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Preventing exploitation, promoting equity: findings from the International Forum on Intercountry Adoption and Global Surrogacy 2014

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adoptionfostering.sagepub.com**Kristen E Cheney**

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Abstract

This article summarises the findings of the International Forum on Intercountry Adoption and Global Surrogacy that took place in The Hague over 11–13 August 2014. The Forum brought together 80 of the world's pre-eminent scholars, activists and policy-makers on international adoption and surrogacy to consider the most pressing issues in both fields and posit solutions for them. Participants identified concerns about commercialisation and exploitation, poverty and inequality, and subsidiarity determinations. They recommended better preservation of information, pre- and post-adoption and surrogacy support, implementation of subsidiarity, and accountability of agencies to ensure equity and rights for all involved in international adoption and surrogacy arrangements.

Keywords

Exploitation, Hague Convention on Intercountry Adoption, inequality, intercountry adoption, rights, subsidiarity, surrogacy

Introduction

Preparations for the August 2014 International Forum on Intercountry Adoption and Global Surrogacy took place amid international news reports of numerous alarming developments and scandals. Revelations of extreme abuse by adoptive parents included the death of 13-year-old Hana Williams from Ethiopia at the hands of US adoptive parents¹ and abandonment of adopted children through 'rehoming'.² These stories fuelled the concerns of sending countries which, recognising fraud and trafficking warning signs in their own

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adoption systems, also led to the suspension of intercountry adoption (ICA) in the Democratic Republic of Congo (DRC)³ and Kenya.⁴ At the same time, the abandonment of a baby with Down's syndrome born through commercial surrogacy in Thailand highlighted the need to also scrutinise the growing practice of international commercial surrogacy.⁵ All of these stories brought to light remaining challenges for ICA and global surrogacy, making an international forum for discussion of these issues both timely and important.

This article characterises the overall findings from the Forum by recognising dominant themes and summarising the discussion around them. It describes the background, purpose and organisation of the Forum, followed by brief discussion of the main themes that emerged. Finally, the main recommendations yielded in the deliberations are considered. Recommendations for better preservation of information, pre- and post-adoption and surrogacy support, implementation of subsidiarity⁶ and accountability of agencies to ensure equity and rights for all involved in ICA and surrogacy arrangements will be of importance for other scholars, activists and policy-makers.

Forum background and purpose

The Hague Conference on Private International Law (HCCH) drafted the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (HCIA) to provide global, children's rights-based standards for international adoptions. Nevertheless, after 20 years of Hague Convention implementation significant unease about ICA remains. In addition, it was determined in the 2010 Special Commission that concerns over the rise in international surrogacy practices could not be covered under the HCIA. The Hague Conference has thus published several documents that analyse the issues surrounding parentage and international surrogacy arrangements to explore the possibility of promulgating a separate Convention regulating global surrogacy practices.

In light of these factors and the fourth Special Commission of the HCIA planned for June 2015, the Forum was organised to provide an opportunity for scholars and practitioners to come together to provide an evidence base for ICA problems and/or best practices, especially those which might inform the Hague Conference and HCIA Central Authorities as well as other international policy-makers about the latest state of knowledge about ICA and surrogacy. The Forum was organised into five cross-cutting thematic areas: (1) HCIA implementation and the best interests of the child in intercountry adoption; (2) Countries of origin and biological families; (3) Intercountry adoption agencies and the HCIA; (4) Force, fraud and coercion; and (5) Global surrogacy practices.

Approximately 80 scholars, activists and researchers from 30 different countries took part. Each day began with a brief keynote address by a noted expert in the field of ICA or surrogacy, bringing a distinct perspective based on his or her expertise that helped raise the tenor of discussion at the Forum.

First to speak was Hans van Loon, former Secretary General of the Hague Conference on Private International Law (1996–2013) whose comments helped to contextualise the debates of the Forum within the original objectives of the HCIA, which currently has 93 contracting countries.

The second keynote address was given by Deepa Venkatachalam, Director of Sama Resource Group for Women and Health in India, who presented an overview of the

surrogacy industry in India. She placed commercial surrogacy in the political-economic context of global trends in labour, medical technologies and the overall commercialisation of health, and summarised key findings from Sama's qualitative study of surrogates, along with India's current policies in this area.

The third and final keynote speaker was Norma Cruz, founder of the Survivors Foundation (*Fundación Sobrevivientes*) and human rights defender for mothers and their children who have been abducted into ICA in Guatemala.⁷ Cruz discussed the conditions that led to a necessity to stem the flow of illegal adoptions through implementation of the HCIA in Guatemala. She noted that adoption fraud in Guatemala took place within a context of civil war⁸ and a patriarchal system of 'machismo, racism and sexism' that disproportionately affected women by reducing them to objects for manipulation and exploitation. Cruz wished not only to convey the sadness and harsh realities of Guatemalans' experiences but also the positive stories of their encounters with adoption and lessons learned.

Following each plenary presentation and discussion, participants broke into concurrent sessions according to thematic areas. However, thematic area chairs jointly planned a number of concurrent sessions to address topics salient to multiple thematic area participants. Everyone then reconvened at the end of each day for a closing plenary session that briefly recapped the various discussions that took place in concurrent sessions. All plenary presentations and discussions were live-streamed and are archived on the ISS website.⁹

Key themes

A number of noteworthy themes emerged over the course of the Forum and are summarised below.

Synergies and differences between adoption and surrogacy

Bringing together experts on ICA with those on surrogacy created some fruitful ground for sharing experiences and lessons learned. While many of those who participated in ICA-related thematic areas came from social science and social work backgrounds, participants in the global surrogacy practices thematic area also hailed from medical sciences, bioethics and law. Because cross-border surrogacy is a much more recent phenomenon than ICA, the Forum presented a fruitful opportunity to discuss parallels and departures (see also Scherman, et al., this volume).

Some surrogacy experts thought that the Hague Conference's 2014 Report on surrogacy (HCCH, 2014a; 2014b) insufficiently emphasised women's rights – their vulnerability to exploitation, lack of independent legal representation and medical, psychological and social implications – while other participants were concerned about the perceived marginality of the child in most surrogacy arrangements.¹⁰

Darnovsky and Beeson (2014: 19) noted that surrogacy's utilisation of third-party gametes – purchased eggs and sperm – has no direct correlate in adoption. However, Cahn (2011) claims that adoption holds lessons for assisted reproductive technologies (ART) wherever the child is not genetically related to one or both parents. In any case, Forum participants expressed concern about the lack of evidence-based information on long-term risks of the hormonal manipulation of the egg providers' endocrine systems as well as the minimal information available on short-term risks, making truly informed consent problematic.

Furthermore, when it comes to the problem of access to information, we can take the lessons learned from adoptees to pre-empt some difficulties ahead; for example, in India, the surrogate mothers' and egg providers' names do not currently appear anywhere in the birth or hospital records of the resulting children, making it difficult if those children want to establish contact with them later in life – an issue with which adoptees are very familiar. Adoptee organisations have been advocating for better preservation of records for many years so as to facilitate birth family searches.

Participants readily agreed that it is important to address both women's and children's rights in policy and ICA, and surrogacy advocacy.

What's in a name? Terminology matters

Terminology was an important starting point for laying the ground rules of discussion at the Forum – particularly for how one refers to the people involved in ICA and global surrogacy. According to Sarah Hrdy (1999: 57):

... all parenting can be argued to involve physical and bodily processes and are 'biological' in that sense. The term 'birth mother', on the other hand, looks at these women purely from the point of view of the Global North, as 'just' giving birth so that others can become the 'real' parents...

Darnovsky and Beeson (2014: 24) add:

Some terms, such as 'birth mother' and 'gestational mother', explicitly acknowledge the maternal aspect of the woman's role. Others, such as 'gestational carrier', make her maternity and even her personhood less visible.

This raises the question of who gets to determine who is the actual parent of an adopted or surrogate child – legally, socially or emotionally – implicating global relations of power. The same applies to labels describing children in ICA, which often freeze adoptees in time by referring to them as perpetual children.

There is also the question of what is meant by 'special needs' and how the label may affect adoptees; according to agencies and central authorities, this could mean anything from permanent debilitating medical conditions, to children who have been institutionalised, to being a relatively older child available for adoption.

There was also fundamental disagreement about whether surrogacy should be seen as 'work'. Whether or not one views commercial surrogacy as a legitimate form of labour – as well as whether the children born through surrogacy can be seen as 'goods' – has serious implications for whether and how to go about regulating the practice. Accepting surrogacy as work could empower women to demand higher salaries, better working conditions and protections (Pande, 2014). However, many Forum participants questioned where such an allowance ends: if we view commercial surrogacy as a form of work, does it imply that the baby is a product? In other words, is commercial surrogacy *service* work or a form of *production*? According to Darnovsky and Beeson (2014: 26), 'If surrogacy arrangements are not to be seen as baby selling ... payment to gestational mothers must not depend on the success of the pregnancy or the health of the child.'

While participants came to no consensus on appropriate terms, there was general agreement that language and vocabulary matter because of the ways in which they frame debates (see Beeson, Darnovsky and Lippman, 2014). One must therefore carefully examine one's

own reasons for choosing certain terms over others and approach this consideration with respect for the varying subject positions and perspectives of the people involved in and affected by ICA and surrogacy.

What do we mean by ‘best interests’?

The subjectiveness of ‘best interests’: reflections of the powerful? Forum discussion often addressed the ways in which children’s ‘best interests’ are constructed and deployed in an effort to clarify what they do or should mean in ICA and commercial surrogacy arrangements. Because ‘best interests’ are too often in the ‘eye of the beholder’ – and the beholder is rarely the child but her interlocutors in adoption and surrogacy – it is problematic to base fundamental life decisions for a child on this concept. Children’s interests often conflict with parents’ interests and are constructed by hegemonic processes (Richards, 2014: 2–3): ‘Under such circumstances, there is a real danger that “best interests of the child” just reflect [class-based and gendered] notions and values of the powerful’ (Högbäck, 2014: 11).

Ethnocentrism and inequality in ‘best interests’. Forum participants noted that the construction of ‘family’ in the HCIA is implicitly western, nuclear, neo-local and heteronormative. This construction can influence the criteria for determining a child’s ‘adoptability’ as well as a family’s qualifications to adopt. Further, this western construction of family often contrasts with traditions of informal and extended family child care in many countries of origin, particularly in Africa, where a child’s circulation among kin and community rarely implies a severance of ties with the birth parents or a relinquishment of their parental rights. Few African first families who relinquish children for ICA thus understand their actions as having permanent legal implications, partly because they equate adoption with their own cultural traditions of child circulation, and/or because it is rarely presented to them as a permanent arrangement (Cheney and Rotabi, 2015). Further, first families are not just mothers but also fathers, aunts, uncles, siblings, grandparents and other relatives (Högbäck, 2014). Determinations of adoptability under the HCIA therefore require contextualisation within local, extended family child care practices in countries of origin.

Such cultural considerations have implications not only for determining adoptability but also for determining subsidiarity. While they agreed that subsidiarity was ambiguous, Forum participants disagreed on whether it was appropriate that the HCIA prioritises ICA before institutionalisation in countries of origin. The conclusion was reached that the subsidiarity principle was appropriate only if ‘subordinate to the best interests of the child’, to avoid being driven by prospective adopters’ or agencies’ demands for children. Despite various HCIA safeguards that apply to obtaining the consent of first parents, as Högbäck (2014: 11–12) states:

There is the danger of subsidiarity in many cases being an empty word, sometimes even being viewed by adoption agencies as a threat (to the smooth continuation of adoptions). This leads to the marginalisation of families of origin and other domestic solutions.

Although van Loon stated in his keynote speech that the HCIA intentionally puts the determination of subsidiarity in the hands of countries of origin to restore their control over the process, it is clear that in current practice, many countries lack the capacity to make that determination without external pressure from receiving countries – particularly if they are not signatories to the HCIA but also where signatory countries lack clear guidelines,

resources for implementation and technical support. In the context of unequal global power relations, subsidiarity can thus become a difficult burden for ill-equipped countries of origin. The HCIA can thereby inadvertently perpetuate such inequalities (Högbacka, 2014: 12). Even where countries of origin are involved in decisions about a child's adoptability, the views and concerns of adoptees and first families, particularly mothers, are often excluded from dominant adoption narratives. Participants concurred that if we want to prevent unnecessary adoptions, we need to redress not just the micro but also the global inequities that precipitate them and support international development efforts that emphasise child and family preservation, welfare and protection. Otherwise, ICA ends up being 'a permanent solution to a temporary problem'.

Towards a more dynamic understanding of 'best interests'. What 'best interests' means in adoption discourse has changed historically as ideas about adoption have shifted. Though it was once thought that a 'clean break' from first families was in adoptees' best interests, open adoption is now standard in domestic adoptions in the Global North, while most international adoptions remain 'closed'.¹¹ As Richards (2014: 4) writes, 'such adoptions are clearly not in the best interests of the adopted person, the first family or indeed the adoptive family'. Despite its complexity, Forum participants generally encouraged more openness in ICA.

Finally, there was agreement that ICA standards need to reflect a more dynamic understanding of best interests that change across an adopted person's lifetime. It is therefore crucial to include adoptees – children and adults – in the construction of policies that determine their own best interests.

Process and practice

From children's 'best interests' to children's rights. Participants emphasised that 'best interests' must be seen not as an abstraction but as a practical, responsive decision-making process that changes over time to 'consider the individual child in front of us when making decisions on their behalf' (Richards, 2014: 3). However, Nigel Cantwell argued that 'best interests' had been manipulated and abused to reflect the interests of interlocutors and adoptive parents, and that we should focus instead on children's human rights. A comprehensive rights-based guideline or checklist such as that suggested in Cantwell's (2014) UNICEF publication might help concretise the concepts of 'best interests' and subsidiarity. Forum participants recommended that such guidelines start with the question: 'What should I be able to say to the adopted person about the decision to place them for intercountry adoption?' (Richards, 2014: 3) and that agencies must be held accountable for decisions they make on behalf of children, 'in their best interests'. The guidelines could include timing, risk assessment, welfare available in country of origin, local definitions of adoptability, particular needs, family contact and reunification, and preservation of information, in all of which central authorities could play an important role.

The 'best interests' of the child in global commercial surrogacy. In sharp contrast to adoption, the conversation about the 'best interests' of the child in global commercial surrogacy is just beginning. It may seem difficult to consider the rights of children who have yet to be conceived, but it is imperative to consider whether it is in the 'best interests' of children to be born through this method.

The Thai surrogacy scandals that broke just before the Forum in August 2014 – one in which an Australian couple abandoned a baby boy with Down’s syndrome while taking his twin sister, amid revelations that the commissioning father had multiple child molestation convictions (Pearlman, 2014); the other in which a wealthy 24-year-old Japanese man had fathered 16 children through Thai surrogate mothers in the course of about two years (Rawlinson, 2014) – threw the question of children’s interests in surrogacy into greater relief. Despite other stories of commissioning parents abusing or molesting children born through surrogacy, Darnovsky and Beeson (2014: 19) point out that there is no required screening process for commissioning parents.

Though little is known of the medical implications for children born through surrogacy, some studies indicate higher risk of foetal anomalies due to *in vitro* fertilisation (Merritt, et al., 2014). In surrogacy, health risks are compounded (sometimes four- or fivefold) after birth by the immediate transfer of children into commissioning parents’ care, such that neither child nor mother receives the health advantages associated with nursing (WHO, n.d.) and other physiological connections between babies and birth mothers (Darnovsky and Beeson, 2014: 23).

Though many surrogate mothers will cite the ‘best interests’ of their own children – the desire to better educate, house or feed them – as their motivation for entering into commercial surrogacy, their children may suffer adverse effects when their mothers leave them to bring to term a child they will hand to someone else. Children of surrogates are sometimes left with relatives or neighbours who may not care for them as their mother would. She is often not allowed to visit them and they are not always able to visit her as her pregnancy progresses. This can lead to separation anxiety and even fears of abandonment when they ‘see their parents willingly giving away children after birth’ (Steadman and McCloskey, 1987). Rotabi and Goswami also noted that during an interview with a surrogate mother in Gujarat, India, the interviewee’s seven-year-old son interjected, saying, ‘We don’t need the money; can we just keep my brother?’

Identity, openness and the importance of information

Questions of how experiences of adoption and surrogacy shape people’s subjectivities, as well as the attendant importance of the availability of information – from the very beginning of adoption and surrogacy processes and throughout the lifetimes of individuals who have been adopted and/or born through surrogacy – determine subsequent recommendations for more openness in ICA and surrogacy. Though adoptees do not always identify as ‘orphans’ or ‘adoptees’ (Gray, 2009), it is important to acknowledge that adoption profoundly shapes one’s identity in immutable ways. For this reason, we need to continue to avoid pathologising adoption.

Pre- and post-adoption services could play a larger role in accommodating adoptees’ journeys through identity formation. Because ICA is also often interracial and intercultural, Richards (2014: 8) notes that:

Adoption support groups commonly focus on activities that aim to link the adopted person to their origin cultures, but it should not be assumed that these activities assist children in learning about ways to respond to racism in their adopted countries.¹²

Those conducting home studies and offering post-adoption support, including informal organisations, could therefore give more attention to dimensions of racial and cultural

difference in ways that help adoptees and their families to cope with those differences in positive ways. At the same time, first families continue to be a 'hidden dimension' in ICA. Those implementing the HCIA could do more to acknowledge the importance of extended family, particularly in Africa. Aunts, uncles and siblings may turn out to be international adoptees' most important potential sources for learning more about their own identities through first families.

It is still too early to know the long-term psychological effects of having been born through surrogacy. It is often presumed that children born this way (particularly those genetically related to their parents) are not likely to link their identities to the circumstances of their birth. However, many underestimated the desire of adoptees to learn more about their birth families as they came of age, and we are already seeing children born through third-party gamete providers wanting to know more about those providers, and perhaps maintain relationships with them. Darnovsky and Beeson (2014: 45) ask, 'What role should intermediaries be encouraged or required to play in these situations?' These issues become more acute in global commercial surrogacy arrangements, where the surrogate will live in another country and often be of a different ethnic origin to the child and commissioning parents.

Despite studies showing that open adoptions potentially benefit adoptees, first mothers and adoptive parents (Grotevant, et al., 2007; 2013), the majority of intercountry adoptions remain closed, with full severance of ties. Forum participants were overwhelmingly against the 'clean break' model that dominates ICA; not only is it premised on completing western families' notions of exclusive, nuclear parenthood but 'it sets up the terms of what connections mean, effectively erasing origins' (Högbacka, 2014: 8). Such denial of the existence or importance of first families can (re-)traumatise adoptees.

Although barriers to openness – including distance, language, culture and sizeable wealth disparities between the original and adoptive families – certainly exist, the clean break model disproportionately affects first parents, as they cannot effectively demand information about their child. They often suffer grief and depression as a result (Grotevant, et al., 2013). Some surrogate mothers also report similar feelings of severance with the children to whom they have given birth and yearn for news of them long after relinquishment. Compulsory anonymity deprives providers and progeny of the possibility not only of future reunion but also knowledge of health risks such as genetically inherited conditions (Darnovsky and Beeson, 2014: 28–30). Greater openness would also better accommodate adoptees' identity formation.

Some adoptive parents are very supportive of their children who want to conduct birth family searches, but by the time an adoptee is able to initiate a search for her first family, the trail may have grown cold. Participants thus overwhelmingly favoured the maintenance of information that would make contact with original families possible. Agencies and central authorities could assist with this by maintaining records and helping to initiate contact between adoptees and their original families, as currently happens in many domestic adoption practices. By the same token, the meaning of 'open adoption' needs to be made explicit, both in legal and informal terms, so that the rights of all parties are protected.

People adopted or born through surrogacy also have a right to information about their origins. Birth and adoptive families, as well as surrogate and commissioning parents, need accurate information in order to make informed decisions and to be adequately prepared for the consequences. Too often, though, they have too little information or find that the information provided by intermediaries is inaccurate or even that it has been falsified. Sometimes

it is actively erased, as when birth certificates list only adoptive or commissioning parents but make no mention of birth mothers or egg providers. Adoption agencies are overwhelmed by requests from adoptees for information on their first families (*Att Adoptera*, 2007: 3; Speirs, et al., 2005: 843), raising the question of whether agencies are part of the solution or part of the problem, as they are sometimes involved in obfuscating information. Agencies that broker international surrogacy arrangements have also been criticised for providing incomplete, insufficient or inaccurate information to both intending parents and surrogate mothers. Darnovsky and Beeson (2014: 19) conclude that:

Because intermediaries are often not part of stable enterprises, central government registries may be the most feasible approach to preserving birth records for those who later want accurate information on their origins.

The effects of commercialisation

The combination of poverty and profit potential make for a global market in modern practices of family formation through ICA and surrogacy (Cheney, 2014a). Forum participants agreed that global inequities and market forces need to be better acknowledged and addressed in both cases. Structural conditions of poverty and lack of alternative support drive women to engage in surrogacy and relinquish their own children, often in circumstances of temporary stress but with lifetime emotional consequences. At the same time, structural poverty makes vulnerable populations susceptible to exploitation by profit-making intermediaries in adoption and surrogacy.

Despite the HCCH's identification of poverty as an insufficient justification for removing children from their homes or seeking adoption for them, relinquishing parents and surrogate mothers alike regularly cite poverty as a motivator for their actions. Even the rise in special needs adoptions may be driven by poverty and stigma in sending countries and the decreasing 'supply' of more sought-after healthy infants and children (Cheney, 2014a). Intercountry adoptions currently cost USD \$25–40,000 while the global surrogacy industry is estimated at well over one billion dollars per year. In both cases, middlemen profit most, sometimes shifting from one business to the other. According to Darnovsky and Beeson (2014: 18), 'Financial incentives appear to be encouraging some people who have operated intercountry adoption agencies to shift their focus to surrogacy in countries including the United States, Guatemala and Mexico.' This has implications for human trafficking, a concern since the genesis of the HCIA (van Loon, 1993).

While exploitative practices in ICA are well documented, the question of exploitation in surrogacy is more difficult to determine: women who act as surrogates are asked to consent to relinquishment of the child as a precondition of being impregnated. Though many commercial surrogates report voluntary involvement, their agency is often constrained by extreme poverty and limited alternatives (Rotabi, 2014).

It is clear that adoption and surrogacy have become commercialised and that financial incentives have led to unscrupulous practices, even where clear standards and regulations such as the HCIA are in place. The Convention prohibits 'improper financial gain' in adoption, which was further elaborated in the HCCH guides to good practice (2008; 2012). But does this mean that there are conditions under which financial gain is 'proper'? According to the HCCH (2014c: 3), '... the lack of clarity and consistency in deciding what is "reasonable" has led to situations where prospective adoptive parents are required to pay excessive

amounts to complete an adoption...’ – often through agencies’ complicity in child abduction, selling and trafficking. Nor has the establishment of central authorities entirely eliminated concerns.

Is it even possible to remove money from adoption and surrogacy processes? Improved financial transparency and accountability are imperative to avoid illicit profit-making, especially amid the decrease in ICA and agencies’ attendant falling income. Agencies which have lost income due to the decline in intercountry adoptions over the past decade also have increased costs for home studies, preparation and support, particularly due to the rise in special needs placements (Selman, 2014).

Still other types of donations can establish skewed relations of obligation and reliance between donors and recipients; often, orphanages in countries of origin are funded externally by individuals or organisations in receiving countries with interests in creating a pipeline for ICA. In his description of the current situation in Uganda, Mark Riley suggested that private donor influence was impeding the development of child protection and welfare structures (see also Cheney and Rotabi, 2015). Rather than trying to redirect cash flows within the adoption industry, Cantwell (2014) proposed that we eliminate them altogether and instead encourage sending countries to request development aid for preventive care and social protection of children and families. However, although the Hague Conference 2010 Special Commission recommended ‘a clear separation of intercountry adoption from contributions, donations and development aid’ (HCCH, 2010, as cited in HCCH, 2012: 91), countries of origin still report subtle pressures to make children available for adoption as a condition of receiving aid.

The way forward

The recommendations made by Forum participants reflect a concern for the basic human rights of all involved in ICA and surrogacy. However, it is important to realise that international treaties like the HCIA have both advantages and limitations: the minimum standards they set can be adapted and enhanced in domestic laws, but they are also relatively static documents which, once they have been adopted, cannot easily be changed to reflect new developments and realities. While the HCIA addresses these issues in ICA, there is not yet a regulatory instrument on surrogacy, and there may not be one for some time. In any case, ensuring ethical practice in ICA and surrogacy is not only the responsibility of the HCCH, but also – and indeed primarily – of the individuals, agencies and states joining and implementing such international treaties.

To start, availability of accurate information is of paramount importance for relinquishing parents in ICA and surrogacy, many of whom report having little understanding of the long-term consequences of relinquishment. Commercial surrogates and egg donors require adequate explanation of medical and psychological risks. Information, education and support are also crucial as ICA trends more towards special needs adoption, where all parties involved could benefit from more adequate preparation.

Preserving information and providing post-adoption/surrogacy support are also essential for adoptees and surrogate children’s identity formation. Central authorities could play a greater role in ensuring and maintaining adoptees’ access to information. All available information is helpful for adoptees – and it may become so for children born through surrogacy as they come of age and start to wonder about the circumstances of their

births. Central authorities must therefore follow up with reporting as requested by the countries of origin.

The emphasis on information necessarily precludes ‘clean break’ models of adoption and surrogacy and forces both greater openness and compliance with the subsidiarity principle, particularly where poverty is a factor.¹³ Adoption agencies (which may be threatened by increases in domestic adoptions) must also be more accountable to this principle. Unethical practices by agencies wishing to profit could in fact be bolstered by the western-centrism of the HCIA by deploying its narrow definition of ‘stable family’ and determining who is an ‘adoptable’ ‘orphan’. Further, ‘informed consent’ is problematic in coercive conditions of poverty and repressive reproductive policy, such as under the former One Child Policy in China. It is important to note that ICA does not alleviate poverty, either at the household or the national level. The priority should be on assistance to first families and development aid to countries of origin (though this must be separate from adoption considerations). Otherwise, ICA will continue to be a permanent solution to a temporary crisis in the first family.

At the end of the Forum, many participants reflected on what it means to commodify human beings in adoption and surrogacy. Rotabi said that this was an especially difficult struggle for participants who want to keep ICA as an important option for children who really need it. Part of the answer was to keep thinking through how to prevent exploitation, protect victims and prosecute the most nefarious offenders, while also acknowledging the macro-structural factors – multiple inequalities such as class, gender, sexuality, race and caste – that precipitate commodification and exploitation. In plenary discussion, Rotabi asked:

How do we talk about the structural inequalities in creating opportunities for work that is not around exploitive labour but work that women really, really want to engage in, because women will say, ‘I’m choosing the best of my options.’ How about some better options?

Concrete steps to address inequality lead us back to broader questions of international development, such as better social protection for family preservation within sending countries to withstand the demands of a commodified reproduction market (Cheney, 2014a). In this regard, Forum discussion helped recall the challenges in regulating adoption to consider how potential regulation of surrogacy could be structured. Though adoption and surrogacy are similar in that most infertile couples may consider them together as their only two options for having children, Darnovsky pointed out that there are many ways in which the analogy between cross-border surrogacy and ICA – and other analogies invoked around labour, work (especially sex work) and organ transplantation – are both helpful and dangerous, in that they do not precisely map onto surrogacy practices and therefore can obfuscate as well as reveal aspects of international commercial surrogacy.

In surrogacy, there is also a larger, fast-moving technical context of ART, with the futuristic prospect of inheritable genetic modification having potentially profound ethical implications. The issue relates to concepts of kinship, which are greatly manipulated in ART in order to allow the unfettered flow of commerce. ‘I think what we need is new categories for thinking about what surrogacy is,’ Darnovsky concluded, ‘and I don’t think we’ve come to those yet, but I think we should be striving for that.’

While we must never forget the concerns of women in surrogacy, we must also think beyond the child as ‘product’. Does international commercial surrogacy violate a child’s

rights to identity, family or nationality under the Convention on the Rights of the Child? This is but one of the many areas in which we need more research.

The Forum yielded information and debate to inform knowledge and practice in various disciplines, from bioethics, to population studies, to social work, with the intent of furthering the best interests of all involved, however flawed our understanding of the term ‘best interests’ might be.

Selman posited that even if ICA were to cease immediately:

... there are a million children out there who have been adopted, and we’ve got to have in place structures that continue to support them and inform them, and therefore ... these situations are ones that don’t go away – and the same will apply to surrogacy, even if we decide to ban it or [draft] a convention.

Participants thus came away with new research and advocacy ideas to carry forward the issues raised. Various publications and collaborations are sure to emerge in time from the discussion at the Forum (including Scherman, et al., this volume). They also resolved to redouble their efforts to inform policy and people considering adoption and surrogacy by talking to media more effectively and bringing the knowledge acquired at the Forum back to their organisations and networks. It is my hope that readers of this article will do the same.

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Notes

1. www.slate.com/articles/double_x/doublex/2013/11/hana_williams_the_tragic_death_of_an_ethiopian_adoptee_and_how_it_could.html
2. www.reuters.com/investigates/adoption/#article/part1
3. <http://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notices/DRC7-11-14.html>
4. www.nation.co.ke/news/Cabinet-No-more-foreign-adoptions/-/1056/2537564/-/feyt4qz/-/index.html
5. www.abc.net.au/7.30/content/2014/s4089822.htm
6. The principle that decisions should be taken at the lowest possible level, or closest to where they will have their effect, e.g. in a local area rather than nationally.
7. Cruz’s keynote was delivered in Spanish and interpreted by Forum participant Carmen Monico.
8. Guatemala’s civil war lasted from 1960 to 1996.
9. www.iss.nl/adoption_surrogacy
10. It should be noted, however, that Part C of the 2014 study sets out many of the women’s rights issues arising in relation to international surrogacy arrangements which were discussed at the Forum (cf. HCCH, 2014b: 89). The HCCH also identified objectives of further international work in the 2014 report, e.g. at para. 61, where it states that an objective of international work would be ‘to ensure that ISAs [international surrogacy arrangements] are conducted in a manner which respects the human rights and welfare of *all* those involved with the arrangement’ (HCCH, 2014a, emphasis added).
11. The HCIA does not define the nature of adoption as either open or closed, leaving this to national law.

12. For an incisive account of such experiences, see the *Red Thread Broken* blog post (19 December 2014) on the suicide of a 13-year-old international adoptee. Available at: <http://redthreadbroken.wordpress.com/2014/12/19/in-memory-of-emilie-grace-olsen-and-all-adoptees-gone-too-soon/>.
13. The HCCH *Guide to Good Practice* (2012) leaves subsidiarity determinations to countries of origin but encourages co-responsibility between states.

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