December 18, 2013

The Honorable
John F. Kerry
Secretary of State
Washington, DC 20520

Subject: Action Request with Respect to Implementation of the Hague Adoption Convention

Dear Secretary Kerry,

We write with an urgent request for a thorough internal review of the Bureau of Consular Affairs, Office of Children’s Issues policies and procedures related to determinations of partner country compliance with the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention). Stated simply, we believe that the Office of Children’s Issues, as the Convention’s Central Authority, has been arbitrary and inconsistent in making these determinations, and we have reason to believe that some of the determinations were based on an inappropriate reading of Convention requirements. We therefore recommend that the State Department take immediate corrective action by:

1. Establishing clear, publicly available criteria for determining whether a Hague Adoption Convention partner country is compliant with the requirements of the Convention by the U.S. Central Authority;
2. Establishing a transparent and timely process for making compliance determinations that includes the opportunity for public comment;
3. Identifying concrete steps that the Department of State can take to assist countries found non-compliant in becoming compliant and then taking those steps; and
4. Establishing a transparent and timely process for reviewing determinations of non-compliance to determine if improvements are sufficient to find the country compliant.

As the following discussion demonstrates, the State Department’s performance as the Central Authority in handling compliance determinations over the past five years (since the Hague Adoption Convention entered into force for the United States) has not been timely or transparent, nor has it included concrete, effective assistance to countries seeking to become compliant.

As a first example, on December 5, we learned that the Government of Cambodia has announced plans to resume placing children for international adoption beginning in 2014. This is welcome news as it has been more than 12 years since all international adoptions from Cambodia stopped. During this period, tens of thousands of children in Cambodia have had no chance at a permanent family and have instead grown up or died in institutional care and ended up on the streets or trafficked into the sex trade. Closing international adoptions did nothing to alleviate the plight of unparented children in Cambodia (or anywhere), and, in fact, serves only to eliminate an important protection option for such children. Thus, we welcome the news that Cambodia, which has joined the Hague Adoption Convention and made changes to their internal structures, is now ready to resume international adoptions.
However, the Department of State as the Central Authority has retained its notification posted on its website (www.adoption.state.gov) indicating that the United States does not consider Cambodia to be a Hague partner country because they are not in compliance with the requirements of the Convention. Further, the Department of State has not signaled when, if ever, it will consider Cambodia a Hague partner country, and on the contrary continues to state in public venues that Cambodia remains non-compliant. We have heard that Department of State officials cite Cambodia’s lack of domestic adoption system as the reason for this finding, and note that the Convention does not require that such a system be in place. As long as the United States Central Authority continues to find Cambodia non-compliant, the United States will not allow any international adoption cases by U.S. families to proceed. This is just one example among many of how our own Central Authority in the United States has served to prevent rather than promote progress through the Hague Adoption Convention.

On a more general level, we draw your attention to how the Department of State has responded to new Hague partner countries in the five years since the Hague Adoption Convention entered into force for the United States (on April 1, 2008). Since 2008, according to the Hague Permanent Bureau website (www.hcch.net), 13 countries have become active Convention partners. And yet, as of the end of FY 2012, not one Hague adoption had occurred from any one of these 13 countries to the United States. Six of these countries have been found by the Department of State to be out of compliance with the Convention, such that international adoptions from those countries to the United States ceased as soon as the Convention entered into force (Cape Verde, Fiji, Guatemala, Montenegro, Vietnam, and Cambodia). Four countries remain closed while trying to implement internal changes that the State Department has deemed necessary for the U.S. to find them compliant (Kazakhstan, Rwanda, Senegal, and Swaziland). Three countries are listed as new Hague partners, but not one Hague adoption to the United States has taken place from them according to available statistics (Greece, Ireland, and Macedonia). Only Lesotho has been able to overcome a non-compliance finding and become a Hague partner, but not a single Hague adoption has yet been completed from there either. By way of contrast, these 13 countries accounted for over 4,100 international adoptions to the United States in 2004.

The previous paragraph demonstrates the disastrous net effect of the State Department’s handling of its role as Central Authority vis-a-vis new Hague Adoption Convention partner countries, which is extremely troubling in and of itself, but there is another aspect of this issue that is equally troubling. The Department of State has no transparent process for making non-compliance determinations or for reversing them.

As an example, take the case of Vietnam. The Convention entered into force in Vietnam on February 1, 2012, and for months leading up to that date, the Department of State had been signaling to the community that Vietnam would be able to reopen as a Hague partner. (Indeed, USAID partially funded a UNICEF program in Vietnam in order to help Vietnam meet Hague standards but, despite frequent requests, we have never been able to obtain an accounting of how this money was spent.) One week before February 1, a delegation from the State Department traveled to Vietnam and returned to announce that they had found Vietnam not to be in compliance with the Convention. There was no public explanation of this finding. The community was stunned. As of today, the website still lists Vietnam as not being a Hague partner. And yet, the State Department recently announced the opening of a pilot program for
special needs children in Vietnam. Does this mean that Vietnam is now compliant? If so, when and what happened to lead to the reversal of the earlier non-compliance determination?

We are very concerned about the lack of clear and explicit criteria for measuring a country’s compliance with the Convention; the lack of open communication about how such determinations are made, reviewed periodically, and reversed; the lack of information about how the Department of State is engaging with the Central Authorities of the other countries to overcome obstacles; and lack of timeliness in engaging with other countries to help ensure a smooth transition in Hague partnership.

We would like to request your personal review of this process and direct intervention as outlined above in an effort to reverse this tragic trend. We urge you to ensure that Hague Adoption Convention compliance determinations are made in a timely, transparent way and subject to regular review. We urge you to ensure that your agency’s Hague compliance efforts focus on helping other Hague signatory countries become Hague-compliant rather than simply using alleged and non-specific Hague shortcomings to so that their children are denied the opportunity to find loving adoptive homes abroad.

As you may know, a piece of legislation now pending before both the Senate and the House of Representatives, Children in Families First, includes specific language that would require the Department of State to make changes consistent with our requests as outlined above. This legislation, which does far more than address this particular issue, has attracted a broad coalition of bipartisan cosponsors already, indicating that Congress is also focused on the need for change.

We thank you in advance for your attention to this issue which directly affects the well-being of some of the world’s most vulnerable children and we look forward to your response.

Donald Cofsky
American Academy of Adoption Attorneys
Craig Juntunen
Both Ends Burning

Diane Kuntz
Center for Adoption Policy
Elizabeth Barthalet
Harvard Law School Child Advocacy Program

Kathleen Strotman
Congressional Coalition on Adoption Institute
Thomas Difilipo
Joint Council on International Children’s Services

Terry Baugh
Kidsave
Chuck Johnson
National Council For Adoption

Elizabeth Styffe
Saddleback Church Orphan Care Initiative