

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
ORGANIZATION OF AMERICAN STATES

WRITTEN RESPONSE TO QUESTIONS BY COMMISSIONERS AT  
THEMATIC HEARING ON HUMAN RIGHTS OF UNPARENTED CHILDREN AND  
RELATED INTERNATIONAL ADOPTION POLICIES  
137<sup>TH</sup> ORDINARY PERIOD OF SESSIONS, NOVEMBER 6, 2009

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## *I. Introduction*

We appreciate this opportunity to respond to various questions posed by the Commissioners during the November 6, 2009, Hearing. We also hope that you will let us know if there is any additional information that we can provide beyond this submission.

### *A. IACHR Core Principles and Concerns*

Thank you for providing us with copies of the Reports issued by the Rapporteurship on the Rights of the Child, *The Rights of Children in the Inter-American System of Human Rights* [hereafter *The Rights of Children*], and the *Report on Corporal Punishment and Human Rights of Children and Adolescents* [hereafter *Report on Corporal Punishment*]. These confirmed our understanding of the leadership position that the IACHR has taken in advancing children's rights. We note the emphasis in *The Rights of Children* on the child as a subject with human rights, and the role played by the American Convention on Human Rights in expanding the concept of children's rights beyond previously limited notions of children as the object of protection. We also note that the American Convention on Human Rights is the only binding international human rights instrument that prohibits suspension of international obligations related to the human rights of children. We are impressed with the range of powers held by the Rapporteurship on the Rights of the Child, including the right to visit OAS member States, to conduct specialized studies, and to engage in promotional and other activities designed to ensure compliance with basic human rights principles within all OAS States. Finally we are inspired by the Rapporteurship's willingness to challenge in the *Report on Corporal Punishment* practices that are common throughout the world, and generally tolerated by OAS State governments, and to demand their elimination through the adoption of legislation prohibiting corporal punishment in the home, at school, and in institutions responsible for child care. This provides reason for hope that the IACHR will take a leadership role in protecting unparented children from the conditions they now suffer, and in demanding that OAS States take action to guarantee children the core right to grow up in a nurturing family.

At the Hearing one of the Commissioners noted that while children might have a right to be adopted, prospective parents have no right to adopt. We agree entirely that the focus must be on the child's right. We are not arguing that prospective parents have a right to adopt. We argue simply that children have a right to grow up in a family, and if they cannot grow up with their birth parents then children have a right to grow up in another family and to be placed in that family as early in life as possible. If the families available are in another country, this means that children have a right to be placed in International Adoption.

### *B. Developments Since the November 6, 2009, Hearing*

We want to bring to your attention certain important developments.

First, the November 6, 2009, IACHR Hearing received positive press in Central and South America, demonstrating a level of popular sympathy for children's rights to be released from institutional care to international adoptive homes. An editorial published November 11, 2009, both in *Peru 21* and in *El Nuevo Herald (Nobody's Children*, by Fernando Berckemeyer) describes the position that we presented to you at the Hearing as "extremely just," and goes on:

Among the reasons that exist to believe in humanity, few are better than adoption that crosses barriers such as culture, race, nationality, class, religion, and all those labels within which we often shut ourselves....

And even so, .... there are many among us who attack international adoption. Some do so because they prefer to leave children in orphanages instead of committing themselves to the work of fighting against child trafficking. Many others argue foolishly that international adoption violates the right to "cultural heritage," as if there were culture that one could take advantage of growing up raised by a legal entity in an underdeveloped shelter, and as if, in any case, it were more important to understand customs surrounding the accident of one's birth than to have someone to call "mommy."

Yet naturally the children are the last thing such individuals are considering: what interests them is feeding the pride of the tribe....

See also supportive editorials and articles which together with the above are listed at <http://www.law.harvard.edu/programs/about/cap/ia/iacommissionhearingnov09.html>, which include editorials by other authors in *Peru 21*, as well as an article in a Mexican publication.

Second, Brazil has recently passed a law recognizing the destructive impact of institutionalization, and requiring that children not be held in an institution for longer than two years. Law No. 12.010, of August 3, 2009, Article 29, section 2, amending the country's Estatuto da Crianca e do Adolescente. This law in no way *approves* holding children in institutions for any unnecessary period of time, but rather makes two years *the maximum* that a child can be held unless the special court for children and youth justifies a longer period in a formal and reasoned decision based on the particular case. This law is also designed to ensure that the preference for in-country adoption be implemented in a way that prevents any delay in adoptive placement as recommended in the International Adoption Policy Statement attached to our Written Testimony. The law requires that when children are freed for adoption, the central authorities in the respective Brazilian state jurisdiction consult a list of adopters certified for in-country adoption, and if there is no match, then immediately consult the list of those certified for International Adoption (with a preference for Brazilians living abroad over non-Brazilians living abroad) (*id.*, Article 50, section 10).

Third, various events confirm the unfortunate reductions in the numbers of International Adoptions described in our previous submissions (our July 23, 2009, *Request for Thematic Hearing* and our *Written Testimony*). The official statistics on adoptions to the U.S. are now in for 2009, and they show a dramatic drop in the past year, from 17, 475 in 2008 to 12, 753 in 2009, with very low numbers of such adoptions from Central and South American countries. Thus not

only has there been a drop in numbers every year since the peak year of 2004, but the decline has escalated, making it clear that the projection we gave you previously for 2010 will be sadly correct – the number will fall to significantly less than half the 22,990 reported for 2004. See Attachment A. Guatemala has reported that its new system for International Adoption will initially consist of a pilot program that will release only a small number of children any given year, limited to special needs and other hard-to-place children, including children for whom efforts to locate in-country homes have failed. The Official Notice circulated by the National Council of Adoptions of Guatemala Central Authority states explicitly that future numbers of International Adoptions will be limited to “the hundreds and not the thousands.” Anecdotal evidence indicates that unparented children in Guatemala continue to live in dire conditions, with homes for children that used to place them in adoption now converted to institutions in which children are expected to grow to adulthood. See, e.g., Ezra Fieser, *Will Guatemala’s new adoption rule stop exploitation or result in more orphans?*, December 23, 2009, GlobalPost.

## II. Information Regarding Children Adopted Internationally

This section attempts to answer several of the specific questions posed by the Commissioners at the hearing.

### A. Social Science Research Findings Related to Adoptee Welfare

The social science literature demonstrates convincingly that children adopted early in life generally do roughly as well as children raised in normal, non-problematic biological families, despite the fact that most children categorized as early-adopted have spent up to one year in difficult situations prior to adoption and many also suffer pre-natal insults. These positive findings regarding adoption are true for all groups of adoptees, including children adopted internationally and transracially. There is no evidence that placement across national, ethnic or racial lines causes any harm to children. There is extensive evidence that denying children a permanent nurturing home early in life causes them severe cognitive, socio-emotional and other damage. See III A, *infra*. Adoptee studies regularly show that the later in life children are placed in their adoptive homes, the greater the risk for developing problems. Documentation of these matters is contained in, e.g., the following: Femie Juffer & Marinus H. Van Ijzendoorn, *Behavior Problems and Mental Health Referrals of International Adoptees*, 293 JAMA 2501 (2005) (a meta-analysis of research on international adoptees showing that adoptees are generally well-adjusted, with those living with their adoptive families for more than twelve years the best adjusted, and with preadoption adversity increasing the risk of problems); Elizabeth Bartholet, *FAMILY BONDS: ADOPTION, INFERTILITY, AND THE NEW WORLD OF CHILD PRODUCTION* at 158-59 and nn. 23-29, 164-86 (1999) [hereafter *FAMILY BONDS*]; Elizabeth Bartholet & Joan Heifetz Hollinger, *International Adoption: Overview*, in *ADOPTION LAW AND PRACTICE* § 10-1, §§ 10-15 to 10-21 (Joan Heifetz Hollinger ed., 2002) [hereafter *ADOPTION LAW AND PRACTICE*].

A recent study of children adopted internationally is illustrative of this larger body of research. It demonstrates: (1) the harm children suffer from institutionalization; (2) the help they get in

overcoming at least some of that harm from being raised in International Adoptive families; and (3) the fact that additional time spent in institutions causes additional lifetime damage despite the good care the children receive. Emma Jacobs, Laurie Miller and Linda Tirella, *Developmental and Behavioral Performance of Internationally Adopted Preschoolers: A Pilot Study*, 41 Child Psychiatry Hum. Dev. 15 (2010). The study was done by highly respected International Adoption pediatric specialists at the International Adoption Clinic, Tufts Medical Center, Boston MA. The study involved children adopted from countries including Guatemala during the first 24 months of age, who had been in the U.S. for at least three years. Most of the children experienced multiple pre- and post-natal risk factors prior to adoption. The study found that the children had made dramatic progress in overcoming language skill and other deficits, but still suffered certain problems, with the degree of problem related to the age at placement. The study summarized:

In conclusion, this group of healthy, “uncomplicated” children adopted at a young age did exceedingly well at catching up with their American born peers with regards to ... language skills.... fine motor and visual reception skills.... However, nearly one-quarter to one-half of internationally adopted preschoolers display behavioral problems.... And nearly one-half display sensory-seeking behaviors. More than 10% ... had problems with executive function. The presence of these problems correlated with older ages at adoption, even in this group of children all adopted before 24 months of age.... In conclusion, early adoptive placements should be facilitated to minimize later behavioral, executive dysfunction, and sensory problems. (*Id* at 26)

While many people believe that children will be best off if kept in their country or group of origin, there is no evidence that this is true, despite many studies designed to assess the issue. There is no evidence that children with a strong sense of racial or ethnic or national group identity are any happier or have any better sense of self-esteem than children who think of themselves primarily as belonging to the human race, or as belonging to groups defined in non-racial and non-national ways.<sup>1</sup> And the studies of children adopted across racial and national lines reveal no evidence that growing up separated from one’s group of origin has any negative impact whatsoever on the child.<sup>2</sup> And of course common sense is enough to tell us that children adopted internationally will do much better than children who live in institutions or on the streets, which are the real-world alternatives today for almost all unparented children in Central and South America. Even if poor countries are able to develop foster care systems, the evidence demonstrates that adoption works

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<sup>1</sup> WILLIAM E. CROSS, JR., SHADES OF BLACK: DIVERSITY IN AFRICAN-AMERICAN IDENTITY 108-14 (1991); see also Barry Richards, *What is Identity?*, in IN THE BEST INTERESTS OF THE CHILD: CULTURE, IDENTITY AND TRANSRACIAL ADOPTION 77, 84-86 (Ivor Gabor & Jane Aldridge eds., 1994) (positing that personal, as opposed to social, identity is central to emotional security, and that its formation is independent of the ethnicity of one’s parents); Barbara Tizard & Ann Phoenix, *Black Identity and Transracial Adoption*, in *id.* at 94-95, 99 (stating that there is no persuasive evidence linking self-esteem with black or racial group identity measures).

<sup>2</sup> Transracial adoption within the U.S. has been extensively examined for evidence that it might put children at some risk for identity confusion or other problems, but the entire body of research has revealed no such evidence whatsoever, *See e.g.*, Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. Rev. 1163, 1207-26 (1991); Elizabeth Bartholet, *Commentary: Cultural Stereotypes Can and Do Die: It’s Time to Move on with Transracial Adoption*, 34 J. AM. Psychiatry L. 315, 319 (2006).

far better than foster care for children. Elizabeth Bartholet, *NOBODY'S CHILDREN: ABUSE AND NEGLECT, FOSTER DRIFT, AND THE ADOPTION ALTERNATIVE* (1999) at 81-97.

Critics of International Adoption cite occasional isolated incidents in which children have been abused by their adoptive parents. But tragically there will always be parents, whether biological or adoptive, who abuse children. What is important is to assess whether there is any risk to adopted children *as a group*, and the evidence demonstrates clearly that *there is no such risk*. Studies demonstrate that the *rates of child abuse and other maltreatment are extremely low overall in adoptive families* – lower than the general rate for non-problematic biological families, lower than the rate for foster families, and much much lower than the rate of abuse in biological families once identified as abusing or neglecting their children (families to which children have been returned from foster or institutional care). See Elizabeth Bartholet, *NOBODY'S CHILDREN*, *supra*, at 96-97, 109-10, 177.

Some have expressed concerns about certain categories of parents who may adopt internationally, such as single parents and older parents. However most of those who adopt internationally are traditional married couples of normal child-rearing ages. The parental screening process in adoption generally gives such couples a preference over singles and older parents so that the children placed with single and older parents are likely to be children who otherwise would find no adoptive family at all. Also the studies of single, older and other non-traditional adoptive families reveal no significant disadvantages for the children as compared to children raised by more traditional parents. See Bartholet, *FAMILY BONDS*, *supra*, at 84 and n. 20; see also *id* at nn. 18-19 and related text.

#### *B. Characteristics of Unparented Children Adopted Internationally*

Critics of International Adoption often argue that prospective parents are only interested in adopting healthy white infants, and are not interested in providing homes for many of the children in need – children of other races and ethnicities, children suffering from the impact of institutionalization, children with disabilities. The reality is that almost none of the children adopted internationally are healthy white infants. Prospective adoptive parents are regularly advised that the children available for international adoption are almost all at least one year of age, generally older than that, and often much older. They are regularly advised that the children available are likely to be of a different race and ethnic background from the adoptive parents, and likely to have health and developmental problems ranging from mild to severe. Prospective adopters press forward eagerly to adopt internationally with this knowledge in mind. A recently published *ADOPTION FACTBOOK* (National Council for Adoption, *ADOPTION FACTBOOK IV*, 2007) reports that, based on the 2000 U.S. Census, 27 % of foreign-born adopted children were 2-4 years old when they arrived in the U.S., 18% were 5-9 years old, and 11% were 10-17 years old (p. 141). It reports that roughly two-thirds were non-white (p. 149). The Factbook reports that most internationally adopted children live in institutional care prior to adoption and suffer a range of health and developmental problems as a result, some of which can be overcome with nurturing family care, and many of which are serious enough to put the children at risk of lifelong physical, mental and emotional problems (*id* at 381, 384-85, 389-91). A 2007 Survey of

Adoptive Parents in the U.S. (ADOPTION USA, U.S. Dept of HHS, 2009) reports that close to one-third of internationally adopted children have special health care needs as of the time of the survey, that over two-thirds of the children adopted internationally had lived previously in institutional care, and that 84% of children adopted internationally are in transracial placements. Consistent with other adoption studies this survey reports that adoptive parents and children overwhelmingly express satisfaction with their adoptive experiences (*id* at pp. 7, 13, 35).

### C. Existing Systems for Screening, Monitoring and Assisting Adoptive Parents and Children

Extensive systems exist for screening prospective international adoptive parents for parental fitness, and monitoring adoptive arrangements during a probationary period after the child is placed in the adoptive family. In the U.S. prospective parents must be screened for parental fitness by child welfare professionals in their home state and also approved by federal authorities. The Hague Convention on Intercountry Adoption has added new layers of requirements for all Hague adoptions, including that agencies engaging in such adoption satisfy new certification requirements. See generally ADOPTION LAW AND PRACTICE, *supra*, chapter 11, *Intercountry Adoption: Legal Requirements and Practical Considerations*. Following placement of a child for international adoption and entry into the U.S., most children will go through a U.S. adoption court proceeding, either a second adoption if they were already adopted in the country of origin, or the required initial adoption if they came in in a guardianship arrangement. Prior to any such U.S. adoption, the U.S. adoption agency will typically monitor adoptive arrangements for a probationary period lasting roughly six months. After adoption, there has been a developing trend in the U.S. in recent years for adoption agencies to provide support services to families with children with special needs.

### D. The Organ Harvesting Rumor

At the hearing one Commissioner requested that we address in our post-hearing Submission the Organ Harvesting rumor. This rumor has been deliberately spread by opponents of International Adoption. The claim is that some of those who present themselves as adoptive agencies or parents are taking children from other countries in order to kill them for their organs, which are then used in organ transplants. The claim is entirely unsubstantiated – not a single case of such organ harvesting has ever been documented. Moreover the claim has been repeatedly investigated by reputable organizations, including the United Nations and the European Parliament, and has been consistently debunked in these investigations. See generally *The Child Organ Trafficking Rumor: A Modern “Urban Legend,”* A Report Submitted to the U.N. Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, by the U.S. Information Agency (USIA), December 1994; U.S. Information Agency, *Misinformation and Disinformation: The So-Called “Baby Parts” Rumor Spreads Worldwide*, June 1, 1990; Bartholet, FAMILY BONDS, *supra*, at 153 and n. 18. The 1994 USIA Report persuasively summarizes the various international and national investigations, the absence of evidence in support of this rumor, and the impossibility of organ harvesting existing without any evidence surfacing:

Since January 1987, rumors that children are being kidnapped so that they can be used as

unwilling donors in organ transplants have been rampant in the world media. No government, international body, non-governmental organization, or investigative journalist has ever produced any credible evidence to substantiate this story, however. Instead, there is every reason to believe that the child organ trafficking rumor is a modern “urban legend,” a false story that is commonly believed because it encapsulates, in story form, widespread anxieties about modern life.

Organ transplant experts agree that it would be impossible to successfully conceal any clandestine murder-for-organ-trafficking ring. Because of the large number of people who must be involved in an organ transplant, the sophisticated medical technology needed to conduct such operations, the extremely short amount of time that organs remain viable for transplant, and the abhorrent nature of the alleged activities, such operations could neither be organized clandestinely nor be kept secret.

\* \* \*

The rumor has... harmed and disrupted intercountry adoption, caused widespread, groundless fears in Latin American and elsewhere....

\* \* \*

The U.S. Information Agency has investigated allegations of trafficking in children’s organs since these charges first appeared in the world press in January 1987. In addition to its own investigations, the U.S. Information Agency has also attempted to learn about the results of examinations of this issue by intergovernmental bodies such as the United Nations and the European Parliament, and by other governments, non-governmental organizations, and investigative journalists. Despite almost eight years of exhaustive inquiries involving numerous allegations, the U.S. Information Agency is not aware of any credible evidence produced by any of these investigations that indicates that any trafficking in children’s organs has ever occurred. On the contrary, all the information points to the opposite conclusion: that allegations of trafficking in children’s organs are a totally unfounded myth.

\* \* \*

Although political motivations have been responsible for some of the more spectacular outbursts of the child organ trafficking rumor, for the most part, the rumor has been embraced and spread by well-meaning individuals who believe it out of naiveté or worry that it may be true. Tragically, the publicity these well-intentioned individuals have given the rumor by deploring a non-existent crime has inadvertently contributed to its credibility and the resultant damage it has done. At this point, the rumor has attained such currency that it appears certain to continue on the strength of its own momentum for years to come.

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On July 23, 1987, in response to a European Parliament resolution asking for an investigation of such charges, the European Community Commission stated that it “does not know of any transplant operations performed in Europe for which the organs of Latin American children have been used.”

On October 7, 1987, the Geneva-based, non-governmental organization Defense for Children, International (DCI) stated, “In recent months, DCI has tried to have these reports verified by its representatives in Central America. So far, these investigations have failed to find any evidence to substantiate the reports.”

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On August 25, 1988, Ms. Linda Sheaffer, Director of the Division of Organ Transplantation at the U.S. Public Health Service, stated that such illegal transplants would be “not only impractical but impossible.” She pointed out that some organ transplants “take up to 14 hours, none of the procedures could occur without the complete cooperation and knowledge of the hospital staff,” and “any such large scale operation would not be kept secret.”

On September 23, 1988, the Paris-based International Federation for Human Rights released a “Mission Report” on their “Investigation on Possible Trafficking in Infant Organs.” It stated, “we have not been able to find a single piece of evidence indicating that such a trafficking operation is really occurring.”

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On June 6, 1989, U.S. Assistant Secretary for Health James Mason and U.S. Surgeon General C. Everett Koop released a lengthy letter in which they pointed out that “the technical and medical aspects of organ transplantation make it impossible to obtain and transplant organs secretly.” They stated, “The requirements of the process, including numerous highly trained professional personnel and sophisticated equipment, assure that any such activity would be detected and exposed,” stressing that “removals of organs is a complex surgical procedure, performed only in hospitals, and specialized technical arrangements are needed to preserve the organs.” Mason and Koop went on to point out, “Organ transplant procedures are also highly complex and must be performed in the highest level surgical facilities, most often in large hospitals affiliated with schools for the education of physicians.” “Because of the nature of the technology involved,” they concluded, “these activities could not be conducted in secret or makeshift facilities.”

#### *E. The Need for Any Additional Systems for Monitoring Adoptive Families*

At the Hearing one of the Commissioners raised the question as to whether there was a need for

governments to impose additional systems for monitoring adoptive families, such as requiring some kind of follow up reports after adoption. As we stated then, we believe that there is no objective need for any such additional systems or requirements. Internationally adopted children are safer and better treated in their adoptive homes than children raised in normal, non-problematic biological families. They are overwhelmingly better off than children in institutional or foster care, or children reunified with birth parents who once abused or neglected them. Existing systems for screening adoptive parents for fitness, and for monitoring adoptive arrangements during probationary periods prior to adoption finalization, help ensure that adopted children are well treated. These systems have been strengthened by the requirements in the Hague Convention on Intercountry Adoption for certification of adoption agencies involved in International Adoption.

The only reason that additional requirements might make sense would be to alleviate concerns harbored by some private individuals and public officials that children might be at risk if adopted abroad. Requirements could be instituted to require adoptive parents and agencies to send photographs and reports on internationally adopted children subsequent to their adoption so as to alleviate such concerns. This might help demonstrate that there is no objective basis for concern, and thus ease the way in the future for more children to find adoptive homes.

### III. Information Regarding Unparented Children Not Adopted Internationally

#### A. Additional Documentation Regarding Harms Caused by the Denial of Nurturing Family Care

We acknowledge what the Commissioners made clear at the Hearing – that you are well aware of the harms to children from institutional care and life on the streets. We will not belabor this point but simply provide in the footnotes in this section a sampling of the documentation demonstrating these harms in order to supplement the information presented in our Written Testimony.

Studies have for decades shown the devastating damage done when children are denied a nurturing family, and in recent years these studies have been able to demonstrate the causal effects of institutional conditions with more scientific precision.<sup>3</sup> Even the better institutions have proven

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<sup>3</sup> See, e.g., Charles H. Zeanah et al., *Designing Research to Study the Effects of Institutionalization on Brain and Behavioral Development: The Bucharest Early Intervention Project*, 15 DEV. & PSYCHOPATHOLOGY 885, 886-88 (2003) (summing up previous research on deleterious effects of institutional rearing, including recent research on the many problems of children adopted out of institutions in Eastern Europe, Russia, and other countries, as well as ameliorating effects of early intervention). This article describes the Bucharest Early Intervention Project (BEIP), an ongoing randomized controlled trial of foster placement as an alternative to institutionalization designed to document scientifically both the effects of institutionalization and the degree of recovery that model foster care can provide, and to assist the government of Romania in developing alternative forms of care beyond institutionalization. Research already produced by the BEIP “Core Group” documents some of the damage Romanian children have suffered by virtue of institutionalization. See Peter J. Marshall & Nathan A. Fox and the BEIP Core Group, *A Comparison of the Electroencephalogram between Institutionalized and Community Children in Romania*, 16 J. COGNITIVE NEUROSCIENCE 1327 (2004); Susan W. Parker and Charles A. Nelson, *The Impact of Early Institutional Rearing on the Ability to Discriminate Facial Expressions of Emotion: An Event-Related Potential Study*, 76 CHILD DEV. 54 (2005). See also, e.g., Nelson, C.A., Zeanah, C.H., Fox, N.A., Marshall, P.J., Smyke, A.T., & Guthrie, D., *Cognitive recovery in socially deprived young children: The Bucharest Early Intervention Project*, Science, 318, 1937-1940 (2007); Zeanah, C.H., Egger, H.L., Smyke, A.T., Nelson, C.A., Fox, N.A., Marshall, P.J., & Guthrie, D., *Altering early experiences reduces psychiatric disorders among*

incapable of providing the personal care that human children need to thrive physically and emotionally.<sup>4</sup> Research on children who started their early life in institutions demonstrates vividly the damage such institutions do even when the children are lucky enough to escape the institutions at relatively early ages.<sup>5</sup> Age at adoptive placement regularly shows up in adoptive studies as the primary predictor of likelihood of successful life adjustment, with children placed at younger ages doing better. See discussion in Section IIA *supra*. Social science demonstrates clearly that while foster care works better for children than living in birth families characterized by child abuse and neglect, it does not work nearly as well as adoption.<sup>6</sup> Finally, there is no evidence that institutionalized children who cannot grow up with their birth parents will do better if placed in so-called “family type care” than children placed in adoption. A recent study of 6-12-year-olds in a number of poor countries even claims that they do better in institutions than in such family care. Kathryn Whetten *et al*, *A Comparison of the Wellbeing of Orphans and Abandoned Children Ages 6-12 in Institutional and Community-Based Care Settings in 5 Less Wealthy Nations*, PLoS ONE, Vol 4, Issue 12 (Dec. 2009). While this study has been criticized as methodologically flawed, and provides no support for the idea that institutions can provide appropriate care for infants and young children, it does help negate the idea that removing children from institutions to typical community care would be in any way better for children than placing them in International

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*institutionalized Romanian preschool children*, American Journal of Psychiatry, 166, 777-785 (2009). For other recent research see the St. Petersburg-USA Orphanage Research Team, *Characteristics of Children, Caregivers, and Orphanages For Young Children in St. Petersburg, Russian Federation*, 26 J. OF APP. DEV. PSYCHOL. 477 (2005) (giving comprehensive, empirical description of orphanage environments, describing most salient deficiencies as in social-emotional environment, and describing harmful impact on children, all consistent with reports on other countries’ orphanages); Bilge Yagmurlu *et al.*, *The Role of Institutions and Home Contexts in Theory of Mind Development*, 26 J. APP. DEV. PSYCHOL. 521 (2005) (documenting harmful impact of institutionalization on “theory of mind” development of children in Turkey, relevant to social, cognitive and language development, and psychological adjustment, all related to deprivation of normal adult-child interaction, and all consistent with other research findings). See also MENTAL DISABILITY RIGHTS INTERNATIONAL, HIDDEN SUFFERING: ROMANIA’S SEGREGATIONS AND ABUSE OF INFANTS AND CHILDREN WITH DISABILITIES (2006), <http://www.mdri.org/projects/romania/romania-May%2009%20final.pdf> [hereafter MDRI REPORT], at 5, 20-21, nn 25-34; *ADOPTION LAW AND PRACTICE*, *supra*, §§10-17, §10.03[1][c], at. 10-20 and notes 36-37; *FAMILY BONDS*, *supra*, at 150-51, 156-57.

<sup>4</sup> Important early studies of children placed in residential nurseries in London in the 1960s showed the destructive impact of even these relatively “model” institutions. Barbara Tizard & Jill Hodges, *The Effect of Institutional Rearing on the Development of Eight Year Old Children*, 19 J. CHILD PSYCHOL. & PSYCHIATRY 99 (1978) (describing problems in attachment and other relationship issues, with length of institutionalization related to additional harm, and placement with adoptive parents resulting in better emotional adjustment as compared to return to biological parents); Barbara Tizard & Judith Rees, *The Effect of Early Institutional Rearing on the Behavior Problems and Affectional Relationships of Four-Year-Old Children*, 16 J. CHILD PSYCHOL & PSYCHIATRY 61 (1975) (study of same children at earlier stage); see also, *e.g.*, MDRI Report *supra*, at iii-v, 1, 3, 4 (2006). The MDRI Report, while focusing on children with disabilities, documents the fact that even infants and children without disabilities continue to be sent to and kept in institutions, the horrific conditions characterizing many of these institutions, and the fact that even the new, smaller, and allegedly improved institutions function as devastatingly damaging places for children: “Romania’s newer, cleaner, and smaller institutions continue to constitute a threat to children’s right to life and protection from inhuman and degrading treatment. . . .” MDRI Report at iv.

<sup>5</sup> Early results of the Bucharest Early Intervention Project, *supra*, show that placement of the institutionalized Romanian children in specially designed, model foster care had positive effects on their intellectual, emotional, psychiatric and brain development, with the length of time previously in the institution and the age at which removed to foster care factors in their functioning. U. Md. Press Release, *Institutionalized Children Benefit from Early Intervention* (Feb. 14, 2006); See also Charles Nelson, *Romania’s Homeless Children*, Presentation on BEIP research results at the Art of Social Change class at Harvard Law School (Oct.19, 2006).

<sup>6</sup>See Barcholet, *NOBODY’S CHILDREN*, *supra*, 81-97.

Adoption. See Marian Bakermans-Kranenburg & Marinus van IJzendoorn, *No Evidence for Orphanages Being “Not So Bad,”* Comments to *Id.*, PLoS ONE (Dec. 24, 2009) (noting that the extremely poor living conditions for community-care children as well as for institutionalized children in these countries may result in such generally damaging conditions as to mask differentiation between impact of the different situations).

#### *B. The Need for Investigation by the IACHR and the Rapporteur on the Rights of the Child*

We know that the situation of Unparented Children in Guatemala, Honduras, Peru and many other countries in the Americas is dire. We know that there are millions of unparented children relegated to inadequate institutions and to the streets. We know that there is almost no country in the Americas with an adequate system for identifying unparented children and deciding whether they should be returned to their birth families or freed for adoption. We know that because of poverty, disease, war and related problems, there are a very limited number of adoptive families available in Guatemala, Honduras, Peru and the other poor countries in the Americas. We know that International Adoption has been closed down as a meaningful option for children in Guatemala, Honduras, Peru and the other poor countries in the Americas, and that as a result increased numbers of children are relegated to institutional care and to street life.

However we do not know the detailed specifics related to these general facts, nor are Petitioners in a position to investigate these specifics. Our Request for Remedies asked for the Rapporteur to conduct an Investigation and prepare a related Report. This Investigation and Report would serve many important goals, including exposure of the facts in important detail. Below we suggest some sources that the Rapporteur might consult in conducting such an Investigation, and some of the questions that the Rapporteur might submit to appropriate public and private agencies. We emphasize again our conviction that even conducting such an Investigation would constitute a hugely important step forward, alerting OAS member States to some of the issues that they should be focused on, issues that others rarely address.

##### *1. Suggested Sources for Additional Information*

This is an *extremely limited* list, since we have no way of systematically locating good sources of information. We simply suggest that in any Investigation you conduct, you might contact the people listed here as possible sources of useful information including information about other useful sources:

Cristina Matossian de Pardo ([cristinaencasa@yahoo.es](mailto:cristinaencasa@yahoo.es)): This is the Director of a private nonprofit home for children in Peru called Nuevo Futuro Peru, which has an excellent reputation. She was helpful to us in identifying some information about the homes and institutions for abandoned children in Peru, the numbers of children involved, the numbers of domestic and international adoptions, the inadequacy of systems for identifying unparented children in need of adoptive placement, and the nature of various systems over recent years for placing children in adoption.

Eric Rosenthal (U.S. telephone 202-296-6550, [erosenthal@mdri.org](mailto:erosenthal@mdri.org)), Director of MDRI (Mental Disability Rights International), a nonprofit international organization committed to the human

rights of those with disabilities, including children, knowledgeable about conditions in institutions worldwide, including in the Americas.

Hannah Wallace (U.S. home telephone 215-465-8264, U.S. cell phone 267-408-6400, [hwall334@aol.com](mailto:hwall334@aol.com)), Director of the nonprofit Focus on Adoption, and former Director of adoption agency, with extensive knowledge of situation of unparented children in the Americas generally and Guatemala in particular, and of related institutional care and international adoption issues.

Raul Alva and his wife Maria Elena in Lima, Peru ([raulalvaf@gmail.com](mailto:raulalvaf@gmail.com)), adoption attorneys with extensive experience in adoption and familiarity with judges and other officials central to Peru's child welfare policy.

## *2. Suggested Issues to Pursue During Any Investigation*

We suggest the following questions be included in a Questionnaire you might develop or other Inquiry you might make as part of any Investigation you undertake:

- How many unparented children are living in institutions, how many on the streets, how many in foster care, how many in group homes, and how many in other arrangements?
- How do these numbers compare to numbers in the past (e.g. 5, 10, 15, and 20 years ago)?
- How old are the children in institutional care (giving the number and percentages of children in different age categories)?
- For children in institutions and other state care arrangements, what are the reasons they are no longer living with their parents, and how many fall in each category (e.g. abuse and neglect or other maltreatment, abandonment, death of parents)?
- What is the system, if any, for identifying unparented children who should be returned home to live with birth parents, kept in institutional care, freed for adoption, or placed in other arrangements?
- Are there limits on the length of time children can be held in institutional care or foster care, before they must be freed for adoption?
- How many children have been placed in foster care as compared to domestic adoption as compared to international adoption in each of the past 10 years?
- For children who are adopted, how long are they held in institutional or foster care prior to being placed in their adoptive family (broken down by domestic and international adoption)?
- For children who are adopted, how old are they at the time placed in their adoptive family (broken down by domestic and international adoption)?
- Do you have any rules requiring that children be held pending a search for an in-country home prior to being placed abroad? If so describe the nature of such rules and any impact they have or likely have on delaying or denying adoptive placement.
- Do you have any other rules providing a preference for in-country placement over out-of-country adoption? If so describe the nature of such rules and any impact they have or likely have on delaying or denying adoptive placement.

We emphasize that this is only a limited list of questions that might provide a starting point for thinking about preparing a Questionnaire or related Inquiry for any Investigation.

#### *IV. Conclusion*

We hope this has been helpful in answering some of the questions you posed at the Hearing. We welcome any additional questions you might have for us. And we urge you to grant the Remedies requested in our Written Testimony, endorsing the basic human rights principles there outlined and conducting the special Investigation and the related Inquiries requested. Truly honoring the child's most basic human rights requires steps to guarantee the child's right to grow up in a family. And if the child cannot grow up in the birth family, then human rights principles require that the child be placed as soon as possible in an alternative permanent nurturing family, whether in the country of origin or abroad.

Respectfully Submitted,

*Elizabeth Bartholet, Professor of Law and Faculty Director of Child Advocacy Program, Harvard Law School*

*Paulo Barrozo, Asst. Professor of Law and International Human Rights Scholar, Boston College Law School*

*Karen Bos, MD and MPH Candidate and Charles Nelson, PhD, Children's Hospital Boston, Harvard Medical School and Harvard School of Public Health*

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Tel: 617-496-1684

The Center for Adoption Policy  
New York, New York  
U.S.A.  
<http://www.adoptionpolicy.org/index.html>

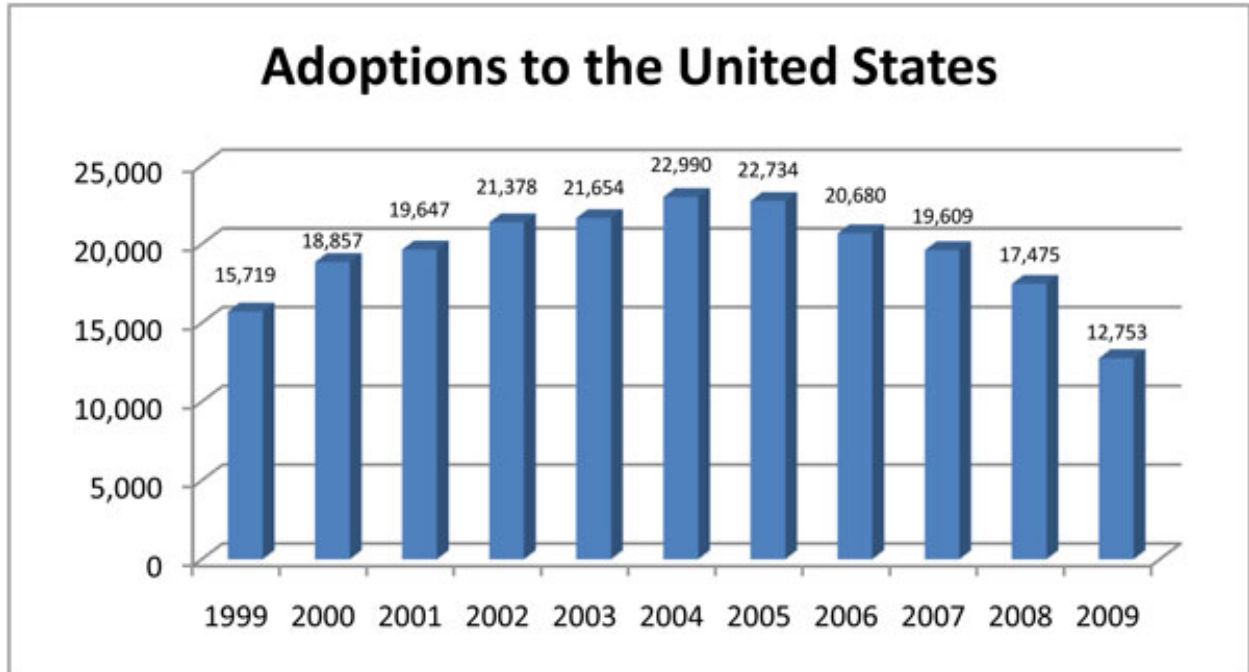
January 22, 2010

# Attachment A

## Total Adoptions to the United States

**\*NOTE:** All statistics given correspond with the U.S. Government *fiscal year*, which begins on October 1 and ends on September 30. For example: Adoption statistics for 2009 = Number of adoptions from October 1, 2008 through September 30, 2009.

Fiscal Year 2009 Adoption Statistics



	<b>FY 2009</b>	<b>FY 2008</b>	<b>FY 2007</b>	<b>FY 2006</b>	<b>FY 2005</b>
<b>1</b>	China 3001	Guatemala 4122	China 5453	China 6492	China 7903
<b>2</b>	Ethiopia 2277	China 3911	Guatemala 4727	Guatemala 4135	Russia 4631
<b>3</b>	Russia 1586	Russia 1857	Russia 2303	Russia 3702	Guatemala 3783
<b>4</b>	South Korea 1080	Ethiopia 1724	Ethiopia 1254	South Korea 1373	South Korea 1628
<b>5</b>	Guatemala 756	South Korea 1065	South Korea 938	Ethiopia 731	Ukraine 824
<b>6</b>	Ukraine 610"	Vietnam 748	Vietnam 828	Kazakhstan 588	Kazakhstan 755
<b>7</b>	Vietnam 481	Ukraine 490	Ukraine 613	Ukraine 463	Ethiopia 442
<b>8</b>	Haiti 330	Kazakhstan 380	Kazakhstan 547	Liberia 353	India 323
<b>9</b>	India 297	India 308	India 411	Colombia 344	Colombia 287
<b>10</b>	Kazakhstan 295	Colombia 306	Liberia 314	India 319	Philippines 268
<b>11</b>	Philippines 281	Haiti 301	Colombia 309	Haiti 310	Haiti 234
<b>12</b>	China - Taiwan 253	Philippines 292	Philippines 260	Philippines 248	Liberia 183
<b>13</b>	Colombia 238	Liberia 254	Haiti 191	China - Taiwan 187	China - Taiwan 141
<b>14</b>	Nigeria 110	China - Taiwan 219	China - Taiwan 184	Vietnam 163	Mexico 88
<b>15</b>	Ghana 103	Nigeria 149	Mexico 89	Mexico 70	Poland 73
<b>16</b>	Mexico 72	Mexico 105	Poland 84	Poland 67	Thailand 71
<b>17</b>	Uganda 69	Ghana 97	Thailand 66	Nepal 66	Brazil 66
<b>18</b>	Thailand 56	Kyrgyzstan 78	Brazil 55	Brazil 66	Nigeria 65
<b>19</b>	Jamaica 54	Poland 77	Kyrgyzstan 54	Nigeria 62	Jamaica 62
<b>20</b>	Poland 50	Thailand 59	Uganda 54	Thailand 56	Nepal 62

## IR3 - IH3 - IR4 - IH4 Visa Issuances for FY-2009

	IR-3	IH-3	IR-4	IH-4	TOTAL
<b>Africa</b>					
Algeria	3	0	0	0	3
Angola	0	0	0	0	0
Benin	2	0	0	0	2
Botswana	0	0	0	0	0
Burkina Faso	0	2	0	0	2
Burundi	4	0	0	0	4
Cameroon	7	0	0	0	7
Cape Verde	0	0	0	0	0
Central African Republic	0	0	0	0	0
Chad	0	0	0	0	0
Comoros	0	0	0	0	0
Congo, Republic of the (Congo Brazzaville)	0	0	0	0	0
Congo, Dem. Rep. of the (Congo Kinshasa)	12	0	9	0	21
Cote d'Ivoire (Ivory Coast)	4	0	2	0	6
Djibouti	0	0	0	0	0
Egypt	0	0	2	0	2
Equatorial Guinea	1	0	0	0	1
Eritrea	8	0	6	0	14
Ethiopia	165	0	2112	0	2,277
Gabon	0	0	0	0	0
Gambia, The	2	0	6	0	8
Ghana	80	0	23	0	103
Guinea	0	0	0	0	0
Guinea-Bissau	0	0	0	0	0
Kenya	21	0	0	0	21
Lesotho	2	0	0	0	2
Liberia	11	0	24	0	35
Libya	0	0	0	0	0
Madagascar	0	0	0	0	0
Malawi	3	0	0	0	3
Mali	0	0	0	0	0
Mauritania	0	0	0	0	0
Mauritius	0	0	0	0	0
Morocco	0	0	20	0	20
Mozambique	1	0	0	0	1
Namibia	0	0	0	0	0
Niger	0	0	0	0	0
Nigeria	100	0	10	0	110
Rwanda	12	0	4	0	16
Sao Tome and Principe	0	0	0	0	0
Senegal	2	0	2	0	4
Seychelles	0	0	0	0	0

Sierra Leone	4	0	2	0	6
Somalia	0	0	0	0	0
South Africa	4	1	0	0	5
Sudan	0	0	0	0	0
Swaziland	10	0	1	0	11
Tanzania	4	0	0	0	4
Togo	0	0	0	0	0
Tunisia	1	0	0	0	1
Uganda	4	0	65	0	69
Zambia	8	0	0	0	8
Zimbabwe	2	0	0	0	2
<b>Africa Totals</b>	<b>477</b>	<b>3</b>	<b>2,288</b>	<b>0</b>	<b>2,768</b>

## Asia

Afghanistan	0	0	5	0	5
Bahrain	0	0	0	0	0
Bangladesh	0	0	12	0	12
Bhutan	0	0	0	0	0
Brunei	0	0	0	0	0
Burma	0	0	0	0	0
Cambodia	0	0	0	0	0
China - mainland born	2375	410	216	0	3,001
China - Taiwan born	236	0	17	0	253
Hong Kong S.A.R.	0	0	2	9	11
India	15	6	226	50	297
Indonesia	3	0	0	0	3
Iran	0	0	10	0	10
Iraq	0	0	0	0	0
Israel	0	0	0	0	0
Japan	9	0	32	0	41
Jordan	0	0	2	0	2
Korea, North	3	0	0	0	3
Korea, South	0	0	1077	0	1,077
Kuwait	0	0	0	0	0
Laos	8	0	0	0	8
Lebanon	6	0	4	0	10
Malaysia	1	0	0	0	1
Maldives	0	0	0	0	0
Mongolia	7	1	0	0	8
Nepal	5	0	1	0	6
Oman	0	0	0	0	0
Pakistan	0	0	33	0	33
Palestinian Authority	0	0	2	0	2
Philippines	53	0	137	91	281
Qatar	0	0	0	0	0

Saudi Arabia	0	0	0	0	0
Singapore	1	0	0	0	1
Sri Lanka	4	1	0	0	5
Syria	0	0	0	0	0
Thailand	3	1	42	10	56
Timor-Leste	0	0	0	0	0
United Arab Emirates	0	0	0	0	0
Vietnam	437	0	44	0	481
Yemen	0	0	0	0	0
<b>Asia Totals</b>	<b>3,166</b>	<b>419</b>	<b>1,862</b>	<b>160</b>	<b>5,607</b>

## Europe

Albania	2	3	0	0	5
Andorra	0	0	0	0	0
Armenia	11	1	8	0	20
Austria	0	0	0	0	0
Azerbaijan	0	0	0	0	0
Belarus	0	0	0	0	0
Belgium	0	0	0	0	0
Bosnia and Herzegovina	2	0	1	0	3
Bulgaria	8	4	3	0	15
Croatia	0	0	0	0	0
Cyprus	0	0	0	0	0
Czech Republic	0	0	0	0	0
Denmark	0	0	0	0	0
Greenland	0	0	0	0	0
Estonia	6	1	0	0	7
Finland	0	0	0	0	0
France	1	0	0	0	1
French Guiana	0	0	0	0	0
French Polynesia	0	0	0	0	0
French Southern & Antarctic La	0	0	0	0	0
Guadeloupe	0	0	0	0	0
Martinique	0	0	0	0	0
New Caledonia	0	0	0	0	0
Reunion	0	0	0	0	0
St. Pierre and Miquelon	0	0	0	0	0
Wallis and Futuna	0	0	0	0	0
Georgia	0	0	0	0	0
Germany	1	0	0	0	1
Great Britain and Northern Ireland	0	1	0	2	3
Anguilla	0	0	0	0	0
Bermuda	0	0	0	0	0
British Virgin Islands	0	0	0	0	0
Cayman Islands	0	0	0	0	0

	Falkland Islands	0	0	0	0	0
	Gibraltar	0	0	0	0	0
	Montserrat	0	0	0	0	0
	Pitcairn	0	0	0	0	0
	St. Helena	0	0	0	0	0
	Turks and Caicos Islands	0	0	0	0	0
	Greece	2	0	0	0	2
	Hungary	7	0	0	0	7
	Iceland	0	0	0	0	0
	Ireland	0	0	0	0	0
	Italy	0	0	0	0	0
	Kazakhstan	295	0	0	0	295
	Kosovo	0	0	0	0	0
	Kyrgyzstan	14	0	5	0	19
	Latvia	25	3	0	0	28
	Liechtenstein	0	0	0	0	0
	Lithuania	21	1	0	0	22
	Luxembourg	0	0	0	0	0
	Macedonia	1	0	0	0	1
	Malta	0	0	0	0	0
	Moldova	4	1	0	0	5
	Monaco	0	0	0	0	0
	Montenegro	0	0	0	0	0
	Netherlands	0	0	0	0	0
	Aruba	0	0	0	0	0
	Netherlands Antilles	0	0	0	0	0
	Norway	0	0	0	0	0
	Poland	36	14	0	0	50
	Portugal	0	0	0	0	0
	Macau	0	0	0	0	0
	Romania	5	0	0	0	5
	Russia	1581	0	5	0	1,586
	San Marino	0	0	0	0	0
	Serbia	4	0	0	0	4
	Slovakia	0	0	0	0	0
	Slovenia	0	0	0	0	0
	Spain	0	0	0	0	0
	Western Sahara	0	0	0	0	0
	Sweden	0	0	0	0	0
	Switzerland	0	0	0	0	0
	Tajikistan	0	0	0	0	0
	Turkey	1	0	0	0	1
	Turkmenistan	0	0	0	0	0
	Ukraine	557	0	53	0	610
	Uzbekistan	5	0	0	0	5
	Vatican City	0	0	0	0	0

<b>Europe Totals</b>		<b>2,589</b>	<b>29</b>	<b>75</b>	<b>2</b>	<b>2,695</b>
<b>North America</b>						
Antigua and Barbuda		3	0	0	0	3
Bahamas, The		0	0	0	0	0
Barbados		0	0	1	0	1
Belize		2	0	4	0	6
Canada		0	0	2	1	3
Costa Rica		0	0	1	0	1
Cuba		0	0	0	0	0
Dominica		1	0	0	0	1
Dominican Republic		11	0	0	0	11
El Salvador		8	1	0	0	9
Grenada		1	0	0	0	1
Guatemala		528	0	228	0	756
Haiti		245	0	85	0	330
Honduras		1	0	3	0	4
Jamaica		22	0	32	0	54
Mexico		52	11	9	0	72
Nicaragua		28	0	0	0	28
Panama		0	0	0	0	0
Saint Kitts and Nevis		0	0	0	0	0
Saint Lucia		1	0	0	0	1
Saint Vincent and the Grenadines		12	0	0	0	12
Trinidad and Tobago		0	0	2	0	2
<b>North America Totals</b>		<b>915</b>	<b>12</b>	<b>367</b>	<b>1</b>	<b>1,295</b>
<b>Oceania</b>						
Australia		0	0	0	0	0
	Christmas Island	0	0	0	0	0
	Cocos (Keeling) Islands	0	0	0	0	0
Fiji		1	0	0	0	1
Kiribati		0	0	0	0	0
Marshall Islands		22	0	0	0	22
Micronesia, Federated States of		0	0	0	0	0
Nauru		0	0	0	0	0
New Zealand		0	0	0	0	0
	Cook Islands	0	0	0	0	0
	Niue	0	0	0	0	0
Palau		0	0	0	0	0
Papua New Guinea		0	0	0	0	0
Samoa		2	0	0	0	2
Solomon Islands		0	0	0	0	0

Tonga	7	0	0	0	7
Tuvalu	0	0	0	0	0
Vanuatu	1	0	0	0	1
<b>Oceania Totals</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>33</b>

### South America

Argentina	1	0	0	0	1
Bolivia	0	0	0	0	0
Brazil	32	0	0	0	32
Chile	0	0	0	0	0
Colombia	160	78	0	0	238
Ecuador	8	4	1	0	13
Guyana	36	0	2	0	38
Paraguay	0	0	0	0	0
Peru	24	4	1	0	29
Suriname	0	0	0	0	0
Uruguay	0	0	0	0	0
Venezuela	0	0	0	0	0
<b>South America Totals</b>	<b>261</b>	<b>86</b>	<b>4</b>	<b>0</b>	<b>351</b>

### Unknown Place of Birth or Stateless

Unknown Place of Birth or Stateless	2	0	1	1	4
<b>Unknown Place of Birth or Stateless Total</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>4</b>

	<b>IR-3</b>	<b>IH-3</b>	<b>IR-4</b>	<b>IH-4</b>	<b>TOTAL</b>
<b>GRAND TOTALS</b>	<b>7,443</b>	<b>549</b>	<b>4,597</b>	<b>164</b>	<b>12,753</b>