

RUNNING HEAD: Intercountry Adoption Declines and New Practices of Global Surrogacy

Intercountry Adoption Declines Lead to New Practices of Surrogacy in Guatemala:
Global Human Rights Concerns in the Context of Violence and the Era of Advanced Fertility
Technology

Karen Smith Rotabi,
Assistant Professor
Virginia Commonwealth University School of Social Work
1001 West Franklin Street, Box 842027, Richmond, VA 23284
Phone: (804) 828-5411
ksrotabi@vcu.edu

Nicole Footen Bromfield
Assistant Professor
United Arab Emirates University Department of Social Work
PO Box 17771, Al Ain, UAE
Phone: 971-50-138-9405
n.bromfield@hotmail.com

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Abstract

Intercountry adoption has declined significantly in the last five years. It is not as feasible an option anymore for building a family with a very young child or infant from Guatemala.. However, global surrogacy appears to be meeting the need for some individuals and couples. Contracting surrogacy with a woman in another nation is explored, focusing on vulnerable women. Specifically, surrogacy in India and Guatemala is discussed with concerns about informed consent in the context of poverty and, in the case of Guatemala, violence against women and human trafficking. Technological advances and globalization are also considered as the authors pose critical questions about the practice of global surrogacy. Implications for social workers and human rights defenders are also posed, underscoring the importance of awareness to this emergent global practice.

Intercountry Adoption Declines and New Practices of Global Surrogacy:

Global Exploitation and Human Rights Concerns

At its peak in 2004, intercountry adoptions (ICA) were estimated to have globally impacted approximately 45,000 infants and children annually (Selman, 2009). Since then a radical decline, caused by complex ethical dilemmas (Hollingsworth, 2003; Freudlich, 2000; Smolin, 2006), has been underway and is estimated to be at least 50 percent globally (Selman, in press). Concerns about adoption ethics and social work practice have been considered by a number of social work scholars, including human rights considerations (Roby, 2007; Roby & Ife, 2009; Rotabi & Bunkers, 2011). One of the earliest documentations in social work refereed literature, on the subject of ethics and human rights, first appeared in *Affilia*, in a manuscript entitled “International adoption: The exploitation of women and children.” (Herrmann & Kasper, 1991). That paper was not only provocative, but it documented concerning practices of child buying in the context of poverty with an emphasis on Latin America. In the time since, social work scholars have documented similar concerns in other regions with a call for reform (Rotabi & Bunkers, 2011).

It is our purpose to briefly present an update on ICA problems, including issues of exploitation and reform in the 20 plus years since Hermann and Kasper’s observations. We also present the emergent practice of global surrogacy, the globalization of the surrogacy industry, as an ICA alternative, including new considerations for exploitation of women in the context of serious human rights abuses such as violence against women and human trafficking.

To anchor this discussion of injustice and oppression as related to intercountry adoption and global surrogacy, we are employing Gil’s 1998 definition: “oppression refers to a mode of

human relations involving domination and exploitation—economic, social, and psychological—between individuals; between social groups and classes within and beyond societies; and globally, between entire societies” (p. 10). Gil further explains that:

Injustice refers to coercively established and maintained inequalities, discrimination, and dehumanizing, development-inhibiting conditions of living (e.g. slavery, serfdom, and exploitative wage labor; unemployment, poverty, starvation, and homelessness; inadequate health care and education), imposed by dominant social groups, classes, and peoples upon dominated and exploited groups, classes, and peoples (Gil, 1998, p. 10).

Considerations of both oppression and injustice overlay the following discourse about intercountry adoption and global surrogacy.

Contemporary Intercountry Adoption Problems

The top three nations engaged in ‘sending’ children to other countries have been Russia, China, and Guatemala and the significant adoption declines from these nations are related to the social policy environment as well as ethical dilemmas. Russia has had a series of ICA scandals, including child abuse deaths in the USA of Russian children (Rotabi & Heine, 2010). China has made bureaucratic changes and has shifted to mainly releasing ‘special needs’ children for intercountry adoption (Dowling & Brown, 2009). Guatemala, on the other hand, had notorious problems with multiple system failures related to human rights abuses (Bunkers et al., 2009; Gresham et al., 2004; Rotabi et al., 2008).

In Guatemala, an actual ICA moratorium has been put in place, due in part to illegal birth mother payments and child sales which are believed to have been routine in the latter years of that nation’s ICA baby boom (Bunkers et al., 2009). Concerns also included forcible housing of pregnant women with midwives (Greshman et al., 2004; Rotabi et al., 2008) and crimes related

to child abduction (Rotabi, in press). These and other problems were documented by a United Nations (2000) report and subsequent reports by human rights defenders (Casa Alianza et al., 2007).

Social Policy Changes: An Additional Factor in the Declining Practice

The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (referred to as simply the Hague Convention) was developed to prevent the sales and abduction of children under the guise of ICA while promoting the best interests of the child (The Hague Conference on Private International Law, 1993; Hollinger, 2004; Rotabi, 2008; in press; Smolin, 2006). Each nation that has ratified the agreement must define its internal processes to insure the ‘best interests of the child’, including financial transparency and ethical practices of child welfare and adoption (Rotabi, 2008). The Convention was intended to alleviate some of the social justice concerns related to ICA and improve practices to protect vulnerable peoples (Hollingsworth, 2003; Rotabi & Gibbons, in press). Both official and de facto adoption moratoriums have resulted from Hague Convention reforms and this is one of the factors related to the decrease in adoptions of orphaned and vulnerable children (Selman, 2009).

Guatemala as a Case Example of Hague Convention Reforms

The most infamous example of Hague Convention implementation and ICA moratorium is Guatemala (Bunkers et al., 2009). Extensive analysis of Hague-related ICA changes in Guatemala by Rotabi and Bunkers (2008) illustrates an adoption system led by a small group of Guatemalan attorneys and birth mother recruiters. The resultant problems, some illegal and most unethical and connected to human trafficking, have resulted in massive systems changes as a part of implementing Hague Convention standards (Casa Alianza et al., 2007; Bunkers & Groza, in press). As a result, adoptions between Guatemala and the U.S. declined by over 80 percent, from

2004-2010 (United States Department of State, n. d. a.) and this decrease continues as the U.S. closed Guatemalan adoptions in late 2007. Currently, the only children expected to leave Guatemala as adoptees are small group of outstanding cases still in process--no new adoptions are expected at this time (Bunkers & Groza, in press).

A new law has been passed in Guatemala to regulate ICA and this legislation is consistent with the Hague Convention (Bunkers et al., 2009). This law has removed the private system dynamics and attorneys no longer handle the cases as a notary process with limited family court oversight. Now the government manages the cases, adhering to international standards of child welfare. One of the new system requirements is that a child must be considered by Guatemalan families first and then, once the child is rejected for adoption placement by at least two Guatemalan families, the child may be deemed eligible for ICA (Rotabi & Gibbons, in press). Not all children will be approved to be eligible by the national child welfare authorities as the child must be assessed and determined to be appropriate for ICA.

Market Dynamics

The problems in Guatemala and other nations have been related to a global demand for young and healthy children (Casa Alianza et al., 2007; Freundlich, 2000; Rotabi, in press). When dynamics of child sales for adoption begin to take over an adoption system, the “cost” of the adoption reflects an unfortunate reality, creating a price point related to supply and demand (Freundlich, 1998). During the peak of the ICA baby boom in the USA, adoptions of children ranged in fees from \$25,000 (United States Government Accountability Office, 2005) and upwards to \$40,000 or more (Rotabi, 2008) for U.S. families. Consistent with a supply and demand market model, the decline in adoption opportunities resulted in fee increases—especially for young and healthy children--as child placement wait times become more protracted. The

child's value becomes based on market economics and allegations of a "baby market" (Goodwin, 2010) have long been asserted by some academics, the popular press, and advocates (Riben, 2007). These conceptions date back to Landes and Posner's (1978) observations in their seminal article entitled "*The economics of the baby shortage*" in which public versus private adoptions are discussed, applying the most basic principles of market capitalism to adoption, including regulation and price. However, they make "no effort...to quantify the social cost of the baby shortage" (p. 335) and now in the past thirty plus years that social cost has come to bear on women around the globe. The women most vulnerable are those in developing or low resource countries living in extreme poverty and under oppressive conditions, with resultant social conditions such as dismal maternal and child health outcomes, violence, and inequalities related to labor and fair wages (van Wormer, 2005).

Healthy Infants Remain in Demand as Intercountry Adoption Declines and Global Surrogacy Emerges as an Alternative with In vitro Fertilization

In 2010, the Nobel Prize was awarded to a scientist recognized for developing and innovating in vitro fertilization. The official press release stated, "Robert Edwards is awarded the 2010 Nobel Prize for the development of human in vitro fertilization (IVF) therapy. His achievements have made it possible to treat infertility, a medical condition afflicting a large proportion of humanity including more than 10 percent of all couples worldwide" (Nobelprize.org, 2010, p. 1). IVF represents an important advancement in science but also a paradigm shift in reproductive technologies. This Nobel Prize coincides with emerging movements in global surrogacy, shifting the terms of social conscience about conception, family-building, technology, and global opportunity and vulnerability.

Solving the problem of infertility is particularly relevant in industrialized nations in which infertility is combined with financial resources and broader notions of *how* one can build a family. This is especially true in the recent context where the decrease of opportunities to obtain healthy infants and children via ICA has inevitably played a role in the shift to alternative family-building strategies, including global surrogacy (in which IVF technology is often used). As Marre and Briggs (2009) point out, ICA and fertility technologies are interconnected and have a direct effect on each other. As ICA continues to become more difficult and commercial fertility activity continues to globalize, India and Eastern Bloc countries have taken the lead in providing fertility alternatives to ICA, especially global surrogacy (Gamble, 2009).

Defining Surrogacy: The Various Forms including Global Commercial Surrogacy

Surrogacy is an arrangement in which a woman agrees to become pregnant and deliver a baby for another couple or individual. In commercial surrogacy arrangements, the surrogate receives payment in exchange for her service. Surrogacy may be traditional or gestational. In traditional surrogacy, the surrogate is impregnated using her own ovum and the intended father's sperm or donor sperm, usually through artificial insemination. In gestational surrogacy, the intended mother's ovum or a donor egg is fertilized with the intended father's sperm or donor sperm and is then transferred to the surrogate's uterus via IVF. In most commercial surrogacy arrangements, either donor eggs or the intended mother's eggs are used and the surrogate is made pregnant through IVF technologies. Global surrogacy is a commercial surrogacy arrangement, in which intended parents hire a surrogate (and often an egg and/or sperm donor) internationally. Reasons for seeking a surrogate outside of one's country vary, but most often are related to the illegality of commercial surrogacy in the intended parents' country (as in much of Western Europe), the dramatically reduced cost of surrogacy in developing nations compared with the

West, limited legal complications and/or governmental interference in surrogacy arrangements in developing nations, the ability of gay couples to pursue surrogacy and arrange for a low cost egg donor and surrogate, and the ability for a couple to complete almost the entire surrogacy transaction via the Internet through an agency with little, if any, personal relationship or continued ties with the surrogate mother, who most likely will not be able to communicate in the language of the intended parents. In fact, if the intended parents are using an egg and sperm donor, a pre-existing embryo (known as embryo adoption), or have their sperm sent on dry ice to the surrogacy agency, only one trip to the surrogate mother's country is needed- to pick up and bring home their newborn baby.

We predict that international commercial surrogacy arrangements will become a rising trend in developing nations, where primacy of the developed nation donor's nationality is protected and costs are not as much of a consideration. Undertaking a commercial surrogacy arrangement inside of the U.S. is a legally daunting process that can cost upwards of \$70,000, while in India surrogacy can be had with little legal "red tape" for about \$12,000, including medical and surrogate fees (Haworth, 2009).

Most laws regulating traditional surrogacy were established before IVF was common practice and lawmakers did not foresee the implications of a future that included gestational surrogacy. Therefore, gestational surrogacy has little or no regulation in many countries (Ben-Asher, 2009) because it was "off the radar screen" for lawmakers, many of whom consider commercial traditional surrogacy "baby selling" (Ben-Asher, 2009).

Surrogacy Arrangements in India Explored

India legalized commercial surrogacy in 2004 and Indian surrogacy is already reportedly a \$445 million per year industry (Haworth, 2009). A recent *Mother Jones* (Carney, 2010) article

underscored troubling issues in the Indian surrogacy market. One of the disturbing practices described is the routine use of Cesarean sections for the benefit of the paying family who can choose a birth date for their child which best suits their desires or needs, and also makes it easier on the clinic as they can “schedule” quick deliveries. In one case, a young mother died post-Cesarean and her husband asserted, in the article, that his wife was denied adequate post-natal care by the physician who managed the private surrogacy clinic. Reportedly, the young woman was left to die as her husband begged for care in the public medical sector. In contrast, the article also profiles happy customers who quickly returned to the U.S. with healthy infants.

Another cause for concern is the process used to recruit Indian surrogates. The would-be surrogates are impoverished, often illiterate women who are recruited from rural villages. Surrogacy recruits are brought to the clinics by “head hunters,” calling themselves social workers, where they are required to stay in the clinic’s living quarters in a guarded dormitory-like setting for the entire pregnancy (Carney, 2010). This practice not only allows the clinics to monitor the surrogates’ activities and behaviors during the pregnancy, but is also seen as protecting the surrogate from ridicule by family members and neighbors; most Indian women acting as surrogates keep it a secret because surrogacy is viewed as dirty or immoral. What is more alarming about the recruiting process is that it is notably similar to the recruitment processes used by human traffickers to coerce rural women into sex work in cities. Also paralleling other trafficking situations, women have to sign documents (often in English) that they cannot read and are then kept “under lock and key” until the obligations set forth in the contracts are fulfilled (Bromfield, 2010). However, Indian surrogates earn between \$5,000-\$7,000 USD, food, and housing during their surrogate pregnancies, which is the equivalent to

about 10 years worth of work for rural Indian women (Haworth, 2009); there is certainly no shortage of available women offering to become surrogates.

In some Indian surrogacy arrangements, and especially in cases where the intended mothers are over the age of 40, the egg is provided by a “donor,” fertilized with the intended father’s sperm, and then transferred to an Indian surrogate for the nine month gestation period. Most Indian surrogacy clinics will not allow the surrogate to be a traditional surrogate because of the legal and emotional complications involved. An easy way to avoid these problems is to use the egg of another woman, rather than have the surrogate use her own. Even though two different, non-American women are involved in the creation of the baby, the legal transaction is simple when the child is the offspring (genetically either whole or half) of a U.S. citizen. The American intended parents’ names are listed directly on the baby’s birth certificate and the family exercises a normal route for securing U.S. documents for citizen travel back into the U.S. In other countries, the process is not so straight forward and there have been multiple cases in which infants born through surrogacy arrangements were rendered stateless. Many of these children are genetically linked to Indian genetic/biological mothers and this leads to the need to engage in discourse regarding citizenship, emerging multi-cultural issues, and human trafficking.

While certainly not all global surrogacy arrangements are human trafficking cases, the potential for a global surrogacy arrangement to become a human trafficking scenario is startling. Particular concerns about human trafficking are raised when considering that the latest emergent nation for surrogacy is Guatemala. Guatemala will likely become even more attractive than India to potential customers, especially for U.S. citizens, given that it is less expensive and time-consuming travel for those living in North America. However, such a transaction is not simple nor without ethical or moral consequences, especially in this socially complicated country.

Social Context is Critical to Understand Surrogacy Implications in Guatemala

Guatemala is known to have some of the worst human rights abuses in the Western Hemisphere as a result of a number of factors, including civil unrest and a protracted civil war from 1960-1996 which has not yet truly resolved peacefully (Recuperación de la Memoria Histórica [REMHI], 1999). This desperately impoverished nation, which has a significant indigenous Mayan population estimated to be as much as 50 percent of its total citizenry, was recently determined by the United Nations to have the greatest gender inequality in the Western Hemisphere (United Nations High Commissioner for Human Rights, 2010). This finding is based on a number of variables, including limited leadership of Guatemalan women in post-conflict democracy (Perez, 2003) and attempts to silence women, especially Mayan women, who speak out for social change (Sanford, 2000). In addition and critical to this discourse, Guatemala has the highest incidence of gendered violence in the Americas (Sanford, 2008; Costantino, 2006; see www.StopFemicide.com). This includes rape at alarming rates (Fieser, 2009) and femicide. The killings are carried out by men and/or boys to strike terror into the community. Forces of narco-trafficking, gang behavior and other societal-level problems including familial or domestic violence underlie this gendered crime (Costantino, 2006; Guatemala Human Rights Commission, 2009a, 2009b, 2009c; Sanford, 2008).

In the global environment of assistive technology and a demand for babies, we assert that Guatemalan women are at risk for human sales of their offspring in global surrogacy schemes—not unlike some of the aforementioned abuses in the ICA system. This is not a new idea, Herrmann and Kasper pointed out in 1992 that women have commonly been called “breeders” in ICA rings, and to exemplify this concept, they provide the following example originally presented by Pastor in 1989.

In Honduras, they have paid teenage girls to get pregnant; the merchants then follow the young women throughout their pregnancy to make sure they eat well and receive some kind of prenatal care. Once a baby is born, and if the baby is healthy, the mother is paid \$50.00 for the product. This practice is not very different from what we call “surrogate motherhood” in the U.S.; however, it is substantially cheaper (Pastor, 1989, p. 19).

The term “breeders” has been used to as a descriptive (Corea, 1986) and for social workers this is an inhumane term lacking in dignity and respect for the person. However, the activity employs technology systematized by animal husbandry practices and the pejorative use of “breeders” underscores the emotionally provocative nature of the subject of surrogacy practices.

Understanding Global Surrogacy in Guatemala: A Glimpse into One Business Model

Little is known about this emerging business in Guatemala, but at least one group, “*Advocates for Surrogacy*,” provides some insight. The following observations are based on the materials posted on the organization’s website in December 2010 and it serves as an example of the emergent industry (advocatesforsurrogacy.com). This group began their work as ICA actors in the Central American nation. On their website they claim to be the “first and only agency to successfully complete the surrogacy/passport process through the U.S. Embassy in Guatemala City.” In this same marketing material, they also state that they “have a highly experienced full service team... in Guatemala headed up by lawyers who have partnered for many years in international adoption.” Further, they market the concept of medical tourism, as follows:

The idea of deciding to pursue surrogacy in a foreign country may at first seem intimidating; however, medical tourism is a fast growing industry. With excellent medical care available abroad and substantial cost savings, people across the globe are

now seeking treatment outside their home countries. Our Guatemalan program offers excellent fertility clinics with well-trained, fully bilingual staff (English and Spanish). Our experienced local program staff led by an attorney will assist you every step of the way upon arrival in Guatemala and throughout your stay with the goal of making your experience a memorable, rewarding and joyful journey to parenthood.

This organization also claims the highest ethical standards of care for surrogate mothers, including a psychological evaluation process, with no detail of or attention to the context of oppression in the nation. Specifically, this information—provided in a website marketing pitch—is provided without any mention that Guatemala currently has no regulatory oversight of the process as the commercial practice is not defined in national laws. Also tellingly, there is no mention of the nation’s horrific track record of human rights abuses and highly vulnerable women. The website reads more like a tourism brochure than an advertisement for surrogacy services, with photos of scenic landscapes and enchanting indigenous people. It presents Guatemala as an ideal location for surrogacy activities and services, and invokes a tone of positivity for all involved in the transaction

Finally, the fact that this surrogacy business is managed by attorneys who previously worked in the ICA sector is not too surprising. Because some of the attorneys became millionaires during the adoption baby boom (Rotabi, et al., 2008), they would easily have the resources to begin medical tourism as a business and the birth mother recruiters who worked with them (Rotabi & Bunkers, 2008) would be well-suited to carry on the necessary activity of identifying women to become surrogates. From a macro-historical perspective, this scenario is consistent with repetitive structures of oppression in Guatemala.

It should be noted that there are no formal ethical or legal violations known about this particular group. This business example is offered to stimulate thought without any particular evidence of specific wrong-doing on their part.

Global Surrogacy: Involvement in the Global Marketplace and Choosing the Lesser Evil in Guatemala

Surrogacy is a way for poor Indian women to engage in the global marketplace and provide a much needed service (Pande, 2009). This sentiment was voiced by Oprah Winfrey in her U.S.-based talk show when she presented surrogacy in India as a family-building strategy that offers economic opportunity to impoverished women (Carney, 2010). Pande (2009) presents surrogacy as social care work and she calls it a “new form of labour” (p. 145) and notes that it is stigmatized in India and thus classifies it as a form of dirty work—occupations which are viewed as degrading to the worker, such as janitorial work. Pande’s (2009) interviews with surrogate mothers provide insight into the decision to participate in the practice, including some valuable information about consent procedures and the limitations of illiterate women in understanding the surrogacy contract. This issue is a concern that has been raised about surrogates, even for women in industrialized nations who have the benefit of education (Corea, 1986). However, the theme of life improvement—including improving the outcomes of the surrogate’s own existent biological children due to the income source—was clear in Pande’s research and it is always involved in discussions about commercial surrogacy (Corea, 1986; Markens, 2007).

Inevitably an “opportunity argument” will be posited in the discourse about the practice in Guatemala. Costantino (2006, p. 107) reminds us, Guatemalan women “...face globalizing forces that simultaneously further oppress them yet offer new resources in their individual and collective efforts to alter the reality of their lives.” Freedom to participate in a global marketplace

is important, especially for poor and marginalized peoples (Hall & Midgley, 2004), including the women of Guatemala. However, some commercial surrogacy arrangements may challenge notions of *self determination* (National Association of Social Workers, 1999) or *free will* and *informed consent* in the current social and economic environment in Guatemala. As a result, human trafficking actors, including some of those who were previously involved in irregular and illegal adoptions, operate with impunity in Guatemala. Ultimately, the legal and law enforcement environment is lacking mechanisms to protect women who may engage in commercial surrogacy. As stated previously, there is no legal regulation of surrogacy and even if there were, law enforcement is currently impotent in the post-conflict nation which is struggling to truly reclaim peace (Doiron & Guenette, 2009; Sanford, 2008; Costantino, 2006).

Self Determination and Free Will Considered in the Context of Human Trafficking

Further examination of the concepts of *self determination* and *free will*, when considering the dynamics of human trafficking has been explored by Jani (2010). She specifies that women in India may actually choose to participate in a form of sex work (i.e. bar room dancing in their locality) to avoid being trafficked into more nefarious networks of exploitation—including being taken into other nations where the conditions may actually be worse or more dire than their home nation. Applying conflict theory, Jani further interrogates the decisions that women make in context, specifically the social structures that oppress women in traditional and impoverished nations with limited economic options. Exploring individual choices, Jani also considers the theory of exchange, identifying that it “...derived its roots from an economic theory that suggests the predominant value that dictates economic behavior is wealth maximization... The theory explains how women often get trapped in debt-burdens that eventually force them to consent to the proposal of working in the sex-industry.” Jani also applied Prospect theory which “was

designed to explain how people make choices in situations where they have to decide between alternatives that involve risk... [This] theory suggests that people underestimate outcomes that are probable as compared to outcomes that are obtained with certainty.” This idea, a cost-benefit analysis of the lesser evil, is particularly relevant to the population of surrogate mothers in Guatemala and in India as a “choice” to participate in global commercial surrogacy over other more oppressive forms of work, including sex work. To put it bluntly, the choice between nine months of being well-fed and medically monitored as a surrogate (even if behind lock and key) is far superior to being forced into prostitution internally or trafficked for sex into other nations like neighboring Mexico or beyond, where women face brutal conditions of sex work/slavery (Risley, 2010). To some women, commercial surrogacy is also superior to working in a textile or other factory where the wages are poor and the commute to and from work is dangerous.

While research has not been formally conducted in this area in Guatemala, applying Jani’s theoretical perspectives, we assert that the extreme oppression of Guatemala creates a vulnerability that requires complex social exchanges for economic opportunity. In a hopeful prospect, some surrogates will choose to participate in global surrogacy. Then, there may be those who do not have an active choice because the “prospecting” is being carried out by husbands, fathers, brothers, or other family or community members (including recruiters) who may entice and/or coerce the surrogacy activity.

While there may be sophisticated psychological tests—as presented in the Advocates for Surrogacy business model/case example—it is hard to believe that all surrogacy businesses will integrate the highest of ethical standards when selecting women for surrogacy. This is especially true if the business moves towards an assembly line approach and baby farming en masse is the outcome. If evidence in India is any indicator, this industry will soon take hold in Guatemala as

social entrepreneurs position themselves for the nation's next "product" for the global economy which may be worth hundreds of millions of dollars in the next decade. This "demand" for a service and potential for fantastic profits will be a complicating factor for Guatemalan women in making informed choices and ultimately exercising *self determination* to "work" as surrogates. Self determination of marginalized women requires critical thought and action (Green, 2010).

Conclusion: Implications for Social Workers and Human Rights Defenders

The rapidly growing global surrogacy industry raises multiple ethical concerns which strike deep at our sensibilities about human need, economics, and human vulnerability; including a power imbalance between consumer and surrogate mother. This is complicated because protective regulations aimed primarily at securing the rights of vulnerable women and their children are lacking or non-existent in developing countries where the highly profitable fertility industry has begun to take root and serve the global surrogacy market. With the exception of India, human rights defenders have not yet begun to truly or effectively focus and organize to address this social justice issue. There is a real need to do so because some of the women who are selling their eggs and their bodies for global surrogacy are some of the poorest, most vulnerable, and most oppressed women in the world. The power divide between these women, the sophisticated organizations developing the services, and the consumers (relatively wealthy couples and individuals) is such that human protections are an absolute imperative (Elster, 2010).

Because of an undeniable demand for healthy babies (Goodwin, 2010), policies must be developed on an international-level above and beyond standards created by the private sector. This means that if and when global surrogacy is practiced, it must be done in a safe, honest, and ethical manner for surrogates and egg donors, as well as the families purchasing the surrogate's services. An important consideration is the environment in which such an ethical approach can

be guaranteed. We submit that a nation like Guatemala is not one in which such a guarantee can be made given the current human rights context. Some may argue that the nation will eventually be 'ready' for such services, especially with oversight such as an organizational 'accreditation' process with international standards for fertility clinics, however developing such a system will take time and considerable energy. In all likelihood, the forces against regulation will be such that it will not take place unless an international body becomes involved and develops new human rights protections (e.g. international private law) related to fertility technology integrated with an expanded definition of human trafficking, to include coerced surrogacy arrangements.

Fundamentally a charged debate is building and it is in its early stages with wealthy actors, those benefiting from incomes related to surrogacy businesses or those who stand to benefit from purchasing surrogate services, interfacing with human rights defenders. Again, this is a power imbalance and it is imperative for social workers and other human rights advocates to be aware of the global surrogacy market and the risks that may accompany it for all involved—most especially the surrogate mothers and to the children who are born from these arrangements. Not only are there social justice implications for the surrogate mothers, there can be lasting repercussions for the children as well. It is possible now for a child that was born out of global surrogacy, to have a genetic mother, a gestational (or biological) mother, and a legal mother all from completely different cultures. Children who are the product of genetic mothers from India and Guatemala, who then are brought to the U.S. by their families, will have no connection, cultural or otherwise, to half of their genetic heritage. This may result in identity or other issues, similar to experiences of intercountry adoptees (Crolley-Simic & Vonk, 2008).

Globalization and technology are rapidly changing the world (Singer, 2002) and result in consequences that we could not have fathomed when IVF was first introduced in the late 1970s

(Goodwin, 2010). Social workers have the responsibility to be aware of emerging issues including global intersections (National Association of Social Work Code of Ethics, 1999, Section VI), and global surrogacy demands our vigilant attention.

Debates will unfold and ultimately that which will prevail will be telling as we enter a new frontier of fertility and family building. Wants versus needs will become pushes and pulls and women in developing nations stand to be exploited. However, when the activity occurs in developing or low resource nations, it will be discussed and marketed as an “opportunity” for women. It is a complex issue and ultimately we must be vigilant to weigh the real and human costs and benefits in any discourse about opportunity versus global oppression and exploitation (Gil, 1998). The conception of benefit, including women and men who can afford to pay for surrogacy in high resource nations, overlays limited opportunities of women in low resource nations. Ultimately, the cost benefit equation is complex in the globalized economy.

Challenges lie ahead. Nussbaum (2000) in her discourse on sex and social justice points to the fact that the sales of a woman’s body for sex and other activities are common phenomena. This is consistent with the idea of “the oldest profession” in the world and women’s bodies have been sold at the hands of many different actors, not just by organized criminal networks, but also their family members in some cases. Self determination of women in involved in the sex industry is never simple and the underlying decision making or inability to consent varies, depending on circumstances. And, poverty is not a simple consideration when making analysis of the situation at hand (Green, 2010). The case of surrogacy—the sales of one’s capacity to reproduce—is undoubtedly complex. As a result, global surrogacy practices require immediate attention so that social work can begin to address the issues at hand and develop an ethical response to the inherent and emerging problems.

References

- Advocates for Surrogacy (n.d.). *Introducing our Guatemala Surrogacy Program*. Available from http://www.advocatesforsurrogacy.com/guatemala_program.php
- Ben-Asher, N. (2009). The curing law: On the evolution of baby-making markets. *Cardozo Law Review*, 30 (5), 1885-1924.
- Bromfield, N. (2010, June 11). Global surrogacy in India: Legal, ethical and human rights implications of a growing "industry". *Reproductive Health Reality Check: Information and Analysis for Reproductive Health*. Available from <http://www.rhrealitycheck.org/blog/2010/06/10/stateless-babies-legal-ethical-human-rights-issues-raised-growth-global-surrogacy-india>
- Bunkers, K. M., & Groza, V. (in press). 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 & K. S. Rotabi (Eds.). *Intercountry adoption: Policies, practices, and outcomes*. Surrey, England: Ashgate Press.
- Bunkers, K. M., Groza, V. & Lauer, D. (2009). International adoption and child protection in Guatemala: A case of the tail wagging the dog. *International Social Work*, 52(5), 649-660.
- Carney, S. (2010, March/April). Cash on delivery: gestational dormitories, routine c-sections, quintuple embryo implants. brave new world? Nope, surrogacy tourism. *Mother Jones*, 69-73.
- Casa Alianza, Myrna Mack Foundation, Survivors Foundation, the Social Movement for the Rights of Children and Adolescents, Human Rights Office of the Archbishop of

- Guatemala, & the Social Welfare Secretariat. (2007). Adoptions in Guatemala: Protection or business? Available from <http://www.brandeis.edu/investigate/gender/adoption/docs/InformedAdopcionesFundacionMyrnaMack.pdf>
- Costantino, R. (2006). Femicide, impunity, and citizenship: The old and new in the struggle for justice in Guatemala. *The Journal of Mujeres Activistas en Letras y Cambio Social*, 6(1), 107–121.
- Corea, G. (1986). *The mother machine: Reproductive technologies from artificial insemination to artificial wombs*. Harper and Row: New York.
- Crolley-Simic, J., & Vonk, M. E. (2008). Racial socialization practices of white mothers of international transracial adoptees. *Journal of Ethnic & Cultural Diversity in Social Work*, 17(3), 301–318. doi: 10.1080/15313200802258257
- Doiron, F. & Guenette, L. (2009). Breaking the cycle of impunity in Guatemala: Who will police the police? *Alternatives International Journal*, 1(9).
- Dowling, M., & Brown, G. (2009). Globalization and intercountry adoption from China. *Child and Family Social Work*, 1–10, doi:10.1111/j.1365-2206.2008.00607.x
- Elster, N. R. (2010). Egg donation for research and reproduction: The compensation conundrum. In M. B. Goodwin (Ed.). *Baby markets: Money and the new politics of creating families* (pp. 226-236). New York: Cambridge University Press.

Fieser, E. (2009, November 20). Guatemala slowly confronts widespread rape of women.

Christian Science Monitor. Available from

<http://www.csmonitor.com/layout/set/print/content/view/print/265674>

Freundlich, M. (1998). Supply and demand: The forces shaping the future of infant adoption.

Adoption Quarterly, 2(1), 13–46.

Freundlich, M. (2000). Market forces: The issues in international adoption. In M. Freundlich

(Ed.), *Adoption and ethics* (pp. 37–66). Washington, DC: Child Welfare League of America.

Gamble, N. (2009). Crossing the line: The legal and ethical problems of foreign surrogacy.

Reproductive Biomedicine Online. Available at: www.rbmonline.com/article/4484

Gil, D. G. (1998). *Confronting injustice and oppression*. New York: Columbia University Press.

Goodwin, M. B. (2010). *Baby markets: Money and the new politics of creating families*. New York, NY: Cambridge University Press.

Green, D. M. (2010). The paradox of self-determination for marginalized individuals. *Social*

Work and Society, 8(1). Retrieved from <http://www.socwork.net/2010/1/green>

Gresham, K., Nackerud, L., & Risler, E. (2004). Intercountry adoption from Guatemala and the

United States: A comparative policy analysis. *Journal of Immigrant & Refugee Studies*, 1(3-4), 1-20. doi:10.1300/J191v01n03_01

Guatemala Human Rights Commission/USA. (2009a). *Fact sheet: Femicide and feminicide*.

Available at <http://www.GHRC-USA.org/Publications/FemicideFactSheet2009.pdf>

Guatemala Human Rights Commission/USA. (2009b). *Guatemala's endangered species: Women support I-VAWA*. Available at <http://www.GHRC-USA.org/Publications/IVAWAGuatemalaFactSheet.pdf>

Guatemala Human Rights Commission/USA. (2009c). *Guatemala's femicide law: Progress against impunity?* Available at http://www.GHRC-USA.org/Publications/Femicide_Law_ProgressAgainstImpunity.pdf

The Hague Conference on Private International Law. (1993). *The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993)*. Available at www.hcch.net/index_en.php?act=conventions.pdf&cid=69

Hall, A., & Midgley, J. O. (2004). *Social policy for development*. Sage Publications, Thousand Oaks, CA.

Hawthorne, A. (2009, July 1). Surrogate mothers: womb for rent. Seattle P.I., Available at <http://www.seattlepi.com/lifestyle/article/Surrogate-Mothers-Womb-for-rent-1303111.php>

Herrmann, K. J., Jr., & Kasper, B. (1992). International adoption: The exploitation of women and children. *Affilia*, 7(1), 45–58.

Hollinger, J. H. (2004). Intercountry adoption: Forecasts and forebodings. *Adoption Quarterly*, 8(1), 41-60.

Hollingsworth, L. D. (2003). International adoption among families in the United States: Considerations of social justice. *Social Work*, 48(2), 209-217.

Jani, N. (2010). Theoretical analysis of human trafficking: A South Asian perspective. *Journal of Global Social Work Practice*. Available at:

<http://www.globalsocialwork.org/vol3no1/Jani.html>

Landes, E. M., & Posner, R. A. (1978). The economics of the baby shortage. *The Journal of Legal Studies*. 323-348.

Marre, D., & Briggs, L. (2000). Introduction. In D. Marre and L. Briggs (Eds.) *International adoption: Global inequalities and the circulation of children*. (pp. 1-15) New York: New York University Press.

Markens, S. (2007). *Surrogate Motherhood and the Politics of Reproduction*. Berkeley: University of California Press.

National Association of Social Workers (NASW). (1999). *Code of ethics*. Revised by the 2008 NASW Delegate Assembly. Washington, D.C.: Author. [online] Available at: <http://www.socialworkers.org/pubs/Code/code.asp> [Accessed 10, April, 2011].

Nobelprize.org (2010, Nov). The 2010 Nobel Prize in Physiology or Medicine - Press Release. Available at: http://nobelprize.org/nobel_prizes/medicine/laureates/2010/press.html

Nussbaum, M. C. (2000). *Sex and social justice*. New York, NY: Oxford University Press.

Pande, A. (2009). Not an 'angel' not a 'whore': Surrogates as 'dirty' workers in India. *Indian Journal of Gender Studies*, 16(2), 141-173.

Pastor, R. (1989, May). The Honduran baby market. *Sojourner: The Women's Forum*, p19.

Perez, O. (2003). Democratic legitimacy and public insecurity: Crime and democracy in El Salvador and Guatemala. *Political Science Quarterly*, 118 (4), 627-644.

Recuperación de la Memoria Histórica (REMHI). (1999). Guatemala: Never again! Guatemala City: Archdiocese.

Riben, M. (2007). *The stork market: America's multi-billion dollar unregulated adoption industry*. Dayton, NJ: Advocate.

Risley, A. (2010). Sex trafficking: The “other” crisis in Mexico? *The Latin Americanist*, 54 (1), 99-117.

Roby, J. L. (2007). From rhetoric to best practice: Children's rights in intercountry adoption. *Children's Legal Rights Journal*, 27(3), 48–71.

Roby, J. L., & Ife, J. (2009). Human rights, politics, and intercountry adoption: An examination of two sending countries. *International Social Work*, 52(5), 661–671.

Rotabi, K. S. (in press). El uso de la fuerza, el fraude y la coerción en algunas adopciones en Guatemala: Los casos graves de secuestros que cuestionan el principio del “interés superior del menor” [Force, fraud, and coercion in some Guatemalan adoptions: High-profile abduction cases challenge the ‘best interests of the child’]. *Scripta Nova*.

Rotabi, K. S. (2008, Jan/Feb). New intercountry adoption requirements. *Immigration Law Today*, 12-15.

Rotabi, K. S., & Heine, T. M. (2010). Commentary on Russian child adoption incidents: Implications for global policy and practice. *Journal of Global Social Work Practice*. Available from <http://www.globalsocialwork.org/vol3no2/Rotabi.html>.

Rotabi, K. S., & Bunkers, K. M. (2011). In the era of reform: A review of social work literature on intercountry adoption. *Sage Open*. Available from <http://sgo.sagepub.com/content/early/2011/11/14/2158244011428160.full#aff-1>

Rotabi, K. S., & Bunkers, K. M. (November/2008). Intercountry adoption reform based on the Hague

Convention on Intercountry Adoption: An update on Guatemala in 2008. *Social Work and Society News Magazine*. Available from <http://www.socmag.net/?tag=adoption>

Rotabi, K. S., & Gibbons, J. L. (in press). Does the Hague Convention on Intercountry Adoption adequately protect orphaned and vulnerable children and the families who gave birth to them? *Journal of Child and Family Studies*.

Sanford, V. (2008). From genocide to femicide: Impunity and human rights in twenty-first century Guatemala. *Journal of Human Rights*, 7, 104-122.

Sanford, V. (2000). The silencing of Maya women from Mama Maquin to Rigoberta Menchu. *Social Justice*, 21(1), 128-151.

Selman, P. (in press). The rise and fall of intercountry adoption in the 21st century: Global trends from 2001 to 2010. In J. L. Gibbons & K. S. Rotabi (Eds.), *Intercountry adoption: Policies, practices, and outcomes*. Surrey, England: Ashgate Press.

Selman, P. (2009). The rise and fall of intercountry adoption in the 21st century. *International Social Work*, 52(5), 575-594.

Singer, P. (2002). *One world: The ethics of globalization*. Yale University Press: New Haven, Connecticut.

Smolin, D. M. (2006). Child laundering: How the intercountry adoption system legitimizes and incentivizes the practices of buying, trafficking, kidnapping, and stealing children. *Wayne Law Review*, 52 (113), 113-200.

United Nations Economic and Social Council Commission on Human Rights (2000) *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child*

Pornography: Report on the Mission to Guatemala of Ms Ofelia Calcetas-Santos. New York, NY: United Nations.

United Nations High Commissioner for Human Rights. (2010). *Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala.*

Available at

http://www.unhcr.org/refworld/topic_4565c225b_459b8a1e2_49c768892_0.html

United States Department of State (2009). *Trafficking in Persons Report 2009.* Available at

<http://guatemala.usembassy.gov/tipguate2009.html>

United States Department of State, Office of Children's Issues (n. d. a.). Guatemala country information. Available at <http://www.adoption.state.gov/country/guatemala.html>

United States Department of State, Office of Children's Issues (n. d. b.). Russia country information. Available at <http://www.adoption.state.gov/country/russia.html>

United States Government Accountability Office (2005). Foreign affairs: Agencies have improved the intercountry adoption process, but further enhancements are needed (Publication No. GAO-06-133). Available at:

<http://www.gao.gov/new.items/d06133.pdf>

van den Akker, O. (2007). Psychological aspects of surrogate motherhood. *Human Reproduction Update*, 13 (1), 53-62.

Van Wormer, K. (2005). Concepts for contemporary social work: Globalization, oppression, social exclusion, human rights, etc. *Social Work and Society*, 3(1), 1-10. Available at

<http://www.socwork.net/2005/1/articles/474/VanWormer2005.pdf>