "poverty" as

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[368] Smolin, *Child Laundering*, *supra* note 292, at 127.

> A significant cause of child abandonment or relinquishment is often extreme poverty. . . [T]he ethics of intercountry adoption becomes problematic where poverty induces the family to give up their child. Under such circumstances, even the cost of transporting the child from sending to receiving nation, if spent instead to aid the family, could have kept the family intact. It is ethically questionable to spend thousands of dollars (or tens of thousands of dollars) to arrange an intercountry adoption, when aid of less than a thousand dollars would have kept the child with their birth family.

Id.

[369] *Marshall Islands*, WORLD BANK GROUP, https://data.worldbank.org/country/marshall-islands (last visited Apr. 17, 2022). "A third of Micronesians live below the basic needs poverty line and poverty has increased in three out of four states in the past decade. Inequality varies greatly between the states. FSM's economy is aid dependent . . . ." *Federated States of Micronesia*, UNITED NATIONS, https://micronesia.un.org/en/about/federated-states-micronesia (last visited Sept. 26, 2023).

[370] Hosia & Doherty, *supra* note 10.

[371] In 2002, member countries of the Pacific Islands Forum (of which the RMI is a part) stated before the UN General Assembly that:

> We agree that chronic poverty remains the single biggest obstacle to meeting the needs, and protecting and promoting the rights of children. To a certain extent poverty exists in the Pacific and is on the increase in many countries. Children bear the brunt of poverty. Poor families cannot afford basic needs such as adequate nutrition, education or health care. The cycle of poverty, where it is replicated from one generation to the next, is becoming apparent, creating an underclass of disadvantaged people and exacerbating social and economic divisions.

Olowu, *supra* note 336, at 119.

[372] Roby, *supra* note 342, at 316.

[373] *Id*.

synonymous with parents who are "ill-fit".[374] However, while some Marshallese citizens may feel economic pressures, there is nothing to suggest that the RMI as a whole, is ill-equipped to raise its children despite its history of political and economic exploitation by other States.[375]

The decreased standard of living in the RMI is due to the United States' trusteeship.[376] Even though COFA provided reparations for the United States' post-World War II actions, the islands have been unsuccessful in holding the United States to its complete fulfillment of that promise.[377] The Department of the Interior's Office of Insular Affairs gave roughly $34 million dollars in COFA funds for the 2022 fiscal year.[378] However, much of the funding earmarked for infrastructure does not stay within the islands; foreign contractors are hired as a more specialized workforce.[379] The economic challenges facing the RMI community are felt by all, especially when the possibility of a new mouth to feed comes into play.[380] Examining

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[374] *Id.* at 307.

> In 1974, during the peak of the Indian Child Welfare Act, large numbers of Indian children were being placed, either permanently or temporarily, in non-Indian homes. In many states two-thirds of Indian child placements were in non-Indian homes and the risk for Indian children of being involuntarily separated from their parents was up to one thousand times greater than for non-Indian children. The reasons for the removal of high numbers of Indian children were listed as high rates of alcoholism, poverty, perceived neglect or mistreatment of Indian children, and even religious zealotry to "save" these children from a dismal future. All of these "reasons" were reported from a non-Indian perspectives.

Id.

[375] *See supra* Section II.B.

[376] ISLAND SOLDIER (Meerkat Media 2017), https://www.islandsoldiermovie.com/ (last visited Nov. 12, 2023); *see also supra* Section II.B.

[377] The U.S. Congress must authorize the disbursement of COFA funds through the setting of the fiscal budget each year. ISLAND SOLDIER, *supra* note 376. However, since COFA's creation, the Micronesian islands have had to fight to receive the funds they were promised. *See id*.; Emily Sauget, *Guam Official Fight for Missing COFA Funds*, PASQUINES (Aug. 23, 2023), https://pasquines.us/2023/08/23/guam-officials-fight-for-missing-cofa-funds/.

[378] *Interior Announces $34 Million in Compact Funding for FY 2022 Government Operations in the Republic of the Marshall Islands*, U.S. DEP'T INTERIOR (Nov. 12, 2021), https://www.doi.gov/oia/press/Interior-Announces-%2434-Million-in-Compact-Funding-for-FY-2022-Government-Operations-in-the-Republic-of-the-Marshall-Islands.

[379] ISLAND SOLDIER, *supra* note 376.

[380] Kathy Jetñil-Kijiner & Hilda Heine, *Displacement and Out-Migration: The Marshall Islands Experience*, WILSON CTR. (Sept. 30, 2020), https://www.wilsoncenter.org/article/displacement-and-out-migration-marshall-islands-experience; Mina Kim, *Facts About Poverty in the Marshall Islands*, BORGEN PROJECT (Oct. 31, 2020), https://borgenproject.org/facts-about-poverty-in-the-marshall-islands/.

and amending dynamics in the U.S.-RMI relationship requires a renewal of existing agreements.

C. *Restructuring the U.S.-RMI Relationship to Include International Best Practices of Subsidiary Means*

Much of the international conversation about children focuses on their ability to grow up in a safe and enriching environment.[381] Discussions focus on equipping parents in countries with the resources to strengthen families.[382] Many scholars have argued that the lack of humanitarian and social justice[383] approaches to adoption ultimately results in the exploitation of families and the neglect of children.[384] The international community has recognized that because the family is the "fundamental group of society and the natural environment for the growth, well-being, and protection of children, efforts should be primarily directed to enabling the child to remain in or return to the care of [their] parents, or when appropriate, other close family members."[385] Additionally, many scholars have highlighted the importance of keeping children with their families in order to promote a child's right to preservation of their culture. [386] However, in order to do so would require a

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[381] "Every child has the right to health, education and protection, and every society has a stake in expanding children's opportunities in life." *Global Issues: Children*, UNITED NATIONS, https://www.un.org/en/global-issues/children (last visited Sept. 25, 2023).

[382] U.N. Secretary-General, *Status of the Convention on the Rights of the Child*, ¶77, U.N. Doc. A/75/307 (Aug. 12, 2020).

> States should invest in nationally appropriate and universal social protection systems, intensifying efforts to improve the standard of living of all children as a matter of priority, paying particular attention to the most vulnerable. In addition, States should promote inclusive and responsive family-oriented policies, including those designed to strengthen parents' and caregivers' ability to care for children.

Id.; *see also* Committee on Enforced Disappearances, *Joint Statement on Illegal Intercountry Adoptions*, U.N. Doc. CED/C/9 (Oct. 16, 2015), https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf.

[383] A social justice approach would focus more on the conditions that have bred the need for or the exploitation of the current systems, such as considerations of historical injustice and the unequal distribution of resources. *See* Hollingsworth, *supra* note 80, at 211.

[384] *Id.*

[385] G.A. Res. 64/142, annex (II)(A)(3), Guidelines for the Alternative Care of Children (Feb. 24, 2010).

[386] *See generally* Barbara Bennett Woodhouse, *"Are You My Mother?": Conceptualizing Children's Identity Rights in Transracial Adoptions*, 2 DUKE J. GENDER L. & POL'Y 107 (1995) (exploring "the tensions between preserving children's individual and group identities"); Albert & Mulzer, *supra* note 29 (arguing that the "practice of permanently severing the legal bonds between a parent and child and 'replacing' them with new ones via formalized adoption" must be abolished).

true humanitarian perspective[387]

Since, the intercountry adoption system has tainted and exploited true humanitarianism,[388] an argument can be made for the need to shift away from humanitarianism altogether and instead focus on a human rights perspective.[389] Appropaching adoptions from a human rights or social justice perspective is not only significant in the context of exploitive colonial history, which continues to have lingering effects in certain countries, but would also protect the child's right to identity.[390] Thus, one important approach to international adoptions between the United States and the RMI is to incorporate the international recognition of a child's right to identity – a fundamental human right – within a social justice framework.[391]

To maintain a child's right to identity and to prevent the large-scale trafficking of children, the United States must adopt the CRC's subsidiarity principle.[392] Although the United States is not a party to the CRC, it has signed the conventions and ratified and incorporated the Optional Protocol into its laws, and therefore has a responsibility to not violate the object and

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[387] A true humanitarian approach to intercountry adoptions is "ideally about finding families for children who *need* them" and a shift away from self-righteousness. *See* Cheney, *supra* note 326, at 255.

[388] "The international adoption industry has become a market driven by its customers." Katherine Herrmann, Reestablishing the Humanitarian Approach to Adoption: The Legal and Social Change Necessary to End the Commodification of Children, 44 FAM. L. QUARTERLY 409, 416–17 (2010).

[389] Many adoptive parents in the economic north see adoption as a means of saving children from poverty and therefore, are less likely to be concerned by illegal or exploitive intercountry adoption processes. Robin Shura et al., *Children for Sale? The Blurred Boundary Between Intercountry Adoption and Sale of Children in the United States*, 36 INT'L J. SOC. & SOC. POL. 319, 321 (2016). The "economic" or "global" north does not refer to a traditional geographic region but instead to the "relative power and wealth of countries in distinct parts of the world," such as North America, Europe, and Australia. Lara Braff & Katie Nelson, *Chapter 15: The Global North: Introducing the Region, in* GENDERED LIVES: GLOBAL ISSUES 501, 501 (Nadine T. Fenandez & Katie Nelson eds., 2021). "Modern adoption has long been framed as a humanitarian practice, but it also has roots in social engineering. British policy from the 1870s to the 1960s advocated moving orphaned children to the colonies as a means of social reform." Cheney, *supra* note 326, at 249. Additionally, according to UNICEF, the use of intercountry adoptions should only be used as a solution when a local family-based one is not available. *Id.* at 255–56.

[390] CRC, *supra* note 46, art. 8; *see supra* Section III.B.

[391] *See* Hollingsworth, *supra* note 80, at 214–15.

[392] *See* Kimberly Svevo-Cianci & Sonia C. Velazquez, *Companion Piece: Convention on the Rights of the Child Special Protection Measures: Overview of Implications and Value for Children in the United States*, 89 CHILD WELFARE 139, 148–49 (2010).

purpose of the CRC.[393] By incorporating the CRC subsidiarity principle, the United States can prohibit adoptions in which sending States have not exhausted all domestic possibilities first, thereby upholding its international duty.[394] This approach to adoptions prioritizes a child's right to their identity by allowing children to remain within their communities as much as possible.[395] Several of the international conventions on adoption reference this concept.[396] Because of the unique relationship that the United States has as a former trustee over the RMI, the United States can incorporate the subsidiarity principle into the adoption system by amending the current

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[393] *Id*. at 152; G.A. Res. 66/138, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (Dec. 19, 2022); Vienna Convention on the Law of Treaties art. 18, Jan. 27, 1980, 1155 U.N.T.S. 331.

[394] *See generally* Svevo-Cianci & Velazquez, *supra* note 392, at 148–49 (discussing why the United States should ratify the CRC to help stop human trafficking).

[395] This approach has been utilized by Indonesia following the 2004 Indian Ocean tsunami and proven to be effective. *Children and the 2004 Indian Ocean Tsunami: An Evaluation of UNICEF's Response in Indonesia (2005 - 2008)*, Rep. of the UNICEF Evaluation Office, Sec. 1.2 (August 2009), https://www.cpcnetwork.org/wp-content/uploads/2014/04/20.-Ager-et-al.-Thailand-Tsunami-UNICEF-Evaluation-2009.pdf. In February of 2005, the government of Indonesia adopted the "Indonesian Government Policy on Separated Children, Unaccompanied Children and Children Left with One Parent in Emergency Situations." MINISTRY OF SOC. AFFS. OF THE REPUBLIC OF INDONESIA, INDONESIAN GOVERNMENT POLICY ON SEPARATED CHILDREN, UNACCOMPANIED CHILDREN AND CHILDREN LEFT WITH ONE PARENT IN EMERGENCY SITUATIONS (2005), https://bettercarenetwork.org/sites/default/files/attachments/Indonesian%20Government%20Policy%20on%20Separated%20Children.pdf. In addition to this policy, "the government placed a moratorium on adoptions of Acehnese children to allow for community-based solutions to take precedence . . . promot[ing] family and community-based solutions for separated children." *Children and the 2004 Indian Ocean Tsunami, supra*, at Sec. 4.3.

[396] *E.g.*, CRC, *supra* note 46, art. 21.

> The principle of subsidiarity was introduced in 1986, in [article 17 of] the UN "Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement Nationally and Internationally." . . . In 1989, Article 21(b) of the United Nations Convention on the Rights of the Child stated, "Intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin."
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> In 1993, a text regarding the principle of subsidiarity was included in the Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption.

International Adoption and the Principle of Subsidiarity, INT'L SOC. SERVICE USA, https://www.iss-usa.org/international-adoption-and-the-principle-of-subsidiarity/ (last visited Sept. 25, 2023).

agreements under COFA.[397]

The COFA renewal between the United States and RMI was finalized in 2023.[398] While COFA renegotiations nearing Congressional passage seem fairly final, the countries still need to update the current immigration policies to prohibit children and Marshallese citizens from being trafficked into the United States.[399] Future policies or COFA re-negotiations should include the subsidiarity means principle by denying adoptions without verification that all resources were exhausted before the child was considered for placement.[400] Such immigration policies would prevent pregnant mothers from giving birth to their babies in the United States[401] and U.S. courts from signing off on adoptions merely because the mother "consented" to an American adoptive placement.[402] Consequently, United States judges would not be able to sign off on adoptions that do not have proof of efforts to comply with the subsidiarity principle, even if RMI adoption facilitators attempt to circumvent accreditation from their central authority and relevant immigration policies.[403] Ultimately, the application of the subsidiarity

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[397] *See generally* Shannon Marcoux, *Trust Issues: Militarization, Destruction, and the Search for a Remedy in the Marshall Islands*, 5 HRLR ONLINE 98, 105 (2021) (discussing the trustee relationship between the United States and the Marshall Islands); *see also* Sarah-Vaughan Brakman, *The Principle of Subsidiary in the Hague Convention on Intercountry Adoption: A Philosophical Analysis*, 33 ETHICS & INT'L AFF. 207, 208, https://www.cambridge.org/core/services/aop-cambridge-core/content/view/D6332108BEACA445FD033A82A8448597/S0892679419000170a.pdf/the-principle-of-subsidiarity-in-the-hague-convention-on-intercountry-adoption-a-philosophical-analysis.pdf.

[398] THE COMPACTS OF FREE ASSOCIATION, CONG. RSH. SERVICE, (Aug. 25, 2023), https://crsreports.congress.gov/product/pdf/IF/IF12194#:~:text=Compact%20Negotiations&text=In%20January%20and%20February%20of,Palau%20on%20extending%20economic%20assistanc.

[399] *See* Kim, *supra* note 380. On October 16, 2023, the United States and the RMI signed three newly negotiated agreements relating to COFA. *Office of the Spokesperson: The United States and the Republic of the Marshall Islands Sign Three Compact of Free Association-Related Agreement*, U.S. DEP'T STATE (Oct. 17, 2023), https://www.state.gov/the-united-states-and-the-republic-of-the-marshall-islands-sign-three-compact-of-free-association-related-agreement/. While the agreement reflects a historic cooperation, the focus of the agreements address financial support for the legacy of nuclear testing and pacific defense operations, therefore failing to address adoption, immigration, and human trafficking. *See* David Brunnstrom & Michael Martina, *Exclusive: US Negotiator Signs New Deal With Strategic Marshall Islands*, REUTERS (Oct. 16, 2023), https://www.reuters.com/world/us-negotiator-expects-sign-new-deal-with-strategic-marshall-islands-monday-2023-10-16/.

[400] Brakman, *supra* note 397, at 208.

[401] *See supra* Section IV.B.

[402] *See supra* Section IV.B (discussing how there is essentially no oversight for how consent is obtained because of the exception within State Department regulations).

[403] *See supra* Section IV. B (discussing how facilitators try to circumvent the requirements of the adoption process).

principle to adoptions would lead to the best outcome for a child because it prioritizes keeping them attached to their community and identity over an intercountry placement.[404] This is but one solution of the many available and likely required to completely eradicate intercountry baby selling.[405]

Significant international scholarship has also advocated for reparations for most treaty and human rights violations.[406] However, monetary reparations in this context should not be the sole focus for addressing the current exploitive system because they would not necessarily prevent or discourage baby selling and they fail to address the child's best interest.[407] Thus, any solutions proposed to prevent or compensate for abuses in the adoption system must ensure comprehensive redress for victims, and not just financial

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[404] Brakman, *supra* note 397, at 208; *International Adoption and the Principle of Subsidiarity*, *supra* note 396.

[405] *E.g.*, van Loon, *supra* note 218, at 169–71 (describing an International Social Services report recommending controls based on the best interest standard in safeguards for children, cooperation among social workers, an international social welfare agency, a system of licensing or of accrediting agencies for intercountry adoption, and offering parents skilled counseling services); Walsh, *Adoption and Agency*, *supra* note 15, at 17. The RMI Ministry of International Affairs Task Force

> [r]ecommended a special division within Foreign Affairs be established with the responsibility for coordinating and overseeing all adoption related activities including: reviewing and verifying case studies of potential adoptive families, coordinating counseling services and conducting home studies of Marshallese families involved in an international adoption, making recommendations to the Court based on their findings in each case, compiling a list of adoption agencies complete with an ongoing review of their activities, providing information regarding adoption in the RMI, ensuring that Marshallese families have proper representation throughout the adoption process, assisting in monitoring the adopted children, establishing and maintaining guidelines for international adoptions.

Walsh, *Adoption and Agency*, *supra* note 15, at 17.

[406] *See, e.g.*, Thomas Craemer, *International Reparations for Slavery and the Slave Trade*, 49 J. BLACK STUD. 694 (2018) (proposing slave-trade reparations for use in Africa and the New World to "indemnify the descendants of the formerly enslaved"); G.A. Res. 55/25, annex II art. 6(6), Convention Against Transnational Organized Crime and the Protocols Thereto (Nov. 15, 2000) ("Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."); *id*. art. 25(2) (requiring that that at least some "appropriate procedures" are established to provide access to compensation or restitution).

[407] Irene Salvo Agoglia & Karen Alfaro Monsalve, *'Irregular Adoptions' in Chile: New Political Narratives About the Right to Know One's Origins*, 33 CHILD. & SOC'Y 201, 209 (2019) (discussing how victims of irregular or illegal intercountry adoptions have demanded the restitution of the right to know one's origins).

compensation.[408] Transitional justice is a better solution. In a report to the UN Security Council, the UN Secretary-General defined transitional justice as:

> [T]he full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.[409]

Solutions to the RMI intercountry adoption dilemma should therefore deploy truth seeking and institutional reform by changing the intercountry adoption laws to prioritize subsidiarity principles.[410]

D. *With the Continuation of Marshallese Adoptions, Hawai'i Legislators Must Amend the Family Court Adoption Procedures to Reflect the 2004 Family Court Judges' Recommendations for Consent Hearings*

The issue of consent is of huge consequence to the United States and RMI relationship, not only historically, but also in the present adoption context.[411] Most of the world, including the RMI, understands child rearing to involve collective efforts among trusted adults within the community.[412] As discussed above, to many, the U.S. adoption process which severs the birth parent's rights to their child is inconceivable.[413] Thus, the RMI's unique culture

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[408] *Id.*; Alexander L. Boraine, *Transitional Justice: A Holistic Interpretation*, 60 J. INT'L Aff. 17, 25 (2006) ("The provisions of reparations without the documentation and acknowledgment of truth can be interpreted as insincere, or worse, the payment of blood money.").

[409] U.N. Secretary-General, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, (III)(8), U.N. Doc. S/2004/616 (Aug. 23, 2004).

[410] *See* CRC, *supra* note 46, art. 29; Smolin, *Child Laundering*, *supra* note 292, at 511–12; *see also supra* Section III.B.

[411] In the post-WWII context, the RMI did not consent to becoming the United State's testing grounds nor test subjects. *See supra* Section II.B. Yet, the RMI was exploited for the "greater good." *See supra* Section II.B. This exploitation continues to exist in other contexts of the U.S.-RMI relationship. *See supra* Section IV.B.

[412] *See generally* Berman, *supra* note 336 (analyzing kinship bonds that extend beyond biological ties).

[413] Smolin, *Child Laundering*, *supra* note 292, at 509; Roby, *supra* note 342, at 309–10.

affects ongoing confusion about lost legal rights in the U.S. adoption system.[414]

In 2017, the Minister of Cultural and Internal Affairs of the RMI confirmed that the RMI does not entertain or practice intercountry private adoptions arranged directly between birth parents in the RMI and adoptive parents in another country who plan to take the child outside of the RMI.[415] Indeed, the issue of private adoption facilitators has been an ongoing factor in Marshallese exploitation.[416] Therefore, further regulations around facilitators seem insufficient for addressing the underlying factors that incentivize such practices.[417] The solution to illegal baby selling is not stricter prohibitions against private facilitators and the inducement of birth parents to relinquish their children.[418] Rather, the solution requires clearly defining consent and ensuring judicial oversight in its enforcement within existing adoption procedures.[419]

Hawai'i acts as a central point of contact between the RMI and the United States and can therefore effectuate laws that tighten the consent requirements for adoptions out of the RMI.[420] In 2004, the senior Hawai'i Family Court judges drafted a memorandum to discuss just that.[421] In this memorandum, they stated that birth mothers must appear in a separate proceeding before the judge presiding over the adoption petition, prior to the final adoption hearing.[422] Additionally, unless the birth parents' first language is English, an interpreter, found to be qualified by the presiding judge, must be present with the birth mother at the separate proceeding.[423]

Requiring a separate consent hearing gives the judge the opportunity to engage in conversation with and question the birth mother to confirm that she fully consents to and waives the consequences of her consent to the adoption proceedings and understands the United States' practices regarding adoptions.[424] It also allows the Hawai'i family courts to thoroughly check that the RMI government or central authority sponsored the adoption after

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[414] *See supra* Section IV.B.

[415] Letter to Hon. Judge Remigio, *supra* note 60.

[416] *See supra* Part I.

[417] *See supra* Part I.

[418] One social justice approach, argued here, is to address the underlying unequal power dynamics and economic disenfranchisement. *See* Hollingsworth, *supra* note 80, at 211.

[419] Perez, *supra* note 328; *see* Smolin, *Child Laundering*, *supra* note 292, at 509–10.

[420] *See supra* Part I.

[421] Memorandum from the Hawai'i Senior Family Court Judges on Marshallese Adoptions to Hawai'i Family Law Practitioners, Attorney General, Director of Health, & Director of Department of Human Services 1 (June 14, 2004) (on file with author) [hereinafter Hawai'i Senior Family Court Judges Memorandum].

[422] *Id.*

[423] *Id.*

[424] *Id*. at 2.

first taking all steps to keep the child within the islands.[425] International best adoption practices, as established in the Hague Convention, would therefore be incorporated because requiring consent hearings ensures there is no inducement of consent, that the mother fully understands that she will be relinquishing her child forever, and that the child does not have a suitable placement option in the RMI.[426] Therefore, the focus of the adoption process would align with the *best interest of the child* standard, rather than the interests of adoptive parents.[427] This memorandum, although insightful, is currently not formally incorporated into adoption practices because bench bar memoranda do not create legal precedent.[428]

E. *Falling Through the Cracks: The Potential Downsides of the Hawaiʻi Family Court Recommendations*

Hawaiʻi is a stop for many travelers on their way to the contiguous United States.[429] Without a consent hearing, Hawaiʻi courts could never have jurisdiction over the adoption proceeding and would not be able to thoroughly check the consent of the birth mothers traveling from the RMI to the contiguous United States.[430] Thus, it is essential that the United States implement the subsidiarity principle, which will ensure that the *best interest of the child* is incorporated.[431]

However, as easy as it is to incorporate the *best interest of the child* language into domestic laws, it is harder to ensure that the laws are truly creating the most ideal outcomes for children. Incorporating the subsidiarity principle, thereby requiring states to exhaust all local placement options first,

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[425] *Id*.

[426] *See supra* Section III.B (discussing how the subsidiarity principles operates in practice).

[427] *See supra* Section III.B; CRC, *supra* note 46, art. 3(1); Hague Convention, *supra* note 49 (describing the best interests of the child).

[428] *See* Hawaiʻi Senior Family Court Judges Memorandum, *supra* note 421; Zoom Interview with Dina Shek, Professor of Law, William S. Richardson School of Law (Feb. 13, 2023). Dina Shek is a licensed attorney in the state of Hawaiʻi. *Meet Our Staff*, MED. LEGAL P'SHIP FOR CHILDREN IN HAW., https://www.mlpchawaii.org/meet-our-staff (last visited Feb. 8, 2024). She is a proud graduate of the William S. Richardson School of Law where she serves as the Legal Director for the Medical-Legal Partnership for Children, a program she co-founded in 2009. *Id.* Dina Shek has received awards for her social justice work, including that of the National Asian Pacific American Bar Association Law Foundation Scholarship for her work with Marshallese communities. *Id.*

[429] *See* U.S. FACT SHEET, HAWAIʻI TOURSIM AUTHORITY 1 (2023), https://www.hawaiitourismauthority.org/media/11846/usa-fact-sheet-with-september-2023-data-final.pdf (showing average length of visitor stays).

[430] *See* Dugdale & Hill, *supra* note 58.

[431] *See* International Adoption and the Principle of Subsidiarity, *supra* note 396.

could lead to the child in the State's care for longer periods of time.[432] The longer the child is not with a family, the less stability and support they have.[433] Thus, it may be argued that leaving children in the State's care for prolonged periods of time undermines the *best interest* standard.[434] However, this concern is not likely of consequence in the case of Marshallese children because they are not adopted out of the RMI's welfare system and instead are taken directly from their mother or other family members.[435] Therefore, Marshallese children do not spend any time in the State's care.

Furthermore, an additional hearing within the adoptive process might place more strain on the judicial system and invoke issues of personal jurisdiction.[436] Marshallese birth mothers would have to consent to the family court's jurisdiction[437] and then further consent in that hearing to the adoption,[438] and it is unclear how this would be perceived by Marshallese citizens. However, by consenting to a U.S. adoption, mothers already consent to U.S. court's jurisdiction and therefore the main consideration is the cost of travel from the RMI to Hawai'i.[439]

Lastly, the Hawai'i family court recommendations do not address how to stop savy adoption facillitators who keenly assist Marshallese women in slipping past other adoptions-related safeguards when entering the United

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[432] Brakman, *supra* note 397, at 210.

[433] *Id*. *See generally,* BARBARA ANN ATWOOD, CHILDREN, TRIBES, AND STATES: ADOPTION AND CUSTODY CONFLICTS OVER AMERICAN INDIAN CHILDREN (2010) (exploring "jurisdictional and substantive disagreements between Indian tribal courts and state courts in litigation over the placement of Indian children" based on the children's welfare interests).

[434] Brakman, *supra* note 397, at 210. Indeed, this argument has been a part of the discourse around the use of the United States Indian Child Welfare Act, which requires the state to look for placements for a Native American child within the same tribe as the child before they are considered for other placements. *See* Lorie M. Graham, *The Past Never Vanishes: A Contextual Critique of the Existing Indian Family Doctrine*, 23 AMER. INDIAN L. REV. 1, 32–33 (1998).

[435] *See supra* Section IV.C.

[436] Dyan M. Medeiros, Judge, District Family Court of the First Circuit & Courtney N. Naso, Judge, District Family Court of the First Circuit Question and Answer Session at the Family Law Bench Bar Conference, Honolulu, Hawai'i (Aug. 8, 2023). At the Hawaii Family Court 2023 Bench Bar Conference, judges reminded attorneys that increased litigation results in judicial strain leading to judges only having roughly thirty minutes to hear the matters in each case. *Id.*

[437] HAW. REV. STAT. § 578-1 (2024); HAW. REV. STAT. § 571-11(4).

[438] HAW. REV. STAT. § 578-2(a)(1) (2024).

[439] Washington, A. & G.R. Co. v. Brown, 84 U.S. 445 (1873).

States.[440] To prevent the reoccurrence of these harms,[441] it may be worth considering more robust screening procedures at U.S. airports.[442] Pulling aside pregnant Marshallese women traveling from the RMI to the contiguous United States for secondary questioning could help ensure stricter compliance with adoption and immigration laws.[443] While this could be a slow down for RMI women traveling, it may be effective in preventing Marshallese mothers in unknowingly relinquishing their rights to their children.[444]

V. CONCLUSION

The U.S.-RMI relationship is founded on exploitation.[445] World War II nuclear testing and present-day baby selling taint the possibility of a robust

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[440] *See e.g.*, Hosia & Doherty, *supra* note 10 (describing how a Marshallese woman who served as an adoption facilitator admitted that she would "befriend [poor Marshallese women and those with little education] with offers of assistance and money. She would organize identity documents and passports for the women - often within days - and travel with them to the US"). It is illegal to travel to the U.S. for the purpose of adoption without first obtaining a special visa. Hill & Dugdale, *supra* note 11. "That's true whether a Marshallese woman travels while pregnant or after the baby is born. Nor does it matter if the birth mother plans to stay in the U.S. after the adoption, [said Claudia] Lokeijak[,]" director of the central authority. *Id.*

[441] *See* Livia Ottisova et al., *Psychological Consequences of Human Trafficking: Complex Posttraumatic Stress Disorder in Trafficked Children*, 44 BEHAVIORAL MEDICINE 234, 239 (2018) (analyzing the prevalence of PTSD in trafficked children).

[442] *See, e.g.,* United States v. Ramsey, 431 U.S. 606, 617 (1977) ("Th[e] interpretation, that border searches [are] not subject to the warrant provisions of the Fourth Amendment and [are] 'reasonable' within the meaning of that Amendment, has been faithfully adhered to by this Court."). All persons arriving at a port-of-entry to the United States are subject to inspection by U.S. Customs and Border Protection (CBP) officers. Inspection of Persons Applying for Admission, 8 C.F.R. 235 (2024). CBP officers will conduct the Immigration, Customs and Agriculture components of the Inspections process. *Id.*

[443] While this suggestion could decrease human trafficking, it is imperative to weigh the benefit with the potential risk it has of increasing discrimination. *See, e.g.,* Yvonne D. Newsome, *Border Patrol: The U.S. Customs Service and the Racial Profiling of African American Women*, 7 J. AFR. AM. STUD. 31 (2003); Shaun L. Gabbidon et al., *The Influence of Race/Ethnicity on the Perceived Prevalence and Support for Racial Profiling at Airports*, 20 CRIM. JUST. POL'Y REV. 344 (2009).

[444] *See* Dugdale & Hill, *supra* note 58 (discussing the opportunity for intervention by U.S. Customers and Border Protection agents); *see, e.g.*, United States v. Mendenhall, 446 U.S. 544 (1980) (holding that federal agents stopping and posing a few questions to a traveler in a U.S. airport did not amount to a seizure).

[445] *See The Legacy of U.S. Nuclear Testing and Radiation Exposure in the Marshall Islands*, *supra* note 38.

United States and RMI partnership.[446] And while the United States continues to atone for the irreparable harm it caused to the RMI during World War II, the United States can and must make greater strides to prohibit future harm from occurring.[447] With continued U.S.-RMI relations,[448] this Comment offers proposals to limit the chances of that relationship continuing or ending with exploitation. The current international adoption conventions offer guidance that the United States should utilize to curb the practices of human trafficking and baby selling.[449] Additionally, Hawai'i can contribute to the solution by implementing consent hearings that birth mothers are required to attend before the state will approve the adoption.[450]

However, more research needs to be conducted to provide insight into how these recommendations could be implemented in all United States international adoptions and not just in adoptions where the RMI is the sending country.[451] States have an obligation to the well-being of these children, and need to act more effectively in seeing that the protection of children is realized.[452] Until stronger efforts are made to keep children within their community networks, children of color will continue to suffer for the sake of completing a home.[453]

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[446] *See* Jessica Stone, *US Pacific Security Deal with Marshall Islands at Risk Over Nuclear Payments Description*, VOICE OF AMERICA (Sept. 29, 2023, 2:42 PM), https://www.voanews.com/a/7290553.html; Hosia & Doherty, *supra* note 10 ("After years of abuse of the system, in 2003, the compact was amended to specifically forbid women from traveling for the purposes of adoption.").

[447] *See The Legacy of U.S. Nuclear Testing*, *supra* note 445.

[448] THE COMPACTS OF FREE ASSOCIATION, *supra* note 398.

[449] CRC, *supra* note 46.

[450] Letter to Hon. Judge Remigio, *supra* note 60.

[451] *See, e.g.*, Charles M. Kunz, *Compendium of Law Review Articles on International Adoption*, CENTER FOR ADOPTION POLICY (Sept. 2014), http://www.adoptionpolicy.org/pdf/Compendium%20of%20Law%20Review%20Articles%20on%20International%20Adoption.pdf.

[452] MARTIN GUGGENHEIM, GENERAL OVERVIEW OF CHILD PROTECTION LAWS IN THE UNITED STATES 1, https://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/224751148/Excerpt%20from%20Chapter%201.pdf (last visited Nov. 21, 2023) ("Every state has laws that protect children from harm.").

[453] *See, e.g.*, Dugdale & Hill, *supra* note 58 ("For American parents adopting Marshallese babies, legal niceties can take a back seat to the promise of getting a newborn far more quickly than they would going through the official route.").