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# After Artyom: How Efforts to Reform U.S.-Russia Adoption Failed, and What Russia Must Now Do to Ensure the Welfare of Her Orphans

Sarah Gatti

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# AFTER ARTYOM: HOW EFFORTS TO REFORM U.S.-RUSSIA ADOPTION FAILED, AND WHAT RUSSIA MUST DO NOW TO ENSURE THE WELFARE OF HER ORPHANS

*Sarah Gatti\**

*In the past two decades, American citizens have adopted more than 60,000 Russian orphans. In December of 2012, however, these adoptions came to an abrupt end after the Russian government unexpectedly banned Americans from adopting in Russia only eight weeks after a new Bilateral Adoption Agreement with the U.S. entered into force. The international community and adoption advocates have vilified Russia for enacting this ban. While some criticism is valid, focusing on the ban of American adoptions ignores Russia's larger child welfare crisis and incorrectly assumes that foreign adoption played an exclusively positive role in that crisis. Instead, the international community should see this ban as the impetus and opportunity for Russia to finally make necessary legal and social policy changes that will protect the welfare of its orphans over the long haul. In light of this ban, Russia should focus on three key areas of reform: alcohol abuse and treatment, the creation of a juvenile court system, and the gradual, carefully structured closing of the orphanage system.*

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I. INTRODUCTION

*"Writing laws is easy, but governing is difficult."*<sup>1</sup>

As this quote from the beloved Russian author Leo Tolstoy points out, it is relatively easy to write a statute or regulation. All one needs, even in a democratic system, is a consensus. Governing, however, requires something different—to govern, one must

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1. LEO TOLSTOY, WAR AND PEACE 428 (Richard Pevear & Larissa Volokhonsky trans., 2007).

understand how implementing laws can create complex issues and cause multilayered problems that require intricate solutions. One such problem in Russia is the welfare of children, whose parents cannot care for them.

The Russian Federation (“Russia”) has what can only be described as a crisis of child welfare. As of 2011, official figures indicated that 700,000 children in Russia were orphans whose biological parents were deceased or otherwise unable to care for them.<sup>2</sup> Of those 700,000, nearly two-thirds were “social orphans,” or children who cannot live safely at home but have one or two living parents. About 370,000 of those children live in orphanages.<sup>3</sup> In 2009, it was reported that 2.5 percent of Russia’s youth were in state care, which is double the amount of children in state care than in any other developed country.<sup>4</sup> Various reports have indicated that in addition to these children categorized as orphans, close to five million more Russian children could be classified as “street children.” These children are essentially homeless, living either on the streets with gangs of other children or floating between friends and relatives with no parental supervision.<sup>5</sup>

The life of a Russian orphan is grim. Institutionalized orphans are often deprived of the basic building blocks of the human experience. These children endure severe neglect, sensory deprivation, malnourishment, and illness. Children from the worst orphanages are often developmentally delayed by years, have difficulty speaking, and struggle cognitively and emotionally. Due to a lack of resources, orphanages are often dilapidated and lack basic supplies. One caregiver is responsible for as many as thirty children.<sup>6</sup> Due to a lack of attention from workers, orphans may never get a chance to “attach” to caregivers and often never experience love or empathy from a caregiver. The statistics show that an equally bleak adulthood awaits these children. Nearly 40 percent of children who age out of

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2. Ann A. Rudnicki, *The Development of Russia’s Child Protection and Welfare System*, 20 DEMOKRATIZATSIYA 29, 31 (2012).
  3. Alexandra Odynova, *State of the Wards*, 56 RUSSIAN LIFE 28, 30 (2013).
  4. In Great Britain, 0.5 percent of children are in state care, in the U.S. 0.69 are in state care, and in Germany 0.89 percent are in state care. Rudnicki, *supra* note 2, at 31.
  5. See Natasha Kravchuk, *Children in Post-Communist Russia: Some Aspects of the Child’s Right to Protection*, 17 INT’L J. CHILDREN’S RIGHTS 611, 614 (2009).
  6. See Kate Pickert & Simon Shuster, *When the Adopted Can’t Adapt*, TIME (June 28, 2010), <http://content.time.com/time/magazine/article/0,9171,1997439-1,00.html>.

the orphanage system ultimately struggle with substance abuse,<sup>7</sup> and 10 percent eventually commit suicide.<sup>8</sup>

While many children in orphanages come from either destitute poverty or abusive homes, the orphanage environment is rarely an improvement. One adoptive mother told the story of her now sixteen-year-old daughter, who lived in a Russian orphanage from age six to thirteen. Orphanage staff beat her regularly for wetting the bed, which is a common symptom of childhood abuse.<sup>9</sup> Eventually, she decided to sleep in urine-soaked sheets rather than face punishment. She was permitted to bathe once per week, and her only possession was a toothbrush. Every week, she received one pair of clothes—including underwear—that she wore for the entire week. Her only source of affection was the village’s stray dogs, who she often tried to protect from the older boys in the orphanage, who made games out of killing them. When her adoptive mother brought her home, she was emaciated and vomited regularly after eating because she gorged herself at meals. The child of an alcoholic mother, she has had difficulty learning English and struggles with short-term memory. After several years with her adoptive family, she has finally begun to adjust.<sup>10</sup>

There is no debate about the harms orphanages can cause, which is largely why Russia has generally encouraged domestic and foreign adoptions of orphans. Foreign adoptions, however, are historically far more common. Since the fall of the Soviet Union, Russia has relied on the U.S. and other western countries to adopt Russian-born orphans. American citizens have adopted nearly 60,000 Russian orphans since 1991.<sup>11</sup> However, in 2010, a bizarre set of events put the wheels of an adoption ban in motion. That April, an adoptive mother named Torry Hansen from North Carolina put her seven-year-old adopted son from Russia, Artyom Savelyev, alone on a plane to Moscow. She included with him a note that said he had “severe psychopathic issues” and

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7. *Children at Risk in Russia*, THE COMM’N FOR CHILDREN AT RISK, <http://comission.org/go/carrussia> (last visited Dec. 30, 2014).
  8. *Id.*
  9. *See What is Child Abuse and Neglect? Recognizing the Signs and Symptoms*, CHILD WELFARE INFO. GATEWAY 7 (2013), <https://www.childwelfare.gov/pubs/factsheets/whatiscan.pdf>.
  10. Dee Thompson, *Understanding My Daughter’s Background*, RAINBOWKIDS (Dec. 23, 2007), <http://www.rainbowkids.com/expertarticledetails.aspx?id=281>.
  11. Daniel B. Wood, *Returned Russian Child Spotlights International Adoption Problems*, THE CHRISTIAN SCIENCE MONITOR (Apr. 13, 2010), <http://www.csmonitor.com/USA/2010/0413/Returned-Russian-child-spotlights-international-adoption-problems>.

that she no longer wanted to parent him.<sup>12</sup> The Russian government was outraged.<sup>13</sup>

Stories similar to Artyom's began to emerge in the weeks and months that followed.<sup>14</sup> Adoptive parents of Russian children told nightmarish stories in the media, including one parent whose adopted child sexually abused his adoptive siblings and regularly threatened the family with knives and other weapons.<sup>15</sup> Some of these parents felt they had no choice but to dissolve the adoption for which they had waited years and on which they had spent thousands of dollars.<sup>16</sup> Russian media began following these stories, and soon, even more heartbreaking situations came to light. American and Russian news sources have reported that as many as twenty adopted children from Russia have been murdered by their adoptive parents<sup>17</sup>—a statistic that exposed the broken state of the adoption system.

With many prospective adoptive families' fates hanging in the balance, the Russian Foreign Minister and U.S. Secretary of State negotiated and signed a Bilateral Agreement ("Agreement") to reform the adoption process<sup>18</sup> in July of 2011.<sup>19</sup> The primary requirements of

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22. Deborah Tedford, *Russian Adoption Risks*, NPR *Case Spotlights* (Apr. 3, 2010), <http://www.npr.org/templates/story.php?storyId=125903954>.
  23. See Wood, *supra* note 11.
  24. See Pickert & Shuster, *supra* note 6.
  25. *Id.*
  26. See *id.*
  27. Ellen Barry, *After Adopted Boy Dies in U.S., Russian Officials Accuse Texas Woman*, N.Y. TIMES (Feb. 19, 2013), <http://www.nytimes.com/2013/02/20/world/europe/adopted-boys-death-in-us-stirs-outrage-in-russia.html?pagewanted=all>.
  28. The agreement does not appear to have undergone any kind of ratification before the U.S. Senate as is required for a treaty under Article 2 of the U.S. Constitution. Furthermore, the use of the word "treaty" is not used in the agreement or in any documents produced by the State Department about the agreement. Thus, it cannot be properly classified as a treaty. Conversely, the use of the words "shall" and "will" in addition to the signature of high-level officials—Secretary of State Hillary Clinton and Russian Foreign Minister Sergey Lavrov—indicate that this agreement is not meant to be a non-binding Memorandum of Understanding or "MOU." The most viable conclusion about the nature of this document is that it is an executive agreement. See *United States-Russia Bilateral Adoption Agreement*, U.S. DEP'T OF STATE (Oct. 18, 2012), <http://www.state.gov/r/pa/prs/ps/2012/10/199322.htm>.
  29. See Agreement Between the United States of America and the Russian Federation Regarding Cooperation in Adoption of Children. U.S.-Rus., July 13, 2011, available at [http://adoption.state.gov/content/pdf/us-russia\\_adoption\\_agmt-713%2011-signed\\_english.pdf](http://adoption.state.gov/content/pdf/us-russia_adoption_agmt-713%2011-signed_english.pdf) [hereinafter Agreement].

the Agreement included more post-adoption monitoring; notifications to the Russian government of any dissolution of adoption, and retention of adoptees' Russian citizenship.<sup>20</sup> While not a drastic change in policy, it was a step in the right direction, especially considering that Russia had not ratified the Hague Convention on Adoption.<sup>21</sup> However, the Agreement did not require Russia to correct its underlying problems, namely closing the orphanage system or modernizing its legal and psychological approach to child welfare.

The Agreement entered into force on November 1, 2012. Just as a solution appeared within reach, things took a turn for the worse. In late 2012, the U.S. Government passed the Magnitsky Act.<sup>22</sup> This law prevents Russian human rights abusers from obtaining visas to enter the U.S.<sup>23</sup> Shortly thereafter, the Russian government voted to ban<sup>24</sup> adoptions of Russian children by American citizens, a reaction which many perceived as retaliatory.<sup>25</sup>

While the ban sat on Vladimir Putin's desk awaiting his signature, the Russian public began to react. Some government officials urged Putin not to sign the bill; one argued that doing so would violate the U.N. Convention on the Rights of the Child.<sup>26</sup> To

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20. *See id.* art. 14.

21. *See Convention Countries*, INTERCOUNTRY ADOPTION BUREAU OF COUNSELOR AFFAIRS, U.S. DEP'T OF STATE, [http://adoption.state.gov/hague\\_convention/countries.php](http://adoption.state.gov/hague_convention/countries.php) (last visited Dec. 30, 2014).

22. Fred Weir, *U.S. Magnitsky Law Draws Kremlin Ire—But Many Russians Support It*, THE CHRISTIAN SCIENCE MONITOR (Dec. 17, 2012), <http://www.csmonitor.com/World/Europe/2012/1217/US-Magnitsky-Law-draws-Kremlin-ire-but-many-Russians-support-it>.

23. *Id.*

24. Called "Dima's Bill," after a Russian adoptee who died after being left alone in an overheated car, the law ended adoptions from Russia to the U.S. entirely. Tom Jackman, *Toddler's Tragic Death in Herndon, in Overheated Car, Continues As Political Issue in Russia Four Years Later*, WASH. POST (Dec. 12, 2012), [http://www.washingtonpost.com/blogs/the-state-of-nova/post/toddlers-tragic-death-in-herndon-in-overheated-car-continues-as-political-issue-in-russia-four-years-later/2012/12/12/c6a6c9c6-43e4-11e2-9648-a2c323a991d6\\_blog.html](http://www.washingtonpost.com/blogs/the-state-of-nova/post/toddlers-tragic-death-in-herndon-in-overheated-car-continues-as-political-issue-in-russia-four-years-later/2012/12/12/c6a6c9c6-43e4-11e2-9648-a2c323a991d6_blog.html).

25. Those who defend the ban argue that it was not retaliatory but a necessary, inevitable change. *See* George Green, *The Facts About Russia's New Necessary Adoption Ban*, PRAVDA (Jan. 23, 2013), [http://english.pravda.ru/society/family/23-01-2013/123542-adoption\\_ban-0/](http://english.pravda.ru/society/family/23-01-2013/123542-adoption_ban-0/).

26. *See* David Herszenhorn, *Russian Says Ban on U.S. Adoption Flouts Treaties*, N.Y. TIMES (Dec. 25, 2012), [http://www.nytimes.com/2012/12/26/world/europe/russian-official-says-adoption-ban-violates-treaties.html?\\_r=1&](http://www.nytimes.com/2012/12/26/world/europe/russian-official-says-adoption-ban-violates-treaties.html?_r=1&); Alan Cullison & Andrey Ostroukh, *Russians Slam Adoption Ban*, WALL ST. J. (Jan. 13,

the shock of the international community, Putin nonetheless signed the ban, nullifying the Agreement less than six weeks after it had entered into force and leaving forty-six families in legal limbo.<sup>27</sup> Moreover, many roundly criticized the ban<sup>28</sup> for violating the human rights of the thousands of children in Russian orphanages, who were now unlikely to be adopted.<sup>29</sup> With this ban in place, Russia can no longer rely on American families to provide the family or family-like environment that Russian orphans are entitled to under Russian law<sup>30</sup> and the U.N. Convention on the Rights of the Child.<sup>31</sup>

This Note argues that despite intense criticism, Russia's ban on American adoptions presents an opportunity for Russia to address three primary problems that negatively affect the welfare of its children: (1) high rates of alcoholism; (2) lack of a developed juvenile law system, and (3) the institutionalization of orphans. Part II discusses important background information necessary to understand

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2013), <http://online.wsj.com/article/SB10001424127887324595704578239641635418814.html>; James Brooke, *Adoption Ban Splits Russia*, VOICE OF AM. (Jan. 18, 2013), <http://www.voanews.com/content/adoption-ban-splits-russia/1586564.html>.

27. The Russian Supreme Court eventually ruled that those families whose adoptions were finalized in Russian court before the ban but after the mandatory thirty-day waiting period would be permitted to leave Russia with their adopted children. *Russia's Top Court Clarifies Adoption Rules for Americans*, RIA NOVOSTI (Jan. 23, 2013), <http://en.rian.ru/russia/20130123/178970281/Russias-Top-Court-Clarifies-Adoption-Rules-for-Americans.html>.
28. See Anna Nemtsova, *Vladimir Putin's Adoption Ban Raises Issue of Who Will Save Russian Orphans*, THE DAILY BEAST (Jan. 4, 2013), <http://www.thedailybeast.com/articles/2013/01/04/vladimir-putin-s-adoption-ban-raises-issue-of-who-will-save-russian-orphans.html>; William J. Dobson, *Putin the Pitiful*, SLATE (Dec. 28, 2012), [http://www.slate.com/articles/news\\_and\\_politics/foreigners/2012/12/russia\\_adoption\\_ban\\_putin\\_shows\\_his\\_unpopularity\\_by\\_picking\\_on\\_orphans.html](http://www.slate.com/articles/news_and_politics/foreigners/2012/12/russia_adoption_ban_putin_shows_his_unpopularity_by_picking_on_orphans.html); Katya Soldak, *Russia Screws Its Orphans to Hurt the U.S.*, FORBES (Dec. 30, 2012), <http://www.forbes.com/sites/katyasoldak/2012/12/30/russia-screws-its-orphans-to-hurt-the-us/>.
29. Russia did not ban Western European Countries from adopting Russian orphans. In 2011, Spaniards adopted 685 Russian children and Italians adopted 798 in comparison to the 965 children who were adopted by Americans. Kathy Lally, *Russia Defends Ban on U.S. Adoptions*, STAR TRIBUNE (Jan. 23, 2012), <http://www.startribune.com/world/188141871.html?refer=y>.
30. SEMEINYI KODEKS ROSSIISKOI FEDERATSII [SK RF] [Family code] art. 54 (Russ.).
31. Convention on the Rights of the Child, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 44 (entered into force Sept. 2, 1990).



why U.S. adoptions from Russia were so common and why Russia has such a crisis of child welfare. Part III discusses why the now-nullified Agreement would not have solved adoption-related problems between Russia and the U.S. and in fact might have even made them worse. Finally, Part IV argues for the changes that Russia must make to its child welfare and legal system to ensure the human rights of its orphans.<sup>32</sup>

## II. BACKGROUND: WHY DOES RUSSIA HAVE A CRISIS OF CHILD WELFARE?

### *A. Historical, Social, Economic, and Cultural Factors Have Contributed to Russia's Child Welfare Crisis*

Due to the carnage of World War I, the Russian Revolution, the Red-White Wars, and World War II, Russia's orphan crisis developed quickly in the early twentieth century.<sup>33</sup> These orphans were true orphans—their parents were no longer living and efforts at reunification were impossible. As a result, family preservation services did not develop in the Soviet Union between 1917 and 1950.<sup>34</sup> Furthermore, Soviet-era ideologies created a unique mindset regarding children and family that still exists today and has resulted in high levels of child abandonment. During Soviet times, children were considered a resource: they were future workers and soldiers for the state.<sup>35</sup> The state encouraged women to bear as many children as possible, and women who gave birth to more than ten children were given a special medal for their contribution to the future of the Soviet Union.<sup>36</sup> The Soviet State took an active role in raising children due to the fact that many parents had to work twelve to fifteen hours per day in state-run farms or factories. In particular, the Soviet State provided childcare for these children before and after school for prolonged hours until age they reached the age of seventeen.<sup>37</sup>

Meanwhile, monetary resources for most families were very limited. The average Soviet family had to share an apartment with

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32. Due to the fact that international events move quickly and it is still uncertain what some of the long-term legal effects of this ban are, this Note will not focus on whether this ban was permissible under international law.

33. Rudnicki, *supra* note 2, at 31.

34. *Id.*

35. See MARTIN MCCAULEY, *THE RISE AND FALL OF THE SOVIET UNION* 97 (2013) (noting that the Soviet State aimed to increase reproduction in order to rebuild the population and make up for other losses stemming from the war).

36. *Id.*

37. Kravchuk, *supra*, note 5, at 611–12.

another family. Food and supplies were scarce, particularly in rural areas.<sup>38</sup> Thus, many poor families with even fewer resources felt they had no choice but to relinquish their children to state-run orphanages. The rationale was that if the state wanted these children for their contribution to the Soviet workforce, the state should pay for their upbringing. Parents were never prosecuted for bringing their children to an orphanage.<sup>39</sup> A policy developed where Soviet parents could place their children in orphanages at birth, no questions asked, for as long as a year, or three years. However, due to the abject poverty many parents faced, they were often unable to completely resume caring for their children in their homes.<sup>40</sup> Many children became what are known as “social orphans,” or children who have living parents who visit them occasionally but are unable to parent them.<sup>41</sup> Many parents, particularly single mothers, considered relinquishment to be a viable, socially acceptable option.<sup>42</sup>

Additionally, Soviet ideology blinded the society to the abuse and neglect of children. Academic study of child development, particularly child abuse and neglect, was abandoned along with formal study of the orphanage system and child welfare.<sup>43</sup> Under cover of the self-proclaimed perfection of the Soviet State, social problems would supposedly iron themselves out, and orphanages would become unnecessary. Policy-makers reasoned that in the perfect Soviet State, there would be no abuse or neglect of children. As a result, the Soviet government never developed a true juvenile court system similar to those found in Western countries or even a firm legal definition of child abuse.

What little existed of Russia’s orphanage system unraveled with the fall of the Soviet Union, just as it was needed the most. Funding to orphanages was cut sharply, while domestic upheaval led to more

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38. See DAVID R. MARPLES, *RUSSIA IN THE TWENTIETH CENTURY* 105–06 (2011).
39. See Olga Issoupova, *Problematic Motherhood: Child Abandonment, Abortion, Adoption, and Single Motherhood in Russia in the 1990s*, 6 *SLAVONICA* 80, 82 (2000).
40. See *id.* at 82, 88 (describing the option of “temporary refusal” and two case studies).
41. See Judith Record McKinney, *Russian Babies, Russian Babes: Economic and Demographic Implications of International Adoption and International Trafficking for Russia*, 17 *DEMOKRATIZATSIYA* 19, 30 (2009).
42. See *id.*; Issoupova, *supra* note 39, at 83.
43. See A.Sh. Shakhmanova, *Social and Pedagogical Problems of the Upbringing of Orphans in Russia*, 52 *RUSSIAN EDUC. & SOC’Y* 71, 75 (2010).

broken families and higher poverty rates.<sup>44</sup> Russia's heroin crisis of the mid-1990s increased the number of parents who were unable to care for their children.<sup>45</sup> The quality of health care declined with the collapse of the state structure, and access to affordable, reliable contraception was limited.<sup>46</sup> At the same time, poverty, distrust of strangers and government involvement, and a general feeling in the Russian culture that adoption was "unnatural," meant that there were almost no Russian homes that were willing to foster or adopt Russian children.<sup>47</sup>

*B. Russia's Current System Is Not Properly Equipped to Handle Child Welfare Cases*

1. Russian law lacks defined criteria for child abuse

Russia lacks a specific legal definition of which behaviors constitute is child abuse. In 2009 at a Child Protection Conference in Russia, one government representative spoke of the absence of a uniform criterion for determining abuse, noting that child abuse is generally defined as something "harmful" for children.<sup>48</sup> Russian laws do not contain precise legal language, which is in stark contrast to laws in the U.S. and other Western countries.<sup>49</sup> The vague definition of child abuse makes it difficult for authorities to know when they should intervene. For example, a 2008 law strengthened the legal mandate for authorities to extricate children from abusive or neglectful homes, and children can now be removed if the parent has done something to hinder "the normal development of the child."<sup>50</sup>

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44. See Kate O'Keefe, Note, *The Intercountry Adoption Act of 2000: The United States' Ratification of the Hague Convention on the Protection of Children, and its Meager Effect on International Adoption*, 40 VAND. J. TRANSN'TL. L. 1611, 1617 (2007).
45. See Shakhmanova, *supra* note 43, at 72; Gregory Gilderma, *Death by Indifference: AIDS and Heroin Addiction in Russia*, WORLD AFF. J. (2013), <http://www.worldaffairsjournal.org/article/death-indifference-aids-and-heroin-addiction-russia>.
46. See Dag Stenvoll, *Contraception, Abortion and State Socialism: Categories in Birth Control Discourses and Policies*, 28 KANSAI U. REV. L. & POL. 33, 37 (2007).
47. McKinney, *supra* note 41, at 33.
48. Rudnicki, *supra* note 2, at 33.
49. See, e.g., OHIO REV. CODE ANN. § 2151.031 (LexisNexis 2013); OHIO REV. CODE ANN. § 2919.22 (LexisNexis 2013) (giving a detailed description of the actions that legally constitute child abuse).
50. Allan Cullison, *After Adoption Law, Russia Debates Seizure of Children*, WALL ST. J. (Jan. 23, 2013), <http://online.wsj.com/article/SB10001424127887323485704578257893744845054.html>.

This broad criterion gives authorities virtually limitless power to remove children from homes while providing no guidelines regarding prioritization of cases.

While abuse is broadly defined, it is underreported. Teachers and health care professionals are mandated reporters of child abuse in Russia, but Russia has reported very low rates of child maltreatment—lower than 5 percent. Other countries in the region have reported levels between 8 and 17 percent, which is more on par with levels found in Canada and the U.S. Due to the fact that Russia has so many homeless children and that one of the primary reasons that children run away from home is maltreatment, one could infer that actual rates of abuse are much higher.<sup>51</sup>

Interventions on behalf of maltreated children are also difficult from a legal perspective due to the structure of the Russian juvenile law system. Russia does not have a separate juvenile justice system or even domestic relations court system. Currently, there are only ten courts in the entire country that have a panel of judges dedicated to child welfare cases.<sup>52</sup> Most courts are courts of general jurisdiction, and thus judges and court staff are usually untrained regarding psychological issues related to child welfare.<sup>53</sup> Instead, Russia has what is referred to as the Guardianship and Curatorship Department, which watches over abuse and neglect cases and makes recommendations to judges. The functions of this department are supposed to be similar to that of the Department of Child and Family Services in the U.S.<sup>54</sup> In practice, however, this department has few resources, and its work is limited.<sup>55</sup>

## 2. Russia's child welfare system lacks effective family services

Limited services in all areas are generally a problem in Russia. More than one observer has commented on the “appalling” lack of preventative and treatment services for families at risk of child abuse and neglect.<sup>56</sup> These types of services allow children to remain in their homes while social workers monitor the families to ensure the

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51. Tatiana Balachova, Barbara L. Bonner, & Sheldon Levy, *Street Children in Russia: Steps to Prevention*, 18 INT'L J. SOC. WELFARE 27, 31–32 (2009).

52. *Activists Oppose Big Brother Snooping on Families*, RT (July 6, 2012), <http://rt.com/politics/juvenile-justice-family-rights-554/>.

53. MASHA ANTOKOLSKAIA, NATIONAL REPORT: RUSSIA 36, available at <http://ceflonline.net/wp-content/uploads/Russia-Parental-Responsibilities.pdf>.

54. Victoria Schmidt, *Orphan Care in Russia*, 7 SOC. WORK & SOC'Y 58, 61 (2009).

55. ANTOKOLSKAIA, *supra* note 53, at 36.

56. *See* Rudnicki, *supra* note 2, at 33.

children's safety. However, despite having family preservation services in theory,<sup>57</sup> nearly 70 percent of parents eventually lose their parental rights after a referral to the child protection system. As an example of what can happen without effective family preservation services, authorities removed four children from a village about 120 miles outside of Moscow because the family had run out of firewood for their wood stove, and temperatures overnight had dropped to -22 degrees Fahrenheit. Rather than provide the family with firewood or financial assistance, authorities placed the children in orphanages.<sup>58</sup>

3. Orphanages in Russia can be psychologically damaging, abusive environments

Children who are placed in orphanages due to abuse or neglect often do not find better environments inside orphanage walls. Anecdotal evidence regarding the conditions in these orphanages is grim. Individuals who have visited orphanages describe children who sit alone, rocking back and forth with blank stares.<sup>59</sup> Due to a lack of proper stimulation and attention from adults, it is not uncommon for children to be unresponsive or to appear years younger than they actually are. One study found that 68 percent of children in orphanages in the Murmansk region could be characterized as developmentally delayed.<sup>60</sup>

Moreover, orphanages are often unregulated and chaotic, with one caretaker responsible for as many as thirty children.<sup>61</sup> Turnover is rapid amongst caregivers, and a child may experience fifty to 100 different caretakers in the first two years of life, making normal psychological attachment processes impossible to obtain.<sup>62</sup> In addition to neglect, physical and sexual abuse occurs in orphanages as well. At one orphanage in the Kurgan region, nine children were killed in a five-year period after they were beaten, starved, and placed in a

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57. One expert has speculated that part of the reasoning behind the ineffectiveness of family preservation services is a general contempt among the professional community for families with multiple, systemic issues such as poverty, drug addiction, and mental illness. This is evidenced by the fact that the word used to label high-risk families is *neblagopolychenye*, or "unfortunate." McKinney, *supra* note 41, at 35.

58. Cullison, *supra* note 50.

59. Pickert & Shuster, *supra* note 6.

60. Laurie C. Miller et al., *Medical Diagnoses and Growth of Children Residing in Russian Orphanages*, 96 ACTA PAEDIATRICA 1765, 1767 (2007).

61. Pickert & Shuster, *supra* note 6.

62. Christina J. Groark et al., *Improvements in Early Care in Russian Orphanages and Their Relationship to Observed Behaviors*, 26 INFANT MENTAL HEALTH J. 96, 101-02 (2005).

correctional isolation room.<sup>63</sup> Sexual abuse between orphans in orphanages is also common.<sup>64</sup>

The orphanage system treats developmentally delayed children in particular very poorly. The Russian government uses a system to determine whether orphans are “educable” or not—essentially, whether the orphan has any developmental delays. At the age of four, a panel of doctors evaluates each orphan. Their decision is final, and there is no means to appeal it.<sup>65</sup> Those children who are deemed “educable” are sent to a “dyetskii dom,” or “children’s home.” While called a “home,” it is still an orphanage. These orphanages are often slightly better maintained than traditional ones, and children attend regular public schools.<sup>66</sup>

A much bleaker fate awaits children who are labeled “uneducable.” They are sent to traditional closed orphanages with children who are similarly classified. They have little to no contact with the outside world and are forgotten by society, rarely receiving the specialized care necessary for children with developmental disorders.<sup>67</sup> This policy of isolation is the legacy of the Soviet Union, where anyone considered abnormal was excluded from society.<sup>68</sup> Traditional closed orphanages are essentially prisons, and children are often forcibly restrained and tied to beds or given heavy sedatives with no supervision from doctors.<sup>69</sup> Further, children sent to these institutions are twice as likely to die as children in regular orphanages.<sup>70</sup>

Children who are lucky enough to be raised in “children’s homes” still face struggles when they reach their late teens and are legally emancipated from the system. While these children receive high school diplomas or training in different trades, they have difficulty finding work because Russian society carries a bias against orphans,

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63. Kravchuk, *supra* note 5, at 619.

64. *See* Thompson, *supra* note 10.

65. HUMAN RIGHTS WATCH, ABANDONED TO THE STATE: CRUELTY AND NEGLECT IN RUSSIAN ORPHANAGES 71–88 (1998), *available at* <http://www.hrw.org/news/1998/12/15/report-documents-brutal-treatment-russian-orphanages>.

66. Andrew C. Brown, *International Adoption Law: A Comparative Analysis*, 43 INT’L LAWYER 1337, 1358 (2009).

67. *Id.*

68. *See* Gregory Feifer, *Russia’s Halt on Adoptions Spotlights Conditions*, NPR (Apr. 25, 2007), <http://www.npr.org/templates/story/story.php?storyId=9810880>.

69. *See* HUMAN RIGHTS WATCH, *supra* note 65, at 135.

70. Feifer, *supra* note 68.

often believing that they are “defective.”<sup>71</sup> In addition, Russian society is highly bureaucratic, and nepotism and corruption are a common part of daily life.<sup>72</sup> When a child is raised without an immediate family or social support network, gaining admission to higher education or finding a job can be challenging because there is no social network on which the child can rely.<sup>73</sup> Furthermore, moving from a highly regimented system to complete freedom literally overnight with limited resources virtually guarantees that orphans will have difficulty transitioning into adulthood.<sup>74</sup>

Physical conditions at some orphanages, specifically in urban areas, have improved in recent years. Buildings are less dilapidated and need fewer repairs.<sup>75</sup> Still, orphanages are overcrowded, and as many as twenty children use the same toilet and shower.<sup>76</sup> Psychologically speaking, however, even improved orphanages are not capable of meeting children’s basic needs. Children often are not permitted outside to play, and infants face dire psychological deprivation. An infant in an orphanage might get less than ten minutes of individualized attention per day.<sup>77</sup>

Given these conditions, it is not surprising that Westerners, who became aware of the Russian orphans’ plight, wanted to adopt. Americans adopted 60,000 Russian children between 1990 and 2012.<sup>78</sup> Until very recently, Russia has ranked third, after Guatemala and China, in the number of orphans adopted from any one country.<sup>79</sup> Given Russia’s status as a former world power and adversary of the U.S., it might seem strange that Russia now sends so many of its children to the U.S. However, like China with its one-child policy, Russia has unique cultural factors that contribute to the high number of adoptions between the U.S. and Russia.

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71. Brown, *supra* note 66, at 1358.

72. *Id.* at 1364.

73. *See id.* at 1358.

74. *See id.*

75. *See* Jennifer Rankin, *Russia: Struggles to Reform Soviet-Era Orphanages*, THE MOSCOW TIMES (Mar. 29, 2012), <http://www.themoscowtimes.com/news/article/russia-struggles-to-reform-soviet-era-orphanages/455659.html#no>.

76. Joe Lowry, *Inside Russia’s Orphanages*, THE MAGAZINE OF THE INT’L RED CROSS & RED CRESCENT MOVEMENT (2000), [http://www.redcross.int/EN/mag/magazine2000\\_1/voyage\\_en.html](http://www.redcross.int/EN/mag/magazine2000_1/voyage_en.html).

77. Rankin, *supra* note 75.

78. *Id.*

79. *Id.*

*C. Unique Cultural and Psychological Factors Contributed to the  
Popularity and Problems of U.S.-Russia Adoptions*

During the 1990s, the number of children adopted from Russia increased steadily, despite the fact that Russian adoption took longer and was more expensive than foreign adoption from other countries.<sup>80</sup> The rates of adoption held steady until 2006, when they began to decline.<sup>81</sup> Despite thousands of successful adoptions, adoptions from Russia to the U.S. have been fraught with a variety of issues from dissolved adoptions to accusations of human trafficking. There have been many reasons for this, and both sides bear some of the blame.

1. American parents did not always enter adoption with informed motives

The high cost of adoption from Russia to the U.S. has led some to speculate that racial attitudes in the U.S. impact adoption rates. For example, the average cost of an adoption from Russia is between \$30,000 and \$50,000, whereas the average cost of an adoption of a child from Africa or the Caribbean is only about \$10,000,<sup>82</sup> and adoptions out of the American child welfare system<sup>83</sup> can cost between \$0 and \$2,500.<sup>84</sup> Commentators have speculated that the popularity of Russian children is due to the fact that Russian orphans are generally fair-skinned and are more likely to resemble their adoptive parents and siblings, who are usually white.<sup>85</sup> Furthermore, Americans also have a well-documented fascination with Russia, which is understandable after years of a cold war and constant portrayals in the American media of Russians as spies, mobsters, and generally persons of intrigue. This is not to say that every parent who adopts from Russia is motivated by race. Many adoptive parents have

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80. See Donovan Steltzner, *Intercountry Adoption: Toward a Regime that Recognizes the "Best Interests" of Adoptive Parents*, 35 CASE W. RES. J. INT'L L. 113, 117 (2003).

81. See Wood, *supra*, note 11.

82. See Steltzner, *supra* note 80, at 122–23 & n.61; Dean Schabner, *Why It Costs More to Adopt a White Baby*, ABC NEWS (Mar. 12, 2013), <http://abcnews.go.com/US/story?id=91834&page=1>.

83. It would seem that race is not an entirely innocuous factor in decision-making by adoptive parents. In the U.S., for example, black males wait longer to be adopted than any other demographic. Catherine Rampell, *Black Babies, Boys Less Likely to be Adopted*, ECONOMIX BLOG N.Y. TIMES (Jan. 25, 2010, 4:26 PM), <http://economix.blogs.nytimes.com/2010/01/25/black-babies-boys-less-likely-to-be-adopted/>.

84. Child Welfare Information Gateway, *Costs of Adopting*, CHILD WELFARE INFORMATION GATEWAY (Feb. 2011), [https://www.childwelfare.gov/pubs/s\\_cost/s\\_costs.pdf](https://www.childwelfare.gov/pubs/s_cost/s_costs.pdf).

85. See Steltzner, *supra* note 80, at 118–19, 122 n.61.



expressed a feeling of religious calling or duty to adopt a child who is “in the most need,” and as a result have sought to adopt children with disabilities, many of whom would otherwise face a bleak existence.<sup>86</sup>

While many adoptive parents are well-equipped and well-intentioned, adoption is not always a purely altruistic endeavor. At times, it is not about finding a home for a child but finding a child for a home.<sup>87</sup> Many couples come to adoption after struggling with infertility. If a couple is not properly educated about the struggles of adoption, they may expect their adopted child to replace the biological child that they were unable to conceive. However, when parents have hopes and expectations for the child they work so hard to adopt, they can also be disappointed when things do not go as they expect. They may have trouble attaching to their adoptive child and may feel “let down” by their experience.<sup>88</sup> Extensive training is usually necessary to prepare prospective adoptive parents for the difficulties they might face.

2. Adoptive parents often lacked complete and reliable information regarding adoptees

Even if a parent is aware of the potential challenges of adopting a child who has been institutionalized, it can be difficult to learn what struggles the prospective child might be facing. It is extremely difficult to get complete medical and psychological records of adoptees.<sup>89</sup> It is even more difficult to get an accurate translation of any records that do exist. Furthermore, when it comes to recordkeeping, it is clear that there has been irresponsible behavior on both sides of Russian-American adoptions. Lucy Armistead, director of an American adoption agency, has stated that there can be a big difference between “what parents were told and what they actually heard,”<sup>90</sup> implying that when parents want to adopt, they may focus on the positive and ignore the negative, leading to unrealistic expectations.

Russians have stated the opposite, claiming that Russian orphanage administrators often overinflate a child’s problems. This

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86. See Caitlin Dewey, *Russian Adoption Ban Will Hit Disabled Children, Evangelical Christian Families*, WASH. POST (Jan. 2, 2013), <http://www.washingtonpost.com/blogs/worldviews/wp/2013/01/02/russian-adoption-ban-will-hit-disabled-children-evangelical-families/>.

87. See Mario J. Ortiz, *When Love is Not Enough: Emotional Disorders Found in Kids Who Are Adopted from Eastern Europe*, THE PLAIN DEALER, Aug. 17, 1996, at E1.

88. *Id.*

89. *Id.*

90. Pickert & Shuster, *supra* note 6.

was allegedly done because children were not legally eligible for foreign adoption until they had been passed over by three Russian couples. Due to the fact that foreign adoptions garnered more money for orphanages, administrators would falsify records to make children seem sicker than they actually were, leading Russian couples to refuse adoption of particular children and foreign couples to adopt them instead.<sup>91</sup>

3. Many Russian adoptees suffered from severe behavioral problems

Regardless of a child's official diagnosis or history, behavioral problems play a huge role in the dissolution, or "failure" of adoption. There are two psychological disorders commonly diagnosed in children who have been adopted either after abuse and neglect or after institutionalization—Reactive Attachment Disorder (RAD), and Fetal Alcohol Spectrum Disorder (FASD).<sup>92</sup> Found in the Diagnostic and Statistical Manual of Mental Disorders,<sup>93</sup> RAD generally describes a pattern of behaviors common in children who were severely abused or neglected early in life. One of the diagnostic criteria for RAD is a period of pathologic caregiving in a child's first two years of life.<sup>94</sup> This period of pathologic care can be physical or sexual abuse or even severe neglect, such as not talking to a child regularly or not holding a child, ultimately providing an environment where a child cannot attach to a caregiver. RAD in Russian orphans could be the result of abuse or neglect in a birth home or in a poorly administered orphanage, or a combination of the two. Symptoms generally include lack of empathy, inability to bond with others, compulsive lying, pyromania, and abuse of animals and other children.<sup>95</sup>

Physiologically, studies have shown that children who are not given opportunities to attach to caregivers also have brains that are smaller and less developed.<sup>96</sup> The type of neglect common in

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91. See Monica Hayde, *From Russia, with Love*, PALO ALTO ONLINE (Mar. 13, 1996), [http://www.paloaltoonline.com/weekly/morgue/cover/1996\\_Mar\\_13.COVER130.html](http://www.paloaltoonline.com/weekly/morgue/cover/1996_Mar_13.COVER130.html).

92. See *Fetal Alcohol Spectrum Disorders*, CENTERS FOR DISEASE CONTROL & PREVENTION (Sept. 22, 2011), <http://www.cdc.gov/ncbddd/fasd/facts.html> (describing FASDs).

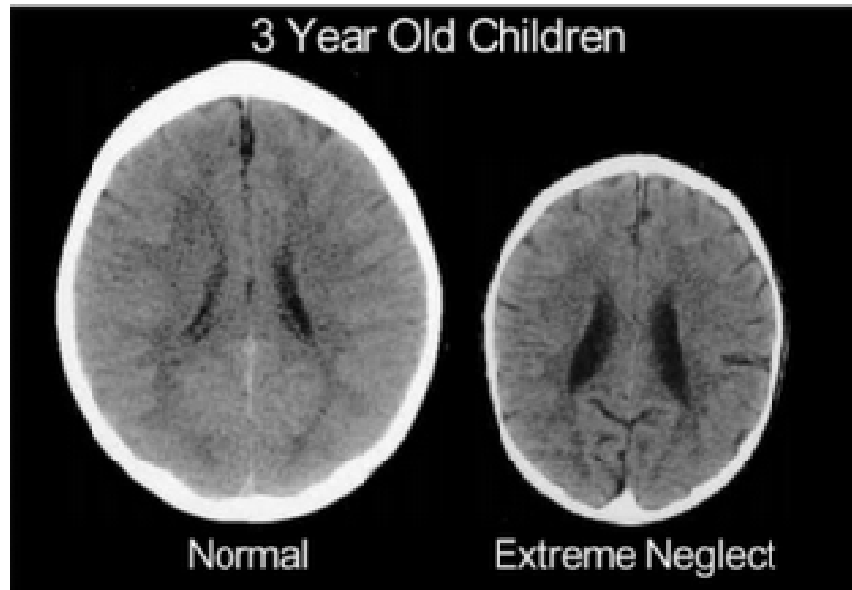
93. AM. PSY. ASS'N, *Reactive Attachment Disorder*, in DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 265–68, § 313.89 (5th ed. 2013).

94. *Id.* at 265–66.

95. *Id.*

96. Bruce D. Perry, *Childhood Experience and the Expression of Genetic Potential: What Childhood Neglect Tells Us About Nature and Nurture*, 3 BRAIN & MIND 79, 92–94 (2002).

institutionalized children, who often see a caregiver for minutes a day, is referred to as “global neglect.”<sup>97</sup>



*The images above show the physiological differences between the brains of severely neglected children and children raised in healthy environments.<sup>98</sup>*

The second disorder that commonly affects adoption is FASD, which is caused by excessive consumption of alcohol during pregnancy. Alcohol abuse is a widespread cultural problem in Russia and drinking alcohol during pregnancy is common.<sup>99</sup> In one study of pregnant women in St. Petersburg, nearly 60% reported drinking while knowing they were pregnant: 35% had reported drinking within the 30 days prior to the survey, and 7.4% reported binge-drinking during pregnancy.<sup>100</sup> In Moscow, 85% of women reported drinking while pregnant. Other studies have indicated that anywhere from 20

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97. *Understanding the Effects of Maltreatment on Brain Development*, CHILD WELFARE INFO. GATEWAY (2009), [https://www.childwelfare.gov/pubs/issue\\_briefs/brain\\_development/effects.cfm](https://www.childwelfare.gov/pubs/issue_briefs/brain_development/effects.cfm).

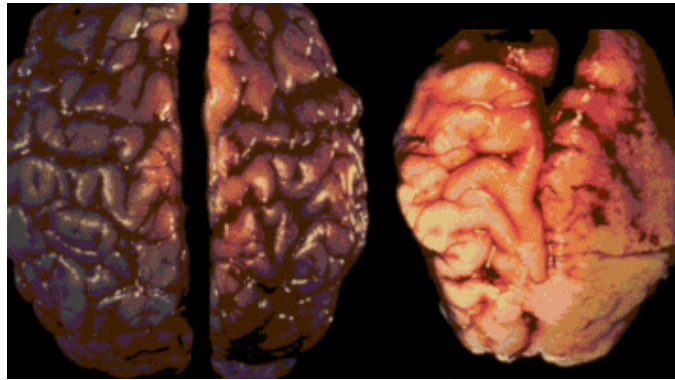
98. Perry, *supra* note 96, at 93.

99. See Sharon James Williams et al., *Legal and Psychological Implications of Nondisclosure in the Adoption of a Child with Fetal Alcohol Spectrum Disorder*, 39 J. PSYCH. & L. 193, 196–97 (2011).

100. Tatiana Balachova et al., *Women's Alcohol Consumption and Risk for Alcohol-Exposed Pregnancies in Russia*, 107 ADDICTION 109, 110 (2011).

to 50% of Russian women drink after realizing they are pregnant and that binge drinking is the current modal drinking pattern in Russian women.<sup>101</sup> Most notably, women who are actively trying to get pregnant do not reduce their drinking.<sup>102</sup>

Due to this trend—and the fact that alcoholic parents are more likely to lose custody of their children—the rate of FASD in Russian-adopted children is nearly about 8 percent.<sup>103</sup> Children with FASD often have lower IQs, difficulties in school, struggle with language skills,<sup>104</sup> exhibit hyperactivity, and are generally unresponsive to caregivers.<sup>105</sup> FASD can also cause abnormal facial features, such as a smooth ridge between the nose and upper lip.<sup>106</sup>



*On the left is the brain of a child with no exposure to alcohol during pregnancy. On the right is the brain of a child whose mother drank heavily during pregnancy.<sup>107</sup>*

Both RAD and FASD cause severe and dangerous behavioral problems. When a child experiences such problems, the psychological rift between parent and child can grow to a point where the bond of attachment<sup>108</sup>—if it ever existed—may be beyond repair. In extreme

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101. *Id.* at 110, 114.

102. *Id.* at 114.

103. Williams et al., *supra* note 99, at 196–97.

104. See Ann P. Streissguth et al., *Risk Factors for Adverse Life Outcomes in Fetal Alcohol Syndrome and Fetal Alcohol Effects*, 25 DEV. & BEHAVIORAL PEDIATRICS 228, 232 (2004).

105. *Id.* at 229.

106. *Id.*

107. Teresa Kellerman, *FASD and the Brain*, FAS ALASKA (2010), <http://come-over.to/FAS/brochures/FASbrainBrochure.pdf>.

108. “Attachment” is a psychological bond between an individual and an attachment figure, and is the underlying component of Attachment Theory. Infants generally form an attachment to a caretaker who consistently responds to their communications of need. The ability to

cases, an adoption will fail.<sup>109</sup> Failed adoptions are not exclusive to international adoption and happen with tragic regularity when parents adopt domestically from the American child welfare system.<sup>110</sup> Furthermore, failed adoptions occur domestically in Russia. In 2011, more than 4,500 children were adopted domestically in Russia and returned to orphanages within a year.<sup>111</sup> While hearing of a parent “giving back” an adopted child usually leads to negative reactions from observers, the reality is that most adoptive parents who dissolve adoptions do so as a last resort.<sup>112</sup> When an adoption must be dissolved, it is usually because the actions of the child are so disruptive or dangerous that the adopted child can no longer be safely cared for in the home.<sup>113</sup> The bottom line is that adoption is neither easy nor simple.

### III. THE BILATERAL AGREEMENT AND WHY AMERICAN ADOPTIONS WERE NOT THE SOLUTION

The focus on Russia’s ban on American adoptions in the media can create the impression that American adoptions from Russia were a paramount aspect of Russia’s child welfare system. Protests in Russia by politicians and the public showed great opposition to the ban, and American writers condemned it as a human rights violation. These critics have a valid point. Unlike the Russians, Americans were willing to adopt Russian children. Furthermore, while it is true that there were several high-profile incidents of maltreatment of Russian adoptees by their American parents, these reports represent a very small percentage of the nearly 60,000 children that Americans have

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form healthy attachments is thought to be essential in normal emotional and social functioning in humans. Research has indicated that attachment patterns are consistent across cultures. For a detailed discussion of attachment theory and its neurobiological origins, see generally DANIEL J. SIEGEL, *THE DEVELOPING MIND: HOW RELATIONSHIP AND THE BRAIN INTERACT TO SHAPE WHO WE ARE* (2d ed. 2012).

109. See Pickert & Shuster, *supra* note 6.

110. Approximately 25 percent of adoptions of older children eventually fail, and 9 to 15 percent of adoptions of younger children eventually fail. CHILD WELFARE INFO. GATEWAY, *ADOPTION DISRUPTION AND DISSOLUTION* 2 (2012), available at [https://www.childwelfare.gov/pubs/s\\_disrup.pdf](https://www.childwelfare.gov/pubs/s_disrup.pdf).

111. *Over 4,500 Children Rejected by Russian Adoptive Parents Last Year*, THE MOSCOW TIMES (Nov. 13, 2012), <http://www.themoscowtimes.com/news/article/over-4500-children-rejected-by-russian-adoptive-parents-last-year/471322.html>.

112. Susan Livingston Smith et al., *Where Are We Now?: A post-ASFA Examination of Adoption Disruption*, 9 *ADOPTION Q.* 19, 22 (2006).

113. *Id.*

adopted from Russia. However, it is important to keep in mind that American adoptions in recent years constitute only a small portion of Russian orphans. In the past five years, Americans have adopted approximately 5,000 children from Russia.<sup>114</sup> Given that Russia had an estimated 700,000 orphans in 2011,<sup>115</sup> focus on the ban itself exaggerates the role the U.S. plays in influencing the Russian child welfare system and ignores the larger problem of the need for domestic child welfare reform in Russia.

Had adoption continued under the now defunct Agreement, the adoption process would have likely seen only minor improvements, and in some cases, the Agreement might have actually made fundamental reform more complicated. For true change to occur in the adoption process, the Agreement would have needed to address two key issues—the compatibility of international adoption with the American child welfare system and the role of the Russian orphanage system in adoption failure. An examination of the Agreement’s text and comments made by Russian government officials<sup>116</sup> shows that Russia was concerned about the ability of the Russian government to intervene post-adoption if necessary. Adoptive parents were to be

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114. Laura Jean, *Russia’s Adoption Ban Harms Kids*, CNN (Jan. 17, 2013), <http://www.cnn.com/2013/01/17/opinion/jean-russia-adoption/>.

115. Clifford J. Levy, *Russian Orphanage Offers Love, but Not Families*, N.Y. TIMES (May 3, 2010), <http://www.nytimes.com/2010/05/04/world/europe/04adopt.html>.

116. Despite troubling signs from the Russian government, this agreement brought a sense of relief to the international adoption community, and prospective adoptive parents expressed optimism that the process of adoption from Russia to the U.S. would continue to improve and change. Pavel Astakhov, Russia’s children’s rights ombudsman, was quoted as saying “Now, as we have a legally binding intergovernmental agreement, we can officially insist on following the rights of our children adopted overseas . . . .” *Moscow to Support Appeals Against Lenient Sentences on US Foster Parents*, VOICE OF RUSSIA (Nov. 3 2012), [www.english.ruvr.ru/2012\\_11\\_03/Moscow-to-support-appeals-against-lenient-sentences-on-US-foster-parents](http://www.english.ruvr.ru/2012_11_03/Moscow-to-support-appeals-against-lenient-sentences-on-US-foster-parents). Furthermore, there has been at least one high-profile incident of Russian government officials visiting a treatment facility for adopted children without warning or permission. *Ranch Becomes Focus for Russian Adoption Outrage*, FOX NEWS (July 11, 2012), <http://www.foxnews.com/us/2012/07/11/ranch-becomes-focus-for-russian-adoption-outrage>; *US Couple Gets Suspended Sentences for Abusing Adopted Russian Son*, VOICE OF RUSSIA (Nov. 13, 2012), [www.english.ruvr.ru/2012\\_11\\_13/US-couple-gets-suspended-sentences-for-abusing-adopted-Russian-son](http://www.english.ruvr.ru/2012_11_13/US-couple-gets-suspended-sentences-for-abusing-adopted-Russian-son). This happened despite the fact that the Agreement specifically states that “[b]efore the acquisition by the adopted child of the citizenship of the Receiving Country, the Country of Origin shall exercise jurisdiction with respect to this child in accordance with the norms of international law.” Agreement, *supra* note 19, art. 13(3).

subject to more monitoring,<sup>117</sup> adoptees were to retain their Russian citizenship,<sup>118</sup> and the Russian government was to be notified and consulted before any change in custody of an adoptee.<sup>119</sup> Post-adoption monitoring was already taking place before the Agreement, but adoptive parents would have been required to undergo additional monitoring.<sup>120</sup> While it is true that the adoption process between Russia and the U.S. needed reform and that closer monitoring would have likely prevented Artyom Savelyev's return, the Agreement was not a game changer for Russian orphans. Relying solely on the Agreement would have masked the more pressing underlying changes that are needed.

*A. The Agreement Did Not Acknowledge the Realities of the American Child Welfare System*

Letting an adoption fail may be one of the only ways an adopted child can get the intensive psychiatric care he needs,<sup>121</sup> but the Agreement did not acknowledge this irony. Treatment for disorders such as FASD and RAD is extremely expensive in the U.S., and it may be difficult to find a healthcare provider who is skilled in treating them.<sup>122</sup> Severe cases, especially of RAD, require inpatient hospitalization, which can cost up to \$100,000 a year if not covered by insurance.<sup>123</sup> Furthermore, there are a limited number of facilities that provide appropriate treatment, and the waiting lists for these facilities can exceed a year.<sup>124</sup> Oftentimes, the only way to get guaranteed admittance into an inpatient facility that provides treatment for RAD is through a referral from a state's Department of Child and Family Services.

In order for a state's Department of Child and Family Services to make a referral, the state must have custody of the child.<sup>125</sup> This can

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117. Agreement, *supra* note 19, art. 14(4).

118. *Id.*

119. *Id.* art. 5(1)(e)(i).

120. *Id.* art. 5.

121. See MARY GILIBERTI & RHODA SCHULZINGER, THE BAZELON CTR. FOR MENTAL HEALTH LAW, RELINQUISHING CUSTODY: THE TRAGIC RESULT OF FAILURE TO MEET CHILDREN'S MENTAL HEALTH NEEDS: EXECUTIVE SUMMARY 3 (2000) (describing the problems of access to psychiatric services for children in state welfare agencies).

122. See Carl J. Sheperis, Edina L. Renfro-Michel, & R. Anthony Doggett, *In-Home Treatment of Reactive Attachment Disorder in a Therapeutic Foster Care System: A Case Example*, 25 J. MENTAL HEALTH COUNSELING 76, 81 (2003).

123. *Id.*

124. *Id.*

125. See GILIBERTI & SCHULZINGER, *supra* note 121, at 3.

lead an adoptive parent to relinquish custody of the child to the state through dependency hearings in juvenile court.<sup>126</sup> The Agreement did not account for this reality and did not detail any procedure for how to reconcile dependency proceedings controlled by state law with the requirements of the Agreement. Hearings to determine the custody and placement of an abused or neglected child must take place within twenty-four hours of the filing of a complaint, and in many jurisdictions, social workers have the ability to remove children without filing a complaint as long as a hearing is held within twenty-four hours.<sup>127</sup> The Agreement provided no detailed description of how or when to involve the Russian government in any decision, and yet any social worker removing an adopted Russian child from a home without consulting the Russian government would be in violation of the Agreement.

*B. The Agreement Did Not Address the Role of Institutionalization in Adoption Failure*

The Agreement also failed to address the conditions of Russian orphanages and did not put any obligation on the Russian government to tackle the causes of these psychological disorders that contribute to adoption failure. While many children in Russia enter state care due to poor parenting, poor conditions in orphanages and lack of attachment with adult caregivers resulting from overcrowding can exacerbate or cause RAD. These institutions contribute to failed adoptions by creating children who do not resemble “normal” children behaviorally, emotionally, or psychologically. Sadly, the reality is that when children have special needs—whether physical or psychological—they are at high risk for physical abuse, neglect, and abandonment.<sup>128</sup>

This is not to say that abusive American adoptive parents lack culpability. An adoptive parent—or any parent—who feels overwhelmed with the care of a child has a duty to seek help. Furthermore, there will always be isolated cases of truly predatory adoptive parents who see an adopted child as an easy target. The point, however, is that in the vast majority of cases, preventing the abuse of an adopted child and preventing adoption dissolution is a complex task that involves addressing the needs of the parent and

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126. *See id.* at 3–4.

127. *See, e.g., Care and Protection Cases*, CHILDREN’S LAW CTR. OF MASS., <http://www.clem.org/edcandp.html> (last visited Dec. 30, 2014) (explaining that in emergency cases, an investigation is required within twenty-four hours).

128. *See* WORLD HEALTH ORG., CHILD ABUSE AND NEGLECT (2002), available at [http://www.who.int/violence\\_injury\\_prevention/violence/world\\_report/factsheets/en/childabusefacts.pdf](http://www.who.int/violence_injury_prevention/violence/world_report/factsheets/en/childabusefacts.pdf).



child both before and after adoption. The Agreement focused primarily on the needs of parents after adoption. In order to truly facilitate better adoptions, the Agreement should have also concentrated on reducing psychological damage suffered by Russian orphans before adoption. If Russia does not want to see history repeat itself with future domestic adoptions, it must make policy changes.

#### IV. RUSSIA SHOULD CONSIDER THREE KEY POLICY CHANGES TO IMPROVE CHILD WELFARE

##### *A. Russia Must Address Alcohol Misuse*

Alcoholism has deep roots in Russian culture: decades of poverty and oppression combined with long, brutal, sunless winters and the availability of cheap vodka has made for an environment in which alcohol abuse is common. The average Russian drinks fifteen liters of pure alcohol each year.<sup>129</sup> One study found that 47 percent of its St. Petersburg participants misused alcohol, and those that did were 3.28 times more likely to perpetrate intimate partner violence.<sup>130</sup> Not only is alcohol use during pregnancy a significant contributing factor to child welfare problems in Russia, but also parental alcohol misuse is a huge factor in intimate partner violence and child maltreatment. Drunken parents abuse about two million Russian children each year, and about 50,000 children run away from home annually to escape violence.<sup>131</sup> For the purposes of child welfare, alcohol misuse must be addressed from two different angles. First, Russia must take steps to reduce the rate of FASD. Second, Russia must develop an effective service system that gives alcoholic parents an opportunity to achieve recovery and regain custody of their children.

Preliminary research has shown that the Russian medical community lacks awareness of the nature of FASD. Less than 60 percent of surveyed obstetricians reported counseling patients to abstain from alcohol during pregnancy.<sup>132</sup> Further, less than 10 percent of surveyed obstetricians were aware that FASD is a lifelong condition.<sup>133</sup> Finally, less than 40 percent of obstetricians reported

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129. G.G. Zaigraev, *Alcoholism and Drunkenness in Russia: Ways to Come Out of the Crisis Situation*, 49 SOC. RES. 3, 3-4 (2010).

130. Weihai Zhan et al., *Alcohol Misuse, Drinking Contexts and Intimate Partner Violence in St. Petersburg, Russia: Results from a Cross-Sectional Study*, 11 BMC Public Health 629, 629 (2011).

131. Zaigraev, *supra* note 129, at 5.

132. See Tatiana Balachova & Elena Varavikova, Presentation at 1st Central and Eastern European Summit on Preconception Health and Prevention of Birth Defects: Preventing FAS/FASD in Russian Children, at 28 (Aug. 27-30, 2008), available at <http://www.ibis-birthdefects.org/start/pdf/budapest/Plenary/5/Varavikova.pdf>.

133. *Id.*

asking patients about their own alcohol consumption.<sup>134</sup> Small studies with focus groups have found that the Russian public is generally unaware of the harms associated with drinking during pregnancy.<sup>135</sup> These findings suggest that public education campaigns and proper physician training could have a substantial impact on the number of women that drink during pregnancy.<sup>136</sup>

However, for women who are already hardened alcoholics, simple awareness of the risks associated with drinking while pregnant will not be sufficient.<sup>137</sup> This is why Russia must develop a system that can treat alcoholic parents. Historically, Russian policy has treated alcoholism as a social ill, not as a disease or as a psychological problem.<sup>138</sup> There are no alcohol education programs for adolescents in schools.<sup>139</sup> Policies attempting to curtail consumption have had little success, and in some cases have made the problem worse. For example, high taxes on alcohol in the 1990s led to production of illegal alcohol, causing a peak of 55,500 cases of poisoning in 1994 alone.<sup>140</sup> Mortality rates due to alcohol use finally started to decline in 2006, when the government placed limits on who could sell alcohol and when.<sup>141</sup>

Alcohol counseling programs and Alcoholics Anonymous programs are underdeveloped<sup>142</sup> or unavailable.<sup>143</sup> Programs that recommend

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134. *Id.*

135. Tatiana N. Balachova et al., *Use of Focus Groups in Developing FAS/FASD Prevention in Russia*, 42 *SUBSTANCE USE MISUSE* 881, 881 (2007).

136. *See id.* at 882.

137. *See* Janet R. Harkin, *Fetal Alcohol Syndrome Prevention Research*, NAT'L INSTITUTE ON ALCOHOL ABUSE & ALCOHOLISM (Aug. 2002), <http://pubs.niaaa.nih.gov/publications/arh26-1/58-65.htm>.

138. Zaigraev, *supra* note 129, at 8.

139. *Id.* at 17.

140. *Id.* at 18.

141. Nancy Shute, *Russia's Love Affair with Vodka Leads Many to an Early Grave*, NPR (Jan. 30, 2014), <http://www.npr.org/blogs/health/2014/01/30/268908367/russias-love-affair-with-vodka-lures-many-to-an-early-grave>.

142. *See* Gregory Warner, *The Killer Cure for Alcoholism in Russia*, MARKETPLACE (Mar. 3, 2011), <http://www.marketplace.org/topics/world/russia-rx/killer-cure-alcoholism-russia> (describing some of the extreme therapies used in Russia to cure alcoholics). One of the primary forms of treatment for alcoholism in Russia today is “coding,” or the use of hypnosis and conditioning to convince an alcoholic that drinking is deadly. It is effective for short periods of time but does not lead to a lasting change. *See* Peter Finn, *Russia's 1-Step Program: Scaring Alcoholics Dry*,

complete abstinence, such as Alcoholics Anonymous, may be unworkable in Russia on a larger scale due to the central role that alcohol, particularly vodka, plays in social gatherings and celebrations.<sup>144</sup> Programs that are currently popular in Russia often use negative reinforcement and have high relapse rates.<sup>145</sup> Russian experts on alcoholism have commented that Russians generally prefer more passive approaches to treatment and do not seek behavioral therapy<sup>146</sup>—a more effective method of alcoholism treatment.<sup>147</sup> Given these factors, it is no wonder that treating alcoholism in Russia has frustrated healthcare professionals and policymakers for decades.<sup>148</sup>

Medical approaches are just developing in the U.S.,<sup>149</sup> but as Russians generally see alcoholism as a sin instead of an illness,<sup>150</sup> public education about alcoholism is necessary. Additionally, more research is needed to determine what kinds of treatment are most suitable for the Russian population and how to best to educate the Russian public about these treatments. Creating a system of alcohol treatment programs and facilities—less than 30 percent of Russian states have treatment facilities<sup>151</sup>—must become part of a larger plan to reduce alcohol abuse. To have maximum impact on child welfare, such a system must be well connected to a juvenile court system.

*B. Russia Must Create an Appropriate Juvenile Law System*

It is worth noting that since the fall of the Soviet Union, Russia has made enormous strides—at least legislatively—in the protection of children's rights. Article 54 of the 1995 Family Code states that

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WASH. POST (Oct. 2, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/10/01/AR2005100101196.html>.

143. See Warner, *supra* note 142.

144. Heavy drinking with hard liquor is a key aspect of most Russian social functions. Anyone who has traveled to Russia or participated in any kind of traditional Russian celebration has probably been subjected to rounds of toasts, which are very traditional at weddings, holidays, and social gatherings.

145. See Finn, *supra* note 142.

146. See Agence France-Presse, *Russians Warily Turn to AA in Battle With Alcohol*, RAW STORY (Jan. 18, 2013), <http://www.rawstory.com/rs/2013/01/18/russians-warily-turn-to-aa-in-battle-with-alcohol/>.

147. See Bankole A. Johnson, *Medication Treatment of Different Types of Alcoholism*, 167 AM. J. PSYCH. 630, 630 (2010).

148. Zaigraev, *supra* note 129, at 8.

149. See Bankole, *supra* note 147, at 630.

150. Zaigraev, *supra* note 129, at 8.

151. *Id.*

“[e]very child has the right to live and grow up in a family, as far as possible, [and] the right to know their parents . . . .”<sup>152</sup> In 1998, Russia passed a law entitled “On Basic Guarantees of the Rights of the Child in the Russian Federation,”<sup>153</sup> which was essentially a duplication of the U.N. Convention of the Rights of the Child, but it did not present any mechanism for implementing change.<sup>154</sup>

Russia ratified the U.N. Convention on the Rights of the Child in 1990.<sup>155</sup> However, one significant problem is the fact that the Convention on the Rights of the Child does not have a specific enforcement mechanism: it merely lists “best practices.” Ratifying countries are reviewed for their compliance with the standards set by a U.N. Committee (“Committee”). While the Committee has commended Russia for its progress since the first review in 1993, the Committee has continued to raise the same issues.<sup>156</sup> The Committee has expressed regret on more than one occasion that despite Russia’s ratification of the Convention, it does not appear that the treatment of orphans in Russia has been sufficiently addressed.<sup>157</sup> In 2005, the Committee issued a report that expressed concern about the number of children still in institutional care as well as the lack of services for parents and legal guardians.<sup>158</sup>

The Committee has pointed out that widespread corruption in the Russian system has created a serious lack of resources that has made it difficult for Russia to meet even basic needs of orphans. The report found that children live in buildings that are in disrepair with

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152. SEMEINYI KODEKS ROSSIISKOI FEDERATSII [SK RF] [Family code] art. 54 (Russ.).
153. Federal’nyi Zakon Ob Osnovnykh Garantiyakh Prav Rebenka v Rossiyskoy Federatsii [Federal Law on Basic Guarantees of the Rights of the Child in the Russian Federation], SOBRANIE ZAKONODATEL’SIVA ROSSIISKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 1998, No. 31, Item 3802.
154. Kravchuk, *supra* note 5, at 613.
155. *Convention on the Rights of the Child*, U.N. TREATY COLLECTION, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) (last visited Dec. 30, 2014).
156. *See, e.g.*, Comm. on the Rights of the Child, Concluding Observations on the Combined Fourth and Fifth Periodic Reports of the Russian Federation, Jan. 23–24, 2014, U.N. Doc. CRC/C/RUS/CO/4-5. It is not lost on this author that the U.S. is not a party to this Convention. At the very least, Russia should be commended for allowing the international community to review and scrutinize its child protection system—something the U.S. has been unwilling to do thus far.
157. Kravchuk, *supra* note 5, at 619.
158. *See* Comm. on the Rights of the Child, Considerations of Reports Submitted by States Parties Under Article 44 of the Convention, 40th Sess., Sept. 28–30, 2005, U.N. Doc. CRC/C/RUS/CO/3.

inadequate sanitary facilities. Further, children do not receive proper clothing, medications, or diets. One institution in the Republic of Kabardino-Balkaria received only 30 percent of the funds allocated to its budget.<sup>159</sup> In the Rostov Region, nearly seven million rubles out of twenty million allocated rubles either were unaccounted for or were spent on items unrelated to child welfare.<sup>160</sup> Historically, foreign Christian missionaries and programs like the U.S. Agency for International Development (USAID) have provided significant resources and funding to programs intended to assist orphans.<sup>161</sup> However, there are indications that it will soon become more difficult for foreigners to operate charities in Russia. In late 2012, Russia actually announced that it will no longer permit USAID to operate within its borders.<sup>162</sup> Thus, more burdens will fall on the Russian government to provide funding and to ensure that the allocated funding is actually delivered.

The Committee report is important because it illustrates that despite passing laws, the Russian government has seen limited progress. In 2002, Putin introduced a series of proposals to improve services for orphaned children, but there has been little evidence to show that these proposals made any real difference.<sup>163</sup> One notable exception is that the number of children in foster care increased between 2000 and 2007. However, this figure was still only 5.28 percent of the total number of children in state care, while 21.3 percent remained in orphanages.<sup>164</sup> Experts have noted that while there have been many attempts by the government to address the problem, there has been little evidence to show that the reality of life for orphans in Russia is much different.<sup>165</sup>

One of the best, and most effective, changes Russia could make would involve the creation of a juvenile court system to facilitate the delivery of services and reunification of families. The Russian government recognized this in 2000 and made plans to develop a juvenile court system after it signed the European Social Charter. So

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159. Kravchuk, *supra* note 5, at 618.

160. *Id.*

161. Rudnicki, *supra* note 2, at 35, 40.

162. Arshad Mohammed, *USAID Mission in Russia to Close Following Moscow Decision*, REUTERS (Sept. 18, 2012), <http://www.reuters.com/article/2012/09/18/us-usa-russia-aid-idUSBRE88H11E20120918>.

163. Kravchuk *supra* note 5, at 617.

164. *See* Rudnicki, *supra* note 2, at 36.

165. *See* B.N. Olson & A.B. Kholmogorova, *The Professional Foster Family as One Model for Solving the Orphan Problem in Russia*, 45 RUSSIAN EDUC. & SOC'Y 26, 39 (2003); Kravchuk, *supra* note 5, at 619; Rudnicki, *supra* note 2, at 41.

far, however, the only success has been the establishment of the Office of the Children's Rights Ombudsman—yet another example of legislative reforms that caused minimal practical change.<sup>166</sup> In early 2013, Putin proposed a bill that would establish a sophisticated, western-style child welfare system. This bill has been met with considerable opposition:<sup>167</sup> the Russian public is divided about creating a court system to handle child welfare cases.<sup>168</sup> Just over half of the Russian population supports the creation of a juvenile court system,<sup>169</sup> but consensus on what types of authorities that system should have varies. Russians are understandably concerned about corruption in the court system,<sup>170</sup> and the Russian Orthodox Church has expressed concern about state interference with families.<sup>171</sup>

Recent surveys reflect attitudes about children's rights that will serve as a future roadblock for the creation of a juvenile court system. Seventy-one percent of Russians believe that parental rights trump children's rights, and 74 percent of Russians are against prosecution of parents who leave their children unattended.<sup>172</sup> Children's Rights Ombudsman Pavel Astakhov has stated that creating a juvenile court system "is not a topical issue for Russia" because there are enough

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166. RIA Novosti, *Most Russians Oppose Juvenile Justice System – Poll*, THE MOSCOW NEWS (Feb. 8, 2013), <http://themoscownews.com/russia/20130208/191216821/Most-Russians-Oppose-Juvenile-Justice-System---Poll.html>.

167. Natalya Krainova, *Child Welfare Bill Sparks Fear Among Parents*, THE MOSCOW TIMES (Feb. 19, 2013), <http://www.themoscowtimes.com/news/article/child-welfare-bill-sparks-fears-among-parents/475726.html>.

168. Sergei Mizerkin, *Russia Considering Juvenile Justice System*, THE VOICE OF RUSSIA (June 7, 2010), <http://English.ruvr.ru/2010/06/07/9274052.html>. In July of 2012 prior to the adoption ban, a group of academics wrote an open letter to Putin voicing their opposition to a Juvenile Court system, and expressing concern that the state would remove children from parents for pretextual reasons. The same letter also said, "Normal child upbringing is impossible without encouragement and punishment. It all becomes impossible . . . because in juvenile terminology that is called violence." The letter further expressed concern that a juvenile law system would encourage children to "snitch" on their parents, undermine the family structure, and reduce birth rates. *Activists Oppose Big Brother Snooping on Families*, *supra* note 52.

169. RIA Novosti, *supra* note 166.

170. See Sergei L. Loiko, *Corruption Scandals Dominate Russian Headlines*, LA TIMES (Dec. 2, 2012), <http://articles.latimes.com/2012/dec/02/world/la-fg-russia-corruption-20121203>.

171. Krainova, *supra* note 167.

172. RIA Novosti, *supra* note 166.

existing laws to protect children.<sup>173</sup> He claims to have observed the American and French juvenile court systems and rejected those models as excessive.<sup>174</sup>

The current Russian legal system, however, serves a mainly punitive function in child welfare cases and does not focus on family reunification.<sup>175</sup> Russian civil code does not allow for a child to have standing in court.<sup>176</sup> The law clearly states that children's opinions are to be considered, but they are not enforceable,<sup>177</sup> and there is no way for an interested adult to file a petition on behalf of a child. There are no *guardian ad litem*s or other individuals who represent a child's best interests in court. Without this advocacy, there is no motivation for the system to provide services to parents or to promote family reunification. Parents who wish to regain custody of their children after removal face an uphill battle. In addition to a lack of reunification services, current Russian law allows termination of parental rights in six months or less.<sup>178</sup> In regions where family preservation and reunification services are present, such as Moscow and Perm, these efforts have been successful and conditions have improved.<sup>179</sup>

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173. Vladimir Golovkin, *Does Russia Need Juvenile Justice*, RADIO-THE VOICE OF RUSSIA (Dec. 22, 2010), <http://English.ruvr.ru/2010/12/22/37476226.html>.

174. *Id.* In this article, Astakhov also shares an anecdote from his time in America that has influenced his feelings on child protection and child welfare: "I saw how those juvenile courts work in the United States, France, and other countries. When lots of children are seized from their parents at the first call to social or tutorship authorities, this is certainly overdoing it. Regrettably, children receive a somewhat warped approach to the situation. I know what I am talking about. When I was studying in the United States, my son, a second-grade pupil, came to me after attending an American school for several months, and said that if I would not allow him to go out in the evening, he would dial a telephone number they had given him at school and special services and they would come and take him for adaptation." *Id.*

175. Svetlana Smetanina, *Protecting Russia's Orphans*, RUSSIA BEYOND THE HEADLINES (Apr. 13, 2011), [http://rbth.ru/articles/2011/04/13/protecting\\_russias\\_orphans\\_12692.html](http://rbth.ru/articles/2011/04/13/protecting_russias_orphans_12692.html).

176. Kravchuk, *supra* note 5, at 614.

177. ANTOKOLSKAIA, *supra* note 53, at 41.

178. *See* Rudnicki, *supra* note 2, at 32.

179. *Id.*

*C. Russia Must Approach Deinstitutionalization Gradually and  
Intelligently*

To provide better homes for orphans, Russia is currently experimenting with domestic adoption, patronage, foster families, orphan shelters attached to monasteries, religious institutions, and military schools.<sup>180</sup> While it might seem that closing the orphanage system immediately is the best way to improve conditions, experience says otherwise. Rapid deinstitutionalization through domestic adoption is not the answer. Such action would face many of the same obstacles that contributed to the failure and difficulties of international adoption. Rapid deinstitutionalization was unsuccessful in Romania, and when one Russian region attempted to close its orphanages in 2007, nearly 40 percent of children from those orphanages had to be returned to institutional care.<sup>181</sup> Instead, Russia should approach deinstitutionalization gradually.

1. Russia should use the Children's Village model as a transitional step

While a foster care system presents its own problems,<sup>182</sup> there can be no denying that it is superior to an orphanage system. However, there is some data that shows that smaller orphanages, when run properly, can be an effective way to raise children. To be run properly, an orphanage needs to have a smaller child-to-caretaker ratio and resemble a family.<sup>183</sup> The professional foster family has been proposed as a solution to Russia's child welfare crisis for some time. This is not a new idea, and in fact, there are already examples of this type of caregiving in Russia.

One example is the Children's Village in Moscow, where now ten-year-old Artyom Savelyev lives in a foster home with a paid foster

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180. See Shakhmanova, *supra* note 43, at 75.

181. Mark R. Elliot, *Russian Children at Risk*, 28 RELION E. EUR. 1, 15 (2008).

182. Those who study child welfare are quick to admit that a foster care system is often fraught with its own concerns. Children in foster care in the U.S. experience abuse in the foster care system on a shockingly regular basis, and for years, the American system struggled with "foster care drift." Leslie Joan Harris, *Challenging the Overuse of Foster Care and Disrupting the Path to Delinquency and Prison*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 68 (Nancy E. Dowd ed., 2011). It has only been in recent years, after considerable policy changes based on empirical research on attachment, trauma, and parenting that America has begun to see better long-term outcomes for children in the child welfare system. For a detailed discussion of the child welfare system in America, see generally JANNAH MATHER, PATRICIA B. LAGER, & NORMA J. HARRIS, CHILD WELFARE: POLICIES AND BEST PRACTICES (2d ed. 2006).

183. See Rudnicki, *supra* note 2, at 34.



mother and five other children. The idea of a “Children’s Village” was first developed in Austria in 1949. Nearly 120 countries use this model today with positive outcomes. The general criticism of this model is that it is expensive. In fact, Russia previously made attempts to use these types of homes in the 1990s, but these attempts were largely abandoned when it became clear that the minimum number of children in a home to make the home financially viable was ten.<sup>184</sup>

Russia should revisit this model, as it is now a much wealthier country than it was in the 1990s,<sup>185</sup> and the high cost of social problems associated with orphans and street children is becoming clear. Furthermore, Russia now spends a considerable amount of money per orphan simply to maintain orphanage care—between USD11,000 and USD19,000 per year.<sup>186</sup> How much of that is siphoned off due to corruption is unknown, but this money, if properly spent, could easily support a Children’s Village.<sup>187</sup>

Moreover, private charities and donors have experimented with this model and achieved considerable success. One Children’s Village, Kitezh, is funded by Russian entrepreneurs. As of 2008, forty children had “graduated” from the village, and 60 percent of those had enrolled in university programs.<sup>188</sup> This is in stark contrast from the 2 percent of emancipated orphans from traditional orphanages who go on to university and is even an improvement from the 45 percent of children raised in families who attend university.<sup>189</sup> While empirical data does not exist on this point, it would seem logical that at least some of the initial investment in Children’s Villages would be repaid to society in the form of lower crime and homelessness and more productive, educated citizens.

Children’s Villages also provide an appropriate psychological transition from traditional orphanages to traditional foster homes. Some of the progress in transitioning to traditional foster homes has been hampered by reports that children raised in orphanages are a negative influence on biological children living in a foster home.<sup>190</sup>

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184. Olson & Kholmogorova, *supra* note 165, at 39.

185. See Tom Parfitt, *Russia’s Rich Double Their Wealth, but Poor Were Better Off in 1990s*, THE GUARDIAN (Apr. 11, 2011), <http://www.guardian.co.uk/world/2011/apr/11/russia-rich-richer-poor-poorer>.

186. Krainova, *supra* note 167.

187. *See id.*

188. Michael Schwartz, *In a Fairy-Tale Village, Russian Orphans Thrive*, INT’L HERALD TRIBUNE (Oct. 2, 2008), <http://www.ihl.com/bin/printfriendly.php?id=16632414>.

189. Brown, *supra* note 66, at 1358.

190. N.E. Markova, *Social Orphanhood Under the Conditions of Depopulation*, 53 RUSSIAN EDUC. & SOC’Y 85, 91–92 (2011).

Children's Villages allow children that have more severe behavioral problems to live in homes with children similar to themselves so that they are not isolated or treated differently by foster parents. Employing professional foster parents who are specifically trained to respond to the unique psychological needs of orphans, Children's Villages also utilize small caregiver-to-child ratios, allowing for normal attachment processes to develop. This ensures that if a child is matched with an adoptive family, that child will have the requisite psychological foundation to develop an attachment with their adoptive family.

Finally, Children's Villages are an ideal transition to traditional foster care homes because they will encounter less pushback from the orphanage industry. There are nearly 1,300 orphanages in Russia.<sup>191</sup> Many are in small towns and serve as large local employers.<sup>192</sup> Despite spending a significant amount of money per orphan, funding that is accounted for goes towards building maintenance and staff salaries and not towards supplies or treatment for children.<sup>193</sup> Critics of child welfare authorities have argued that high subsidies have created an incentive for corruption and pointed to the case of the family with no firewood as a prime example of corruption in Russia's child welfare system, in which every new addition to an orphanage's population means more income from the federal government.<sup>194</sup>

Putin recognized this problem in 2006 when he mentioned in a nationwide speech that adoption alone was a USD1.5 billion industry in Russia.<sup>195</sup> Boris Altshuler, head of a Russian NGO called Right of the Child, has similarly commented saying, "Behind this great orphanage system of Russia there is enormous money—several billion dollars a year. [Without orphans], children's institutions will not receive money."<sup>196</sup> If foster care and adoption become common in Russia, thousands of orphanage workers will face unemployment, but opening Children's Villages with professional, paid foster parents will alleviate some of this job loss.

A Children's Village will still face challenges of corruption—something that touches virtually every area of Russian life.<sup>197</sup> Eliminating corruption is a constant struggle for Russia even though

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191. Odynova, *supra* note 3, at 30.

192. *Id.* at 32.

193. Smetanina, *supra* note 175.

194. Cullison, *supra* note 50.

195. Elliot, *supra* note 181, at 14.

196. Martha Wexler, *In Contentious System, Hope for a Russian Orphan*, NPR (Mar. 25, 2012), <http://www.npr.org/2012/03/25/149319484-in>.

197. *See* Loiko, *supra* note 170.

legislative strides have been made in the past five years.<sup>198</sup> Russia should not delay making these changes to its child welfare simply because of concerns about corruption, and waiting to make them until corruption is a thing of the past may leave orphans waiting for years to come.

2. Fostering and adopting must become desirable and feasible

The current lack of available foster and adoptive parents is merely one of the reasons that Russia needs a Children's Village model to transition away from the orphanage system. One of the primary factors that works against domestic adoptions in Russia is poverty. In 2005, a national survey indicated that Russian families did not volunteer to foster or adopt children largely due to financial reasons and the size of housing as well as bureaucratic barriers.<sup>199</sup> As of 2011, there were only 20,000 potential adoptive homes, which is nowhere close to meeting the needs of 120,000 children in Russia deemed "eligible" for adoption.<sup>200</sup>

The Russian government already offers a significant stipend for foster parents; however, this incentive does not appear to have made a significant dent in the lack of domestic and adoptive homes.<sup>201</sup> This is probably due to three main reasons: first, there is a negative view of orphaned children in Russian society that has been reinforced by negative media reports.<sup>202</sup> In a poll conducted in 2005, 72 percent of respondents said they would "under no circumstances agree to adopt an orphan."<sup>203</sup> Public service announcements, positive accounts of adoption in the media, and other campaigns to change cultural views of orphans and adoptions are necessary to ensure that children are able to leave institutionalized care.

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198. See Federal'nyi Zakon o Protivodejstvii Korrupcii [The Russian Federation Law on Corruption Counteraction], ROSSIJSKAIA GAZETA [ROS. GAZ.] Dec. 30, 2008.

199. McKinney, *supra* note 41, at 33.

200. Cullison, *supra* note 50.

201. *See id.*

202. Various conspiracy theories have been floated in the Russian media about the reasons why Americans adopt from Russia. One is that Americans adopt Russians because they want to "steal [Russia's] high-quality "genetic pool." See Masha Lipman, *What's Behind The Russian Adoption Ban*, THE NEW YORKER (Dec. 21, 2012), <http://www.newyorker.com/online/blogs/newsdesk/2012/12/whats-behind-the-russian-adoption-ban.html>. Misinformation in the Russian media and freedom of the press in Russia is a long-standing issue. For a full discussion, see generally ANDRE BOGMOLOV & MARITA NUMMIKOSKI, NEWS FROM RUSSIA: LANGUAGE, LIFE, AND THE RUSSIAN MEDIA (2004).

203. McKinney, *supra* note 41, at 33.

Second, while the federal government has allocated billions of rubles towards creating new foster homes, the responsibility for creating foster programs and distributing these funds is regional, and implementation in many regions has been very slow.<sup>204</sup> And third, Russians who wish to adopt are not immune from the exorbitant bribes often charged by officials throughout the adoption process—the process continues to be expensive and lengthy.<sup>205</sup> Yet again, issues of bureaucracy and corruption have prevented improvement.

Still, there are some glimmers of hope. There are now 32 schools in Moscow that train foster parent,<sup>206</sup> and the number of foster homes has grown. Isolated regional examples have shown that the *solutions to Russia's child welfare crisis do exist, and they do succeed when actively implemented*. In the Krasnodar territory, for example, there were 25 foster families in 2005. By 2012, there were more than 2,000 foster families. The local government credits this growth to airing television programs about adoption and actively identifying and recruiting foster families. As a result, 9 out of 10 orphans in the Krasnodar territory now live in families.<sup>207</sup>

## V. CONCLUSION

While Russia has been roundly criticized for nullifying its adoption agreement with the U.S. for reasons of both international law and human rights, the fact remains that while international adoption would have provided a way out for thousands of children, there would have been hundreds of thousands more children who would not have benefited from it. In many ways, the Bilateral Agreement was a bit of a red herring—while it would have improved some parts of the adoption process, it would also have created new issues and would not have solved the underlying problems that had led Russia to need international adoption in the first place.

There is no denying that during the dark days of the early 1990s, Russia lacked the resources to properly address its child welfare crisis. This is no longer the case. Russia is now first in the world in number of billionaires<sup>208</sup> and contains one of the world's largest reserves of oil.<sup>209</sup> In preparation for the 2014 Winter Olympics in Sochi, the

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204. *Id.* at 32.

205. Wexler, *supra* note 196.

206. Smetanina, *supra* note 175.

207. *Id.*

208. Smetanina, *supra* note 175.

209. Andrew Kramer, *Russia Anticipates Boom in Oil Extracted from Shale*, N.Y. TIMES (Nov. 13, 2012), [http://www.nytimes.com/2012/11/14/business/energy-environment/russia-anticipates-boom-in-oil-extracted-from-shale.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/11/14/business/energy-environment/russia-anticipates-boom-in-oil-extracted-from-shale.html?pagewanted=all&_r=0).

Russian government spent an estimated \$51 billion, showing that Russia is willing and able to marshal significant financial resources if the right people stand to benefit.<sup>210</sup> The ban against U.S. adoption was ill timed, arguably retaliatory, and questionable in its legality. However, Children's Rights Ombudsman Pavel Astakhov was right to say that it was a "disgrace" that Russia, given its resources, needed to resort to international adoption to find homes for orphaned children.<sup>211</sup>

Nearly a year after the pass of the adoption ban, limited information on the changes in the Russian system is available. Olga Balatina, First Deputy Chairwoman of the State Duma Committee on Family, Women, and Children, has stated that in the first half of 2013, 95 percent of children removed from their families due to abuse or neglect were either returned to their families or placed in foster homes, implying that 5 percent of children removed from their parents were placed in orphanages.<sup>212</sup> Domestically, Russia has increased the monthly stipend available to adoptive parents and lifted the age limits on unmarried individuals hoping to adopt.<sup>213</sup> Preliminary reports indicate that this appears to be working, as Russia expects to hit 15,000 domestic adoptions for the year 2013, nearly doubling the recorded statistics for 2012.<sup>214</sup> However, even with this progress, concerns are still present. The orphanage industry fears the loss of subsidies and is pushing back against reforms or refusing to place children in homes.<sup>215</sup> Further, Russia has limited international

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210. *Russia's \$9.4B Road to Sochi Latest in Long Line of Olympic Boondoggles*, FOX NEWS (Feb. 7, 2014), <http://www.foxnews.com/sports/2014/02/07/sochi-olympic-price-tag-soars-critic-slams-road-that-could-have-been-paved-with/>.
211. *Russia May Ban All Foreign Adoptions*, RT (Jan. 11, 2013), <http://rt.com/politics/ban-foreign-adoptions-duma-773/>.
212. *Situation with Orphans in Russia Improves Dramatically*, PRAVDA (Oct. 24, 2013), [http://english.pravda.ru/russia/politics/24-10-2013/125993-russia\\_orphans-0/](http://english.pravda.ru/russia/politics/24-10-2013/125993-russia_orphans-0/).
213. Alexei Bausin, *Adoption Made Easier for Russian Citizens*, RUSSIA BEYOND THE HEADLINES (Mar. 4, 2013), [http://rbth.ru/society/2013/03/04/adoption\\_made\\_easier\\_for\\_russian\\_citizens\\_23465.html](http://rbth.ru/society/2013/03/04/adoption_made_easier_for_russian_citizens_23465.html).
214. Gabrielle Tétrault-Farber, *Few Russians Would Consider Adoption, Poll Says*, THE MOSCOW TIMES (Nov. 14, 2013), <http://www.themoscowtimes.com/news/article/few-russians-would-consider-adoption-poll-says/489545.html>.
215. See Tim Whewell, *Russia: Are Efforts to Help Thousands of 'Abandoned' Children Being Resisted?*, BBC, (Apr. 2, 2013), <http://www.bbc.co.uk/news/world-europe-21994332>.

adoptions even more severely, making it illegal for single people to adopt from any country where gay marriage is legal.<sup>216</sup>

In January 2013, Russian Prime Minister Dmitry Medvedev boldly predicted that the number of children living in orphanages and shelters would halve by 2018,<sup>217</sup> a mere five years later. This is a lofty goal and requires Russia to address the complex problems that led to its child welfare crisis with complex solutions. Indeed, critics have expressed skepticism. Svetlana Pronina, co-chair of the Russian NGO Right of the Child, has said, “My forecast is that when the scandal [from the ban] dies down, the authorities will forget about all the promises they made to orphans.”<sup>218</sup>

If Russia wants to prove its skeptics wrong, it must finally implement the social, cultural, and legal changes necessary to provide its orphans with environments that contribute to psychological normalcy. Russia must address Fetal Alcohol Spectrum Disorder and Reactive Attachment Disorder and the parental behavior and institutional care that cause them. It must create fair and comprehensive legal process to address child welfare cases. It must dismantle the orphanage system and use professional and non-professional foster care. Lastly, Russia must foster a culture of adoption. As Russia looks forward and attempts to reach the same level of power and influence as it had in the past, a modern child welfare system that provides children with a safe and loving family structure would go a long way towards convincing the international community that Russia is not simply trying to escalate a new cold war with orphaned children as the pawns.

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216. Eliana Dockterman, *Russia Expands Adoption Ban*, TIME (Feb. 13, 2014), <http://world.time.com/2014/02/13/russia-bans-adoption-by-singles-in-gay-marriage-legal-countries/>.

217. *Orphanage Population to Halve in Russia in 5 Years - Medvedev*, RUSSIA BEYOND THE HEADLINES (Jan. 31, 2013), [http://rbth.com/news/2013/01/31/orphanage\\_population\\_to\\_halve\\_in\\_russia\\_in\\_5\\_years\\_-\\_medvedev\\_22367.html](http://rbth.com/news/2013/01/31/orphanage_population_to_halve_in_russia_in_5_years_-_medvedev_22367.html).

218. Fred Weir, *Kremlin: Adoption Ban Needed to Create ‘Russia Without Orphans,’* THE CHRISTIAN SCIENCE MONITOR (Jan. 14, 2013), <http://www.csmonitor.com/World/Europe/2013/0114/Kremlin-Adoption-ban-needed-to-create-Russia-Without-Orphans-video>.