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## Note

# Our Most Precious Resource: How South Korea is Poised to Change the Landscape of International Adoption

Catherine M. Bitzan\*

A two-year-old girl named Kim Sung lives in an orphanage in Seoul, South Korea.<sup>1</sup> She had been placed there by her young mother, who suffered from Hepatitis B and was unable to care for her child. Kim Sung seemed to be developing normally until the age of nine months, when she was diagnosed with a rare brain disorder—a physical impairment that would severely limit her developmental potential. This diagnosis reduced Kim Sung's chances of being adopted by 75 percent, since there is a far greater demand for healthy children by adoptive parents.<sup>2</sup> If the South Korean government terminates its international adoption program, as it currently proposes to do, and requires all waiting children to be placed in Korean homes or institutions, Kim Sung's likelihood of being adopted would diminish to less than two percent.<sup>3</sup> This would effectively erase her chances of being adopted into a permanent family,

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1. Kim Sung's story is real. For the child's privacy, the U.S. agency coordinating her potential adoption has requested that the child's name be changed and that the agency remain anonymous. Interview Notes (on file with author).

2. Based on statistics in *Health Status of Children Adopted*, South Korea Ministry of Health and Social Welfare (2006) (on file with author).

3. *Id.*

relegating Kim Sung to a life in the Korean welfare system.<sup>4</sup>

South Korea faces a crucial point in shaping the future of its international adoption policy. Amidst growing political and economic pressures to end its international adoption program, the country contends with a virtual inability to create sufficient homes for its children domestically.<sup>5</sup> South Korea is unique in its role as a stable, economically advanced "sending country" in international adoption; most countries sending children to adoptive families abroad are developing nations or have experienced sudden political or socio-economic upheaval.<sup>6</sup> In the case of South Korea, a number of realities complicate the issue—the high level of criticism South Korea has received for its role as a sending country, the nation's dramatically low birth rate, and the cultural opposition of the Korean people to adoption.<sup>7</sup> In addition to these significant pressures to halt its international adoption program, the nation must also consider the very real impact this action would have on Korean children awaiting adoption.<sup>8</sup> To its credit, the South Korean government

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4. See Susan Tran, *Kids in Care Funneled Into Institutions*, KOREA HERALD, Feb. 14, 2006. In 2005, the Korean government transferred jurisdiction over child welfare matters to local governments. Although the federal government encourages placement of children in family settings, such as foster care, local welfare workers have adhered to the traditional system of placing children into large institutions. The number of children in Korean orphanages rose to 17,675 in 2004, compared to 10,198 children in foster care. Foster care provides one-on-one care in a family setting where the child has greater opportunities to develop relationships, a critical advantage over the often impersonal, structured setting of orphanage care. However, orphanages will continue to serve as the primary placement for Korean children in need of homes until local governments can generate sufficient funds to sustain individualized care programs. *Id.*

5. See Sun-young Lee, *Lawmaker Pushes Ban on Overseas Adoption*, KOREA HERALD, May 10, 2006; *Government in Bid to Encourage Adoption in Korea*, THE CHOSUN ILBO, July 18, 2006, available at <http://english.chosun.com/w21data/html/news/200607/200607180031.html>; Chung-a Park, *Singles Can Adopt Children*, KOREA TIMES, July 18, 2006.

6. See KERRY O'HALLORAN, *THE POLITICS OF ADOPTION: INTERNATIONAL PERSPECTIVES ON LAW, POLICY & PRACTICE* 269, 286 (2006). A "sending country" is one who participates in international adoption by placing its children with adoptive families abroad. Nations whose citizens adopt these children into their families are termed "receiving countries." *See id.*

7. See HOWARD ALTSTEIN & RITA J. SIMON, *ADOPTION ACROSS BORDERS: SERVING THE CHILDREN IN TRANSRACIAL AND INTERNATIONAL ADOPTIONS* 7–9 (2000); MICHAEL BREEN, *THE KOREANS: WHO THEY ARE, WHAT THEY WANT, WHERE THEIR FUTURE LIES* 53 (1998); Peter Selman, *Intercountry Adoption in the New Millennium: The "Quiet Migration" Revisited*, 21 *Pop. Res. & Pol. Rev.* 205, 219, 220 tbl. 9, 222 (June 2002).

8. See Tran, *supra* note 4 (describing the significant rise in the number of Korean children placed in foster care and orphanages in recent years); *see also* KAY ANN JOHNSON, *WANTING A DAUGHTER, NEEDING A SON: ABANDONMENT, ADOPTION,*

has consistently held the interests of its “waiting children” in highest regard, and its desire to provide the best for these children will undoubtedly play a role in future policy decisions.<sup>9</sup> South Korea now faces the task of balancing these competing interests in determining whether and how to eradicate its international adoption program.<sup>10</sup> If it chooses to do so, South Korea would be the first sending country to attempt to transform such a large-scale international adoption program into a policy of exclusively domestic adoption.

This Note examines South Korea as a unique case study of a nation hoping to end its role of sending children abroad in international adoption. Part I discusses the origins of international adoption, the cultural, political, economic, and social pressures affecting the formation of Korean adoption law, and the state of adoption law in South Korea. It also traces the development of international instruments on international adoption. Part II demonstrates that an immediate end to South Korea’s international adoption program is not in the best interests of Korean children or the nation. This part also examines the proper role of international instruments in the formation of nations’ adoption laws generally, and proposes that South Korea could play a significant role as a leader in the international community through its original approach to the formation of new adoption policy. Part III proposes that South Korea embark on a three-tiered policy of slowly phasing out its international adoption program, should it continue to pursue this goal. This Note concludes that it is in South Korea’s best interest—and the best interest of its children—to continue its international program in the short term and to end the program only when the nation can ensure homes for the Korean children who will remain.

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AND ORPHANAGE CARE IN CHINA 151 (2004) (arguing that even foster care, which offers a more personal environment than orphanages, is not an adequate substitute for adoption into a permanent family).

9. See *infra* Sections I.A, I.C.

10. See Youn-Taek Tahk, *International Adoption Program in Korea, in* ADOPTION IN WORLDWIDE PERSPECTIVE 79, 91 (R.A.C. Hoksbergen ed., 1986) (describing the tension between a sending country’s nationalism and the best interests of its homeless children).

## I. THE STATE OF INTERNATIONAL ADOPTION IN SOUTH KOREA

### A. THE BIRTH OF INTERNATIONAL ADOPTION

Although the practice of adopting a child can be traced to ancient cultures, international adoption is predominantly a phenomenon of the twentieth century, born of poverty, social upheaval, and the aftermath of the World Wars.<sup>11</sup> The Korean War, from 1950 to 1953, brought international adoption to the forefront of the American consciousness.<sup>12</sup> The war devastated most of the Korean Peninsula, leaving millions of war orphans and abandoned children for whom the government was not equipped to provide care.<sup>13</sup> Half-Asian children of American soldiers born to impoverished Korean women became the responsibility of the occupying U.S. army, since many mothers could not afford to raise them.<sup>14</sup> In response to this overwhelming need to provide children with permanent homes, American families reached out and began to adopt Korean children.<sup>15</sup> For the next forty years, South Korea remained the largest single source of adopted children to the United States and other nations.<sup>16</sup> This burgeoning trend of sending children

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11. See MARY KATHLEEN BENET, *THE POLITICS OF ADOPTION* 120 (1976). Following the Second World War, the U.S.S.R., Britain, and France established systems to find homes for orphaned or displaced children. Germany, Italy, Greece, and Japan became the main sources of children adopted internationally. *Id.* Desperate poverty and social turmoil in Latin America, Eastern Europe, and the former Soviet Union have led to the adoption of many of its children by families in other countries over the last twenty years. The Evan B. Donaldson Adoption Institute, *International Adoption Facts*, <http://www.adoptioninstitute.org/FactOverview/international.html> (last visited Sept. 3, 2006).

12. BENET, *supra* note 11, at 121.

13. Tahk, *supra* note 10, at 79, 80; see also BENET, *supra* note 11, at 124.

14. See BENET, *supra* note 11, at 125. The plight of these orphaned, abandoned and dependent Korean children became more visible to Americans due to U.S. involvement in the Korean War, and incited American families to seek adoption of the children. See Arnold R. Silverman, *Nonrelative Adoption in the United States: A Brief Survey*, in *ADOPTION IN WORLDWIDE PERSPECTIVE* 1, 3-4 (R.A.C. Hoksbergen ed., 1986).

15. In 1953, the U.S. government passed the Refugee Relief Act, directly tailored to allow Americans to adopt Korean war orphans by immediate placement, and adoption thereafter. BENET, *supra* note 11, at 125.

16. JOHNSON, *supra* note 8, at 136. As of 2005, more than 155,000 Korean children had been adopted over half a century by families abroad. *Health Status of Children Adopted*, *supra* note 2. As of 2001, China and Russia replaced South Korea as the primary sending country to the U.S., at 25% (China), 22% (Russia) and 20% (South Korea) of children from abroad adopted by U.S. citizens. The Evan B.

to homes through international adoption has gradually extended to other nations ravished by poverty and war.<sup>17</sup> Between 1971 and 2001, more than a quarter million children from other countries were adopted by U.S. citizens.<sup>18</sup>

The objective needs of homeless children and prospective parents are not the only impetus for the changes in patterns of international adoption.<sup>19</sup> Nations have developed widely varying approaches to adoption policy based on two factors—the country's strongly ingrained cultural perspectives and values and the external political, social, and economic environment surrounding international adoption.<sup>20</sup>

## B. INGRAINED OPPOSITION TO ADOPTION IN SOUTH KOREAN CULTURE

Adoption is a practice rooted in ancient law. From the biblical story of Moses' adoption by Pharaoh's daughter<sup>21</sup> to an intricate account of Babylonian adoption strictures in the Code of Hammurabi,<sup>22</sup> the embrace of a non-biological child into another's family has been historically recognized and practiced by many cultures. Yet societal customs and traditions regarding adoption vary widely between nations.<sup>23</sup>

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Donaldson Adoption Institute, *supra* note 11.

17. BENET, *supra* note 11, at 121–123. In the aftermath of war, developed nations often have the economic momentum to sufficiently absorb their displaced children, whereas underdeveloped nations lack such resources. *Id.* Nations abroad learn of the children's plight through media or the presence of their occupying army in the country and seek to establish ties with the country to adopt its orphaned and abandoned children. Silverman, *supra* note 14, at 3–4.

18. The Evan B. Donaldson Adoption Institute, *supra* note 11. Of the 265,677 children adopted by U.S. citizens in this time frame, Asia was the source of 156,491 children. *Id.* American citizens now adopt children from over 100 different countries, yet nearly three-quarters of all children come from only five sending countries: China, Russia, South Korea, Guatemala, and the Ukraine. *Id.*

19. Elizabeth Bartholet, *International Adoption, in CHILDREN AND YOUTH IN ADOPTION, ORPHANAGES, AND FOSTER CARE* 63, 65 (Lori Askeland ed., 2005).

20. *See id.*

21. *Exodus* 2:1–10.

22. Leo Albert Huard, *The Law of Adoption: Ancient and Modern*, 9 VAND. L. REV. 743, 744 (1956).

23. Many countries in Africa have a caretaking tradition in which children are raised by their extended family if they are orphaned or unable to be cared for by their parents. BENET, *supra* note 11, at 42–43. Often, classifications such as “mother” or “father” are blurred into the roles of many relatives. *Id.* For many years, Israel required by law that the religion of the child matched that of the adoptive parents. *Id.* at 94. Islamic law is strongly opposed to adoption, allowing it only where there are few or no alternatives. *Id.* at 27. The Koran states, “[Allah] . . . does not regard your adopted sons as your own sons. . . . Name your adopted sons

South Koreans embrace a conservative cultural approach to adoption.<sup>24</sup> This practice is grounded in the Confucian emphasis on the importance of family bloodline.<sup>25</sup> A tradition of patriarchal family values places male bloodline as the "central organizing principle of kinship and community" in Korean society.<sup>26</sup> As in other Buddhist societies, the adoption of a son is traditionally allowed for childless families in order to preserve the family name, and the preference is for a child within the extended family.<sup>27</sup> This loyalty to ancestors has prevented many Koreans from adopting a child from outside their lineage.<sup>28</sup> Even today, the adoption of someone else's child is generally disfavored, and to some is considered shameful.<sup>29</sup>

The significant bond intertwining blood relatives is exemplified in Korean culture by a strong interdependence, exclusive trust, and the tradition of the extended family living together.<sup>30</sup> This reverent focus on blood lineage extends to all bounds of Korean society, affecting nearly every aspect of a Korean's life.<sup>31</sup> Emphasis on the male bloodline is even integrated into the history of Korean family law.<sup>32</sup> In a system

after their fathers; that is more just in the sight of Allah." Koran, xxxiii, at 4-6. Accordingly, few Muslim countries practice formal adoption. BENET, *supra* note 11, at 27.

24. See ALTSTEIN & SIMON, *supra* note 7, at 7; JOHNSON, *supra* note 8, at 137.

25. JOHNSON, *supra* note 8, at 137.

26. *Id.*

27. BENET, *supra* note 11, at 124.

28. BREEN, *supra* note 7, at 53.

29. Although young Koreans are more modern and open-minded, most state they are as reluctant as their parents to adopt. Michael Baker, *South Korea Struggles to Free Itself From Adoption Stigma*, CHRISTIAN SCI. MONITOR, Nov. 17, 1997, at 6. However, other sources show that the Korean cultural stigma of adoption is slowly eroding, as a growing number of Korean adoptive parents openly share the fact that a new child is adopted. Soe-jung Kim, *Slowly, Adoption Loses its Stigma*, JOONGANG DAILY, May 11, 2006.

30. BREEN, *supra* note 7, at 50-51. Although common through the 20th century, the tradition of extended families living together is now dwindling in Korean society. *Id.*

31. *Id.* at 50-53.

32. Article 809 of the Korean Civil Code (declared unconstitutional in 1997 by the Korean Constitutional Court) prohibited marriage between two persons who share a common surname and ancestral home. Korean Civil Code Art. 809, § 1 (1957). Those with the surname Kim, for example, share 282 particular blood ancestors, each of whom are identified with a different ancestral home. NATIONAL BUREAU OF STATISTICS, ECONOMIC PLANNING BOARD, 1 REPORT ON THE KOREAN SURNAME AND ITS ORIGIN 12-228 (1988). The two largest Kim branches are Gimhae (4 million) and Gyeongju (1.5 million). *Id.* Under Article 809, none of the 4 million Gimhae Kim could marry another Gimhae Kim. *Id.* This strict rule of patrilineage can be traced back to the late Chosŏn Dynasty. Hahm Chaibong, *Family Versus the*

often viewed as “tribal sociology,” the family name plays a large role in determining which doors will be opened or closed—in everything from educational and work opportunities to marriage prospects.<sup>33</sup> Strict adherence to this blood-based family structure means that a child in Korea who is without a biological family faces great discrimination.<sup>34</sup> For example, many Korean orphans have married fellow orphans because of the strong bias against an orphan marrying into a Korean family of known bloodline.<sup>35</sup> Koreans who do adopt take great precautions to protect their child from such discrimination, often faking pregnancy and obtaining a birth certificate declaring the baby as their own biological child.<sup>36</sup>

In nations like South Korea, with a strong cultural hesitancy to adopt domestically, the government faces great challenges in the formation of its adoption law.<sup>37</sup> It must address crucial issues of whether it can, through legislation, change cultural attitudes toward adoption in order to encourage adoption domestically—and if not, whether it can develop systems to fully care for its orphaned children or if it must continue its role in international adoption. As South Korea faces these issues, it may appear that international adoption is the best or only viable option. However, economic, social, and political pressures threaten to end this practice.

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*Individual: The Politics of Marriage Laws in Korea*, in CONFUCIANISM FOR THE MODERN WORLD 334, 336 (Daniel A. Bell & Hahm Chaibong eds., 2003). Although this law has been repealed, the importance of blood lineage in Korean society has not wavered. *Id.*

33. BREEN, *supra* note 7, at 50–53. “Tribe” is formally defined as “a group of persons having a common character, occupation, avocation, or interest.” Webster’s Third New International Dictionary (3d ed. 2002). However, the term has been more broadly interpreted by sociologists and anthropologists as a dense social network of groups structured around patterns of identity, beliefs, and culture, forming the organizational foundation of a society. *See, e.g.*, Gary Alan Fine, *On the Trail of Tribal Sociology*, 18 SOC. FORUM 653, 654 (2003).

34. Baker, *supra* note 29.

35. Interview with David Pilgrim, Vice President of Adoption Services, Children’s Home Society and Family Services, in St. Paul, Minn. (Nov. 9, 2006).

36. *Id.*; BREEN, *supra* note 7, at 53.

37. *See* JOHNSON, *supra* note 8, at 137. Although South Korea is now an economically strong and politically stable nation, many believe that its cultural grounding in Confucianism and reverence of bloodline has made the government’s efforts to promote domestic adoption particularly difficult. *Id.*



### C. ECONOMIC, SOCIAL, AND POLITICAL PRESSURES ON SENDING COUNTRIES

In addition to the deeply ingrained cultural tenets of their own societies, governments have also struggled with forming adoption policies in response to ever-changing worldwide economic, social, and political pressures.<sup>38</sup> An increasing openness to international adoption over the last few decades has collided with growing hostilities toward it.<sup>39</sup> Despite the good international adoption might do for the individual child and adoptive parents, sending countries are often stigmatized as economically weak, morally compromised, and pawns in the game of imperialism.<sup>40</sup>

Poverty has been a primary factor in determining whether or not a country is or continues to be a sending country in adoption.<sup>41</sup> Developing countries often lack the strong, sophisticated infrastructure that can handle a sudden influx of children in need of a home due to a political uprising or socio-economic shift.<sup>42</sup> Often international adoption is seen as the best solution to care for the immediate welfare interests of the children.<sup>43</sup> Sending countries are therefore viewed as economically dependent upon receiving countries, as the latter serve to both lighten the burden of homeless children on sending nations' social systems and provide a source of money to its

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38. See JAY W. ROJEWSKI & JACY L. ROJEWSKI, *INTERCOUNTRY ADOPTION FROM CHINA* 20 (2001).

39. See Thomas Atwood, Op. Ed., *The Child's Best Interests; Malawi's Bureaucratic Adoption Nightmare*, WASH. TIMES, Oct. 25, 2006, at A17.

40. See BENET, *supra* note 11, at 131, 135.

41. O'HALLORAN, *supra* note 6, at 286. War and political upheaval wreak particular havoc in developing countries, often causing an "internal migration" of its population into overcrowded urban areas in search of food, employment, and safety. *Id.* at 269.; *cf.* BENET, *supra* note 11, at 120–121 (pointing out that this type of migration generating children available for adoption also occurs in developing countries due to industrialization). This sudden displacement and poverty causes a breakdown of the extended family care system, leaving many children orphaned or abandoned and in need of care. See BENET, *supra* note 11, at 120–121.

42. O'HALLORAN, *supra* note 6, at 276. The institutions intended to care for such children are usually poorly equipped, understaffed, and offer an environment little conducive to the social and developmental needs of the children who may already be distressed upon their arrival. *Id.* Contrarily, developed countries are more likely to have the resources to absorb a sudden displacement of its children into its institutions or permanent families. See BENET, *supra* note 11, at 120–121.

43. Sara R. Wallace, *International Adoption: The Most Logical Solution to the Disparity Between the Numbers of Orphaned and Abandoned Children in Some Countries and Families and Individuals Wishing to Adopt in Others?*, 20 ARIZ. J. INT'L & COMP. L. 689, 690 (2003).

government and adoption agencies.<sup>44</sup> Some sending nations are considered “developed” countries, yet economic and cultural forces still create a need to place their waiting children with permanent families abroad.<sup>45</sup> South Korea and China are two examples—although part of the developed world, their role in international adoption still draws scrutiny.<sup>46</sup>

Unique cultural and policy issues of its own have propelled China to join South Korea at the forefront of the international adoption scene.<sup>47</sup> Throughout the 1990s, China’s combination of a social preference for boys and its one-child-per-family policy resulted in the nation’s inability to absorb its displaced children.<sup>48</sup> The Chinese government has recognized the negative fallout of these policies and, like Korea, has begun to slowly move toward prioritization of domestic over international adoptions.<sup>49</sup> Yet unlike Korea, the number of children placed for adoption in China is expected to decrease substantially due in part to the government’s relaxation of its one child policy, the fading of the traditional preference for boys, and the formation of a middle class which affords more families the economic luxury of multiple children.<sup>50</sup> The decrease of children placed for adoption within China is a natural impetus toward the

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44. See Bartholet, *supra* note 19, at 65, 74–75; see also Michelle Van Leeuwen, *The Politics of Adoptions Across Borders: Whose Interests are Served? (A Look at the Emerging Market of Infants from China)*, 8 PAC. RIM L. & POL’Y J. 189, 200–201 (1999) (pointing out that the Chinese government usually demands a \$3,000 adoption fee by the adoptive parents to the orphanage of their child, which in 1996 resulted in more than ten million U.S. dollars going directly to orphanages in China).

45. Van Leeuwen, *supra* note 44, at 191, 193.

46. *Id.* Benet posits that adoption in South Korea has continued through its economic boom due to the transformation of war relief into ingrained relief of underdevelopment itself—the more adoption aid given to the country, the more difficult it has been for South Korea to create self-sustaining adoption systems. See BENET, *supra* note 11, at 120–23.

47. Van Leeuwen, *supra* note 44, at 193.

48. The country’s one-child rule and restrictive domestic adoption policy decreased the pool of potential Chinese adoptive parents and increased the number of female children abandoned in hopes of trying to bear a male child. Kay Johnson, *Politics of International and Domestic Adoption in China*, 36 LAW & SOC’Y REV. 379, 388–390 (2002).

49. The Chinese government recently proposed more stringent rules on the qualifications of foreign adoptive parents, including barring singles, couples married less than two years, obese persons, disabled persons, those over age 50, and families with less than \$80,000 in net assets. Geoffrey A. Fowler & Elizabeth Bernstein, *China Weighs Rules Restricting Adoptions*, WALL ST. J., Dec. 20, 2006, at D1. These rules would disqualify thousands of potential foreign adoptive parents. *Id.*

50. *Id.*

restriction and possible phasing out of its international adoption program.<sup>51</sup> In this way, China may be able to escape the scrutiny leveled at more economically developed sending countries.<sup>52</sup>

Labeling sending countries as immoral, bustling baby markets in the international adoption scheme is a common attack.<sup>53</sup> South Korea has faced scathing public criticism from North Korea due to its status as a major sending country in adoption.<sup>54</sup> North Korean media has expressed biting disapproval of South Korean policy: "the traitors of South Korea, old hands at treacheries, are selling thousands, tens of thousands of children going ragged and hungry to foreign marauders under the name of 'adopted children.'"<sup>55</sup>

A more general concern of sending countries is that international adoption is another form of imperialism.<sup>56</sup> Adoption represents "a shameful admission to the world of the government's inability to care for its own, the loss of a vital national asset, and perhaps the ultimate example of exploitation by rich nations of the poor nations of the world."<sup>57</sup> Many sending countries are sensitive to this perspective. A United States Department of State posting on Chinese adoptions strongly suggests that American parents act with the utmost discretion and reserve due to the high sensitivity of Chinese authorities about the operation of foreign entities in their country.<sup>58</sup> It explains that Americans advocating for adoption from China could cause the Chinese government to bar all

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51. *See id.*

52. *See id.*

53. BENET, *supra* note 11, at 131.

54. PYONGYANG TIMES, *quoted by* Robert Whyman, *Baby-Snatching*, THE GUARDIAN (London), June 20, 1973, at 11.

55. *Id.*

56. Darawan Dharmaruska, *Adoption in Thailand*, in ADOPTION IN WORLDWIDE PERSPECTIVE 115, 121, 128 (R.A.C. Hoksbergen ed., 1986); Van Leeuwen, *supra* note 44, at 202; Wallace, *supra* note 43, at 709. Similarly, Tobias Hübinette argues that many of the major sending countries in international adoption have been subjected to the warfare or influence of the United States, including South Korea, Vietnam, Thailand, the Philippines, Colombia, Chile and Guatemala. Tobias Hübinette, *Adopted Koreans and the Development of Identity in the "Third Space,"* in ADOPTION AND FOSTERING, 28, no.1, at 16.

57. Van Leeuwen, *supra* note 44, at 202 (citing ADOPTION IN WORLDWIDE PERSPECTIVE 79, 89-91, 121, 128, 147 (R.A.C. Hoksbergen ed., 1986)).

58. U.S. DEP'T OF STATE, INT'L ADOPTION, COUNTRY-SPECIFIC INFO., CHINA, [http://www.travel.state.gov/family/adoption/country/country\\_365.html](http://www.travel.state.gov/family/adoption/country/country_365.html) (last visited Oct. 24, 2007).

future adoptions to the United States.<sup>59</sup>

Many sending countries have battled to escape this economic, moral, and political stigma by passing increasingly restrictive laws on international adoption, with some countries electing to ban adoptions altogether.<sup>60</sup> In 2000, Romania closed its doors to virtually all foreign adoptions while thousands of children remained in desperately inadequate orphanages.<sup>61</sup> One problem with these dramatic changes in adoption policy is that the country is often ill-prepared to cope with the number of children that it will need to place in homes or care for through its social services system.<sup>62</sup> In 1992, the Chinese government placed a one-year moratorium on adoptions while it determined which national agencies would govern the adoption process.<sup>63</sup> During this time, orphanages in China remained under-funded and inadequate to the task of caring for their rapidly-growing population of Chinese waiting children.<sup>64</sup>

#### D. LAWS GOVERNING INTERNATIONAL AND DOMESTIC ADOPTION

Growth in the emerging concept of international adoption has led to a strong need for systems to govern its regulation.<sup>65</sup> Nations have advanced efforts on both domestic and international levels to create policy surrounding international adoption.<sup>66</sup>

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59. *Id.*

60. *See, e.g.*, U.S. DEPT OF STATE, INT'L ADOPTION, ADOPTION OF PAK. EARTHQUAKE ORPHANS BANNED, Oct. 16, 2005, *available at* [http://travel.state.gov/family/adoption/notices/notices\\_2737.html](http://travel.state.gov/family/adoption/notices/notices_2737.html) (relating the Pakistani Prime Minister's announcement of a ban on international adoptions of its displaced children, assuring it would find guardians within Pakistan to care for the children); U.S. DEPT OF STATE, INT'L ADOPTION, UKRAINE: ADOPTION SUSPENSION ON NEW DOSSIERS, Sept. 21, 2005, *available at* [http://kyiv.usembassy.gov/amcit\\_adoptions\\_notice\\_0921\\_eng.html](http://kyiv.usembassy.gov/amcit_adoptions_notice_0921_eng.html) (describing the Ukraine government's suspension of new adoption applications, in reaction to the noncompliance of adoptive parents from other countries with the Ukraine's post-adoption reporting standards).

61. Bartholet, *supra* note 19, at 66. In June 2004, Romania eliminated international adoption, largely due to great pressure from the European Union. *Id.* at 73 (citing Evan B. Donaldson Adoption Institute).

62. *See, e.g.*, Van Leeuwen, *supra* note 44, at 215.

63. *Id.* at 201.

64. *Id.* at 215.

65. *See* ASHA BAJPAI, ADOPTION LAW AND JUSTICE TO THE CHILD 134–35 (1996) (recognizing the international community's collaboration to create uniform standards on adoption and specific provisions for the safety of the children involved).

66. *See id.* at 144–58.

### 1. *Laws Regulating the Adoption Process in South Korea*

Adoption processes are highly regulated by the Korean government.<sup>67</sup> The Korean Ministry of Health and Social Welfare governs all adoptions of Korean children.<sup>68</sup> Korean law requires that every international adoption be coordinated through one of four Korean adoption agencies licensed by the government.<sup>69</sup> These agencies then collaborate with a foreign adoption agency in the adopting parent's country to facilitate the legal adoption process.<sup>70</sup> However, great preference is given to potential Korean parents over foreigners.<sup>71</sup> All children placed with overseas agencies are first placed with the Seoul City Children's Guidance Clinic, which makes the child available first to Korean families.<sup>72</sup> This ensures that no child will be adopted by a foreign family when the child could be adopted domestically.<sup>73</sup>

### 2. *South Korea's Increasingly Restrictive Laws on International Adoption*

Soon after the end of the Korean War, the government of South Korea began to actively encourage both domestic and international adoption.<sup>74</sup> Between 1953 and 1981, U.S. citizens alone adopted 38,129 South Korean children.<sup>75</sup> Yet over the past two decades, South Korea has gradually made its international adoption laws and policies more restrictive.<sup>76</sup> In the 1980s, South Korea announced a plan to cut overseas adoption by a dramatic ten percent per year.<sup>77</sup> In 1993, an official in the

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67. See Tahk, *supra* note 10, at 80–91, for a discussion of the Korean government's efforts to encourage and streamline the legal process of international adoption through the 1976 enactment of the Extraordinary Adoption Law.

68. U.S. DEPT OF STATE, REPUBLIC OF KOREA ADOPTION INFO. FLYER (2006), available at [http://www.travel.state.gov/family/adoption/country/country\\_410.html](http://www.travel.state.gov/family/adoption/country/country_410.html).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. Tahk, *supra* note 10, at 80.

75. See Richard H. Weil, *International Adoptions: The Quiet Migration*, 18 INT'L MIGRATION REV. 2, 281–86 (1984).

76. See Elizabeth Bartholet, *International Adoption: Thoughts on the Human Rights Issues*, 13 BUFF. HUM. RTS. L. REV. 151 (2007), available at <http://www.law.harvard.edu/faculty/bartholet/5-27-07%20BHRLR%20Article.pdf>.

77. Baker, *supra* note 29. The motive to drastically reduce its international adoption program may have sprung from strong criticism of South Korea's role as a

Health Ministry remarked on the government's plan to ban international adoptions completely as of 1996, stating, "We believe by [1996] we will be able to take care of our own children."<sup>78</sup> Yet the government's campaigns to abolish international adoption have not been successful, and a small number of Korean children continue to be adopted overseas.<sup>79</sup> According to the South Korean Ministry of Health and Social Welfare, 2,365 Korean children were adopted by foreign families in 2002; 2,287 in 2003; 2,258 in 2004; and 2,101 in 2005.<sup>80</sup>

Various reasons have been proposed as the impetus behind South Korea's increasingly restrictive international adoption laws.<sup>81</sup> Some have argued that the combination of South Korea's growth into a major economic force—paired with its national pride—has incited the country's desire to provide wholly for its own children.<sup>82</sup> Other scholars credit the South Korean government with acting in its children's best interests while encouraging adoption in the 1950s and 1960s, but believe that the country has embarked on its campaign to discourage overseas adoptions for purely political reasons.<sup>83</sup> Despite some negative postulation of South Korea's motives for promoting domestic over international adoption, the nation's changing policy may reflect a belief that the best way to serve its children's interests is to give them the opportunity to be raised in Korean culture.<sup>84</sup> While its children's interests were once best

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sending country during the 1980s. See Sasha Aslanian, et al., *Finding Home: Fifty Years of International Adoption*, American RadioWorks, 2007, <http://americanradioworks.publicradio.org/features/adoption/a5.html> (reporting that South Korea was heavily scrutinized at the 1988 Seoul Olympic Games where the worldwide media alleged that South Korea's economic boom was due to its practice of sending its poor children away).

78. *South Korea to Restrict Adoptions by Foreigners*, BALT. SUN, Dec. 26, 1993, at 16; See also Van Leeuwen, *supra* note 44, at 202 n.84 (citing Arthur Higbee, *South Korea Plans to Ban Foreign Adoptions*, INT'L HERALD TRIB., Oct. 15, 1993).

79. Baker, *supra* note 29.

80. *Intercountry and Incountry Adoptions: 2000 to 2005*, South Korea Ministry of Health and Social Welfare (2006) (on file with author).

81. See, e.g., ALTSTEIN & SIMON, *supra* note 7, at 8–9; ROJEWSKI & ROJEWSKI, *supra* note 38, at 20; Barholet, *supra* note 19, at 65.

82. ALTSTEIN & SIMON, *supra* note 7, at 8–9.

83. See Barholet, *supra* note 19, at 65; see also ROJEWSKI ROJEWSKI, *supra* note 38, at 20 (positing that the restriction of South Korea's adoption laws may be a continued reaction to the harsh criticism faced by the nation in the 1980s).

84. This principle is a natural extension of South Korea's current policy of first attempting to place waiting children with Korean families, based on the belief that children are ideally raised by a family within their country of origin. See U.S. DEP'T OF STATE, INT'L ADOPTION REPORTS – KOREA BUREAU OF CONSULAR AFFAIRS (1995), available at <http://dosfan.lib.uic.edu/ERC/population/children/adoptions/Korea.html>.

served through the establishment of an international adoption program, South Korean policymakers may believe the best way to serve its children today is to eradicate this program and care for waiting Korean children in their home country.

A more recent source of anti-international adoption sentiment in South Korea is its escalating population crisis.<sup>85</sup> The nation is experiencing an alarmingly low birth rate and an aging population, which experts say will dramatically slow the nation's potential for economic growth.<sup>86</sup> The current low birth rate is largely a result of aggressive government promotion of family planning in the 1960s, at that time enacted in fear of impending overpopulation.<sup>87</sup> In 1962, the South Korean government implemented the first of its five-year plans aimed at decreasing the birth rate by offering free contraception through private physicians, providing ready access to legal abortion, encouraging voluntary sterilization, and initiating educational family planning programs for married couples.<sup>88</sup> This government-led initiative encouraging Koreans to desire smaller families—paired with the cultural preference for sons—led to an increased incidence of abortions and a higher number of children being placed for adoption.<sup>89</sup> The success of the government's efforts to promote smaller families caused the birthrate to drop below the ideal population replacement level of 2.1 children per female in the 1980s and to continue to fall into the 1990s.<sup>90</sup> Today, many Koreans continue to favor small

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85. See Debate Surrounding Citizenship Law Amendment, South Korean National Assembly, May 9, 2006 (on file with author).

86. Yoon Ja-young, *Low Birthrate Will Cause Worker Shortage by 2020*, KOREA TIMES, Apr. 20, 2006.

87. Norimitsu Onishi, *South Korea, In Turnabout, Now Calls for More Babies*, N.Y. TIMES, Aug. 21, 2005.

88. C. Haub, *South Korea's Low Fertility Raises European-Style Issues*, 19 POPULATION TODAY, Dec. 1991, at 3, available at [http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?itool=abstractplus&db=pubmed&cmd=Retrieve&dopt=abstractplus&list\\_uids=12284303](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?itool=abstractplus&db=pubmed&cmd=Retrieve&dopt=abstractplus&list_uids=12284303).

89. One study examined retrospective data from the 1991 National Fertility and Family Health Survey of Korea, which showed that from 1975, among childless parents only 27% of pregnancies were aborted, while among one-child families 46% were aborted and among two-child families 81% were aborted. There was also a significantly higher incidence of abortion in families with one or more sons than in families without a son. N.H. Cho & N. Ahn, *Changes in the Determinants of Induced Abortion in Korea*, BOGEON SAHOE NONJIB, Dec. 1993, at 67-79, available at [http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?itool=abstractplus&db=pubmed&cmd=Retrieve&dopt=abstractplus&list\\_uids=12179767](http://www.ncbi.nlm.nih.gov/entrez/query.fcgi?itool=abstractplus&db=pubmed&cmd=Retrieve&dopt=abstractplus&list_uids=12179767).

90. Onishi, *supra* note 87. South Korea's birth rate in 2005 was 1.08, significantly lower than other OECD countries: Japan (1.29), Italy (1.33), France (1.9) and the United States (2.05). Pino Cazzaniga, *Low Birth Rate Data Released*

families—citing the high cost of education and child care as major deterrents from having children—and they continue to make use of the availability of contraceptives, abortion, and adoption placement as means of family planning.<sup>91</sup>

In the wake of this crisis, the government is struggling to reverse its long-ingrained mantra of small families and low fertility.<sup>92</sup> The plummeting population rate has forced the government to advance broad initiatives to encourage and support Korean families in having children.<sup>93</sup> Simultaneously, some government figures are arguing that Korea should not be sending children abroad in international adoption when they could form part of the solution to the population emergency at home.<sup>94</sup> One South Korean Congresswoman, Ko Kyung Hwa, has proposed legislation that would ban international adoption as a countermeasure to the emerging population crisis.<sup>95</sup>

### 3. South Korea's Increasing Support of Domestic Adoption

#### a. Inadequacy of Orphanages and Foster Care

The diminishing number of Korean children adopted abroad raises a critical question—how will South Korea care for the homeless children who remain?<sup>96</sup> The government's Child Welfare Act clearly favors placement in more family-like foster care over caring for children in large institutions, yet many children continue to be placed in the nation's extensive

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on Parents' Day, ASIANEWS: SEOUL, May 10, 2006, available at <http://www.asianews.it/index.php?l=en&art=6131> (citing statistics released by South Korea's National Statistics Office).

91. See Chung-un Cho, *Monthly Allowance Granted for Infants*, KOREA HERALD, July 15, 2006.

92. See Onishi, *supra* note 87.

93. *Id.* (reporting that the government has pledged to spend 32 trillion won through 2010 in order to raise South Korea's birthrate, giving cash allowances, subsidies on education and day care, and tax breaks to families with children).

94. See Lee, *supra* note 5.

95. *Id.* There is evidence, however, that a ban on international adoption would not significantly affect the number of children in South Korea—international adoption consisted of only .048% of the entire birth rate in Korea in 2005. *Korean Adoption Statistics*, South Korean Ministry of Health and Social Welfare (2006) (on file with author).

96. According to the Ministry of Health and Social Welfare, in 2005 there were 19,151 Korean children in child welfare institutions, with an average of 68 children per institution. *Number of Children in Child Welfare Institutions: 1960 to 2005*, South Korea Ministry of Health and Social Welfare (2006) (on file with author).



orphanage system.<sup>97</sup> Many of these children are raised in substandard conditions due to a lack of funding and understaffing, prompting the United Nations to call on South Korea to reform its care systems for waiting children.<sup>98</sup> In response, the Korean government is trying to gather funds to build and sustain its far superior foster care program as a replacement for orphanages.<sup>99</sup> However, even foster care falls far short of the benefits gained by placement in a permanent family.<sup>100</sup>

#### b. Incentives to Promote Domestic Adoption

In concert with its efforts to improve government-funded care, South Korea is attempting to persuade Koreans to adopt.<sup>101</sup> Yet, due to the country's ingrained cultural bias against adoption of a non-blood-related child, the Korean government has found it immensely difficult to effectively build a domestic "market" for adoption.<sup>102</sup> In July 2006, the Ministry of Health and Social Welfare announced far-ranging policies that will facilitate the domestic adoption process and create various economic incentives for Koreans to adopt.<sup>103</sup> The initiative broke down traditional barriers to domestic adoption by relaxing the qualifications for Korean adoptive parents, including, for the first time, allowing single parents to adopt a child.<sup>104</sup>

The Korean government has also extended governmental child benefits to domestically adopted children.<sup>105</sup> The Ministry of Health and Social Welfare has significantly increased the social welfare services it offers to all Korean parents, albeit with the main goal of increasing the birth rate in response to the

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97. See Tran, *supra* note 4.

98. *Id.*

99. *Id.*

100. JOHNSON, *supra* note 8, at 151.

101. See Government in Bid to Encourage Adoption in Korea, *supra* note 5.

102. See Baker, *supra* note 29.

103. Park, *supra* note 5; see Government in Bid to Encourage Adoption in Korea, *supra* note 5.

104. A rising percentage of Korean households are single—in 2005, they accounted for 15.9% of all households in the country. The government noted that single adoptive parents will be held to stricter standards of education and family background than will married couples. Park, *supra* note 5. In addition, the government expanded the maximum age difference between the parents and adopted child from less than 50 to under 60 years, and removed the limit of five adopted children per Korean family. *Id.*

105. See Government in Bid to Encourage Adoption in Korea, *supra* note 5.

nation's population crisis.<sup>106</sup> In June 2006, the Ministry initiated a five-year welfare plan aimed at changing the country's low birth rate and aging population.<sup>107</sup> Part of this initiative included a monthly allowance of 100,000 won (approximately \$107 U.S. dollars) from the government to middle-class families with two or more children, to be paid until the child turns 18.<sup>108</sup> The country also advanced a livelihood protection program for single-mother families, granting an allowance of approximately 400,000 won per month (about \$428 U.S. dollars).<sup>109</sup> In July 2006, the government announced an expansion of these monetary incentives to include families with adopted children.<sup>110</sup> In addition, the government is slowly extending eligibility for traditional child-related benefits, such as child leave from work, to families with an adopted child, and has pledged additional funds to child care centers and increased government-funded after-school programs in order to temper the high cost of child care in the country.<sup>111</sup>

The Korean government's efforts in the 1990s and early 2000s to significantly increase the number of Koreans willing to adopt have largely failed.<sup>112</sup> Nevertheless, the government retains high hopes that its recent aggressive efforts will result in a breakthrough in fostering a domestic market for adoption in Korea.<sup>113</sup>

#### 4. *International Instruments on Adoption*

As the number of countries participating in multi-national adoptions has grown, nations have advanced efforts to establish a general international legal framework and guidelines on

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106. Cho, *supra* note 91.

107. *Id.*

108. *Id.*

109. Kim, *supra* note 29. Recently, the government expanded the availability of such welfare support to single-father families. *Id.*

110. *Id.*; *Government in Bid to Encourage Adoption in Korea*, *supra* note 5.

111. Rahn Kim, *Foster Families to Receive More Childcare Support*, KOREA TIMES, May 10, 2006; Cho, *supra* note 91. The government will also pay adoptive parents 2 million won to subsidize adoption fees to the orphanage from which they receive the child. *Government in Bid to Encourage Adoption in Korea*, *supra* note 5.

112. See Baker, *supra* note 29; see also JOHNSON, *supra* note 8, at 128. In 2005, only 41.0% of adopted Korean children went to a Korean family, while 59.0% were adopted by a family abroad. *Intercountry and Incountry Adoptions: 2000 to 2005*, *supra* note 80. Between 2000 and 2005, domestic adoptions fluctuated between 40.6% and 42.0% of all adoptions of Korean children, with no significant increase. *Id.*

113. See Park, *supra* note 5.

international adoption.<sup>114</sup> The first significant international document formed was the 1986 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, which held that the best interests of children should be paramount in developing national adoption policy.<sup>115</sup> In 1989, the United Nations Convention on the Rights of the Child built upon this principle by outlining forty-two substantive rights that comprehensively address the needs of children.<sup>116</sup> The document encouraged nations to incorporate these rights into their adoption policies.<sup>117</sup>

The most relevant modern international instrument is the 1993 Hague Convention on Protection of Children and Cooperation in Respect of International Adoption, which outlines uniform guidelines for the widely divergent rules governing adoptions between nations.<sup>118</sup> All countries that sign and ratify the 1993 Hague Convention agree to comply with its guidelines for international adoptions with other member nations to the Convention, in addition to their own domestic laws and regulations.<sup>119</sup>

The opening words of the 1993 Hague Convention marked a

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114. See BAJPAI, *supra* note 65, at 134. In addition to multi-national conventions and treaties, some independent organizations have held forums to promote a dynamic sharing of information and ideas from experts from the legal, social, and health fields of both sending and receiving countries. See, e.g., Francisco J. Pilotti, *International Adoption: A View From Latin America*, in ADOPTION IN WORLDWIDE PERSPECTIVE 143, 148 (R.A.C. Hoksbergen ed., 1986).

115. 1986 U.N. 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, 32 I.L.M. 1134 (Dec. 3, 1986).

116. 1989 U.N. Convention on the Rights of the Child, G.A. Res. 44/25, 28 I.L.M. 1448 (Nov. 20, 1989).

117. *Id. passim*. The 1989 U.N. Convention on the Rights of the Child has been ratified by nearly 200 countries. O'HALLORAN, *supra* note 6, at 102.

118. Hague Convention on Protection of Children and Cooperation in Respect of International Adoption, May 29, 1993, 32 I.L.M. 1134 [hereinafter, 1993 Hague Convention]. Seventy-two nations have signed the 1993 Hague Convention, and most have ratified the treaty after fully implementing its provisions through domestic laws. Hague Conference on Private International Law, *Status Table on Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption*, [http://hcch.e-vision.nl/index\\_en.php?act=conventions.status&cid=69](http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69) (last visited Sept. 22, 2007). The United States has signed the 1993 Hague Convention and intends to ratify it in 2007. U.S. DEP'T OF STATE, GUAT.: INT'L ADOPTIONS AND THE HAGUE ADOPTION CONVENTION (Dec. 15, 2006), [http://travel.state.gov/family/adoption/intercountry/intercountry\\_3102.html](http://travel.state.gov/family/adoption/intercountry/intercountry_3102.html).

119. GUAT.: INT'L ADOPTIONS AND THE HAGUE ADOPTION CONVENTION, *supra* note 118.

significant change in the international view of what constitutes the best interest of the child, deeming placement in “a family environment” the highest priority.<sup>120</sup> Previously, the 1989 U.N. Convention on the Rights of the Child recognized international adoption as a viable option only if the child could not be cared for “in any suitable manner” in his or her country of origin, including foster or institutional care.<sup>121</sup> Contrarily, the 1993 Hague Convention holds paramount the need of a child for a permanent family, stating that a family placement outside of the child’s nation of origin is preferential to foster or institutional care for the child in his or her country of origin.<sup>122</sup> In this reprioritization, the Convention embodies international affirmation of international adoption as a valid option for homeless children.<sup>123</sup>

The 1993 Hague Convention also lays a concrete framework for its member nations’ adoption programs by prioritizing the rights of children in the international adoption process.<sup>124</sup> It requires the establishment of a central monitoring authority in each country (whether sending or receiving) to oversee all international adoptions, and provides that any adoption agencies must be certified by that central authority.<sup>125</sup> Under the Convention regulations, agencies are required to gather more information on the child’s health, his or her biological parents, and proper documentation of the child’s birth.<sup>126</sup> It also establishes a formal process for bringing complaints against an agency.<sup>127</sup> These measures will increase transparency and accountability and may help to protect against bribery and corruption in the adoption process.<sup>128</sup>

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120. 1993 Hague Convention, *supra* note 118, pmb. In its preamble, the Convention recognizes that the ideal condition for a child’s development is within “a family environment”—a notable departure from the earlier sole priority of keeping children within their country of origin, as in the 1989 U.N. Convention on the Rights of the Child. *Id.*; 1989 U.N. Convention on the Rights of the Child, *supra* note 116, art. 21.

121. 1989 U.N. Convention on the Rights of the Child, *supra* note 116, art. 21.

122. 1993 Hague Convention, *supra* note 118, pmb., art. 4. The Convention sets a new standard, stating that a country should give “due consideration” to possible adoption of the child within its own family of origin, or with a family in his or her nation of origin, but if this is not possible, the Hague Convention clearly allows international adoption *Id.* art. 4.

123. See Bartholet, *supra* note 19, at 67; Van Leeuwen, *supra* note 44, at 205.

124. See Bartholet, *supra* note 19, at 206.

125. 1993 Hague Convention, *supra* note 118, arts. 6–10.

126. *Id.* art. 30.

127. *Id.* art. 33.

128. See also *id.* art. 32 (explicitly banning “improper financial or other gain

There is considerable controversy about whether international instruments have significantly changed the nature of international adoption law.<sup>129</sup> Further, many of the safeguards designed to ensure the best interests of a child often require expensive and time-consuming systems that sending countries are unable to realistically provide.<sup>130</sup> Yet the mere presence of international instruments on adoption conveys the growing focus on children's rights and interests in this process, and a belief that international adoption is a valid and positive solution for homeless children around the world.<sup>131</sup>

Strong evidence suggests that nations have taken international instruments on adoption seriously and have formed their domestic adoption policy with the international scene in mind. However, countries continue to struggle with the best approach to defining adoption policy in light of cultural indoctrination that often conflicts with international political pressures. South Korea, as a herald and as a major sending country in international adoption, is poised at a particularly crucial point in its development of adoption policy—and the ramifications of its forthcoming decisions will be felt acutely by the Korean children awaiting adoption.

## II. A CRITIQUE OF THE SOUTH KOREAN AND INTERNATIONAL APPROACHES TO ADOPTION

### A. IN EVERYONE'S BEST INTEREST: THE CASE AGAINST A PREMATURE BAN ON INTERNATIONAL ADOPTION IN SOUTH KOREA

Although increasing pressures at home and abroad urge the South Korean government to ban the foreign adoption of Korean children, there are many reasons why it would not be in the nation's best interest to do so immediately. Particularly due to its current inability to find permanent homes for its waiting

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from an activity related to an international adoption”).

129. See, e.g., Van Leeuwen, *supra* note 44, at 212. UNICEF voiced strong concerns after its investigation revealed the trafficking in Guatemalan children through the country's adoption system, particularly since Guatemala signed the 1993 Hague Convention. See UNICEF, CHILD PROTECTION FROM VIOLENCE, EXPLOITATION AND ABUSE, [http://www.unicef.org/protection/index\\_exploitation.html](http://www.unicef.org/protection/index_exploitation.html) (last visited Sept. 23, 2007).

130. O'HALLORAN, *supra* note 6, at 280.

131. See Bartholet, *supra* note 19, at 67–68.

Korean children,<sup>132</sup> the government may wish to carefully consider the potential harmful effects of an immediate ban on these children and on the nation.

### 1. *Potential Harm to South Korean Children*

A ban or substantial restriction of Korea's international adoption program may have the effect of depriving waiting children kept in Korean institutions from the opportunity to be placed with a permanent family.<sup>133</sup> There is currently no plan in place that is capable of providing permanent Korean homes to the number of children sent to adoptive families abroad—potential plans aimed at this goal are less than ideal or have failed.<sup>134</sup> Therefore, South Korea may wish to continue its program of international adoption for the short term.

#### a. Orphanages and Foster Care Place Korean Children at a Disadvantage

Currently, the Korean government has the resources to care for its orphaned children in institutions and in its growing foster care system.<sup>135</sup> Yet the care of children in these environments raises both short- and long-term concerns. Even though the foster care system is well-run, tightly controlled by the government, and provides much more individual care and attention to children than orphanages, studies show that such a temporary placement is far inferior to a placement in a permanent home.<sup>136</sup> The first few years of a child's life are critical to his or her development, and the transfer of a child

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132. See Tran, *supra* note 4.

133. *Id.*

134. As discussed above, foster care is not permanent placement, and the small number of Koreans willing to adopt is insufficient to meet the need for permanent families.

135. With a central government budget equivalent to \$100.46 billion U.S. dollars in 2004, the resources exist to properly care for the 19,151 children living in Korean child welfare institutions. See U.S. DEP'T OF STATE, BACKGROUND NOTE: S. KOREA (Aug. 2007), <http://www.state.gov/r/pa/ei/bgn/2800.htm>; *Korean Adoption Statistics*, *supra* note 95. However, proper care of waiting Korean children would require the redirection of more of these resources into the Korean social system. See Tran, *supra* note 4.

136. See, e.g., René A. C. Hoksbergen, *Understanding and Preventing "Failing Adoptions,"* in ADOPTION: INTERNATIONAL PERSPECTIVES 265, 272 (Euthymia D. Hibbs ed., 1991) (finding that children in welfare institutions had a significantly higher rate of behavioral, psychological, and developmental problems than children in permanent families).

through the foster system during these years can lead to emotional, psychological, and developmental problems.<sup>137</sup>

In addition, the culturally inferior status of orphaned children in Korean society causes long-term problems with providing for displaced children.<sup>138</sup> Due to the lack of a known bloodline, these children are without the strong personal identity of a family group and are denied the benefits of a family name in seeking education, employment opportunities, and marriage.<sup>139</sup> Placement in the foster care system disadvantages these children for life and is not an adequate alternative to international adoption.<sup>140</sup>

#### b. Incentives to Encourage Domestic Adoption Will Only Succeed in the Long Term

The government has advanced significant and far-ranging incentives in an effort to encourage domestic adoptions of Korean children into Korean homes.<sup>141</sup> However, these efforts have shown little immediate success in encouraging more Koreans to adopt.<sup>142</sup> Longer-range planning is required as the government faces the formidable task of changing a strong cultural hesitancy to adopt outside of family bloodline.<sup>143</sup>

South Korea's incentives to encourage domestic adoption may present part of a long-term solution. However, at this time, they are not generating enough Korean adoptive homes to substitute for permanent family placement of Korean children overseas.<sup>144</sup>

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137. See *id.*; see also Jane Aronson, Medical Considerations in EU Adoptions, Presentation at the New York Law School Adoption Policy Conference: Intercountry Adoption, the European Union, and Transnational Law (May 21, 2004), cited in Barholet, *supra* note 19, at 124; see also Margaret Talbot, *The Disconnected; Attachment Theory: The Ultimate Experiment*, N.Y. TIMES MAGAZINE, May 24, 1998, at 24, 27.

138. See BREEN, *supra* note 7, at 53–54.

139. *Id.* at 50–53.

140. See *id.*

141. See Baker, *supra* note 29; *Government in Bid to Encourage Adoption in Korea*, *supra* note 5; Park, *supra* note 5.

142. See *Intercountry and Incountry Adoptions: 2000 to 2005*, *supra* note 80.

143. Even in the United States, comprised of a very ethnically diverse population, it has taken a process of over one hundred years for the idea of adoption (both domestic and international) to be embraced at the level it is today. Sasha Aslanian, et al., *supra* note 77. By contrast, South Korea is one of the most ethnically homogeneous nations in the world, and the idea of adopting a Korean child from an unknown bloodline is only recently awakening in the Korean consciousness. See Onishi, *supra* note 87.

144. See *Intercountry and Incountry Adoptions: 2000 to 2005*, *supra* note 80.

## 2. Potential Harm to the Nation

As long as the need for family placement continues, there is no significant benefit to South Korea ending international adoption. South Korea has the eleventh largest economy in the world and continues to grow in strength on the international scene.<sup>145</sup> It has a valid desire to remove the stigma of being a sending country in international adoption.<sup>146</sup> However, there is little to gain by ending foreign adoption as far as world power and economics are concerned.<sup>147</sup> Banning the placement of Korean children in foreign countries would be a symbolic gesture of power—theoretically, South Korea would withhold the “resource” of its children from receiving nations.<sup>148</sup> Yet practically, this produces no economic advantage over receiving nations, since they have no real need for the children.<sup>149</sup> Withholding its children would produce no international advantage for the South Korean government.

On the contrary, acting preemptively may raise a host of new troubles for which the country may be even more widely criticized. Korean children would continue to fill the country’s orphanages and foster care system, remain there longer, and many would never be adopted by Korean families.<sup>150</sup> This could result in two forms of even stronger criticism than the country faces today. First, it could be argued that this violates international law. The 1993 Hague Convention clearly recognizes that it is in the best interest of a child to be placed in a permanent home—even in a foreign nation—rather than in orphanage or foster care.<sup>151</sup> A decision to eliminate South Korea’s international adoption program would appear to directly oppose the Convention’s directive.<sup>152</sup> Second, allegations of

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145. BACKGROUND NOTE: S. KOREA, *supra* note 135.

146. See Pilotti, *supra* note 114, at 147.

147. See Elizabeth Bartholet, *What’s Wrong with Adoption Law?*, 4 INT’L J. CHILD. RTS. 263, 270 (1996).

148. For further discussion of the interplay of power between sending and receiving nations, see *id.* at 269–70.

149. See *id.*

150. According to statistics of the South Korean Ministry of Health and Social Welfare, 2,101 Korean children were adopted by families abroad in 2005, while only 1,461 Korean children were adopted by Korean parents the same year. *Intercountry and Incountry Adoptions*, *supra* note 80. Without an increase in the number of Korean families willing to adopt, waiting children no longer placed for adoption internationally would be cared for in the Korean social services system. See Tran, *supra* note 4.

151. 1993 Hague Convention, *supra* note 118, pmbl.

152. See *id.* This Note does not propose that South Korea’s approach is invalid



human rights abuses may arise once more against the condition of Korean orphanages, which are currently understaffed and under-funded.<sup>153</sup> Romania's temporary moratorium on international adoption led to a similar situation with a surge of negative media attention directed toward the country's overflowing and terribly inadequate orphanage system.<sup>154</sup> Allegations of human rights violations could harm South Korea's image far more than the respect and improved image it may hope to gain by ending its role as a sending country.<sup>155</sup>

Concededly, ending the country's international adoption program may also have some positive effects, such as strengthening nationalism in South Korea and assuaging concerns that it is merely a pawn in the imperialism of adoption.<sup>156</sup> The nation would keep and care for its children at home, discontinue its adoption-based relationship with countries that receive Korean children, and no longer be labeled as a sending country in adoption.<sup>157</sup> Yet before embarking on this path, South Korea should consider the significant risks to its children and its national image that may result from closing its adoption program before it is prepared to care for the affected children.

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because it conflicts with certain views expressed in the Hague Convention. *See infra* Part II.B. Nor could South Korea's policy technically violate international treaty law, since it is not a party to the 1993 Hague Convention.

153. *See* Tran, *supra* note 4.

154. The dire plight of children in Romania prompted the U.S. Congress to pass a resolution urging the Romanian government to take action to improve the standard of care for its children and re-open its doors for international adoption. S. Res. 359, 109th Cong. (2006).

155. Romania's ban on international adoption received scathing worldwide media attention. The Helsinki Commission, a human rights organization, held a conference urging reform of the Romanian adoption system in order to quell the humanitarian crisis of children overflowing the nation's substandard institutional care facilities. Maura Harty, Assistant Sec'y of State for Consular Affairs, U.S. Dep't of State, Remarks Before the Commission on Security and Cooperation in Europe (Sept. 14, 2005), <http://www.state.gov/r/pa/ei/otherststmy/54301.htm>. The United States, UNICEF, and other countries and organizations became involved in the tedious reworking of Romania's adoption law to meet international standards while the country continued its moratorium on international adoptions. *Id.* Today, nations' adoption laws are being heavily scrutinized for compliance with the Hague Convention. Kim Ode, *Foreign Adoptions Decline as Rules Shift*, STAR TRIB. (Minneapolis), Jan. 14, 2007, at A1. If South Korea's premature closure of international adoption creates a situation akin to that of Romania, it would risk the same worldwide negative reaction and cries to reform Korea's adoption laws.

156. *See* Tahk, *supra* note 10, at 79, 89–91; Dharmaruska, *supra* note 56, at 115, 121, 128 (discussing sentiments in Thailand); Van Leeuwen, *supra* note 44, at 202.

157. *See* Tahk, *supra* note 10, at 79, 89–91; Dharmaruska, *supra* note 56, at 121, 128; Van Leeuwen, *supra* note 44, at 202.

## B. THE PROPER ROLE OF INTERNATIONAL INSTRUMENTS

With an increase in the number of nations participating in international adoption and the growth in the number of children moving across country lines to their adoptive parents, the formation of adoption law necessarily faces strong political, cultural, and economic pressures. The best role of international instruments in this process is to highlight a consideration at times overlooked by both sending and receiving nations—the best interests of the child.<sup>158</sup> Existing instruments do this well, focusing to a significant extent on the welfare of children in the adoption process.<sup>159</sup>

Concurrently, international instruments appropriately allow a nation to form its own goals for adoption policy, even if those goals include eliminating its international adoption program.<sup>160</sup> As long as national decisions comply with the provisions of the international instruments and hold the interests of the child in highest regard, these instruments defer to the desires and goals of each individual nation in forming its adoption policy.<sup>161</sup>

The 1993 Hague Convention, as the most recent international instrument on adoption, represents an excellent model for international adoption that emphasizes the interests of children involved in it. Although the Convention has faced some criticism, it is a significant step forward in regulation of adoption at an international level.<sup>162</sup>

### 1. All Parties Would Benefit from South Korea Joining the 1993 Hague Convention

South Korea has not ratified the 1993 Hague Convention

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158. See Van Leeuwen, *supra* note 44, at 203; see also Tahk, *supra* note 10, at 91 (noting sending nations' struggle with placing the welfare of its children above national pride); cf. JOHNSON, *supra* note 8, at 153 (urging receiving nations and individual donors to concentrate their commitment to support Chinese orphanage programs and the promotion of domestic adoption as the best interests of Chinese orphans, rather than perpetuating China's practice of sending children to adoptive parents abroad).

159. See 1986 U.N. Declaration, *supra* note 115, *passim*; 1989 U.N. Convention on the Rights of the Child, *supra* note 116, art. 3; 1993 Hague Convention, *supra* note 118, pmbl., art. 4.

160. See 1993 Hague Convention, *supra* note 118, pmbl., art. 4.

161. See *id.*

162. For a discussion of additional strengths and weaknesses of the 1993 Hague Convention and its impact upon current U.S. law, see Bartholet, *supra* note 19, at 67–70.

and has no plans to do so while it attempts to end its status as a sending country.<sup>163</sup> However, by ratifying the Convention for the short-term, South Korea could gain all of the benefits of being a party to the 1993 Hague Convention while simultaneously working to phase out international adoption. South Korea's current adoption system is practically a model of a Hague Convention-compliant country.<sup>164</sup> Every part of the process is tightly regulated, with the Ministry of Health and Social Welfare overseeing all adoptions, only four agencies licensed by the government, and a strong and well-funded foster care system. South Korea would have to expend very little effort to come into full compliance with the 1993 Hague Convention.<sup>165</sup>

Bringing South Korea to the table to participate in the international debate on adoption policy would provide an important perspective to the discussion. The South Korean government's experience forming its adoption policy and its struggles with a culture unreceptive to the practice may offer insight to nations forming their own adoption policies. South Korea's ability to step back and consider how best to serve its waiting children may also bring a deeper dimension to the role of international instruments—if it chooses, South Korea could become a model to other nations by using the spirit of the 1993 Hague Convention to help develop adoption policies that advocate for the best outcomes for children waiting to be adopted.

## *2. The 1993 Hague Convention Aids All Participants in International Adoption*

The 1993 Hague Convention is a primary instrument for advocating the rights of the child in all forms of adoption.<sup>166</sup> One

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163. Elizabeth Bernstein, *Rules Set to Change on Foreign Adoptions*, WALL ST. J., Nov. 2, 2006, at D1.

164. The 1993 Hague Convention standards that require the most government time, coordination, and expense are already well-established in South Korea's adoption program. The Convention requires the creation of a central authority to coordinate and oversee all adoptions; South Korea's Ministry of Health and Social Welfare already fulfills this role. 1993 Hague Convention, *supra* note 118, arts. 6–9; REPUBLIC OF KOREA ADOPTION INFO. FLYER, *supra* note 68. The Convention also dictates that all adoption agencies be accredited by the central authority; South Korea only has four agencies, all of which are overseen by the Ministry of Health and Social Welfare. 1993 Hague Convention, *supra* note 118, art. 10; REPUBLIC OF KOREA ADOPTION INFO. FLYER, *supra* note 68.

165. *Id.*

166. See Bartholet, *supra* note 19, at 206.

major way it serves this purpose is by making the international adoption process more transparent.<sup>167</sup> By establishing a central monitoring authority in each country, the Convention holds all parties accountable and decreases the risk of bribery and baby selling in the adoption process.<sup>168</sup>

The Convention emphasizes the belief that the ideal situation for a child is placement in a permanent family in his or her country of origin.<sup>169</sup> This allows member sending nations the freedom to pursue efforts of slowly eliminating their international adoption programs.<sup>170</sup> Such an end to international adoption is viewed as valid by the Convention, as long as the best interests of the child can be served by permanent placement in a domestic family.<sup>171</sup>

The 1993 Hague Convention also works to remove the stigma of sending countries by giving multinational legal validation to international adoption.<sup>172</sup> Leaders in sending countries who view foreign adoption as a legitimate way to provide for their orphaned children can use the Convention in support of such a policy.<sup>173</sup> They can point to the many protections the Convention affords to children against sale or exploitation, lessening the ability of any member country to participate in "baby-selling" activity.<sup>174</sup> The sheer number of nations already party to the Convention demonstrates the global view that international adoption is a good option for children.<sup>175</sup>

By receiving more information about the child they are adopting, prospective adoptive parents also benefit from the 1993 Hague Convention's requirements.<sup>176</sup> Agencies are required under the Convention to gather more information on the health, biological parents, and documented birth of each child they receive.<sup>177</sup>

Further, some countries may open their doors to more adoptions to the United States.<sup>178</sup> For example, ratifying

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167. *See id.*

168. 1993 Hague Convention, *supra* note 118, arts. 6–10.

169. *Id.* pmb1.

170. *See id.*

171. *Id.*

172. *See id.*

173. *See* Bartholet, *supra* note 19, at 67.

174. *Id.*

175. As of Sept. 12, 2007, seventy-four nations were parties to the 1993 Hague Convention. Hague Conference on Private International Law, *supra* note 118.

176. *See* 1993 Hague Convention, *supra* note 118, art. 30.

177. *See id.*

178. Bernstein, *supra* note 163, at D3.

countries such as India, Mexico, Bolivia, and the Philippines have all indicated that they might allow more adoptions to United States parents after the United States enacts the International Adoption Act.<sup>179</sup>

Finally, international pressure plays a major role in keeping corruption in check.<sup>180</sup> In any country where there is a market for adoption from abroad, if the nation's domestic adoption laws are not strongly regulated, there is nothing to stop corruption and bribery from entering the adoption process.<sup>181</sup>

### 3. Weaknesses of the 1993 Hague Convention

The process from first signing the 1993 Hague Convention to actual implementation of its principles in each member country can be lengthy and complicated.<sup>182</sup> Once a nation signs the Convention, it must also implement its protocol domestically before ratifying the treaty.<sup>183</sup> Even after implementation begins, the Convention requires member countries to conform to new and stricter regulations, inevitably stalling the adoption process and increasing government costs in the short term.<sup>184</sup> This initial lull means that, during the Convention's implementation stage, waiting children will need to wait longer to be placed in permanent homes.<sup>185</sup>

Another weakness of the Convention is the extent of its

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179. *Id.*

180. One of the main aims of the 1993 Hague Convention was the development of procedural and substantive rules to protect birth parents and their children against corrupt practices in international adoption. Barcholet, *supra* note 19, at 67. To comply with the Convention, member nations must tailor their adoption laws to include the strict safeguards outlined in the document. *Id.*

181. Romania's loosely regulated and poorly structured adoption laws led to a baby-buying scandal in which some birth mothers were induced to place their children for adoption in exchange for money. The discovery of this scandal triggered the country's moratorium on international adoptions. *Id.* at 66.

182. The U.S. signed the 1993 Hague Convention in 1994, enacted its implementing legislation in 2000, and is expected to ratify the treaty in 2007. GUAT: INT'L ADOPTION AND THE HAGUE ADOPTION CONVENTION, *supra* note 118.

183. A State must fully comply with the 1993 Hague Convention's provisions shortly after it ratifies the Convention. See 1993 Hague Convention, *supra* note 118, art. 46 (2). The U.S. implementing legislation of the 1993 Hague Convention is the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, 114 Stat. 825 (2000).

184. See 1993 Hague Convention, *supra* note 118, arts. 4-39, 41.

185. Once a country has ratified the 1993 Hague Convention, the instrument requires full compliance with its terms of before the country may process new international adoption applications. *Id.*, art. 41.

deference to individual nations to determine what safeguards are necessary to protect the best interests of its children.<sup>186</sup> This means that the actual measures taken to protect children can vary widely based on the cultural context of each country.<sup>187</sup> While any international adoption treaty should allow for some flexibility for nations to incorporate their cultural beliefs, it should also advance clear standards and objectives in order to streamline the process.<sup>188</sup> The excessive amount of discretion given by the Convention to nations' Central Authority does not serve to facilitate the process; rather it weakens the protective role of the Convention and allows differences between countries' laws to continue to grow.<sup>189</sup>

### III. PROPOSAL: HOW SOUTH KOREA CAN BOTH PURSUE NATIONAL INTERESTS AND ACT IN THE BEST INTEREST OF ITS CHILDREN

South Korea's desire to end its role as a sending nation is valid. After evaluating the risks involved and whether the country is prepared to care for its waiting children, it may wish to continue its efforts toward closing its international adoption program. In the end, the nation's desire to honor its children by doing what is best for them may eventually mean the end of international adoption from Korea. Yet the manner in which this change occurs could be enhanced by Korea's integration of

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186. Article 21 of the 1993 Hague Convention provides:

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –

(a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

(b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

(c) as a last resort, to arrange the return of the child, if his or her interests so require.

1993 Hague Convention, *supra* note 118, art. 21.

187. See Barcholet, *supra* note 19, at 65, 68.

188. *Id.*

189. See Barcholet, *supra* note 19, at 68.

principles embodied in the 1993 Hague Convention. South Korea has been a leader in international adoption and a paradigm of policymaking that provides for the best interests of waiting children. Thus, South Korea is uniquely situated to become a leader of nations hoping to transform international adoption into programs of domestic adoption. Therefore, this Note proposes that South Korea may benefit from adopting a three-tiered policy aimed at gradually phasing out the international adoption of Korean children.

#### A. INCREASE SUPPORT TO KOREAN BIRTH PARENTS

First, South Korea may wish to consider increasing social services to Korean families to help children stay with their Korean birth parents and decrease the number of children placed for adoption.<sup>190</sup> Some of these initiatives can align with the goal of addressing the nation's population crisis.<sup>191</sup> As part of its initiative to reverse the nation's low birth rate and aging population, the government has offered monetary support to families with children.<sup>192</sup> But in the long run, subsidies and reduced fees are not enough.<sup>193</sup> The government must directly address the high costs of education, medical care, and child care in order to promote childbearing into the future.<sup>194</sup>

In particular, single mothers need support to make keeping their child a viable option.<sup>195</sup> Single mothers face both cultural discrimination and economic barriers that make raising their children a nearly impossible option.<sup>196</sup> The government can immediately address economic concerns by expanding its government-funded housing to support single mothers as they

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190. See Onishi, *supra* note 87; Cho, *supra* note 91.

191. Cho, *supra* note 91.

192. *Id.*

193. See Onishi, *supra* note 87. Many parents cite costs of child care and education as main reasons for not having children, and the insufficiency of government subsidies to make childbearing a viable economic decision. See Cho, *supra* note 91; Onishi, *supra* note 87.

194. *Id.*; see Kim, *supra* note 29.

195. Chang-ho Yi, *Birthmothers: Unspoken Side of Adoption*, KOREA TIMES, Oct. 12, 2006, available at [http://www.koreatimes.co.kr/www/news/nation/news\\_view.asp?newsIdx=2989067](http://www.koreatimes.co.kr/www/news/nation/news_view.asp?newsIdx=2989067). Rev. Kim Do-hyun is producing a documentary on the plight of single Korean mothers who, for economic and cultural reasons, unwillingly had to place their children for adoption. *Id.* Rev. Kim's interviews with the birthmothers revealed their desire to keep their children, and their belief that increased support from the government would make it possible for them to do so. *Id.*

196. *Id.*; Kim, *supra* note 29.

transition into a stable home for their children.<sup>197</sup> The cultural refusal to accept single mothers into Korean society will require a more gradual change, but the nation's lessening devotion to male bloodlines as the organizing principle of society may aid in this process.<sup>198</sup>

Pairing these support initiatives with the nation's current efforts to ease the economic hardship on families with children, in response to the nation's population crises, may serve a dual purpose—encouraging parents to have more children, and giving them the opportunity to raise a child who would otherwise be placed for adoption.<sup>199</sup>

#### B. ADVANCE STRONGER EFFORTS TO FACILITATE AND PROMOTE DOMESTIC ADOPTION IN SOUTH KOREA

It is a reality that changing Korean cultural attitudes toward adoption will be a slow and difficult task.<sup>200</sup> However, South Korea may be able to encourage this shift by both facilitating the adoption process and advancing stronger incentives for domestic families who adopt.<sup>201</sup> To increase the pool of potential Korean adoptive parents, the government could further relax the age requirements imposed on prospective Korean adoptive parents by expanding the acceptable age range of Korean parents to allow younger parents to adopt a child.<sup>202</sup> The Ministry's movement to allow singles to adopt is a strong step in the same direction, opening a previously untapped

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197. Currently there is one government-funded house for single mothers in each South Korean province, but the women can only stay for two years, after which they may receive a small allowance for the child, but no additional support. Kim, *supra* note 29.

198. See JOHNSON, *supra* note 8, at 137.

199. See Onishi, *supra* note 87; Cho, *supra* note 91.

200. The Korean government has already experienced the difficulties of changing Korean views on adoption through its little-successful campaign to promote domestic adoption. See JOHNSON, *supra* note 8, at 137.

201. Congresswoman Ko Kyung Hwa, an advocate for ending South Korea's international adoption program and promoting domestic adoption, believes the most important element is the consistency of the government's efforts. *Interview with Legislator Ko Kyung Hwa*, NAVER NEWS ONLINE, May 11, 2006, available at <http://news.naver.com> (also on file with author). She argues that cultural change will be facilitated by efforts to tie recent legislative acts on adoption into the promotion of a more positive opinion on adoption. *Id.*

202. Until last year, Korea required both domestic adoptive parents to be between 25 and 45 years of age. Park, *supra* note 5. Recently, the government extended the upper limit to under 60 years, but did not change the minimum age. *Id.* Subject to substantive review of parental fitness, the government should consider extending the lower age limit to 21 years of age.



source of Korean parents who may wish to adopt.<sup>203</sup>

In addition to removing obstacles in the adoption process, the government may consider extending all child-based tax incentives and welfare benefits to families with adopted children, as it has done with some benefits, such as child leave from work and monthly per-child allowances.<sup>204</sup> The country could extend these benefits by granting to parents of Korean adopted children the same education, medical, and housing subsidies that biological parents enjoy.<sup>205</sup> This would place the decision to adopt a child on equal economic footing with having a biological child, which may encourage some parents to choose adoption.<sup>206</sup>

A significant Korean cultural deterrent to adoption is the unknown patrilineage of the adopted child.<sup>207</sup> The government no longer prohibits marriage within ancestral homes,<sup>208</sup> but there remains a strong bloodline-based network of connections within Korean society that form large barriers for a child of unknown origin.<sup>209</sup> This places a burden on both the adoptive parents and the adopted child. To lessen this, the Ministry of Health and Social Welfare could require its agencies to document the blood lineage of a child placed for adoption as specifically as the birth parents will allow. If the adoptive parents know the surname and ancestral home of a child, it may translate into more opportunities in Korean society such as wider marriage prospects and increased educational and job opportunities. Koreans may also be more apt to adopt a child from their same surname and ancestral home.<sup>210</sup> This may translate into children connecting with a home more quickly in the adoption process.

Finally, the government should consider pursuing a public and comprehensive educational campaign to present domestic adoption of a Korean child in a favorable light.<sup>211</sup> South Korea could also integrate adoption into family-education courses in

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203. See Park, *supra* note 5.

204. *Id.*; *Government in Bid to Encourage Adoption in Korea*, *supra* note 5.

205. See Baker, *supra* note 29.

206. See Cho, *supra* note 91.

207. See BREEN, *supra* note 7, at 53.

208. See *supra* note 32.

209. See Chaibong, *supra* note 32, at 336.

210. REPORT ON THE KOREAN SURNAME AND ITS ORIGIN, *supra* note 32.

211. Ministry of Health and Social Welfare official Jang Ok-ju has been quoted as saying that the government will consider launching a publicity campaign to cultivate a more positive view of adoption. Park, *supra* note 5.

schools, presenting it as a positive opportunity for both the parents and child, in an effort to promote systemic change toward a more favorable perception of adoption in Korean culture.<sup>212</sup>

### C. CONTINUE INTERNATIONAL ADOPTION PROGRAM UNTIL ALL CHILDREN CAN BE ENSURED A PERMANENT HOME IN KOREA

While advancing the initiatives outlined above, South Korea should consider continuing its international adoption program until all children placed for adoption can be matched with a Korean domestic family.<sup>213</sup> Phasing out the international adoption program over a number of years will ensure that children are not neglected in the transition by being placed into institutions instead of a Korean family or a family abroad.<sup>214</sup> In concert with continuing international adoption, for the reasons discussed above, South Korea may wish to sign and ratify the 1993 Hague Convention.<sup>215</sup>

## CONCLUSION

South Korea has played a significant role as a sending country in international adoption. Recent efforts to curtail its international adoption program have collided with the nation's ingrained cultural hesitancy to adopt domestically, creating an inability to provide permanent homes for children waiting in the Korean welfare system.

South Korea's desire to end its role as a sending country is legitimate and needs to be pursued. However, ending its program prematurely to appease political and economic pressures and cultural concerns will leave waiting Korean children without permanent families at home or abroad, and may open the nation to greater international scrutiny.

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212. *Id.*

213. Although there is a minority push in the Korean legislature to end its international adoption program immediately, experts believe an immediate ban may be too early for the country. Lee, *supra* note 5.

214. Following the 1991 outcry on the desolate state of orphanages in Korea, the Korean government announced a plan in 1993 to phase out institutional care over a ten year period, based on recommendations from the United Nations. Tran, *supra* note 4. Although the government later altered this specific initiative, Korea should take the same care in transitioning from international adoption to a solely domestic program.

215. See Bartholet, *supra* note 147, at 206; Bartholet, *supra* note 19, at 67-68.

International instruments such as the 1993 Hague Convention provide an opportunity for South Korea to lessen the stigma of its status as a sending country and demonstrate its commitment to advocate for the best interest of its children, while concurrently advancing policies to phase out its international adoption program. By advancing robust efforts tailored to help children remain with their Korean birth parents, promoting acceptance of domestic adoption of Korean children, and gradually phasing out its international adoption program, South Korea can meet the dual goals of ending its role in international adoption while holding the welfare of its children paramount.

Sending countries have been at the forefront of attempts to define what is best for waiting children, and this question is crucial at a time when the role of international adoption is being redefined. With the economic and educational resources South Korea has to bear on this issue and its strong cultural reverence of its children, South Korea has much to offer to the international debate on adoption policy. The Korean government's approach may offer an added nuance to the Hague Convention's broad emphasis on the "best interest of the child" by helping to define what this truly is. South Korea has long been an exemplar of prioritizing children's interests, first by establishing the first full-scale international adoption program in the world and then by continuing its program even when harshly criticized. Now, the nation may yet again be an exemplar of implementing policies that advocate for the interests of waiting children by considering whether these children are best served by being raised in Korean homes instead of abroad.

South Korea would be the first sending country to transform such a sweeping, entrenched international adoption program into a policy of exclusively domestic adoption. Although the nation faces exceptional challenges, South Korea is uniquely situated to become an international leader in helping to shape adoption policy that truly places the interests of waiting children at the forefront.