

Sale or trafficking?

**Illicit Intercountry Adoption Practices:  
Sale of Children or Trafficking in Persons?**

**Abstract:**

The conflation of various illicit intercountry adoption activities under the umbrella of ‘child trafficking’ has caused confusion and misdirected advocacy. This paper analyses the cacophony of conceptualizations of illicit adoption practices and suggests a rubric for uniform labelling of common adoption-related offences. Relying on applicable international conventions and analysis of scholarly discussions, this paper argues that child trafficking and sale of children, while both forms of illicit adoption, should be separated for differential responses. It then explores the perspective of birth parents—whose adoption experiences involve fraud, coercion and even force—as the actual victims of trafficking via illicit adoptions.

**Keywords:** Adoption, Children and families, International social work

**Subject Categories:** Adoption, Legislation, General

### **Illicit Intercountry Adoption Practices: Sale of Children or Trafficking in Persons?**

In recent years, the term ‘child trafficking’ has appeared with increasing urgency in adoption literature. Many argue that adoption practices involving force, fraud or coercion against birth parents constitute a form of trafficking in children (Smolin, 2007; Mezmur, 2010; King, 2009; Monico & Rotabi, 2012), while others argue that the term ‘trafficking’ is not applicable because children of intercountry adoption are not exploited at their destinations (Bartholet, 2007; Cantwell, 2005; Gerrard, 2006). This discussion has brought a much-needed spotlight to problems associated with unethical activities in intercountry adoption. Simultaneously, however, the conflation of various illicit activities under the umbrella of ‘child trafficking’ has caused confusion and misdirected advocacy. The purposes of this paper are to compare and contrast illicit adoption practices and child trafficking, and to offer differential recommendations to deal with each in policy and practice.

### **Current Dialogue**

Inconsistence is common throughout the literature when defining human trafficking in general, and when speaking of child trafficking specifically (Chuang, 2010; Jahic & Fickenhauer, 2005; Sedleski, 2008; Gozdziaik & Collett, 2005). Salt and Hogarth (2000) identified at least 22 conceptual definitions for trafficking in North American literature alone (Salt & Hogarth, 2000; Brukert & Parent, 2002), while legal and political instruments generally provide little to no definitive clarity. For example, the Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption (“the Hague Convention,” 1993), despite its stated purpose to prevent the “abduction...sale of, or trafficking in children” (Art. 1), does not provide explicit mention of how or when illicit adoption may constitute child trafficking. Nor

Sale or trafficking?

does the prevailing international instrument for child rights, the Convention on the Rights of the Child (“the CRC”) provide guidance, despite its decree to “take measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form” (Art. 35).

There is, however, one definition of ‘trafficking’ that has gained general acceptance in the international community and may be useful in context of this paper. The United Nations’ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (UN General Assembly, 2000) (“the Palermo Protocol”) defines trafficking by three component parts:

- [1] “the recruitment, transportation, transfer, harbouring or receipt of persons,
- [2] by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,
- [3] for the purpose of exploitation” (Art. 3(a), numbers added).

In this context, “exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (Art. 3(a)).

Particular to *child* trafficking, this Protocol states:

“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in [the previous] subparagraph (a) of this article.” (Art. 3(c))

Notably, the illicit means of obtaining a child for adoption cannot themselves constitute the trafficking of a child according to this Protocol, nor are they requisite to the definition. It is the

## Sale or trafficking?

recruitment, transportation, transfer, harbouring or receipt *and* the exploitation of a child that constitute child trafficking—with or without illicit means. Unfortunately, this protocol also fails to yield clear guidance on whether exploitation must inure to the *child* or, as in most cases of intercountry adoption, exploitation of the vulnerable birth parents is itself adequate.

Not surprisingly, the ambiguity of international standards regarding ‘trafficking’ leads to confusion in adoption literature, which can be roughly represented by four ideological camps, each differing when viewed from the pivotal points of when and to whom exploitation must occur to constitute ‘child trafficking.’ The first camp requires exploitation at the *final destination* to the adopted child. Gerrard (2006), for example, utilizes United States’ Trafficking Victims Protection Act (TVPA) to ground his exclusion of illicit adoption from trafficking, premised by the fact that adopted children are not exploited at their destination. In so doing, he agrees with the 2005 Trafficking in Persons (TIP) Report which states, “illegally selling a child for adoption would not constitute trafficking were the child itself is not to be exploited” (p. 21). Similarly, Bartholet (2007) has suggested that ‘exploitation’ should refer only to exploitation *at destination*, and should not include the abuse that occurs in the sale or illicit means of obtaining a child for adoption. Cantwell (2005), in a more expansive argument, looks to the *purpose* of the adoption industry, suggesting that that even if a child is abused at destination (e.g. if adoptive parents mistreat a child), this does not constitute trafficking because maltreatment was not the intended outcome of the intercountry adoption process. He states:

"In various countries, there are documented cases of parents abusing their adopted children physically, psychologically and sexually, sometimes with fatal consequences... But these acts are abuse, not “exploitation”. They were not an intended outcome of the adoption and, as far as we are aware, the children were never “trafficked” to this end...To

## Sale or trafficking?

imply that such acts constitute evidence of ‘trafficking’ and ‘exploitation’ is...both unfounded and grossly misleading” (p. 2, emphases added).

The second ideological camp related to ‘child trafficking’ in adoption generally assumes a broader interpretation of national and international instruments, and notably excludes the necessity of *end-point* exploitation, arguing instead that exploitation can occur at *any* point in the adoption process to *any* of the members of the adoption triad. Smolin (2005a; 2007), for instance, holds that the abduction or sale of a child for adoption is sufficient to constitute ‘exploitation’ and, therefore, ‘trafficking’ (as mentioned in the Hague Convention and defined in the Palermo Protocol). He contends that these activities exploit both birth families and adopted children, the latter of whom are commoditized and stripped of their identity and culture. Others in this camp interpret the language of “child buying” and “coercion” in the Hague Convention and the United States’ Intercountry Adoption Act to be synonymous with trafficking (Oreskovic & Maskew, 2009). Others rely on the Palermo Protocol (Kim, 2012), and still others interpret the language of the CRC (namely, “the sale of or traffic in children *for any purpose or in any form*”) (Article 35, emphasis added) as inclusive of illicit adoption practices (Mezmur, 2010; Innocenti Research Centre, 2003). And finally, some turn to domestic laws to justify their classification of illicit adoption as trafficking, including the Inter-American Convention on International Traffick in Minors and the South African Children’s Act (Sedlezki, 2008; Mezmur, 2010)

In the third camp, authors neglect reference to external definitions and instead create their own conceptualization of ‘child trafficking’ in intercountry adoption. Meier (2009), for instance, defines child trafficking as the “buying, selling, or stealing [of] children for personal gain” (p 186), and Dillon (2002) applies trafficking to illicit adoption when a child is “[brought] into the adoption system who would not otherwise have been put into that system by their family of

## Sale or trafficking?

origin” (p. 188). King (2009) defines child trafficking as occurring “when children who would otherwise not be adoptable, are bought, sold, stolen, or purposefully lost into the limbo of middlemen and institutions that facilitate intercountry adoption” (p. 438). Meier and Zhang (2009) obtain a similar conclusion by simplifying their definition of ‘exploitation’ to “to make use of selfishly or unethically” (p.122). These arguments align with the second camp’s notion that ‘exploitation’ can occur at all stages of the adoption process, but this camp does so without anchoring arguments to external standards.

The fourth and most populous ideological camp is comprised of authors who give no definitional framework for conceptualizing child trafficking and illicit adoption. These authors seem to operate under an implicit assumption that child trafficking manifests itself within the dynamics of force, fraud or coercion as perpetrated throughout the process of obtaining a child for intercountry adoption (Ethica, 2011; McCreery-Bunkers, et al. 2009; International Labour Organization, 2009, p.5). Within this camp, the term ‘child trafficking’ is quite loosely applied to profiteering and fraud in the consent processes (Graff, 2008), kidnapping of children as a means of recruitment (Romo, 2011; Selvaraj, 2011), the use of bribery to obtain adoption approval from government officials (Corbett, 2002), abuse of cultural misunderstandings (Roby & Matsumura, 2002), and many other activities. Even agencies of the United Nations have at times applied ‘trafficking’ to adoption without establishing a conceptual foundation (Innocenti Research Centre, 2008; Unicef, 2010).

We have now demonstrated that leading international instruments fail to provide unanimous guidance on what constitutes child trafficking in intercountry adoption. We have also demonstrated that scholars differ in their definitions and interpretations of ‘exploitation’ and (therefore) ‘child trafficking.’ As shown in the next section, our effort to define trafficking in the

Sale or trafficking?

context of intercountry adoption has placed us within a niche of the first ideological camp discussed: that without exploitation at destination, illicit adoption methods should not be mislabelled as child trafficking. However, as we shall explain, the negation of *child* trafficking does not negate the possibility of human trafficking in the adoption process.

### **Trafficking vs. Sale of Children**

Given the failure of the leading international instruments to elucidate the nuanced differences that exist between trafficking in children and other forms of illicit adoption practices, we turn now to a less known but relevant instrument. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the “OP-CRC”) defines the ‘sale of children’ as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration” (Art. 2(a)). This simple but comprehensive definition is widely applicable in the intercountry adoption context, as it applies to both individuals and organizations, either domestically or transnationally. In fact, the events described by most authors as ‘child trafficking’ in the context of intercountry adoption seem, more accurately, to be instances of the ‘sale of children’ as defined in the OP-CRC, in that while profiteering is present, no end-point exploitation is intended or present.

Under the OP-CRC, the sale of children includes “improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption,” including the Hague Convention (See PmbI ¶ 9; Art. 3(1)(a)(ii)). Taken broadly, “improperly inducing consent” may refer to the consent of birth parents and/or to the consent of relevant government bodies. Importantly, the OP-CRC requires neither actual exploitation nor the purpose of exploitation to be present at any time during the ‘sale of a child,’ which is in contrast to the Palermo Protocol’s definition of ‘child trafficking.’

## Sale or trafficking?

This interpretation of illicit adoption as the sale of children may lend itself to a commercial transactional analysis. In such a context, a ‘sale’ requires [1] an existing demand, [2] access to a source of supply, [3] obtaining actual available supply, [4] negotiation of terms, and [5] the finalization of the transaction—all of which occurs in the larger market context of supply and demand (Mankiw, 2007). The sale of the child for adoption entails each of these transactional components. [1] The demand for intercountry adoption, though it has declined in recent years, has facilitated the expatriation of an estimated 1 million children in the past 60 years—peaking in 2004 with 45,000/yr (Selman, 2009, 2012). [2] Access to this supply of ‘orphaned’ children has particularly burgeoned as countries of origin have opened for adoption without first establishing proper gatekeeping mechanisms. Indeed, [3] authors have described the frenetic ‘rush’ of placement agencies and their staff to participate in adoption once a country has opened (Roby & Matsumura, 2002), and many have expressed concerns that the processes used to obtain children are unethical—even describing them as the manufacturing of orphans (Rotabi, 2012; Smolin, 2007; Terre des Hommes & UNICEF, 2011 part 3). Such processes, it appears, are tantamount to market competition for children. Furthermore, authors on both sides of the adoption/trafficking debate express concern regarding the use of coercion, inducements, false promises, and bribery to obtain the consent of birth parents—all of which can be viewed as [4] the dynamics of negotiating a sale (Smolin, 2005b; Bartholet 2007; Dickens 2012; Bergquist, 2012). Finally, [5] as legal sanctions are obtained in the sending and receiving countries, one can recognize the finalization of transactions. In this final step, many have documented allegations of bribing officials, falsifying documents, and coaching birth parents and/or children to lie in countries of origin (Cross, 2005; Corbett, 2002; Smolin, 2004). Despite the disconcerting nature



## Sale or trafficking?

of these illicit activities, we propose that the lack of child exploitation at destination in such adoptions categorizes them as the sale of children, rather than child trafficking.

This definitional distinction, which is similar to the international distinction drawn between human trafficking and human smuggling, is pivotal to establishing effective policy and practice (Gallagher, n.d.; U.S. Department of Homeland Security, 2012). Lacking such definitional accuracy, policies, interventions, and criminal justice responses can become inefficient, if not harmful. In response to those who argue that the means of force, fraud, and/or coercion used to illicitly obtain a child for adoption can themselves constitute exploitation and thereby justify the label ‘child trafficking’ (e.g. Smolin), we again refer to the Palermo Protocol’s explicit mention that, in the case of child trafficking, these means neither need be present nor are themselves sufficient to constitute the phenomenon.<sup>1</sup> While we are aware that the Palermo Protocol’s definition of trafficking has come under criticism (Gallagher, 2001), we also assert that if illicit adoptions are to be addressed as a global social problem, then the response needs to be anchored in some global policy, albeit imperfect.

Notwithstanding the separate nature of trafficking and sale of child, it would be a grave mistake to dismiss the presence of true child trafficking that can be facilitated through intercountry adoption. Although rare, there have been cases in which children have been adopted for the purpose of end-point exploitation by adoptive ‘parent(s).’ For example, in one tragic case a five-year-old Russian girl was adopted for the purpose of sexual abuse and child pornography (ABC News, August 2006). In cases such as this—where a child has been adopted *for the purpose of exploitation*—we maintain that child trafficking *has* occurred. In this we differ

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<sup>1</sup> In her elucidation of the negotiation process that lead up to the formation of the Palermo Protocol, Anne Gallagher (2001) explains that the issue of exploitation was hotly debated, but was ultimately in reference to “the end-point purposes of trafficking.”

Sale or trafficking?

from Cantwell (2005) and place the onus of determining whether trafficking has occurred upon the intent of the adopters (and possibly facilitators) involved—not upon the intent of the intercountry adoption process itself. This allows for a primary difference between the sale of a child for adoption and child trafficking to be highlighted: although both occur in context of demand-driven markets, the demand in adoption is most often generated by loving adoptive parents, while the demand in trafficking is generated by exploitative industries such as forced labour and sexual exploitation. To erroneously classify the sale of a child for adoption as ‘child trafficking’ may increase confusion and inaccurate data (Andersen and O’Connell Davidson, 2002; Kempadoo, 2005 p. vii), thereby resulting in misdirected policies and programming applied to each set of problems.

### **Birth Parents as Victims of Trafficking**

We have thus far discussed trafficking in relation to children involved in illicit adoptions; however, often-overlooked victims of trafficking in adoptions may be the birth parents. While many authors have described fraud, coercion and even force inuring to the birth parents, they are seldom recognized as possible victims of trafficking in the adoption process (see Selman, 2009; O’Connor & Rotabi, 2012 p.86). Perhaps due to the dehumanization of poor women in sending countries and their resultant status as ‘forgotten’ members of the adoption triad (Manly, 2006), very little research or discussion has been conducted on their experiences (Hogbacka, 2012 p.143). In this section we explore the feasibility of applying the Palermo Protocol’s definition for trafficking to known experiences of birth parents, particularly birth mothers.

### **Recruitment and Consent**

Under the Palermo Protocol, the “abuse of power or of a position of vulnerability...to achieve the consent of a person having control another person,” when coupled with “means of

Sale or trafficking?

the threat or use of...coercion, of abduction, of fraud, or deception” constitutes trafficking in persons (Art. 3a). We believe that examined in this light, many of the illicit adoption activities qualify as ‘trafficking in persons.’

Intercountry adoption is regularly recognized as a product of global inequality. Poverty, disaster, war, corruption and market forces can all place birth parents of low-income countries into positions of vulnerability whereby informed consent is difficult if not impossible to obtain (Gibbons & Rotabi, 2012 p.255; Green, 2010). Indeed, psychological pressure is now widely recognized as a form of coercion (see 22 United States Codes 7102 § 103(2)), and in most cases of illicit adoption psychological, rather than physical, coercion is applied to birth parents. For example, in cultures where having children out of wedlock is socially unacceptable, extreme shaming has been used to extract a birth mother’s consent for adoption (Malkin, 2011). Some birth parents have been told that holding on to the child they love is ‘wrong’ when they cannot care for them as well as other, wealthier, parents (Roby & Matsumura, 2002; Wiley & Baden, 2005). This is particularly true when the financial burden of birth families has left them with a sense of being without other options (Hogbacka, 2012 p.155; Smolin, 2007); for example, McCreery-Bunkers, et al. (2009) describe the situation in Guatemala as being such that, “the lack of social support services...has sustained community beliefs that the only option for their child, if they cannot care for him or her, is international adoption.” This observation arises from a country that, in 2008, ranked first among the total number of children relinquished for intercountry adoption (US Department of State).

In addition to such psychological and financial pressures, many other forms of coercion and fraud are applied. In some cases, kidnapping has been reported as a means of obtaining a child for adoption (Romo, 2011; Ruiz-Goiriena, 2012; Leland, 2011; Graff, 2008). Instances

## Sale or trafficking?

have also been documented in which mothers are threatened with physical harm or harm to kin if a child is not relinquished (Siegal, 2011, p. 121), and other have been recruited to relinquish their children by means of force, fraud, and deception (McCreery-Bunkers *et al.*, 2012). A study of birth mothers in the Marshall Islands showed that 83% who had placed their children for adoption by U.S. families were deceived into consenting due to the cultural practice of open and continuous adoptions (Roby & Matsumura, 2002). Such misunderstandings have also been documented in Sierra Leone, South Africa, and India (Gibbons & Rotabi, 2012 p.261; Bos, 2007; Joyce, 2011; Heinlein 2011; McCreery-Bunkers *et al.*, 2012). In addition, lies have been used to mislead birthparents (Hogbacka, 2012 p.146; Marusic, 2012), as in Nepal when agents informed birth parents that their children would be taken to the capital of Katmandu to receive education and a better life, but in fact these children were never seen again (Penny 2011; Terre des Hommes & UNICEF, 2011 part 3).

Yet in more cases birth parents' powerlessness have been directly linked to their inability to prevent the loss of their child, including due to lack of legal representation or being defraud in signing documents that they could not understand—either because they were functionally illiterate or because they could not comprehend the legal jargon of the contracts (Terre des Hommes/UNICEF, 2010; Cardarello, 2009). There are also instances in which parents have placed their children in institutions for temporary care, only to have them adopted without permission, or adopted under the false premise that both parents had died (KRO Brandpunt, 2011; Roby & Maskew, 2012, p.59; Cross, 2005; Oreskovic & Maskew, 2008).

## Exploitive Labour

The literature is full of examples such as those listed above, substantiating birth parents as victims of trafficking on the basis of their giving consent by means of force, fraud, coercion

Sale or trafficking?

and/or bribery. However, in order to constitute the Palermo Protocol's definition of human trafficking, such recruitment by illicit means must be conducted *for the purpose of exploitation* (Palermo Protocol Art. 3a). In the case of birth parents, such exploitation can come as their literal labour through nine months of pregnancy, birthing the child, and in many cases raising the child for a number of years is exploited for the profit of others. For example, a group of Marshallese women were brought into the U.S. and confined to a house where their freedoms were severely restricted, with one-way tickets back home to be used after giving birth and relinquishing their child (documents in author's possession). In another case, 14 Vietnamese women, half of them pregnant, were rescued from an "illegal and inhumane" surrogate baby-breeding ring in Thailand, called Baby 101 (Radio Free Asia, 2011), forced to carry their babies to term and then relinquish them. Similar cases have been documented in Nigeria and Guatemala (Kalu, July 2011; White, 2006). Combined with, and even independent of the fraud and/or coercion used to obtain the consent of these mothers (Palermo Protocol Article 3b), it is obvious that their labour has been exploited.

Indeed, in contrast to concerns of "traffic[king] in *children* for the purpose of the sale of children" as expressed in the OP-CRC (emphasis added), it is far more common in adoption to witness trafficking in *parents* for the purpose of the sale of children. Returning to the framework of a transactional market, the sale of a child for adoption is often preceded by the exploitation of birth parents, who are the literal labourers that gestate, bear and raise the child to the point of the 'sale.' With such exploitation of labour, adoption facilitators can increase the quantity of children for sale and/or decrease the cost of obtaining them for adoption, thereby improving profit margins. In the end, this process results not only in an illegal market, but in an illegal market of 'adoptable children' produced by exploited labourers.

Sale or trafficking?

### **Policy and Programming Implications**

Having examined the procedural and end-point differences that exist between child trafficking, the sale of children, and trafficking in parents for the purpose of adoption, we now discuss the implications for policy and programming. In the rare cases that children are in fact trafficked—that is, they are adopted for the purpose of exploitation—children can suffer grave harm. More stringent regulations and professional assessments of adoptive applicants, as well as a holistic cadre of post-placement services for children must be employed—including services to address trauma. It is also imperative that criminal justice systems in countries of origin and receiving countries identify and prosecute those who exploit adopted children.

On the other hand, children *sold* into adoption, though demeaned in their human dignity, are not likely to be exploited at their final destination and the parents (both birth and adoptive) are not likely to be complicit. That said, it is not unusual for children to learn of the circumstances of their adoption and suffer from a sense of having been defrauded and commoditized in the adoption process (e.g. Borshay-Liem, 2000). Children taken from intact families may also suffer from the trauma of having lost their culture and loved ones in countries of origin. These issues will often require supportive and therapeutic treatment for the children.

Similarly, adoptive parents may require post-placement services to deal with the sense of guilt and apprehension that can accompany the realization that they have been defrauded by intermediaries, as shown by American adoptive parents involved in the Cambodian, Nepalese, and Samoan adoption scandals (United States v. Galindo; ABC News, 2007; Terre des Hommes & UNICEF, 2011 parts 3 and 4).

While these remedial services are important, the emphasis should be placed on preventing the sale of children or trafficking in birth parents. One obvious first step is to prevent

## Sale or trafficking?

the dissolution of the birth family if possible. Many sending countries have recently enacted programs to promote the economic stability of families (e.g. the Oportunidades program of conditional cash transfer in Mexico (Nigenda & Gonzalez-Robledo, 2005)). Others have initiated programs, such as Family Group Conferencing where extended family members gather together to generate solutions (Pennell, 2004) and the Family Care Model, designed to provide immediate family counseling when a family faces hardship (Gibbons & Rotabi, 2012). If such solutions do not provide a child with substantive long-term care, however, nations and local government should develop domestic alternative care solutions. If, as a last resort, adoption is considered, birth families should receive independent and culturally competent counselling and legal representation.

Apart from family-centred interventions, pre-placement adoption procedures must also be strengthened or established to prevent the sale of children and trafficking in parents for adoption. Origination documents of orphans must be transparently recorded, obtained, and assessed by third parties—as should all discussions and activities surrounding the relinquishment of a child by living birth parents. Cash transfers should to be prohibited in order to increase financial transparency (Gibbons & Rotabi, 2012), and adoption agencies in receiving countries should be held responsible for their foreign partners' actions (Graff, 2010; PEAR, 2010). Furthermore, criminal justice systems within countries of origin must be equipped and encouraged to identify and prosecute intermediaries who facilitate the sale of children for adoption or the trafficking in birth parents. These procedures will help to not only prevent the sale of children and traffic in parents for adoption, but also the traffic in children for adoption (as defined previously, see page 13).

## Sale or trafficking?

Receiving countries, too, have major responsibilities in preventing the sale and trafficking in children. As a receiving country, for instance, the U.S. has established some policies addressing trafficking and sale of children. The TVPA addresses human trafficking for purposes of labour and sexual exploitation, and issues related to the sale of children are addressed under various federal laws including the Intercountry Adoption Act (IAA)—the legislation implementing the Hague Convention. In addition, federal statutes such as Racketeer Influenced and Corrupt Organizations (RICO) Act and Foreign Corrupt Act address crimes such as visa and wire fraud, child buying, and corruption issues (Roby & White, 2010). In addition, through its USAID office and under authority of Public Law 109-95 (Assistance for Orphans and Vulnerable Children in Developing Countries), the U.S. is coordinating the humanitarian efforts of its governmental and civil society agencies in strengthening families (USAID, 2011). While these efforts are laudable, the U.S. as the largest receiving country of internationally adopted children need to step up its efforts to enforce these various laws, including a tighter regulations of adoption intermediaries and universal requirement for accreditation under the Hague Convention (Author citation, in press). Some advocacy groups have lobbied for the inclusion of adoption trafficking in the TVPA (Ethica, 2012), but it should be recognized that while such an inclusion may be helpful with women who are trafficked for purposes of adoption, it would not address the vast majority of cases where end-point exploitation of children as a key element is missing.

## **Conclusion**

There is ample evidence that a significant number of children are obtained for the adoption market through illicit and illegal means. These and other abuses related to adoption often resemble the means and methods of child trafficking, which may explain the proliferation



## Sale or trafficking?

of reference to child trafficking in adoption literature. However, we conclude that, without end-point exploitation, illicit adoption does not constitute ‘child trafficking’ as defined in the Palermo Protocol. Most often, instances of so-called ‘child trafficking’ for adoption are in fact instances of the ‘sale of a child’ as defined in the OP-CRC. Appropriate responses to each of these phenomena will depend largely on the accurate understanding of their underlying dynamics and end results. We therefore argue that greater attention should be given to distinguishing the two terms in policy and practice, so that appropriate responses can be applied to each. Furthermore, we assert that very often the true victims of human trafficking in illicit adoption are the birth parents who are vulnerable to force, fraud, and coercion borne of extreme poverty, lack of information, and a lack of power. Appropriate pre-placement policies must be established and enforced in both countries of origin and receiving countries to prevent the sale of children and to protect birth parents as dignified members of the adoption triad.

Sale or trafficking?

## References

- ABC News (August 31, 2006). 'Child-Porn Victim Brings Her Story to Washington.' Retrieved December 16, 2012 from <http://abcnews.go.com/Primetime/International/story?id=1919036&page=1#.UNEYkUJGuXA>
- ABC News, (February 27, 2009). 'U.S. Couple Sentenced Over Samoan Adoption Scam.' Retrieved December 10, 2012 from <http://www.abc.net.au/news/stories/2009/02/27/2503646.htm>.
- Anderson, B. & O'Connell Davidson, J. (2002). 'Trafficking- A demand-led problem? Save the Children.' Retrieved January 5, 2013 from <http://gaatw.org/publications/The%20Demand%20Side%20part1.pdf>
- Author citation, with two others (in press). 'Social justice and intercountry adoption: The responsibility of the U.S. social work community.' To be published in *Social Work*.
- Bartholet, E. (2007). 'International Adoption: Thoughts on the Human Rights Issues.' *Buffalo Human Rights Law Review*, **13**, pp. 152-204.
- Berguist, K.J.S. (2012). 'Implications of the Hague Convention on the Humanitarian Evacuation and 'Rescue' of Children.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 43-54). Surrey, Ashgate.
- Borshay-Liem, D. (Director/Producer) (2000). *First Person Plural* [Independent Television Series]. San Francisco, CA. United States: PBS.
- Bos, P. (2007). 'Once a mother. Relinquishment and adoption from the perspective of unmarried mothers in south India.' (Doctoral dissertation, Nijmegen University). Retrieved on October 8, 2012 from <http://dare.ubn.kun.nl/bitstream/2066/73643/1/73643.pdf>

Sale or trafficking?

Bruckert, C. & Parent, C. (2002). 'Trafficking in Human Beings and Organized Crime: A Literature Review.' Retrieved January 4, 2013 from

<http://www.rcmp-grc.gc.ca/pubs/ccapsspcca/pdf/traffick-eng.pdf>

Burke, C. (n.d.). 'Smuggling versus Trafficking: Do the U.N. Protocols have it right?' *Topical Research Digest: Human Rights and Human Trafficking*. Retrieved January 4, 2013 from <http://www.du.edu/korbel/hrhw/researchdigest/trafficking/UNProtocols.pdf>

Cantwell, N. (2005). ISS/IRC Monthly Review, (November-December 2005) (No.1112/2005), 2.

Cardarello, A. (2009). 'The Movement of the Mothers of the Courthouse Square: "Legal Child Trafficking," Adoption and Poverty in Brazil.' *The Journal of Latin American and Caribbean Anthropology*, **14**(1), pp. 140-161.

Chuang, J. (2010). 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy.' *Uni. Pen. L. Rev.*, **158**.

Corbett, S. (2002, June 16). 'Where Do Babies Come From?' *New York Times*. Retrieved January 4, 2013 from <http://query.nytimes.com/gst/fullpage.html?res=9C00EEDE113DF935A25755C0A9649C8B63>

Cross, R. (2005). Transcript of UC ICE Agent Richard Cross (video). Samford University, Cumberland Law School. Retrieved on December 27, 2012 from [http://cumberland.samford.edu/files/rushton/Richard\\_Cross\\_transcript.pdf](http://cumberland.samford.edu/files/rushton/Richard_Cross_transcript.pdf)

Dickens, J. (2012). 'Social Policy Approaches and Social Work Dilemmas in Intercountry Adoption.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 29-42). Surrey, Ashgate.

Dillon, S. (2002). 'Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations convention on the rights of the child with

Sale or trafficking?

- the Hague convention on intercountry adoption.' *Boston University International Law Journal*, **21**, pp. 179-257.
- Ethica (2011). 'Stop Trafficking Into Adoption Today.' Retrieved January 4, 2013 from <http://www.ethicanet.org/tvpra>
- Ethica (2012). 'Volunteer for Ethica or Donate to Support our Cause!' Retrieved on January 4, 2013 from <http://www.ethicanet.org/volunteer-for-ethica-or-donate-to-support-our-cause>
- Gallagher, A. (n.d.). 'Trafficking, Smuggling and Human Rights: tricks and treaties.' *Forced Migration Review*. Retrieved December 18, 2012 from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR12/fmr12.9.pdf>
- Gallagher, A. (2001). 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis.' *Human Rights Quarterly*, **23**, pp. 975-1004.
- Garrard, V. (2006-2007). 'Sad Stories: Trafficking in Children – Unique situations Requiring New Solutions.' *Ga. J. Int'l & Comp. L.* **35**(1), p. 145.
- Gibbons, J. & Rotabi, K. (2012). 'Best Practices in Implementing the Hague Convention.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 255-264). Surrey, Ashgate.
- Gozdziak, E.M. & Collett, E.A. (2005). 'Research on Trafficking in North America: A Review of Literature.' *International Migration*, **43**(1-2), pp. 99-128.
- Graff EJ (2008, 1 November). 'The Lies We Love. Foreign Policy.' Retrieved January 7, 2013 from [http://www.foreignpolicy.com/articles/2008/10/15/the\\_lie\\_we\\_love?page=0,0](http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love?page=0,0)
- Green, D.M. (2010). 'The paradox of self-determination for marginalized individuals.' *Social Work and Society*, **8**(1). Retrieved on January 4, 2012 from <http://www.socwork.net/2010/1/green>

Sale or trafficking?

The Hague (1993). Hague Convention of 29 May 1993 on Protection of Children and Co  
operation in Respect of Intercountry Adoption, The Hague, 17–25 June. Retrieved

January 4, 2013 from [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=69](http://www.hcch.net/index_en.php?act=conventions.text&cid=69)

Heinlein, P. (2011b, March 4). ‘Ethiopia to Cut Foreign Adoptions by up to 90 percent.’

Retrieved on December 12, 2012 from the Voice of America website

<http://www.voanews.com/english/news/africa/-ethiopia-to-cut-Foreign-Adoptions-by-up-to-90-30-percent-117411843.html>.

Hogbacka, R. (2012). ‘Maternal Thinking in the Context of Stratified Reproduction: Perspectives of Birth Mothers from South Africa.’ In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 143-159). Surrey, Ashgate

Innocenti Research Centre (2003). ‘Trafficking in Human Beings, Especially Women and Children, in Africa.’ *Unicef*. Retrieved December 8, 2012 from <http://www.unicef-irc.org/publications/pdf/trafficking-gb2ed-2005.pdf>

Innocenti Research Centre (2008). ‘South Asia in Action: Preventing and Responding the Child Trafficking.’ *Unicef*. Retrieved December 27, 2012 from <http://www.unicef-irc.org/publications/550>

International Labour Organization (2009). ‘Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation. Facilitators' Guide.’ *ILO*. Retrieved January 4, 2013 from

[http://www.ilo.org/ipec/areas/Traffickingofchildren/WCMS\\_111537/lang--en/index.htm](http://www.ilo.org/ipec/areas/Traffickingofchildren/WCMS_111537/lang--en/index.htm)

Jahic, G. & Fickenhauer, J. (2005). ‘Representations and Misrepresentations of Human trafficking.’ *Trends in Organized Crime*, **8**:30, pp. 24-40. doi: 10.1007/s12117-005-1035-7

Joyce, K. (2011, December 12). ‘How Ethiopia’s Adoption Industry Dupes Families and Bullies

Sale or trafficking?

Activists.' *The Atlantic*. Retrieved January 4, 2013 from

<http://www.theatlantic.13com/international/archive/2011/12/how-ethiopias-adoption-industry-dupes-14-families-and-bullies-activists/250296/>

Kalu, Uduma. Vanguard (2011, July 30). 'How child trafficking network operates in South East.'

Retrieved November 10, 2012 from

<http://www.vanguardngr.com/2011/07/how-childtrafficking-networkoperates-in-south-east/>

Kim, G. (June 20, 2012). 'International Adoption's Trafficking Problem.' *Harvard Political*

*Review*. Retrieved November 27, 3012 from

<http://hpronline.org/world/international-adoptions-traffickingproblem/>

Kempadoo, K. (Ed.) (2005). *Trafficking and Prostitution Reconsidered*. Colorado, Paradigm

Publishers.

King, S. (2009). 'Challenging Monohumanism: An Argument for Changing the Way We Think

About Intercountry Adoption.' *Michigan Journal of International Law*, **30**, pp. 413-470.

KRO Brandpunt. (2011). Handel in kindren [Children for Sale]. [Television series episode].

Retrieved December 5, 2013 from [www.youtube.com/watch?v=QYpm3V0XFu8](http://www.youtube.com/watch?v=QYpm3V0XFu8).

Leland, J. (2011, September 16). 'For Adoptive Parents, Questions Without Answers.' *New York*

*Times*. Retrieved January 4, 2013 from

<http://www.nytimes.com/2011/09/18/nyregion/chinas-adoption-scandal-sends-chills-through-families-in-united-states.html?pagewanted=all>

Malkin, B. (2011, July 25). 'Australia's Roman Catholic Church apologises for forced

adoptions.' *The Telegraph*. Retrieved January 4, 2013 from

Sale or trafficking?

<http://www.telegraph.co.uk/news/religion/8660249/Australias-Roman-Catholic-Church-apologises-for-forced-adoptions.html>

Mankiw, N.G. (2007). 'The Market Forces of Supply and Demand.' In *Principles of Economics* (4<sup>th</sup> ed). Cambridge, Thompson South-Western.

Manly, K. (2006). 'Birth Parents: The Forgotten Members of the International Adoption Triad.' *Cap. U. L. Rev.*, **35-2**, pp. 627-661.

Marusic, S. (2012). 'Macedonia Sacks Suspected Adoption Racketeers.' *Balkan Insight*.

Retrieved December 15, 2012 from <http://www.balkaninsight.com/en/article/macedonia-sacks-officials-in-adoption-scam-probe>

Maskew, T, (2004). 'Child Trafficking and Intercountry Adoption: The Cambodian Experience.' *Cumberland Law Review*, **619**.

McCreery-Bukers, K.M., Groza, V., & Lauer, D.P. (2009). 'International adoption and child protection in Guatemala: A case of the tail wagging the dog.' *International Social Work*, **52**(649). doi: 10.1177/0020872809337676.

McCreery-Bunkers, K.M. & Groza, V. (2012a). 'Intercountry Adoption and Child Welfare in Guatemala: Lessons Learned Pre- and Post- Ratification of the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 119-132). Surrey, Ashgate

McCreery Bunkers, K., Rotabi, K., & Mezmur, B. (2012b). Ethiopia at a Critical Juncture in Intercountry Adoption and Traditional Care Practices. In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 133-142). Surrey, Ashgate.

Sale or trafficking?

Meier, P (2009). 'Small Commodities: How Child Traffickers Exploit Children and Families in Intercountry Adoption and What they United States Must Do to Stop Them.' *Gender Race & Justice*, **185**.

Meier, P., & Zhang, X. (2009). 'Sold Into Adoption: The Hunan Baby Trafficking Scandal Exposes Vulnerabilities in Chinese Adoptions to the United States.' *Cumberland Law Rev.* **39**(1), pp. 87.

Mezmur, B. (2010) "'The sins of the 'saviours': child trafficking in the context of intercountry adoption in Africa'." Presented to the Special Commission on the practical operation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, The Hague, 17-25 June.

Monico, C., & Rotabi, K.S. (2012). 'Truth, Reconciliation, and Searching for the Disappeared Children of Civil War: El Salvador's Search and Reunion Model Defined.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 301-310). Surrey, Ashgate.

Nigenda, N. & Gonzalez-Robledo, L.M. (2005). 'Lessons Offered by Latin American Cash Transfer Programmes, Mexico's Oportunidades and Nicaragua's SPN. Implications for African Countries.' *Mexican Health Foundation*. Retrieved January 4, 2013 from [http://www.eldis.org/fulltext/verypoor/5\\_ningenda.pdf](http://www.eldis.org/fulltext/verypoor/5_ningenda.pdf)

O'Connor, M. & Rotabi, K. (2012). 'Perspectives on Child Welfare: Ways of Understanding Roles and Actions of Current USA Adoption Agencies Involved in Intercountry Adoption.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 77-88). Surrey, Ashgate.



Sale or trafficking?

Oreskovic, J. & Maskew, T. (2009). 'Red Thread or Slender Reed: Deconstructing Prof.

Bartholet's Mythology of International Adoption.' *Buffalo Human Rights L. Rev.*, **147**, pp. 71-128.

PEAR. (2010, June). 'PEAR's Response to "The Baby 12 Business."' retrieved December 20, 2012 from <http://pearnow.blogspot.com/search?q=paper>

Pennell, J. (2004). 'Family Group Conferencing in Child Welfare: Responsive and Regulatory Interfaces.' *Journal of Sociology and Social Welfare*, **31**(1, March), pp. 117-135.

Penny, L. (2011). 'Profit, not care: The ugly side of overseas adoptions.' *The Independent*.

Retrieved October 20, 2012 from <http://www.independent.co.uk/life-style/health-and-families/health-news/profit-not-care-the-ugly-side-of-overseas-adoptions-2293198.html>

Radio Free Asia (2011). 'Illicit Baby-Breeding Scheme Exposed.' Retrieved January 4, 2013 from <http://www.rfa.org/english/news/vietnam/trafficking-03072011212319.html>

Roby, J. & White, H. (2010). 'Adoption activities on the internet: A call for regulation.' *Social Work*, **55**(3), pp. 203-212.

Roby, J. & Maskew, T. (2012). 'Human Rights Considerations in Intercountry Adoption: The Children and Families of Cambodia in Marshall Islands.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 55-67). Surrey, Ashgate.

Roby, J. & Matsumura, S. (2002). 'If I give you my child, aren't we family? A study of birthmothers participating in Marshall Island-U.S. adoptions.' *Adoption Quarterly*, **5**(4), pp. 7-31.

Romo, R (2011). 'Guatemalan mother says daughter kidnapped, adopted in U.S.' CNN.

Sale or trafficking?

Retrieved November 12, 2013 from

<http://edition.cnn.com/2011/WORLD/americas/08/15/guatemala.kidnapping.adoption/>

Rotabi, K. (2012). 'Fraud in Intercountry Adoption: Child Sales and Abduction in Vietnam, Cambodia, and Guatemala.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 67-76). Surrey, Ashgate.

Ruiz-Goiriena, R. (2012, 15 May). 'Anyeli Hernandez Rodriguez Girl Allegedly Kidnapped and Adopted, Will Not Return to Guatemala.' *Huffington Post*. Retrieved December 10, 2012 from [http://www.huffingtonpost.com/2012/05/15/anyelihernandezrodriguez\\_n\\_517251.html](http://www.huffingtonpost.com/2012/05/15/anyelihernandezrodriguez_n_517251.html)

Salt, J., & Hogarth, J. (2000). 'Migrant Trafficking and Human Smuggling in Europe : a Review of Evidence with Case Studies from Hungary, Poland and Ukraine.' Laczko, F. & Thompson, D. (Eds.). Geneva: OIM, 11-164. Retrieved January 4, 2013 from <http://www.iom.int>

Sedletzki, V. (2008). 'Legislative Reform for the Protection of the Rights of Child Victims of Trafficking.' *Unicef*. Retrieved January 4, 2013 from [http://www.unicef.org/policyanalysis/files/Legislative\\_Reform\\_for\\_the\\_Protection\\_of\\_the\\_Rights\\_of\\_Child\\_Victims\\_of\\_Trafficking.pdf](http://www.unicef.org/policyanalysis/files/Legislative_Reform_for_the_Protection_of_the_Rights_of_Child_Victims_of_Trafficking.pdf)

Seigal, E. (2011). 'Finding Fernanda.' Oakland, Cathexis Press.

Selman, P. (2009). 'The Rise and fall of intercountry adoption in the 21<sup>st</sup> century.' *International Social Work*, **52**(5), pp. 575-594. doi: 10.1177/0020872809337681.

Selman, P (2012). 'The Rise and Fall of Intercountry Adoption in the 21<sup>st</sup> Century: Global Trends from 2001 to 2010.' In J.L. Gibbons and K.S. Rotabi (eds.), *Intercountry Adoption, Policies, Practices, and Outcomes* (pp. 7-27). Surrey, Ashgate.

Sale or trafficking?

Selvaraj, A. (2011). '18-mth-old kidnapped & sold for Rs 50,000, rescued.' *Times of India*.

Retrieved January 4, 2013 from [http://articles.timesofindia.indiatimes.com/2011-06-](http://articles.timesofindia.indiatimes.com/2011-06-30/chennai/29721098_1_child-trafficking-krishnagiri-police-child-kidnapping)

[30/chennai/29721098\\_1\\_child-trafficking-krishnagiri-police-child-kidnapping](http://articles.timesofindia.indiatimes.com/2011-06-30/chennai/29721098_1_child-trafficking-krishnagiri-police-child-kidnapping)

Smolin, D. (2004). 'Intercountry Adoption as Child Trafficking.' *Valparaiso University Law Review* **39**(2), pp.281-325.

Smolin, D. (2005a). 'Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children.' (August 29, 2005). *Bepress Legal Series*. Working Paper 749.

Smolin, D. (2005b). 'The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals.' *Seton Hall Law Review*, **35**(2), pp. 403-493.

Smolin, D. (2007). 'Child Laundering as Exploitation: Applying Anti-trafficking Norms to Intercountry Adoption Under the Coming Hague Regime.' Retrieved January 4, 2013 from [http://works.bepress.com/david\\_smolin/4](http://works.bepress.com/david_smolin/4)

Terre des Hommes & UNICEF [childrensrightsfirst], (2011, Aug 04). Paper Orphans [Video file]. Parts 1-4. Retrieved January 4, 2013 from <http://www.youtube.com/user/childrensrightsfirst>

The Intercountry Adoption Act of 2000, *Pub. L. No. 106-279*, 114 Stat. 825 (2000), codified at, 42 U.S.C. § 14901-56 (2008).

UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at:

<http://www.unhcr.org/refworld/docid/4720706c0.html> [accessed 17 December 2012]

UN Committee on the Rights of the Child (CRC) (2007). *UN Committee on the Rights of the*

Sale or trafficking?

*Child: Concluding Observations, Kenya*, 19 June 2007, CRC/C/KEN/CO/2, Retrieved January 7, 2013 from <http://www.unhcr.org/refworld/docid/4682102b2.html>

Unicef (2010). 'An analysis of the situation of children in Vietnam.' Retrieved January 4, 2013 from [http://www.unicef.org/sitan/files/SitAn-Viet\\_Nam\\_2010\\_Eng.pdf](http://www.unicef.org/sitan/files/SitAn-Viet_Nam_2010_Eng.pdf)

United States Agency for International Development (USAID, 2011). Fifth Annual Report to Congress, December, 2011. Retrieved December 28, 2012 from [http://transition.usaid.gov/our\\_work/global\\_health/home/Publications/docs/hvc\\_ar5.pdf](http://transition.usaid.gov/our_work/global_health/home/Publications/docs/hvc_ar5.pdf)

United States vs. Galindo, 161 Fed. App'x 735, 736 (2006).

U.S. Department of Homeland Security. 'Fact Sheet: Human Trafficking and Smuggling.' Retrieved January 4, 2013 from <http://www.ice.gov/news/library/factsheets/human-trafficking.htm>.

U.S. Department of State. Statistics. Retrieved on January 4, 2013 from [http://adoption.state.gov/about\\_us/statistics.php](http://adoption.state.gov/about_us/statistics.php)

U.S. Department of State. Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, June 2005. Retrieved on January 4, 2013 from <http://www.state.gov/j/tip/rls/tiprpt/2005/>

White, J. (March, 2006). Journal entry: February 26, 2006, Coban, Guatemala. *Guatemalan Student Support Group Newsletter*, 4(1). Retrieved on January 4, 2013 from <http://www.gssg-usa.org/pdfs/GSSGnewsVol4-1.pdf>.

Wiley, M.O. & Baden, A.L. (2005). 'Birth parents in adoption: Research, practice and counseling psychology.' *The Counseling Psychologist*, 33, pp. 13-50.