

Will Global Surrogacy Be Regulated?

by Karen Smith Rotabi and Nicole F. Bromfield, Virginia Commonwealth University & UAE University
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Tags: adoption | global surrogacy | Palermo protocol | surrogacy in Guatemala | surrogacy in India | Trafficking | trafficking in persons | UN Protocol | International Organizations | Maternal Health | Women's Rights

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This article is the third in a series on global surrogacy by the authors published by *RH Reality Check*. Links to the previous articles on Guatemala and on India can be found in the text below.

Opening a conversation about the intersection between global surrogacy and trafficking requires that, regardless of the alarming practices outlined in previous articles (on [India](#) and on [Guatemala](#)), we must acknowledge that there are no internationally-accepted standards for regulating surrogacy practices. Among nations of the Global South, only India has sought to codify practices in the form of the [Assisted Reproductive Technology \(ART\) \[Regulation\] Bill 2010](#), which is still in draft form. While this new law may work out some practicalities, realistically women in India will remain vulnerable to abuse.

In India, both women's bodies and reproduction are constrained by the importance placed on bloodlines, the traditional value put on childbirth in addition and an emphasis on women's "purity." Surrogate mothers are, inevitably, at risk of social stigma. For married women engaging in surrogacy, many questions arise: How does surrogacy affect the marriage? Existing biological children? Many clinics, for example, require that the surrogate abstain from sexual relations with her husband during the pregnancy. Since surrogacy requires absence from family life as women live in pregnancy dormitories or camps, research on the cost-benefit analysis and impact on Indian family systems is needed. This includes the impact of absence on the surrogate's existing children.

More research also is needed in other nations where these practices have been quietly occurring. This includes the former Soviet Union, which is infamous for sex trafficking of women. Called *Natashas*, women's bodies are sold internally and on the global marketplace for sex trafficking, and it seems inevitable that organized crime will shift into the surrogacy market and sales of women's reproductive capacity. The proximity of Guatemala, also known for serious human trafficking problems, to the USA provides an added "value," making global surrogacy even more affordable to US citizens. Guatemala's lack of civil society and extreme poverty makes it ripe for entrepreneurs, including those who have previously worked in the inter-country adoption sector. We predict that Guatemala will become a new battleground on this issue and given the history of reform in the nation, it is likely that legal regulation will take years to institute.

International bodies such as the United Nations have seriously considered human rights abuses related to human reproduction. But the intersection between human trafficking and reproduction in the form of surrogacy has largely been overlooked in regard to fertility technology and the demand for infants. The [June 2010 Hague Conference on inter-country adoption](#) explored this issue as an unintended consequence of worldwide adoption reform to prevent child sales and theft.

Taking on this lucrative industry, netting well over a billion dollars annually on a global level, will be a challenge as it booms. New investigations and progressive discourse about human rights in this age of reproductive technology will be essential and must begin immediately. Emergent issues include fears about highly efficient baby farming and the rights of self-determination for women who work with little economic opportunity or rights in their communities. Some, like Dr. Nayna Patel, the Director of the Akanksha Infertility Clinic in India will argue that this is a form of work for a fair wage, with a woman earning far more in nine months than the average impoverished woman could earn in several years. This argument is much like the one used for prostitution and a woman's right to the marketplace and exercise of free will. Discourse about the various perspectives is important, but overlaying the phenomena on extreme poverty requires us to proceed with strict controls and human rights considerations. To do otherwise is dismissive of fundamental social justice principles of equity and fairness.

While some may call this science fiction, thinking in the future tense is essential because inevitably the loopholes in US immigration policy and state-level adoption laws leaves great vulnerability for human sales. For example, an impoverished woman in Guatemala could be fertilized with a highly desirable egg (i.e. from an Ivy League college student in the USA) and the sperm of a US citizen. If a parent or adoption representative is one of the unscrupulous persons involved in human sales, he/she could feasibly bring the child back into the USA as a citizen (given the lack of Federal surrogacy regulations in the US) and then immediately relinquish the child to the U.S. private adoption system. This could be done repeatedly with little oversight beyond immigration documentation. Because the US-private adoption system is notorious for high fees for desirable infants, especially in states where there is little regulation, a new form



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of child sales could prevail. Again, call it science fiction, but the lengths to which individuals and couples have been willing to go for a healthy infant have been extraordinary. All of this could easily be accomplished for \$50,000 to \$60,000 with the assistance of a handful of adoption attorneys that are known to be aggressive in serving the marketplace. We already know that many individuals and couples have been willing to pay such (or more) for a healthy Caucasian infant that has not been exposed to substance abuse in utero.

The legal intersection between global surrogacy and existing human trafficking laws is weak at best, and it might be difficult for a perpetrator of the types of human trafficking scenarios mentioned above to be prosecuted under current human trafficking legislation. The [U.S. Trafficking Victims Protection Act \(TVPA\)](#) protects victims of labor trafficking and certainly coerced surrogacy might be viewed as a form of labor trafficking, however, no protection to the trafficked infant in our “science fiction” scenario would be afforded under current US trafficking legislation. Furthermore, the current federal trafficking law would not be sufficient to prosecute the trafficker in this same scenario. The [UN Trafficking Protocol](#), also known as the Palermo Protocol, might allow for protection to a surrogacy trafficking victim, because the protocol loosely defines human trafficking and includes deception, the abuse of power, or having control of another person for the purpose of exploitation, in its trafficking definition. However, it is up to individual nations, who are signatories of the Protocol, to develop their own specific definition of trafficking within the Palermo Protocol framework, and to pass their own federal trafficking legislation. What is needed is for governments to explicitly name global surrogacy as a potential form of human trafficking, similar to the mention of *organ smuggling*, which is named as a type of human trafficking in the UN Trafficking Protocol. Minimally, governments need to be aware that there is the potential for serious human trafficking offenses within the emerging global surrogacy marketplace.

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Despite Progress, Forced-Adoption Practices Persist Throughout the United States

by Jessica DelBalzo



This has been a good year so far for an international community of mothers seeking redress for millions of forced adoptions that took place in the 1950s, '60s, and '70s.

May 15, 10:35am

Child Abduction for Adoption and the Tangled Web of Deceit in Guatemala: A Review of Erin Siegal's "Finding Fernanda"

by Karen Smith Rotabi



Because much of my research has focused on reforming intercountry adoption and most especially Guatemala, I opened Siegal's "Finding

Jan 31, 11:05am

Fernanda" cautiously. By the end of this captivating read, it is impossible to see Alvarado as anything but a strong and resilient woman who is determined to fight circumstances of poverty and oppression.

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profpatt *Will Global Surrogacy Be Regulated?*

July 8, 2010 - 1:06pm

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Whether global or local, you are right that what is needed is for governments to explicitly name surrogacy as a potential form of human trafficking and to pass legislation that would define and regulate the practice, protect the infant and punish abuse. The issue should be approached from the education side, as well. If we could raise awareness of what constitutes acceptable practice and what does not, this could be the single most effective action that any society can take. Awareness may lead to caution and questioning, thereby decreasing the likelihood of being victimized.

- <http://gvnet.com/humantrafficking/>

carolrhil814 *Global Surrogacy Be Regulated!!!*

July 8, 2010 - 4:22pm

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It had better be because if it is not there is going to all kinds problems we can't even imagine and that is a fact.

RH Wire
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It's amazing to me to witness everyday the extreme lengths people take to create a new being to unconsciously use as their poison container. Just as Alice Miller says:

"...You are right, unwanted children are usually mistreated. But there exist as a rule also a huge amount of people who were "wanted" indeed, but only for playing the role of the victims that their parents needed to be able to take revenge on. They were wanted to give their parents what the parents never had gotten from their own parents: love, adoration, attention and so many other things. Otherwise, why would so many people have five or more children when they have no time for them? Why do they adopt children if their body refuses to give them what they apparently "want?"

The never acknowledged, never felt pain of their childhood calls for being avenged. They go to church, they pray, they honor their parents, forgive them everything – and they mistreat their children at home, often in a very cruel way, AS IF THIS WERE THE MOST NATURAL THING, because they learned this so early. Their children learn this perverted behavior, also very early, and will later do the same; and so this perverse behavior continues for millennia. Unless people are willing to SEE the perversion of their parents and are ready to consciously refuse to imitate it.

You are not being "sickeningly sarcastic," you only dared to speak out the truth that most people are afraid of seeing or talking about..."

Alice Miller

<http://blogs.myspace.com/index.cfm?fuseaction=blog.view&friendId=84516927&blogId=369201785>

Alice Miller is quoted above making a number of meaningful points, but some of it goes beyond figures of speech:

Otherwise, why would so many people have five or more children when they have no time for them? Why do they adopt children if their body refuses to give them what they apparently "want?"

One's body does not "refuse" to conceive, any more than it "chooses" to not allow a fertilized egg to implant or "rejects" a fetus it does not "desire." These are biological processes which conscious will and wish don't directly affect. She could make her other points well without implying that the body of an infertile woman (or a couple, where the man might be the infertile one) "refuses" to allow a pregnancy to occur and go to term because of some sort of inadequacy or personal failing.

Alice Miller surely wasn't deliberately trying to be insulting – she's making powerful statements otherwise about the manipulative games than can be passed, even though not necessarily consciously wanted, from generation to generation – but she'd only have been more effective in making the points she was trying to make if she didn't in the above quote go quite so far to villify the adults who ought to be, and maybe are trying to be, more responsible than their parents were.

--southern students for choice, athens



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