



International Forum on Intercountry Adoption & Global Surrogacy II\*

## Force, Fraud and Coercion:

Bridging from Knowledge in Intercountry Adoption to Global Surrogacy

This report is based on the sessions of Thematic Area 4 (Force, Fraud and Coercion) of the International Forum on Intercountry Adoption and Global Surrogacy held at the International Institute of Social Studies in The Hague, the Netherlands, 11–13 August 2014. There is a strong body of intercountry adoption (ICA) research with some focus on force, fraud, and co-

ercion, especially generated in the disciplines of law and to some degree social work and other disciplines with an orientation to social justice. However, this knowledge has not yet effectively bridged and been applied to the practices and problems of global surrogacy. With these considerations at hand, with a particular emphasis on women living in poverty and most frequent-

\* We continue this month with the series initiated in the previous issue with summaries of the final reports from each of the thematic areas of the [International Forum on Intercountry Adoption & Global Surrogacy](#). The event, which brought together experts from different countries, aimed to analyze the regulations, practices and issues related to these two phenomena in order to inform the decisions of the central authorities that have signed the Hague Convention on International Adoption and the Special Commission of the Hague Conference.

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ISSN: 2013-2956



Supported by:



ly India, Thematic Area 4 opened with the following charge:

Force, fraud and coercion are three dynamics in human trafficking, as per the Palermo Protocol, which defines the sales of persons into nefarious global networks for the purpose of sex and servitude. When applied to intercountry adoption, these three dynamics play-out in unique ways (i.e. pressured consent processes, false promises, actual kidnappings, etc.). We will consider an array of these dynamics, including the concept of *child laundering*, specifically and the various ways the concept of *exploitation* is applied to ICA. Because children are generally not exploited at the 'end point' in ICA, the conception of child trafficking is a challenging idea when talking about illicit child adoption across global boundaries. As we identify major themes and share what we know about these problems, we will eventually move to questions of global surrogacy drawing parallels as well as divergences in the two phenomena. In-

cluded is the application of the idea of 'win-win' verses exploitation of surrogate mothers. Social protection of vulnerable people and new directions will be our focal point as we conclude the session.

### **Force, fraud, and coercion and the current state of knowledge about illicit adoptions**

The history of 'child laundering' as an idea was traced back to a 1990 Hague Permanent Bureau (HPB) report, written by Van Loon. This particular report discussed the "washing of children"; that is, changing a child's identity such as status of parents, birth date, and other critical information to make her appear to be an 'orphan'. This problem of child laundering largely began in Latin America and serious and persistent problems of adoption fraud have jeopardized the long-term practice of ICA globally.

There are different modes of illicit activities involved in force, fraud or funds that circumvent good decisions of 'adoptability' by making the child appear to be legitimately available for ICA. In illicit adoptions, the child



*Karen Smith Rotabi opening thematic area 4 on force, fraud, and coercion.*

is stripped of her identity and sold into ICA, and a number of her human rights are abused including her right to protection from adoption fraud. Fundamentally, the child is presented as an orphan, socially and legally, when in fact she has biological family who have been exploited in the process of child laundering.

To illustrate the problems of corruption, various countries were briefly touched upon as case examples, beginning in Latin America. Then shifts were observed to Vietnam and elsewhere as Latin America was largely shut down or went into moratorium in the 1980s/



*Force, Fraud and Coercion track participants.*

early 1990s. Of particular emphasis in this early phase of track discourse were (I) Cambodia, (II) South Korea, (III) African Countries, and (IV) India with highlights discussed below.

I. *Cambodia* was presented as the only country where the U.S. was proactive in establishing an ICA-moratorium. However, it should be noted that other countries in Western Europe and elsewhere continued to engage in ICA even with mounting evidence of corruption. Problematically, adoptions to countries other than the US persisted even with the exceptionally high profile case

against a U.S. adoption agency and facilitator under the *Operation Broken Hearts* federal investigation and prosecution (Smolin, 2006; Maskew, 2004-2005; Rotabi, 2012b). This particular example, that of *Seattle Adoptions International*, provides a strong illustration of how force, fraud, and coercion is often carried out to launder children. Briefly, techniques found in this case are as follows (Cross, 2005).

- Payment to a birth mother when she signs child relinquishment documents.
- Lack of proper counselling and explanation of the relinquishment documents and thus an exploitative informed consent process—often legal documents that are very sophisticated, in a second language such as English, or inappropriate given common problems related to limited literacy of many poor women in low resource countries.
- False promises such as the birth family being led to believe that the child was simply going away to another part of the country or a second country for a good education.

- False promises that the child will remain in contact with the birth family and that they will visit regularly.
- Development of a false paper trail, including falsified birth certificates, to make the child appear to be an 'orphan' without biological family available to care for their needs.

It is important to note that the legal charges in this case were largely based on tax fraud and there was no charge related to human trafficking given inadequate U.S. laws at the time of prosecution (Cross, 20005).

II. *South Korea* was also briefly considered. It is known that, in some cases in the past, extended family members took children to orphanages under false names. Also, of current concern is the use of birth mother homes as these particular environments have proven to be highly problematic. Concerns include the fact that birth mothers cannot engage in a fair consent process for relinquishment in a social environment where those who execute the consent documentation are those who also provide for basic needs and

shelter during the pregnancy. This is particularly concerning in a society that has traditionally treated unwed pregnancy with stigma and shame.

III. *African Countries of Ethiopia and Uganda* and others were also discussed as locations of illicit adoptions and child laundering. Traditional care structures of African family life were identified in the context of rapid changes due to ICA pressures. That is, African families have centuries old practices of negotiating for the care of children. Institutional care is only a very recent phenomenon in many of the continent's countries, especially Ethiopia and Uganda. While residential care institutions are often viewed by biological families as a short-term solution for feeding and educating children, some of these institutions have been organized to supply children for ICA. Ethiopia has received attention in the international press and Uganda was discussed as an emergent location of similar problems in recent years. Thematic Area 4 participants from Uganda shared a correlated rise in the number

of residential care institutions and the rise of ICA. The need for legal regulation was a clear call from our Uganda participants, including strengthened procedures at all stages of the ICA process to prevent child laundering.

IV. *India* was also considered as having a notorious history of ICA fraud, including child abduction. All manners of force, fraud, and coercion that have manifested in India, including children being snatched in crowded areas like train platforms. As a result, some of the best laws in the world have been drafted in India. During the 1980s Indian Supreme court asserted that if the money is not limited there will be a problem, and if unregulated the money will destroy the child adoption system. On paper the laws and the resulting regulatory body look good, but on the ground the reality is different; significant and sustained problems persist. Child abduction remains a problem, and in 2013 families of 'disappeared' children have publically protested in street demonstrations to demand legal intervention in child abduction.

IX CONGRESO INTERNACIONAL AFIN

ESPAÑA, ¿ES UN PAÍS PARA LA INFANCIA Y LA JUVENTUD?: CUESTIONANDO EL ADULTISMO

Fotografía Miguel Gaggiotti

VALLADOLID, 20 Y 21 DE NOVIEMBRE DE 2015  
Palacio de Congresos, Universidad de Valladolid. c/ Real Burgos, s/n. 10895, Valladolid

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**Force, fraud, coercion and exploitation  
in international private law  
including the Hague Convention  
on Intercountry Adoption**

As a result of persistent problems and human rights abuses in ICA, international law was developed to address child laundering. The 1993 Hague Convention on Protection of Children and Co-operation in Respect to Intercountry Adoption (henceforth simply referred to as the Hague Convention on

*Forum participants met in groups to discuss observations, concerns, and recommendations on intercountry adoption and global surrogacy.*



Intercountry Adoption or Hague Convention) was established to provide social protections for orphaned and vulnerable children and their families who interface with ICA. The best interests of the child is the guiding principle and the Hague Convention is intended to prevent the sales and abduction of children into ICA. The details on *how* illicit adoptions and child trafficking are orchestrated and may be prevented, at the practice-level, are found in the “Guide to Good Practice” developed by The Hague Conference on Private International Law. Implementation of the Convention rests on the principle of subsidiarity in which domestic care options are the priority; a continuum of care is the expectation beginning with supportive services preserving biological family life, including extended kin networks for childcare. Guardianship and domestic foster care are important in this continuum; the latter is possible in countries where there are adequate care systems. Adoption within the child’s community and the greater country is also a priority when such intervention is deemed neces-

sary. When these care options have been explored and child welfare officials in the government’s Central Authority assesses that ICA is in the best interests of the child, then the child would have an adoptability determination that releases her into the ICA-process with oversight by the Central Authority. This oversight places controls on the process, especially during the interface with adoption agencies in other countries, in order to ensure that ethical practices prevail and only reasonable and professional fees are charged for adoption procedures. It should be noted that long-term institutional care is not a preferred domestic option over ICA.

It should be noted that the concepts of *force, fraud, and coercion* are actually drawn from another international private law, the Palermo Protocol. Exploitation was an important concept in this protocol; it is an open-ended construct in this particular law and it is applied to sex trafficking, labor trafficking, organ trafficking, etc. without mention of ICA. It should be noted that not all countries have signed and

ratified this particular international private law (e.g. the U.S.). However, the major concepts in the Palermo Protocol are used widely in the discourse on the phenomena of human trafficking.

### Exploitation

#### as a Concept in Intercountry Adoption

Because there is very little clarity in international private law as to what 'trafficking' actually is in regards to ICA, greater clarity was an objective at this juncture and *exploitation* was a core concept for discussion. It is critically important to understand that it is rare for a child to experience exploitation at the end-point of adoption—most children go on to live in middle to upper class families in industrialized countries, enjoying the benefits of health and education systems as well as the love of their second and adoptive family. That does not mean that adoptees themselves, especially Korean adoptees, have not raised many salient issues about exploitation and the impact on their own lives. However, the concept can be difficult to define ultimately when applied to ICA, as was

identified by forum participants in this particular track of the Forum.

This observation is not to suggest that there was a lack of concrete examples of problems and consequences of illicit adoptions. In fact, multiple examples of illicit adoptions were discussed throughout the sessions, to include a recent case in which a Belgium citizen has recently returned to Guatemala to search for her birth family. In this process, she learned that her case was fraudulent with false paperwork and other markers of exploitation that occurred during the war years (1960-1996). Today the adoptee, now a young woman, has filed a case in Guatemalan courts to seek answers, clarity and accountability as well as criminal justice<sup>1</sup>. Recently there has been an arrest in the case and there is great interest as this young woman is the first adult adoptee who has returned to Guatemala, after 28 years, and filed legal charges for accountability.

At this juncture of discourse, some parameters for 'thinking' about



*Kristen Cheney (standing), Marcy Darnovsky, Ritta Hogbacka, and Karen Rotabi engaged in a summary session taking place at the end of the day.*

exploitation and trafficking were suggested based on implementation of the United States Trafficking Victims Protection Act (TVPA). A response framework on a continuum for the TVPA has three areas of intervention: prevention, protection, and prosecution. Track participants agreed that these three areas provide important parameters to better structure discussion.

<sup>1</sup> This case is currently on-going without legal resolution in Guatemala.



*Thematic chairs Marcy Darnovsky, Sarah Richards, Karen Smith Rotabi and Peter Selman took some time out to talk and celebrate Forum success.*

### **Guatemala as a Case Study and the Future Under the Hague Convention on Intercountry Adoption**

Dr. Carmen Mónico presented a study of Guatemala and various forms of force, fraud, and coercion that took place there in recent history; child abduction into intercountry adoption was a focal point of this particular case study. In this small study, three women who had publically reported their children abducted into adoption were interviewed and their experiences were documented including the many

phases of their steps and process in seeking justice. Their experiences of abduction were different, but all three women reported that they were met with distrust and even contempt when they sought support from law enforcement authorities. As has been the case in other child abductions in Guatemala, the police refused to open any meaningful investigation other than taking a report or denouncement of the events that occurred.

However, in time the non-governmental organization *Survivor's Foundation* joined with these women as an advocacy organization to demand justice. Among the strategies used by the women and organization was starvation protest, the last such demonstration taking place in July of 2009. International media attention and the resulting pressure was such that the mothers eventually had their main demand met—they simply asked for a fair process before courts in which their cases could be heard impartially. This legal intervention eventually resulted in a court order for a child's return from the U.S. to Guatemala as a

victim of child abduction into adoption. However, this case remains unresolved as the U.S. adoptive family refuses to comply with the foreign court order. Authorities that could intervene in the U.S. include the Department of Justice and the Department of State. Of these, the latter issued a statement that the adoption occurred prior to Hague Convention ratification and thus this particular case did not fall within their purview as a Central Authority with the obligation to enforce the Convention.

Nonetheless, the three women interviewed reported a sense of empowerment as a result of their self-advocacy. Research findings also included a definition of child abduction with core experiences of child theft, deception, coercion, and fraud. Because all three women were living in poverty and Guatemala has a civil war history of 'disappeared' peoples, these two factors combined as powerful social forces in shaping the problem. As women, they faced social exclusion and reported a triple victimization; that is, when they went to authorities they were themselves accused of child sales—as-

sumptions were made that they were birth mothers who had simply changed their minds and they were treated with great disrespect by police, etc. The second form of victimization was a loss of resources; that is, selling their personal property to finance their search. Additionally the community level of shame was also reported as the experience was stigmatized in the cultural context of Guatemala.

Mónico presented a definition of abduction, integrating the voices of the Guatemalan mothers interviewed. That definition is based on four conceptual areas, as follows:

- Child Theft: Use of force to remove a child unlawfully, kidnapping, or stealing, and subsequent commodification or selling of children that occurs openly against the will of the birthmother, birth parents, family, and community of origin.
- Deception: Lack of fully informed consent on the part of the birthmother throughout the relinquishment process, up to and including the time at which parental rights are legally terminated.

- Coercion: Intra- and extra-family coercion exerted on birthmothers and families of origin to induce relinquishment of the child for any reason.
- Fraud: Any legal, judicial, administrative, political, cultural, or socioeconomic fraud or deception of birthmothers, such as offering of payment or compensation, that leads to the forced separation or relinquishment of their children.

This definition of abduction as well as exploitation of the women of Guatemala cannot be fully embraced without recognizing the social environment that women and marginalized people of Guatemala are faced with on a daily basis. Fundamentally, there is a lack of civil society characterized by inadequate and often non-existent law enforcement. Impunity is a constant reality as serious and petty crimes go largely without prosecution, including homicides and kidnappings. This fact was found to be true in a U.N. investigation of illicit adoptions in which wide scale force, fraud, and coercion were found in the 1500 case files reviewed.

Human rights defenders made similar findings, including a pattern of child abduction into adoption.

Turning from this case study, as an official of the Guatemalan Central Authority Mr. Noe Erazo presented on the progress and gains made in reforming intercountry adoption under the Hague Convention. Erazo began with a presentation of the previous system and the various problems in the process including a notary system which essentially took place outside the authority of the family courts or any system oriented to social protection. More than 25,000 children adopted under this



*Force, Fraud and Coercion track participants in a work session.*

system. Erazo said “We do not know what happened to those children—we know that some of them have gone on to amazing lives. But, other times we hear about sexual assault of two girls who were en route to the USA for adoption. But, rumour is a problem versus fact.” He went on to say that, “We don’t know the number of dissolutions and other issues like re-homing.” All of these problems occurred in a system that operated outside of the protections of the Hague Convention. During this time 4,000-10,000 notary publics were operating without control in a system that was very much Internet based— operations with credit cards in which the notaries themselves completed almost everything in the process. The only intersection with the courts was the execution of a socio-economic study (social history) that was presented to the judges—this process created a huge amount of corruption in the family courts. The next step was an opinion only—not an approval—at the Attorney General’s office. Child laundering activities took place at many different points of this

process and according to Erazo, Guatemala violated HCIA from 2003-2010 as this was a time of significant abuses related to force, fraud, and coercion.

Mr. Erazo and Dr. Juan Jose Rodas Martinez, also of the Guatemalan Central Authority, spoke of improvements and gains made recently, including concerns about children with special needs. While the system is largely oriented to domestic adoption, as per the subsidiarity principle, there is a new initiative to open children with special needs to intercountry adoption. The case of “Sophia” was presented as an example. She is a young child who received a humanitarian visa from the U.S. so that she may be treated for a serious and life threatening health condition in the U.S. She is now in the process of being adopted by a U.S. family and her case is being managed such that the adoption process will take place in Guatemalan courts without the presence of the child as the two Central Authorities have agreed to process in her case in this manner. This is an example of Guatemala and US acting in collaborative partnership

for the best interests of the child as is the intent of the Hague Convention on Intercountry Adoption.

The major areas of system changes were presented, contrasting the ‘old system’ with the new and improved system under the Hague Convention, as described in the table on next page.

### **Application of Prevent, Protect, and Prosecute to Guatemala**

Because the Guatemalans attending the forum were highly involved in this particular track, the history of criminal convictions in Guatemala was also touched upon as Norma Cruz detailed some of the prosecution gains such as incarceration of at least one residential care institution director and a number of lawyers found to be guilty of illicit adoptions using various techniques of child laundering. However, Cruz noted that prosecutions were without cooperation with the U.S. government and because the vast majority of Guatemalan adoptees were sent to families in the U.S., this is an obvious gap in the agreement to collaborate under the Convention.

### The “Old” Guatemala system of ICA verses the reformed system

<b>Old System</b>	<b>New and Reformed System</b>
Voluntary relinquishment by notary (Intervention of private professionals)	Initiation of declaration of adoptability by the government Central Authority (Intervention of government professionals)
Selection of the child on behalf of prospective parent(s)	Now government social workers/psychologists select a suitable child in systematic child-family matching process informed by social assessment
Prevails the will of the prospective family	Prevails the best interests of the child
High costs of adoption	No cost to adoption
Guatemalan families were excluded as they simply could not afford to participate in this expensive system	Guatemalan families are now the priority as per subsidiarity principle—completely free to the family
Socio-economic studies of prospective parents	Psychological, legal, and socio-economic assessment of prospective parents
No post-adoption monitoring required	Post-adoption monitoring is required
No data base of children adopted	Central Authority now has a unit dedicated to collecting and managing this data
No possibility of locating the family of origin of the child with formal information	Adopted children will have the possibility of knowing the family of origin through appropriate records keeping.

Note: Table is an adaptation of a slide from Erazo’s presentation during the forum. For more details about the pre-reform system in Guatemala, see <http://www.socmag.net/?p=435>.

When applying the concepts of prosecute, protect, and prevent to the situation in Guatemala, the following ideas were identified as important. In terms of prosecution, we concluded that while there have been some legal intervention and convictions, that overall there has been a failure to prosecute the bad actors in illicit adoptions.

In terms of protection, Guatemala moved from a private system to a centralized system with The Hague Convention being a catalyst and a parallel domestic law passed at the end of 2007. The Convention was seen to be absolutely essential for this major improvement as per the perspective of our Guatemalan partners. The United States as a nation that ‘pulls’ children into adoption received considerable attention in discussion. However, our Guatemalan colleagues also underscored that the U.S. had a stake in the need for change and a partnership was forged as a result.

**Evidence:****What we know about birth families**

Moving from a focus on Guatemala there was a turn to research on birth families. There have been only a handful of well-designed international birth family studies, focused on birth mothers. While we considered these studies, we began what is known about U.S. birth mothers as a result of longitudinal research.

Dr. Ruth McRoy presented a brief overview of the facts, which begins with unplanned pregnancy and in the earliest days teen mothers were most affected by adoption. The experience was one of emotional turmoil: regret, guilt, fear of others finding out, loss of relationship, and fear of rejection. Maternity homes were used so that girls could 'go away' and then come back to their communities and pretend that nothing happened because there was no evidence of a baby. Adoption under these circumstances was very difficult for many of the girls who simply returned to school and carried on; suffering silently without support and in an environment in which shame

and stigma was the painful reality in their daily family and community life. Changes in the U.S., including a far more rights-oriented adoption system, has led to many of these 'homes' being shut down and a shift to an international approach to seeking infants and very young children for adoption has occurred.

In terms of international birth mothers, there are three other important studies to consider in the following countries: (VII) the Marshall Islands, (VIII) the Tamil Region of India, and (VIII) South Africa.

*VII. Marshall Islands* feature most prominently in the international birth mother research, where the single largest study carried out to date. Roby and Matsumura interviewed 73 birth mothers. It was found that in this impoverished Pacific Island Nation there were small clusters of families and kinship groups of people living in island communities. Traditional family life, strong extended family networks, and a family-centric culture is a dominant experience for the Marshallese as a

social group.

Of the birth mothers interviewed, most of them had children and they reported that their decision to relinquish their child—many of whom went to U.S. families—was largely based on financial issues. Mothers reported that they were living in poverty and that the social care structure of this low resource country is inadequate in providing for the welfare of children and families. As the formal social service structure is limited, there is essentially no help with in-kind assistance for food or cash payments for child welfare. Services that are available are inadequate in meeting the needs of families who are unable to provide for their children. Because childcare often falls upon the entire family, the role of grandmothers featured prominently in the interviews with birth mothers. A significant number of birth mothers reported that their own mothers influenced their relinquishment decision, sometimes under pressure, in order to relieve the care giving burden in large families. It was also reported by many birth mothers that they believed that

their relationship with the adopted child did not end with the adoption decree; they expected an ongoing connection with their child.

VIII. *Tamil Region* of India was the location of Pien Bos' ethnographic study. The two-year investigation included interviews with birth mothers and others involved in the adoption transaction. Her in-depth research found that the shame and discrimination related to children being born out of wedlock, combined with extreme poverty, were important factors that ultimately led to child ICAs. There were a variety of forms of deceit reported by birth mothers, including coercion by those calling themselves social workers as well as the obligation to relinquish once they had received food and shelter from a 'home' for unwed mothers. As has been the case elsewhere, many birthmothers in this region of India did not view the mother-child relationship as one that was terminated and their hope was for a continued familial relationship with their child.

IIX. *South Africa* was the site of another study in which 32 black women were interviewed by Högbacka who found that children were highly valued by the birth mothers and this was consistent with the South African context; extended family life and traditional child care arrangements "all influence the meanings of child relinquishment. As a large number of children do not live with their birth mothers all the time or are raised by kin or non-kin at some point, adoption tends to be viewed not as a permanent erasing of ties" (p. 144). Most birth mothers in this study saw ICA as a way to provide their children with better opportunities, including education. Similar to the Marshall Islands and the Tamil Region of India, Högbacka found that to be true for birth mothers in her study identifying that motherhood does not simply end upon child adoption. As a result, many of the respondents did not see their adoption as a complete legal break as they longed for information and an ongoing relationship with the child.

### Surrogate Mothers in India: A Recent Study

The surrogate mother experience as well as the vulnerabilities of all involved in the global surrogacy equation has received considerable attention and the term *exploitation* features prominently in a variety of literature, ranging from academic and grey literature to popular press. In regards to surrogate mothers themselves, vulnerability, exploitation and women's agency to choose work in the surrogacy equation of India has been investigated and clear evidence about surrogate mothers' perceptions of the global surrogacy experience.

Goswami and Rotabi presented on findings from a very recent study in Gujarat, India where the well-known Akanksha Fertility Clinic operates and thousands of surrogacy arrangements have been executed in this facility. In this qualitative research study, based on interviews with 25 women (ages 26-45 years old), respondents were asked about their experiences, motivations/decision to become a surrogate, and personal view on exploitation.

Findings were that all of the women were living in extreme poverty with poor educational backgrounds; limited literacy was a common problem. Overall, the respondents reported the decision to become surrogate mothers was based on their need for an income or employment and dire economic circumstances; most often the respondents referred to their ability to care for their family. For example, one surrogate mother said:

“I had some troubles, my economic condition wasn’t good, and my husband didn’t have a job. I couldn’t even take my kids to the hospital. Then I thought, although I do have a job in the hospital I earn only Rs. 2100 [34.16 USD]. So I was thinking in this much money will I educate my kids or get a house for us to live or do something else? So after a lot of thinking and discussion, my husband and I took the decision that I will become a surrogate.”

At the time of transferring or ‘handing over’ the infant, the women had mixed responses. One said “I was feeling good to give a childless couple a

child. I was thinking how happy they must be,” indicating feelings of altruism in the process. However, another woman shared a very different perspective:

“I didn’t feel good because I kept them in my belly for 9 months. When they took them away, I cried a lot. I felt like I was giving away my own children and I regretted it a lot. I went back home and couldn’t eat anything, I was crying a lot. Then my husband explained that those were their babies and of course they will take them away. Madam [the clinic owner] also told me that they were not my kids. So like that slowly I forgot about it.”

Another woman spoke of her grief that was particularly complicated because the infants (multiple birth) were not immediately transferred to the commissioning parents. She said:

“I didn’t want to give them away, but it’s their baby so I had to give them away. I cried a lot. I went to drop them off to the airport as well. I kept them for 3 months. Now also they send me pictures of

them. They are very nice. I never felt like they weren’t my kids. But then you sign an agreement, and they belong to them so we have to give them away. They give us the money and we give them the baby. We should give them away with a smile and not being upset. You feel upset of course but you have to give them away, you sign in the agreement. You have nothing but just lending your womb. Like how you take a house for rent, similarly our womb was taken for rent. They make us sign like this in the agreement. It’s theirs so we have to give away. We’ll forget slowly. If we can’t then they will send me more pictures and I get happy looking at those pictures.”

This particular surrogate mother referred to staying in contact with photographs and the majority of women reported a wish to have communication and updates from the commissioning parents and child.

Finally, all women were asked quite simply if they felt used or unfairly taken advantage of as a final question in

the interview. All women stated that they did not feel taken advantage of. For example, one surrogate mother pointed to the realities of extreme poverty and need for work:

“No. Why will they take advantage? They haven’t asked me to become a surrogate. It was my situation which pushed me into becoming a surrogate. I went there myself. I thought if someone else benefits only then will I benefit. They have no advantage here. It’s a good work as someone got a child and our poverty also got erased.”

Very directly, another surrogate mother stated: “No. The benefit was mine. They didn’t come to my house to ask me to come for it. I was the one in need and so I came. So benefit was mine.” The complexities of such a response generated considerable discourse about exploitation and how surrogate mothers are engaged in this research.

### Main Concerns and Topics Raised at the Forum

1. Effective prosecution of crimes is a problem even in an environment of improved regulation of intercountry adoption.
2. Force, fraud, and coercion have been well-documented in intercountry adoption. Evidence of how illicit surrogacy occurs is essential for developing legal code and regulations.
3. The idea that motherhood simply ends without yearning for information about well-being of the child is unrealistic.
4. It is important to learn from adoption birth mothers while being cautious about generalization to surrogate mothers.
5. We need to know more: Research into the experience of the child conceived by global surrogacy arrangement is essential.
6. Findings on perceptions of exploitation, as reported by surrogate mothers in India, were a surprise to most participants.

On the whole, participants of the forum took the position that global surrogacy arrangements with poor women must be exploitive by its very nature. While this concern is directly linked to the values of our participants in Thematic Area 4 and other tracks, defining exploitation and other experiences of force, fraud and coercion without the voices of surrogate mothers is problematic. The findings of Goswami and Rotabi’s research, as well as others engaged in investigating surrogacy in India, require a closer look at the phenomena and ideas of taking unfairly advantage of a woman’s circumstances. Fundamentally, the respondents in the study presented view themselves to be engaged in work and they have made a choice of employment. Notably, this observation idea of work or has been found in other seminal research in India (see Pande’s book *Wombs in labor: Transnational Commercial Surrogacy in India*).

## Conclusion

As would be expected, participants resisted a simplistic view of ICA and global surrogacy as may be a desire of those who benefit in family building or financially from the practices. Some of these parties in the business of surrogacy characterize global surrogacy as a *win-win*, but the complexity of our discourse discarded this conception quite quickly as such a phrase is not true for all and there is far too unknown about the perspective of the children/individuals conceived in this manner.

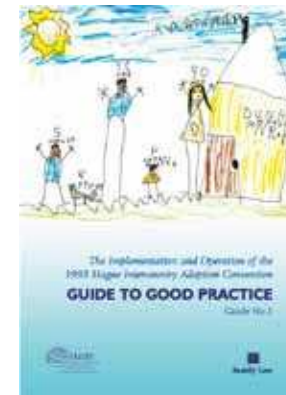
Family formation is far more complicated for those affected by ICA or global surrogacy, especially those individuals and families victimized by illicit practices. This is particularly true for poor women, either birth mothers or surrogate mothers. However, to focus on mothers simply when considering social protection is short-sighted because the health, safety, and well-being of the child requires special consideration and far more discourse than that which was possible in this Thematic

Area. Additionally, there was little attention paid to intended parent(s) and/or other family members when considering global surrogacy.

An overall recommendation, however, is more research on critical areas of social protection, especially including the voices of the most vulnerable. For global surrogacy, there is a metaphorical three-legged stool in which requires clear consideration for the vulnerabilities of all involved: surrogate mothers, children conceived as a result of a surrogacy arrangement, and the commissioning parent(s). It is arguable that a 4-legged chair is really the best metaphor when one adds the rights of other parties to the discourse, such as egg donors. The future of international private law and regulations for global surrogacy must rest upon at least this stool for true social protection.

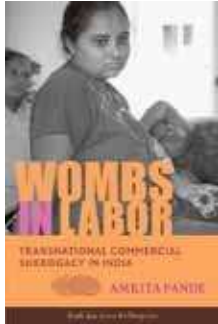
NOTE: For more detailed recommendations of this thematic area, see the main report located at: <http://hdl.handle.net/1765/77403>.

## FURTHER READING



Hague Conference on Private International Law (2008)  
[\*The Implementation and Operation of the 1993 Hague Intercountry Adoption Convention Guide to Good Practice\*](#)  
 Bristol, Reino Unido:  
 Family Law

The purpose of this guide is assisting States (whether or not already Contracting States) with the practical implementation of the Convention, in a manner which achieves the objects of the Convention, namely, the protection of children who are adopted internationally. It identifies important matters related to planning, establishing and operating the legal and administrative framework to implement the Convention. It emphasises the shared responsibility of receiving States and States of origin to develop and maintain ethical intercountry adoption practices. At the heart of the matter are the child's best interests, which must be the fundamental principle that supports the development of a national child care and protection system as well as an ethical, child-centred approach to intercountry adoption.



Pande, A. (2014)  
***Wombs  
 in Labor:  
 Transnational  
 Commercial  
 Surrogacy in  
 India***  
 Columbia  
 University Press

Surrogacy is India's new form of outsourcing, as couples from all over the world hire Indian women to bear their children for a fraction of the cost of surrogacy elsewhere with little to no government oversight or regulation. In the first detailed ethnography of India's surrogacy industry, Amrita Pande visits clinics and hostels and speaks with surrogates and their families, clients, doctors, brokers, and hostel matrons in order to shed light on this burgeoning business and the experiences of the laborers within it. From recruitment to training to delivery, Pande's research focuses on how reproduction meets production in surrogacy and how this reflects characteristics of India's larger labor system.

## FURTHER VIEWING



### ***A Baby Business***

Directed by Nicholas Vesselbo & Katja Døssing  
 Denmark/India: DR, 2007  
 50 min.

This film reveals how cynical child traders in India are willing to do anything to provide children for waiting adoptive parents in Europe, America and Australia. It reveals how children have become a precious commodity worldwide and how inter-country adoption has become a lucrative baby business. The reporters go under cover as representatives from a European adoption agency and reveal how money and not the best interest of the child is the most important factor on an adoption market riddled with corruption on all levels of the adoption process.



### ***Made in India***

Dirigit per: Rebecca Haimowitz i Vaishali Sinha  
 USA/ India, 2010  
 95 min

This is a feature length documentary film about the human experiences behind the phenomena of "outsourcing" surrogate mothers to India. The film shows the journey of an infertile American couple, an Indian surrogate and the reproductive outsourcing business that brings them together. Weaving together these personal stories within the context of a growing international industry, it explores a complicated clash of families in crisis, reproductive technology, and choice from a global perspective.



### ***Made in India***

Directed by Ditte Maria Bjer  
 Coproduced by Riksteatern, Odense Teater & Global Stories  
 120 min.

*Made in India* is international docu-theatre exploring the reality of transnational surrogacy. The performance is based on PhD. Amrita Pande's extensive research in India and presents strong visual material filmed in India. Using stories from real life, it invites you on a fascinating journey into the intersect between the global market, new technology, family, love and our children.