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Global Surrogacy Practices

Marcy Darnovsky and Diane Beeson

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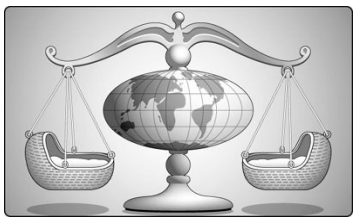
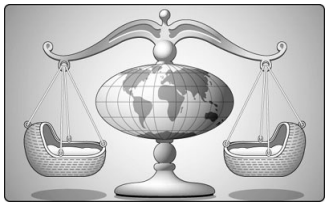


Report for Thematic Area 5
International Forum on Intercountry Adoption and Global Surrogacy
11-13 August 2014
International Institute of Social Studies
The Hague, Netherlands

Kristen E. Cheney, Editor



The International Forum on Intercountry Adoption & Global Surrogacy (ICA Forum) took place at the International Institute of Social Studies (ISS) from 11 to 13 August 2014. The goal was to provide an opportunity for scholars and practitioners to come together to provide an evidence base for international adoption and surrogacy problems and/or best practices. The ICA Working Paper series summarizes the deliberations that took place at the Forum.

Each paper in the series is authored by a chairperson of one of the Forum's five thematic areas, with feedback from thematic area participants. There is also an executive summary by the organizer.

For more information about the Forum, please visit iss.nl/adoption_surrogacy

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Institute of Social Studies
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Abstract

This report summarises discussions of participants in Thematic Area 5 (Global Surrogacy Practices) of the International Forum on Intercountry Adoption and Global Surrogacy held in August 2014. The Forum brought together advocates of women's health, children's rights and human rights; scholars from a range of disciplines; social workers; and legal and policy analysts with expertise in third-party reproduction and/or adoption. To the best of our knowledge, this was the first major convening of scholars, advocates and policy experts to jointly consider these topics and to highlight practices that should be either encouraged or avoided.

Participants affirmed the importance of resolving the legal and citizenship status of children resulting from international surrogacy arrangements. In addition, they highlighted the need for greater policy and public attention to a wide range of effects on all the parties involved, particularly women working as surrogates and the children they gestate and bear.

In addition to these status issues, concerns deemed particularly troubling included practices posing unnecessary medical risks to surrogate mothers and children; restrictions on personal autonomy of surrogates; the need to maintain records so that participants in surrogacy arrangements retain the option of future contact; the absence of basic screening of commissioning parents to reduce risks of abandonment or abuse of children born via surrogacy; and the absence of regulation or oversight of intermediaries in these commercial arrangements.

Participants stressed the importance of these concerns being taken into account in any future Hague Conference convention on intercountry surrogacy.

Keywords

International surrogacy, cross-border surrogacy, commercial surrogacy, contract pregnancy, Hague Conference.

Acronyms

ASRM	American Society for Reproductive Medicine
ART	Assisted Reproductive Technologies
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
FBI	Federal Bureau of Investigation
GIRE	Grupo de Información en Reproducción Elegida
HCCH	Hague Conference on Private International Law
HCIA	Hague Convention on Intercountry Adoption
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IVF	In Vitro Fertilization
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund

INTRODUCTION[1]

The International Forum on Intercountry Adoption and Global Surrogacy took place at the International Institute of Social Studies in The Hague, Netherlands from August 11-13, 2014,[2] in the wake of headlines about two disturbing surrogacy incidents in Thailand.

In one case, an Australian couple abandoned a baby boy, conceived using the husband's sperm. The boy, who has Down syndrome, was left with his Thai surrogate mother while the commissioning parents returned home with his twin sister. The husband was then revealed to have been convicted of multiple child sex offenses that took place between the early 1980s and early 1990s against girls as young as five years old (Pearlman, 2014). In the other news story, a 24-year-old son of a Japanese billionaire fathered 16 children since June 2013 with Thai surrogate mothers, claiming that he wanted a large family (Rawlinson, 2014).

These cases underlined already strong concerns among the women's health and human rights advocates, scholars, and policy experts in attendance who had been working on issues related to commercial surrogacy prior to participating in the Forum. These cases also alarmed Forum participants whose past work focused on intercountry adoption.

The Forum afforded an unparalleled opportunity for some 25 participants in its 'Global Surrogacy Practices' thematic area to share their work and thinking on the many issues related to intercountry surrogacy,[3] and to engage with the intercountry adoption experts from the Forum's other four thematic areas. Some scholars have recognised that there is much to be learned regarding international surrogacy arrangements from the recent history of intercountry adoption (Cahn, 2011). To the best of our knowledge, however, this Forum was the first major convening arranged so that experts from both groups could address this topic together.

The discussion of intercountry adoption and global surrogacy was motivated in part by the policy processes under way at the Hague Conference on Private International Law. The Forum took place ahead of the Special Commission of the Hague Conference's Convention on Intercountry Adoption (HCIA) in June 2015, which is scheduled to discuss challenges and good prac-

[1] The authors wish to first thank Kristen Cheney, without whose insight and dedicated work the International Forum on Intercountry Adoption and Global Surrogacy would not have been possible. We appreciate the central roles that she and Karen Smith Rotabi played in initiating the Forum. We also thank the thematic area chairs, and the staff and student volunteers at the International Institute of Social Studies. Our preparations for the Forum and work during it and on this report were ably assisted by Victoria Nichols. Special thanks to Sonia Allan, Kristen Cheney, Marsha Darling, Eniko Demény, Daisy Deomampo, Shree Mulay and Sally Whelan for their close readings of earlier drafts, and to all the participants in the Global Surrogacy Practices thematic area who gave us the benefit of their suggestions.

[2] See the Forum website at www.iss.nl/adoption_surrogacy

[3] This report uses the terms 'intercountry surrogacy', 'international surrogacy' and 'global surrogacy' interchangeably. None are meant to imply the involvement of only two countries; surrogacy arrangements can involve three or more countries.

tices concerning the implementation and operation of the HCIA, including issues such as illicit practices in intercountry adoption and 'failed' adoptions.

The Hague Conference has also issued a report and other documents about international surrogacy, expressing concerns over the exploitation of women and the status of children born under these arrangements. Its Permanent Bureau expects to receive guidance from members (77 countries and the EU) about whether, and if so how, to move ahead toward a possible convention regulating issues pertaining to cross-border recognition of parent-child relationships and the status of children, including (but not limited to) international surrogacy. Permanent Bureau staff observed the discussions at the Forum, and indicated their active interest in them.

The Forum was initiated and hosted by the International Institute of Social Studies (ISS) of Erasmus University Rotterdam. Its press release described the event as a venue 'to discuss ways to improve international standards around the evolving practices of cross-border adoption and surrogacy, in which children typically move from poorer to wealthier countries'. It characterised the Forum's aim as 'providing an evidence base for international adoption and surrogacy problems and/or best practices' with an eye to 'crosscutting themes pertinent to the [Hague Conference] Special Commission …includ[ing] children's best interests, families and countries of origin, and issues of fraud and coercion' (ISS, 2014a).

Brief accounts of the Forum were published at *The Drum,* an online news site of the Australian Broadcasting Corporation (Van Wichelen, 2014), and on the blogs of the Center for Genetics and Society (Darnovsky, 2014a) and Our Bodies Ourselves (Darnovsky, 2014b).

Forum Planning and Schedule

The Forum was initiated by Kristen Cheney, Senior Lecturer of Children and Youth Studies for the International Institute of Social Studies, and was funded primarily by the Political Economy of Resources, Environment and Population (PER) research programme. The Forum was organised into five thematic areas, each with an invited chair:

- *HCIA Implementation and the Best Interests of the Child*, chaired by Sarah Richards, Senior Lecturer, University Campus Suffolk, UK
- *Intercountry Adoption, Countries of Origin, and Biological Families*, chaired by Riitta Högbacka, Adjunct Professor (Docent) in Sociology, Researcher and Lecturer, the Department of Social Research in Helsinki University, Finland
- *Intercountry Adoption Agencies and the HCIA*, chaired by Peter Selman, Visiting Fellow in the School of Geography, Politics & Sociology, Newcastle University, UK
- *Force, Fraud, Coercion,* chaired by Karen Smith Rotabi, Associate Professor of Social Work, United Arab Emirates University, UAE
- *Global Surrogacy Practices*, chaired by Marcy Darnovsky, Executive Director, Center for Genetics and Society, Berkeley, California, USA

Planning for the Forum began in summer 2013, and continued with regular conference calls held by the organiser and thematic area chairs. Chairs extended initial participant invitations for their respective thematic areas, and later opened participation to additional interested parties. Chairs worked together to plan the format and content of the concurrent sessions. The organiser and chairs together planned the plenary sessions, and structured the Forum with the objective of fostering crosscutting conversations – across themes, disciplines and professional orientations. All sessions were structured to minimise traditional presentations and maximise dialogue and problem solving.

The Forum website was posted in December 2013. In May 2014, the International Institute of Social Studies launched an online platform for participants that included information about and general readings for the Forum (articles written by participants and others), as well as detailed schedules and readings for each thematic area.

Each of the Forum's three days started with a plenary address by a prominent expert:

- Hans van Loon, the former Secretary General of the Hague Conference on Private International Law (1996-2013) who initiated and laid the groundwork for the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Van Loon spoke about the genesis of the Convention, the challenges it has faced, and gave an appraisal of its impact.
- Deepa Venkatachalam, director of Sama Resource Group for Women and Health, and a specialist in the social, medical, ethical and economic implications of intercountry surrogacy, for women and for society as a whole. Venkatachalam gave an overview of the surrogacy industry in India, summarised the key findings of interviews with surrogates conducted by Sama, and reviewed the current state of policy in India on intercountry surrogacy.
- Norma Cruz, a human rights advocate for mothers and their children abducted into international adoption; founder of the Survivors Foundation, Guatemala; 2005 Nobel Peace Prize nominee; and winner of US State Department's 2009 International Woman of Courage Award. Cruz discussed the abduction and selling of children that was rampant in Guatemala when adoption was in the private sphere and the dramatic improvement that took place as a result of implementation of the Hague Convention on Intercountry Adoption.

Following the plenary presentations and discussion, participants broke into concurrent sessions, organised by thematic area and devoted to specific subtopics. A number of these were planned as joint sessions designed to include participants from two or three of the thematic areas.

End-of-day plenaries gave participants an overview of what was covered at the sessions they did not attend, and provided an opportunity for further discussion. All plenary presentations and discussions were live-streamed, and are available on the ISS website (ISS, 2014b).

The Global Surrogacy Practices Thematic Area

The Global Surrogacy Practices thematic area was described on the online platform this way:

> Women's experiences as surrogates; impacts of race, class, gender and power on their decisions, health outcomes, human rights, and well-being; experiences of and outcomes for resulting children, intended parents and egg providers in surrogacy arrangements; understanding the range of surrogacy regulations and practices in different jurisdictions (including 'best practices' and 'most problematic practices'); similarities to, differences with, and lessons learned from intercountry adoption.

As in the other thematic areas, the objective was not to make decisions or reach conclusions. Rather, participants aimed to explore as fully as possible the range of concerns about international surrogacy, to assess the existing and needed evidence about its various aspects, and to begin to discuss the strengths and weaknesses of different approaches to addressing relevant concerns, including policy options and efforts to expand public awareness.

Participants in the Global Surrogacy Practices track included scholars (in fields including African, Black and Caribbean Studies; anthropology; bioethics, community medicine; development studies; gender studies; government; history; law; medical sociology; philosophy; and psychology), advocates (in areas including women's health, reproductive rights and justice, children's rights), social workers, educators, and policy and legal experts. They came from 14 countries.

Most participants had conducted significant scholarly or advocacy work on commercial surrogacy. Others had focused previously on intercountry adoption and were now turning their attention to intercountry surrogacy.[4] The Global Surrogacy Practices thematic area was chaired by Marcy Darnovsky, PhD, executive director of the Center for Genetics and Society (CGS), a California-based non-profit information and public affairs organisation working to encourage responsible uses and effective societal governance of human genetic and reproductive technologies and other emerging technologies.

Sessions were planned to maximise discussion and exchanges of views. The chair arranged a moderator/facilitator and a 'reflector' for each session in advance of the Forum, along with brief presentations for some of the sessions.[5] Each session introduced an important topic for discussion and included activities to facilitate participation.

> ***Session 1: Overview of Concerns about Cross-border Surrogacy: What Do We Know; What Do We Need to Know; What Do We Call It?***
> The goal of this session was to put the many problematic aspects of cross-border surrogacy 'out on the table' and begin to understand the level of concern about each. The session began with an exercise designed to capture the full range of issues for four categories of people affected by intercountry surrogacy arrangements: children, contract pregnant women, intending (or commissioning) parents and gamete providers.

[4] See Appendix A for a complete list of participants who selected the Global Surrogacy Practices thematic area as their primary or secondary area when they registered for the Forum.
[5] See Appendix B for details about the schedule of the Global Surrogacy Practices sessions.

Session 2: Mapping the Industry and Policy Prospects This session aimed to bring into participants' consideration the full commercial and policy contexts of intercountry surrogacy arrangements and the full range of stakeholders and actors involved in them, including various kinds of intermediaries and medical and legal professionals as well as the affected parties on which the previous session focused. In addition, this session aimed to name and begin discussing possible approaches to establishing policies regarding cross-border surrogacy, considering the strengths, weaknesses, potential scope, and feasibility of each.

Session 3: The Role of Intermediaries in Inter-country Adoption and Cross-border Surrogacy This joint session brought together participants in the 'Global Surrogacy Practices' thematic area with those in 'Intercountry Adoption Agencies and the HCIA'. Its goal was to share information about the roles and regulation of intermediaries with the experiences of those focused on intercountry adoption informing consideration of possible steps toward regularizing/regulating intermediaries in cross-border surrogacy.

Session 4: Coercion Versus Agency in Inter-country Adoption and Cross-border Surrogacy With close to 50 participants, this joint session (with the thematic areas 'Intercountry Adoption, Countries of Origin, and Biological Families' and 'Force, Fraud, Coercion') aimed to explore issues of 'force,' 'fraud' and 'coercion' as they apply (or do not apply) to inter-country adoption and to cross-border surrogacy.

Session 5: Next Steps During the final session of the Global Surrogacy Practices thematic area, each participant summarised his or her sense of the Forum's highlights, and current thinking about global surrogacy. Each also shared information about plans for future work in the areas of research, public awareness, policy and advocacy, including options for collaboration or cooperation.

MAPPING THE INTERCOUNTRY SURROGACY INDUSTRY

Findings and Concerns about Policies and Practices

A number of participants in the Global Surrogacy Practices thematic area, and an observer from the Hague Conference Permanent Bureau, were invited to provide presentations for the group. Several of these were prepared remarks; others were informal and conversational. Each presentation was intended to prompt group interaction.

Two presentations focused on the policy contexts in which international surrogacy might be considered:

- Sonia Allan, Macquarie University, reviewed private and public international law relevant to intercountry surrogacy arrangements, including an examination of international instruments and organisations that might be brought to bear on issues raised by such arrangements.
- Hannah Baker, Hague Conference Permanent Bureau, explained the Hague Conference's processes.

Eight briefer presentations addressed practices or policies related to intercountry surrogacy arrangements in specific states, countries or regions:

- Lisa Ikemoto, University of California, Davis School of Law
- Deepa Venkatachalam, Sama Resource Group for Women and Health
- Amrita Pande, University of Cape Town
- Daisy Deomampo, Fordham University
- Karen Smith Rotabi, United Arab Emirates University
- Isabel Fulda Graue, Grupo de Información en Reproducción Elegida
- Eniko Demény, Central European University Center for Ethics and Law in Biomedicine
- Carmel Shalev, Haifa University Faculty of Law

Private & Public International Law: Report by Sonia Allan

Allan discussed the growing importance of international law generally, and its relevance to cross-border surrogacy. She began by explaining that *private international law* is a body of law developed to resolve private, non-state disputes involving more than one jurisdiction or a foreign law element (and focuses on such things as marriage, birthrights, divorce, property settlements or commercial disputes). *Public international law* governs the activities (and rights and duties) of governments in relation to other governments, as well as increasingly individuals, corporations and international organisations.

The Hague Conference on Private International Law first was convened in 1892 and is now comprised of 77 States and the European Union. It is a centre for international judicial and administrative co-operation in the fields of protection of the family and children, civil procedure, and commercial law. Non-member States may also become parties to the Hague Conventions; and, as a result, the work of the Hague Conference on Private International Law encompasses over 142 countries. In recent years, the Hague Conference Permanent Bureau has conducted significant work on the private international law

issues surrounding the status of children, and in particular on the issue of cross-border surrogacy.

Countries differ on how marital status, gestation, genetics and intention relate to parental rights and children's legal parentage. Considerable variation also exists regarding the establishment of legal paternity for children born as a result of new technologies or within newer family forms. These are issues of growing international concern, as legal parentage is a gateway through which many obligations owed by adults to children flow.

International work is clearly needed on building bridges between (differing) legal systems. Despite some relevant bilateral, regional and international efforts, there has been no comprehensive global examination of unifying private international law rules in this area. As a result of the current legal differences, some children have been left with unresolved legal parentage and/or statelessness and may be at risk of suffering serious legal disadvantages, having their fundamental rights impeded, and being discriminated against due to the circumstances of their birth. This is an area of global concern that likely implicates a significant number of children.

One suggestion to address such issues is to develop an international instrument (convention). However, the feasibility of proceeding toward a multilateral convention on legal parentage and the status of children in international surrogacy arrangements is unclear. The answer may depend on the scope and nature of what is sought. Member States have expressed differing opinions, with some reserving their position on this issue pending further internal consideration and discussion with other Members (Hague Conference Permanent Bureau, 2014).

The Permanent Bureau's 2014 Report also recognises that there are broader legal and policy issues raised by international surrogacy arrangements beyond legal parentage that must also be addressed. These include other matters pertaining to child welfare, reproductive freedom, exploitation of the vulnerable (particularly in the context of global economic disparities), health policy, regulation and equality issues. Human rights considerations are therefore also raised.

Public international law is created by state and international organisations composed of states, such as the United Nations. International human rights law is designed to promote and protect human rights at the international, regional and domestic levels; it is made up of treaties, binding legal agreements and customary international law. Since WWII human rights have become the 'dominant moral vocabulary of our time'.

No international human rights instrument specifically addresses surrogacy, but a number may be relevant to the issues it raises:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)

The first two of these address protections for families and children. ICCPR states, 'No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence'. It defines the family as 'the natural and fundamental group unit of society' and states that it is entitled to protection by society and the State. It also states that '[e]very child has the right to a nationality' and to be 'registered immediately after birth'. ICESCR contains similar language about the family, and asserts that special protection should be accorded to mothers during a reasonable period before and after childbirth. It also requires parties to respect women's reproductive rights, by not limiting access to contraception or 'censoring, withholding or misrepresenting information about sexual health'.

CEDAW requires 'the proper understanding of maternity as a social function' and calls for special protection for women during pregnancy in work proved to be harmful to them. It requires the provision of health services, and specifically to ensure services to women during pregnancy and post-natal confinement. It is not clear whether CEDAW's focus on the health of pregnant women is relevant to surrogacy arrangements, but such focus would not be inconsistent with surrogacy arrangements. CEDAW also emphasises non-discrimination of women—noting that while some argue that it is discriminatory not to allow a woman to do what she wishes with her own body; others emphasise the social and economic disparities that exist and view the practice of commercial surrogacy as entirely discriminatory and potentially coercive.

CEDAW's definition of maternity as a social function may preclude commercial contract pregnancy. If this is the case, non-commercial surrogacy arrangements, for example between relatives or friends, may be considered acceptable.

The preamble of CRC asserts that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Several articles are relevant to surrogacy arrangements. Article 7 (1) asserts the child's right to 'be registered immediately after birth', to 'acquire a nationality' and 'as far as possible…to know and be cared for by his or her parents'. Article 9(1) states that 'a child shall not be separated from his or her parents against their will, except when such separation is necessary for the best interests of the child'.

Among the issues raised by CRC that are relevant to surrogacy are children's rights to information about their conception, the providers of gametes (i.e. their genetic parents), and the woman who carried and gave birth to them (whether or not she is genetically related); and to preserve their identity, including nationality, name and family relations.

Article 35 of the CRC requires States Parties to take 'all appropriate national, bilateral and multilateral measures to prevent the…sale of or traffic in children for any purpose or in any form'. Article 2 of the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography further defines the sale of children as 'any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration'. Allan reported that in some jurisdictions, for example the Australian state of New South Wales, commercial surrogacy has been

viewed as falling within the CRC's and the Optional Protocol's definition of sale of a child.[6]

In discussion, Forum participants expressed a range of views on the question of whether international surrogacy amounts to the sale of children and/or trafficking. One view was that sale of children is clearly occurring when surrogate mothers' payment is contingent on the birth of a child. Other participants urged caution about any laws that could have the unintended consequence of criminalizing surrogate mothers for child trafficking. Others yet emphasised that the focus should be upon the clinics, agents or others who stand to profit, or potentially the commissioning parents.

Report from the Hague Conference Permanent Bureau

Hannah Baker explained the broad scope of the Hague Conference's 'Parentage/Surrogacy Project'. She noted that countries may establish legal parenthood differently, resulting in uncertainty regarding a child's legal parentage. This can have serious consequences for the child (e.g., concerning matters such as the child's nationality, inheritance, maintenance and who has parental responsibility).

International surrogacy arrangements are a particular focus of the Hague Conference's Project because the number of international surrogacy arrangements is growing rapidly, and because children born out of these arrangements typically need to move between countries immediately after birth. As a result, the Permanent Bureau sees legal problems occurring frequently and with serious human rights implications for all parties, including the surrogate mothers and the children born of these arrangements.

Decisions about the work that the Hague Conference undertakes are not made by the Permanent Bureau, which is the *Secretariat* of the Hague Conference, but by the Members of the Hague Conference (currently 77 States and the EU). Decisions are made at yearly meetings of the Council on General Affairs and Policy of the Conference, the organisation's governing body. To date, no decision has been reached about whether a convention related to intercountry surrogacy will be drafted. The Permanent Bureau has simply been mandated to gather information and undertake legal research in the field, which it has done, including by sending questionnaires to Members and other interested States, as well as other stakeholders. A 2014 Study and Report by the Permanent Bureau based on this research suggests the desirability of further international work in this area because of serious human rights and cross-border problems, including in the international surrogacy context. But there are still significant questions that remain concerning the feasibility of drafting a convention. Members will decide on the next steps at their next Council meeting in March 2015.

It is not the role of the Permanent Bureau of the Hague Conference to take a position in support of or opposed to commercial or international surrogacy. The Permanent Bureau recognises that the internal laws of Hague Conference Members vary in this area, and it is the aim of the Hague Conference

[6] Surrogacy *Act 2010* (NSW), section 8 prohibits commercial surrogacy. See Australia's Attorney General. (2012:8).

to build bridges between differing legal systems with the goal of upholding persons' rights so that they can enjoy legal security in cross-border contexts.

The Permanent Bureau is open to the thoughts and ideas of all stakeholders. It has sought and is extremely grateful for information from lawyers, health professionals, agencies, academics, social workers, non-governmental organisations, civil society entities, and others.

Baker noted that several policy options being discussed by participants at the Forum should not necessarily be viewed as 'alternatives' to any convention which might be developed under the auspices of the Hague Conference. She pointed out that a Hague Convention is, by its nature, an instrument of *public* international law and that some existing Hague Conventions are well known for providing a legal and co-operative framework which enables States Parties to better implement their international human rights obligations in a cross-border context. For example, the modern Hague Children's Conventions (*i.e.,* the 1980, 1993, 1996 and 2007 Hague Conventions) enable States Parties to implement more effectively some important provisions of the UN Convention on the Rights of the Child in a cross-border context. In addition, Conventions of the Hague Conference always work in tandem with other legal and civil society tools, and public and private international law should always be considered together.

As regards domestic law reform, if there were ever a convention on international surrogacy, it would likely necessitate such legal reform in some countries to bring internal laws into compliance with the international treaty. Bilateral agreements might also be provided for in a convention to supplement the multilateral framework as necessary (*e.g.*, see Art. 39(2) of the 1993 Hague Intercountry Adoption Convention). Therefore, all these options should not be thought of as alternatives but should be considered holistically.

If any Hague Convention is adopted in this area in the future, the Permanent Bureau's job will be to promote it, to assist with its implementation and operation in States Parties, and to monitor compliance with the convention.

Surrogacy Policy in California

Lisa Ikemoto discussed the policy situation in the US, focusing primarily on California, which is widely seen as a 'surrogacy friendly' state. For many years, surrogacy arrangements in California followed and expanded on a judicial precedent set in 1993. The California Supreme Court issued that decision, Johnson v. Calvert. Mark and Crispina Calvert had entered into an agreement with Anna Johnson under which she was impregnated with an embryo created from the sperm of Mark Calvert and the egg of Crispina Calvert. Johnson agreed that in return for $10,000 and a life insurance policy she would relinquish the child at birth to the Calverts, but changed her mind during the pregnancy. The Calverts contested her right to the child, and the Court ruled against Johnson, saying that intent is the 'tiebreaker' when two women qualify as a 'natural mother' under the Uniform Parentage Act.[7]

[7] The US Uniform Parentage Act is Act intended to eliminate the legal distinction between legitimate and illegitimate children enacted in 1975, which while not at the time intended to

In the years following Johnson v. Calvert, bill after bill on surrogacy was introduced in California, but none ever made it to a vote. Then in 2009, an agency scheme to defraud prospective parents, surrogates and financial institutions was exposed (FBI, 2013). SurroGenesis claimed to assist individuals in having children through third-party reproduction while steering them to a purportedly independent escrow company that would hold their funds. But the agency abruptly shut its doors amid reports that it had embezzled more than $2 million from commissioning parents, leaving some surrogates mid-pregnancy. This case led the state legislature to enact a 2010 law (AB 2426) requiring surrogacy agencies and brokers to establish bonded escrow accounts for such transactions.

In 2012 the Theresa Erickson scandal, which the US Federal Bureau of Investigation (FBI) called a 'baby-selling ring', became world-wide news. The Erickson scandal involved a nationally prominent California attorney specializing in reproductive law, the operator of an adoption and surrogacy agency in Maryland, and a Nevada 'surrogacy facilitator'. The three pled guilty to operating an illegal surrogacy scheme in which they recruited women as 'gestational carriers', sent them to the Ukraine to undergo IVF with donor sperm and eggs and then once they were in the second trimester of pregnancy, found parents for the babies, telling the parents that the original intended parents had backed out, and charging them between $100,000-200,000 for the babies. The scandal subsequently led to the passage of California bill AB 1217(California Legislative Information, 2011; FBI, 2011). This law is 'surrogacy friendly'. It affirms the right of individuals, married or unmarried, to become the legal parents of children born through gestational surrogacy and requires intended parents and surrogates to be represented by separate independent legal counsel. It also requires surrogacy agreements to be notarised prior to the administration of medications or any related medical procedure.

Ikemoto also noted the influence of professional organisations in the United States on commercial surrogacy practices. In particular, the American Society for Reproductive Medicine (ASRM) has been a major force in forestalling public policy on commercial surrogacy and other aspects of assisted reproduction, claiming that their guidelines constitute adequate self-regulation. However, ASRM guidelines are routinely ignored by fertility clinics, including those that are ASRM members. This was evidenced in a recent study of risk disclosure in the recruitment of oocyte providers. The study found that clinics subject to the self-regulatory force of these guidelines were not in fact following them (Alberta et al., 2014). An earlier study of compensation to egg providers suggested that 'violation of the ASRM Ethics Committee's compensations guidelines is relatively common' (Levine, 2010).

Surrogacy Policies and Practices in India

Deepa Venkatachalam reported on surrogacy policies and practices in India, drawing on work her organisation has done over the past eight years. Sama engages in research, policy advocacy and development of knowledge resources

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apply to surrogacy arrangements was considered to apply `facially to *any* parentage determination'.

around surrogacy and assisted reproductive technologies, focusing on the social, medical, ethical and economic implications for women and society as a whole, with special attention to caste, class, religion, ethnicity, sexual orientation and other axes of power.

According to India's National Commission for Women, about 3000 clinics in the country offer surrogacy services to people from abroad (typically from North America, Australia and Europe). The clinics are located both in large cities and smaller towns. It is difficult to determine annual fertility industry revenues in India, but they were estimated at US $445 million in 2008 and $1-2 billion in 2012. Some large agencies operating in India are branches or franchises of US-based organisations such as Planet Hospital and Surrogacy Abroad (Sama, 2012).

The growth of commercial surrogacy in India is taking place in a context of increasing privatization, shrinking economic security, and reduced social spending. It is aggressively promoted by the Indian state as part of a long list of medical tourism services. India's new government is expected to pursue state support for medical tourism, including reproductive tourism.

The Indian Council of Medical Research issued voluntary national guidelines for surrogacy in 2005. Bills to codify surrogacy regulations were introduced but not passed in 2008 and 2010. In 2012 the Ministry of Home Affairs drafted another bill that restricts surrogacy to foreign couples consisting of a man and woman who have been married for two years and have a letter from the embassy of their home country confirming that the child will be accepted as their biological child. Surrogacy-related treatments must take place at registered ART clinics, and intended parents must enter the country on medical rather than tourist visas. Their names will be on the child's birth certificate; the surrogate's name will not be recorded. Egg and sperm providers in India are anonymous. Sama describes this bill as protecting the interests of the surrogacy industry and commissioning parents, rather than those of the surrogate mother or the child, and as discriminatory against commissioning parents who are single or gay.

In India, surrogacy agents and recruiters often come from similar class and socio-economic situations as surrogates. Some have themselves worked as surrogates. Recruiters often look for women willing to serve as surrogates in poor areas and slums, and they can be quite persistent in their recruiting practices.

To be eligible to work as a surrogate, women must have previously given birth and appear healthy. Sometimes they must belong to a specified religion or caste. They are offered between US$2000 and $8000, significantly more than they can make doing domestic or factory work. They may get extra payment if they meet certain specifications; lighter-skinned women often receive higher pay even in gestational surrogacy, where there is no genetic link to the child. Married women need their husband's consent to work as a surrogate. One woman who had left her husband because of violence had to negotiate to get his signature.

Typically, Indian women working as surrogates receive 25 per cent of the payment before or during pregnancy and 75 per cent at the end. This gives clinics greater control over women working as surrogates; it also suggests that

the child is indeed seen as a product. Sama has made efforts to change this practice, but has so far been unsuccessful.

Delivery by caesarean section is often required, and timed for the arrival of intended parents from abroad. Surrogates typically are not allowed to nurse the babies they deliver, and typically receive little or no post-delivery care.

In many cities, surrogates reside in special hostels during their pregnancies. Women often prefer to stay away from their homes because of the widespread social stigma associated with surrogacy. Some don't even tell their own families. This also suits the clinics, which want to closely monitor the women and would rather keep a low profile in the community.

In an example of how women negotiate this stigma, Venkatachalam described a woman from Punjab who lived at home during the process let neighbours assume she was pregnant with her own child. After the baby was given to the intended parents, she said there had been a stillbirth and held a memorial.

Qualitative Research with Surrogates in India

Amrita Pande has conducted extensive ethnographic research with surrogates in India over a period of ten years, and recently published *Wombs in Labor: Transnational Commercial Surrogacy in India* (2014). She suggested that surrogacy should be understood in the context of the widespread informal labour market in India, and argued that women choose to work as surrogates, albeit from a limited set of choices. From this perspective, surrogates could be protected by labour laws and standards. Pande pointed to the analogy with sex workers' organising efforts, while acknowledging that in surrogacy arrangements, the interests of children must also be taken into account.

Pande's interviews with surrogates explored their own understanding of the work. She reported that when asked what changes they would like to see, many surrogates' first responses focused on what they are paid. Some pointed out that the payment was very low given the inflation rates in India; others said that they would like to be in a position to negotiate their payment rather than having to accept a set price. Many also spoke of hoping that the stigma surrounding surrogacy could be eased by public education, both nationally and internationally. This would eliminate the need for secrecy and for staying in hostels during pregnancy.

Pande has asked many women who worked as surrogates whether the experience made their lives better. She reported that some have used the money they earned to start small businesses, but that in many cases the money has been spent on the needs of their families and extended families, with little concrete to show for it. Some women enter into contract pregnancies repeatedly, becoming 'veteran surrogates', either because they hope that the additional money will make more of a difference in their lives, or because they prefer surrogacy to street cleaning, factory work or domestic work.

Women whom Pande interviewed also complained about the widespread assumption that surrogacy is simply about the money. In their view, surrogacy is an important service and should be valued by intended parents beyond the contract period. Some women said that the abrupt cutting of the relationship

with the child and the clients was painful and disrespectful of the important service provided by them.

Daisy Deomampo (2013a; 2013b; 2014a; 2014b) has also conducted ethnographic work with commissioning parents, egg donors, and surrogates in India. She provided additional insight on commercial surrogacy in the region. Since 2008 when she began her research, she said, more commissioning parents from India are contracting for pregnancies, though foreigners still dominate. She reported that during a recent trip to Mumbai in 2014, she heard about the prospect of offering 'budget surrogacy' for Indian couples, with the possibility that surrogates' compensation will be reduced to a fraction of current rates.

Deomampo noted that we tend to hear mostly about surrogacy 'success stories,' both in media accounts and the work of scholarly investigators. She stressed the need to consider the experiences of surrogates whom reporters and researchers may not be able to contact, including women who fail to become pregnant or miscarry and then 'fall out' of the system. She also noted that there has been insufficient attention given to capturing the experiences of women who repeat surrogacy and also undergo egg retrieval. The diversity of women's experiences with surrogacy, as well as their views on regulating the practice, should inform policy recommendations (Deomampo 2014a).

She also pointed out that we see and hear about healthy babies born in intercountry surrogacy arrangements far more often than we hear stories about babies with low birth weights or who are born sick. Women who work as surrogates may get adequate or even excellent health care during their pregnancies, but many have not had access to health care before that. The impacts of surrogates' pre-pregnancy health status on their own well-being postpartum, and on the babies they gestate and deliver, have received little attention. An additional challenge in assessing the well-being of children born from intercountry surrogacy arrangements is that most are very young, and most are not accessible to researchers.

In a joint session Karen Smith Rotabi reported on interviews conducted by her student Lopamudra Goswami with 25 women (nineteen Hindu and six Christian) who had served as gestational mothers in Anand, Gujarat, India. Most said they became surrogates for the money, typically in hopes of using the payment to build a house.

Many of these interviewees reported feeling some unhappiness about relinquishing the babies, although the fertility doctor, whom they called 'Madam', had coached them to be prepared for this outcome. They expressed contradictory ideas: both that they were and were not the mother of these babies with whom they 'shared blood'. Several surrogate mothers remained with the infants for short periods, ranging from a few days to three months, during which they could breastfeed them. Many held out hope that the children would come to see them some day. Some had obtained approval for becoming a surrogate from their village elder, who assured them that this work was 'OK'. The researchers reported that the women did not complain of being exploited.

The impact of surrogacy arrangements on surrogates' own children came up in Rotabi's example of one of an interviewee with a seven-year-old son.

The boy, who was in the room while his mother was being interviewed, said, 'We don't need the money; can we just keep my brother?'

Commercial Surrogacy in Tabasco, Mexico

Isabel Fulda Graue spoke about recent rapid growth of commercial surrogacy in the Mexican state of Tabasco, which was triggered by the recent restrictions introduced in India. Though it has attracted significant media attention, little is known about exactly what is currently going on in the region. The situation is being investigated by Grupo de Información en Reproducción Elegida (GIRE or Information Group on Reproductive Choice).

Only a few Mexican states have policies on surrogacy. There was discussion of a surrogacy bill in Mexico City a few years ago, but nothing came of it. Two states, Querétaro and Coahuila, explicitly ban surrogacy. The state of Sinaloa established regulations in 2013 that impose strict limits on surrogacy: It must be altruistic, contracts must be approved by a judge, and intended parents must be heterosexual married couples residing in that state. This effectively rules out intercountry surrogacy in Sinaloa.

In Tabasco, a provision enacted as part of the civil code in 1993 allows surrogacy contracts that make the commissioning mother the legal mother. While these arrangements are supposed to be altruistic, the code says nothing about payment, and this has permitted commercial surrogacy to occur, without regulation or any protection for surrogates.

The government has no data about surrogacy arrangements. Based on interviews with several agencies and surrogate mothers, GIRE estimates that at least several hundred babies have been born in surrogacy arrangements in Tabasco. But only five were registered between August 2012 and December 2013.

Tabasco's civil code stipulates that in any contract pregnancy, the baby must be born in the state. But it says nothing about the rest of the process. Some (if not most) surrogacy agencies, both local and foreign, take advantage of this and offer their services in Mexico City or in Cancun, 'attractive' cities for foreign couples due to transportation and hotel facilities. Part of the 'package' the agencies sell includes having a holiday in Cancun after in vitro fertilization.

GIRE believes that the inadequacy of existing regulation is facilitating all types of disturbing surrogacy practices. One is the prevalence of unnecessary caesarean sections for the convenience of commissioning persons. Another concern is whether contract pregnant women have access to abortion, an issue that is not being discussed by the clinics and agencies. It is assumed that the surrogate cannot withdraw her consent once she agrees to sign the contract, even if her health or life is at risk.

Women working as surrogates in Tabasco tend to be single mothers. Though this is not a requisite, agencies prefer it because it avoids potential legal difficulties with a surrogate's husband. But it exacerbates concern about the lack of health protections for surrogates, since complications related to pregnancy or birth could mean that there would be no one to take care of their own children.

Surrogacy intermediaries and fertility clinics in Mexico often frame surrogacy as an altruistic act and surrogate mothers as 'angels giving a gift'. GIRE believes this is used to justify or hide how poorly women are paid when serving as surrogates.

Commercial Surrogacy in Eastern European Countries

Eniko Demény reported that while some Eastern European countries have specific regulations on medically assisted reproduction, others rely on general laws, and some have no regulation at all (ESHRE, 2009). Hungary, for example, prohibits surrogacy, while Romania has no regulation. Commercial surrogacy has been permitted in Russia since 1995, in Georgia since 1997, and in Ukraine since 2000.

In her presentation, Demény focused on Romania, where in vitro fertilization was introduced in the early 1990s, and an international market in eggs developed soon after. Several cases of serious abuse of young women came to light in the following years, including one that was brought to the attention of the European Parliament in 2005. In 2006, Romania passed a law covering cell and tissue transplants that regulates the provision of third-party gametes.[8] However, surrogacy remains unregulated (Demény, 2013).

Even after the introduction of strict regulations on gamete provision, and a number of highly publicised cases of illegal egg harvesting and subsequent prosecutions, Romania remained a key supplier for eggs procured from Romanian women. Recently, following the political crisis in Ukraine, it has also become a destination for surrogacy arrangements, with many online ads featuring Romanian women willing to become surrogate mothers (Demény, 2012). However, the surrogacy market has not flourished in Romania because of the uncertain regulatory context.

Under the current policy, birth certificates for children born in surrogacy arrangements are issued with the name of the surrogate mother and the biological father. When the surrogate mother relinquishes the child, the commissioning mother adopts the child and a new birth certificate is issued. This situation is considered risky for commissioning parents because surrogacy arrangements in Romania often involve illegal commercial transactions for eggs. Legal actions including prosecutions against Romanian and Israeli physicians and intermediaries have occurred when violations were discovered (Marinas, 2009; Romascan et. al., 2009; Diicot, 2014).

Whether to regulate or prohibit surrogacy remains controversial in Romania, where a draft law on third-party reproduction has been under discussion since 2012.

Marketing Global Surrogacy in Israel

Carmel Shalev described marketing strategies for global surrogacy in Israel. These were vividly displayed in February 2013 at an International Surrogacy and Infertility Conference held at Tel Aviv's Gay Center. More than 15 surro-

[8] Article 153-164, Chapter VI of the Law No. 95/2006, based on the EU Cell and Tissue Directive

gacy services exhibitors participated in this three-day event featuring exhibits directed at both gay and straight prospective parents, with the slogan, 'Your opportunity to make a dream come true'. Exhibitors offered services within Israel alongside options abroad, including the USA, Thailand, India, Nepal and Mexico.

Israeli regulations limiting surrogacy to heterosexual couples, along with opposition to this policy, led to establishment in 2010 of a commission headed by Prof. Mor-Yosef to recommend legislation. In 2012, the commission issued a report that concluded, 'There is no room…to impose prohibitions or restrictions on the realization of autonomy in this area, unless if there is a decisive reason, on grounds of protection of another person, protection of human dignity or other such considerations'. This report has led to a 2014 government initiative to amend laws regulating surrogacy agreements, including those made by Israelis outside Israel, and to license private companies.

The marketing of surrogacy is becoming complicated, as this three-day event made clear, with agencies offering bundles of services. One agency offers to implant embryos in two surrogate mothers at one time; another agency offers a group discount. Options are given regarding fresh or frozen eggs, how much to know about the egg donor, whether or not to have intra-cytoplasmic sperm injection, where to freeze the sperm, and where fertilization will take place. Legal and administrative services, visas, birth and nationality registration and other medical services may or may not be included.

One surrogacy agency head explained that his company was formed in response to discrimination against same-sex and single commissioning parents. When India introduced regulations discriminating against gay couples, this agency started sending Indian women working as surrogates to Nepal to give birth. Some of these women were impregnated with eggs from young Ukrainian or South African women that had been fertilised with sperm frozen in Israel. Israeli agencies also work in other countries including Thailand and Mexico. One strategy to recruit young women to provide eggs is to offer them a beach holiday to India or Thailand, in the course of which they undergo egg harvesting. Israeli gays who can afford the higher costs go to the US for surrogacy because there they can meet the surrogate and know the identity of the egg donor.

In recognition of the complex ethical and policy issues surrounding transnational surrogacy, Shalev announced a project she is heading on 'Ethical and Regulation of Inter-Country Medically Assisted Reproduction' (ERIMAR). This long-term project, based in Israel, will 'engage academics for social responsibility in a discussion on the adoption of an international code of ethics and the drafting of an international human rights convention. In doing so, the project aims to address failures in an unregulated global market of cross-border human embryo and stem cell transfers, egg cell and sperm donations, and surrogate mother arrangements'.

Findings and Concerns about Intermediaries in the Global Surrogacy Industry

Intercountry surrogacy arrangements are often coordinated by medical tourism companies, fertility clinics and specialised surrogacy agencies or brokers that range from large transnational enterprises to small businesses, sometimes run by former surrogates or gamete providers. Other intermediaries – lawyers, social workers, recruiters, psychologists and consultants – often work for these companies, though they are also sometimes retained by commissioning parents.

There is no reliable economic information on the size of the global surrogacy industry, but recent news reports describe it as billion-dollar-a-year business in which 'profits for the middlemen agencies are huge' (ATDT, 2014). While only 31 per cent of countries reporting to the International Federation of Fertility Societies in 2013 allow IVF surrogacy by statute or law, their data indicate an increase of nearly 1000 per cent in the number of international surrogacy arrangements between 2006 and 2010, as well as substantial increases in the numbers of clinics. The United States and Japan, for example, each have more than 400 clinics, and about 3,000 are in operation in India, according to the Indian Council of Medical Research.

The commercial nature of international surrogacy has attracted some players who are focused primarily on financial gain, a goal often in conflict with the best interests not only of the child, but of intended parents and surrogate mothers as well. Financial incentives can increase the incidence of unethical recruitment tactics. They also 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 was a concern voiced by Laura Briggs of the University of Massachusetts, who presented some conclusions based on her work with Diane Marre of the Universitat Autonoma de Barcelona. Briggs called attention to structural conditions that lead women in wealthy countries to delay childbearing, such as shrinking real wages, inequality between women's and men's wages and job insecurity. Briggs expressed concern that multilateral agreements could result in disproportionately benefiting intermediaries, who would be provided with a 'kind of license', bringing more children into these systems.

In India, physicians often coordinate arrangements, and hire or contract with recruiters and other intermediaries. Some intermediaries are former surrogates or gamete providers. Some work through religious organisations. Deepa Venkatachalam, director of Sama Resource Group for Women and Health, gave an example of an infertile couple who prayed for a child at a particular temple and conceived shortly thereafter. After word of their success spread, the son of the priest who blessed them started a surrogacy business.

Forum participants were in general agreement that commercial dynamics combined with lack of regulation and oversight provide great leeway for corrupt practices that may leave many victims in their wake. Recent examples include the case of the US-based medical tourism firm, Planet Hospital, whose surrogacy business collapsed in December 2013, leaving would-be parents out thousands of dollars and dozens of surrogate mothers abandoned. One com-

missioning parent compiled information from 40 couples who say they were victimised by Planet Hospital and filed a complaint with the FBI's Consumer Fraud Division in San Diego, California (Cooper et al., 2014; Cassell, 2014). And in the aftermath of the above-mentioned case in which prominent surrogacy lawyer Theresa Erickson was convicted, she described the industry as 'corrupt' and herself as the 'the tip of the iceberg' when it comes to abusing the system (Devine and Stickney, 2012).

Many Forum participants felt that there should be no role for private, for-profit intermediaries in surrogacy arrangements, since they appear to be a driving force behind unacceptable practices. Alternatives might include appointing state agencies or licensing non-profit agencies to carry out the functions currently served by for-profit intermediaries. Others recognised that non-profit organisations would, however, also need significant oversight, as they may not in themselves solve many of the dilemmas raised by surrogacy, particularly if they were set up to 'facilitate' such agreements without protections for women or children. Some Forum participants suggested that some non-profit or state-run adoption agencies could serve as a model, and this possibility was recognised as an area in which further research and deliberation is needed.

An aspect of commercial surrogacy for which there is no analogy in adoption, and one in which intermediaries are central, is the use of third-party gametes. Both purchased eggs and sperm may be components of international surrogacy arrangements, but purchased eggs play a far more significant role. Eggs in particular may be obtained from countries other than those of the intending parents or surrogate mother. There is a large global market in eggs and sperm, with reports of illegal practices that constitute trafficking, and coercive recruitment practices involving threats and deception.

One area of agreement that may or may not involve intermediaries is the importance of record keeping. There was general consensus that individuals born of surrogacy arrangements have a right to information about their origins and that this information should be preserved. Concern was also expressed that in some jurisdictions, information required for birth certificates omits any reference to gamete providers or surrogate mothers. 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.

Forum participants were also concerned about the multiple cases in which children resulting from surrogacy arrangements have been abused or molested (Perlman, 2014; Overdorf, 2013). Depending upon the intermediaries and clinics involved, and the country in which they are based, these intermediaries/clinics may not screen commissioning parents in any way (and often they are not compelled by domestic legislation to do so). This is in sharp contrast to adoption practices, which require rigorous screening and preparation sessions.

FINDINGS AND CONCERNS ABOUT THOSE DIRECTLY AFFECTED BY INTERCOUNTRY SURROGACY

Of the four categories of people directly affected by intercountry surrogacy arrangements – children resulting from these arrangements, surrogate mothers, commissioning parents, and egg providers, Forum participants expressed most concern for the children and women.

There was initial concern on the part of intercountry adoption experts that those focused on the situation of women working as surrogates were not sufficiently highlighting children's issues. There was also initial concern of the opposite: that in key documents such as the Hague Conference's Preliminary Report, abuses and human rights violations of women were not being given enough attention. Participants were able to quickly come to agreement that both sets of issues are critical, and must be addressed by policy, public awareness, and advocacy efforts.

Children

Children who are born in intercountry surrogacy arrangements often face legal, medical, and/or psychological issues due to the circumstances of their gestation and birth. Some of these have been widely noted; others have not. A prominent scholar on both adoption and the fertility market has observed that while 'the best interests of the child' have been the guiding legal and practice principle in adoption, the current focus of the assisted reproduction sector is on 'achieving the medically possible' as opposed to 'providing research-informed practices that focus more attention on the long-term medical, psychological and social needs of those it serves' (Cahn, 2011:3).

Legal Issues

National and international authorities, along with social workers, family experts and others, have been concerned recently with problems of uncertainty surrounding the legal status of increasing numbers of children born of surrogacy arrangements. Problems often concern the establishment and/or recognition of the child's legal parentage and the legal and social consequences related to such a determination. Deomampo (Forthcoming b) shows how transnational surrogacy simultaneously challenges cultural ideas of parentage while reifying state definitions of citizenship and bio-genetic kinship. As a result, parents who seek citizenship for their children born through surrogacy encounter bureaucratic inefficiencies and contradictions that they view as unjust and discriminatory.

In many cases of intercountry surrogacy, conflicting laws of different states have resulted in children being left with uncertain or unresolved legal parentage, and in some cases of children being left 'stateless, compelled to remain in the country of birth, unable to leave (Darling, 2014). Unresolved legal parentage may have harmful consequences that continue as children grow up and face issues related to divorce, custody disputes, and child support disputes or receipt of inheritance or social security benefits.

Recent international surrogacy cases (Mennesson v France and Labassee v France) brought before the European Court of Human Rights illustrate the problem of conflicts in national laws regarding the legal recognition of the parent-child relationship. In these cases, the families challenged the refusal of the government of France to recognise their parental relationship to their children, who were born in the United States via gestational surrogacy. The European Court of Human Rights ruled that this constituted infringement on the children's right to respect for their private life (ECtHR, 2014).

Forum participants were unified in their concern for the need to resolve legal issues regarding uncertain legal parentage. They noted that this issue is complicated not only by differing laws from country to country, but by situations in which children may be abandoned due to the breakdown of relationships or other changes of circumstances of contracting couples during the pregnancy. This also has occurred, as in the case mentioned in the introduction, when the intended parents reject the child because of unwanted medical conditions. In some cases rejected children of surrogacy have been forced to stay in orphanages due to surrogacy arrangements gone awry. However, it also was noted that forcing legal parentage upon the commissioning person or couple may not avoid this problem if they do not want the child.

More fundamentally, some participants raised the issue of whether cross-border surrogacy violates the child's or the surrogate mother's human dignity by reducing both to mere objects of contracts. Others expressed concern that such arrangements violate the United Nations Convention on the Rights of the Child by failing to preserve his or her identity, nationality, and family relations.

Other issues about children's wellbeing that have received less attention were underlined by the contemporaneous news stories described in the introduction. These cases highlighted the need for broadening the discussion on protecting the interests of children. Participants were divided on the issue of whether adequate protections could be provided with regulation, which might include, at a minimum, screening intending parents for mental illness or criminal records. For others, the inevitability of such abuses reinforced feelings that prohibition would be more appropriate.

Medical Issues

Forum participants within the Global Surrogacy Practices thematic area rated medical issues for children born in commercial surrogacy arrangements (as well as for women working as gestational mothers) as a major concern. Many of these issues result from the dependence of these arrangements on in vitro fertilization (IVF). Recent research conducted in California found that such pregnancies had a four-to-five fold increase in stillbirths compared with naturally achieved pregnancies, and rates of caesarean section with associated complications and co-morbidities increased four-fold. Higher rates of stillbirths, multiple births, and preterm births all contributed to a higher overall rate of foetal anomalies (Merritt et al., 2014).

Twin and higher order pregnancies are more common in gestational surrogacy than in naturally conceived pregnancies, in part because of pressures by competing IVF clinics to increase their rates of live births. This has led to the typical practice of implanting multiple embryos and subsequent multiple births

(ASRM, 2012). In spite of calls for single-embryo transfers by various agencies and authorities, high rates of multiple births with multiple attendant health consequences persist. Pressures for multiple-embryo implantation seem to be greatest where commercial interests are primary. In some cases, both clinics and intending parents may perceive a financial benefit in establishing a twin pregnancy. This can cut costs, but increases risks to infants and contract pregnant women.

Minimizing implantation of multiple embryos will not eliminate all health risks related to IVF. Even pregnancies in which single embryos are implanted have been found to involve significantly greater risks to both infants and birth mothers, yet their consequences for the health of children over the life span remains inadequately understood. Higher rates of vascular dysfunction (Scherrer et al., 2014) and concerns that these and metabolic risk factors could be worse in later life suggest that there is an urgent need for longer follow-up studies of IVF conceived children (Hart and Norman, 2013).

During a concurrent session, concern also was expressed that the health of women prior to becoming surrogate mothers could have long-term adverse consequences for infant development, regardless of the absence of her genetic connection to the child. It was pointed out that in India over half of adult women have been found to be suffering from anaemia (Girija, 2008). A growing body of literature additionally suggests that prenatal environmental exposures, including maternal nutritional history and psychological state-based alternations in *in utero* physiology, can have sustained effects across the lifespan (Almond and Currie, 2011; Kinsella and Monk, 2009; Kuzawa and Quinn, 2009; Rifkin-Graboi, et al., 2013).

Another serious concern is the mounting evidence suggesting that medically unnecessary caesarean sections are routine in transnational commercial surrogacy arrangements, primarily in order to allow intended parents to schedule travel and sometimes for the convenience of physicians. Moreover, doctors often justify high rates of caesarean sections by underplaying the risks associated with surgical deliveries, while exaggerating those associated with surrogate pregnancies (Deomampo, 2014b).

Finally, there is concern that post-birth practices might also endanger the health of surrogate mothers and the children they bear. Typically, infants born via surrogacy are transferred to the care of commissioning parents immediately after birth, depriving both the infant and the birth mother of the health benefits known to result from breastfeeding (WHO, 2014). Campaigns by the United Nations to help people understand that 'immediate breastfeeding within the first hour of birth could prevent one in five unnecessary deaths' and that breastfeeding is 'the simplest, smartest, and most cost-effective way of supporting healthier children' (UN New Centre, 2014) are apparently leading to a variety of efforts in some countries to reduce the ill effects of this deprivation for the infant. These include expanding the role of surrogates to include breastfeeding, and hormonally induced lactation among intended mothers. Breast milk banks are also sometimes an option sought by gay intended parents.

Psychological Issues

In addition to medical issues, a wide range of psychological issues, many of them inadequately understood, was raised by Forum participants. Foremost among these was concern regarding the potential psychological consequences of separating the infant from its birth mother. This is an issue that has gained some traction within the adoption community, with the argument that an understanding of this 'primal wound' can facilitate better-adjusted children and healthier familial relationships (Dennis, 2014; Verrier, 1993).

Regardless of whose eggs are used to create the embryo there is an obvious physiological connection between birth mother and infant that begins before birth. In addition to lacking understanding of the impact of the separation of the child from its birth mother, we know very little about whether or not the emotional detachment of the birth mother from the developing infant, a practice encouraged by clinicians during the course of the pregnancy to ease the trauma of relinquishing the baby at birth, will have psychological/ emotional consequences for the child.

An issue that has gained world-wide attention as a consequence of artificial insemination and sperm and egg 'donation' is the child's desire and/or right to know his or her own origins (Adams and Allan, 2013; Allan, 2011; 2012a; Beeson et al., 2011; Infertility Network, 2014; Ravelingien, 2013) and confusion about one's identity that may (or may not) arise as a result of disclosure. The experience of donor-conceived IVF offspring applies directly to many commercial surrogacy pregnancies because they often also used eggs acquired from a third-party (Kramer and Cahn, 2013). Although gestational surrogacy is somewhat newer than egg transfers and the children may be much less likely to be told of their origins, some children of traditional surrogacy have publicly expressed their objections to the process (Kern, 2014; Brian C., 2006). It is not yet clear whether learning that one is the product of gestational surrogacy will engender similar issues. Will children have as much interest in their biological connection to their birth mother when they were conceived using their intended mother's eggs?

In any case, the clear global trend away from secrecy related to the use of third-party gamete 'donation' has potential implications for gestational surrogacy. This has been fuelled by donor-conceived people asserting their right to this information, human rights arguments in support of disclosure, and evidence that secrecy in families regarding the child's origins may be damaging to familial relationships (Allan, 2013; Blyth, 2011).

This trend toward greater openness should be recognised as relevant to the child's best interests in formulation of policies related to cross-border commercial surrogacy. Both gamete providers who originally agreed to anonymity (Daniels, et al., 2012) and donor-conceived individuals often desire information about or contact with each other many years later. Ethnographic data (Nayak, 2014:13) suggest that surrogate mothers often long for information about the children they have birthed.

All of these factors, in addition to medical concerns, point to a need for central authorities within countries to maintain registries to enable parties to third-party reproduction to contact each other should the desire or need arise

years later.[9] Such registries could also be used as research databases to provide much-needed data about long-term health consequences of surrogacy arrangements for both children and birth mothers (Schneider, 2008). An alternative proposed was that a neutral international authority might maintain confidential records for young people seeking to learn about their origins.

The knowledge that one's conception and birth were products of commercial transactions has been suggested as posing a potential psychological risk. This has been reported by some 'donor-conceived' offspring to be disturbing information and may occur as well in cases of commercial surrogacy. As one young man has written, 'It looks to me like I was bought and sold' (Brian, 2006). There is controversy as to whether surrogacy constitutes baby selling or is a legitimate service. McLeod and Botterell (2014) have argued that although commercial contract pregnancy need not always be considered baby selling, it does amount to that if payment to the gestational mother is contingent on delivery of a live child.

Another concern raised by Forum participants about commercial surrogacy is its effects on gestational mothers' own children. An early analysis of clinical issues in surrogate mothering suggested that 'increased abandonment anxiety is a distinct possibility in the children of surrogate families who see their parents willingly giving away children after birth' (Steatman and McCloskey, 1987).

An example reinforcing this concern, and illustrating how confusing the concept of commercial surrogacy can be to children whose mothers enter into contract pregnancy, was provided above in Karen Rotabi's report of a seven-year-old who asked his mother not to take the money, but instead to 'keep my brother'. In addition, women working as gestational mothers may be held in surrogacy hostels for months, separating them from their existing children at critical ages in their development. Further, the children may be stigmatised in their communities because of their mother's activity. Occasionally, women serving as surrogates suffer significant health consequences, and there have been cases where complications have led to death (Dhillon, 2012; Jaipuriar, 2014). These circumstances clearly place additional burdens on surrogates' existing children.

Women Who Give Birth

Women who agree to become pregnant and to relinquish the child at birth are referred to by a variety of different terms, many if not all of which reflect a bias either in favour of or opposed to such arrangements. 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 (Beeson et al., 2014). In this report we interchangeably use the terms 'surrogate', 'surrogate mother', 'gestational mother' and 'contract-pregnant woman'.

[9] For examples of in-country registries that operate in relation to donor conception generally see Allan (2012b).

Consent and Agency

In considering women who enter into contract pregnancies, a key issue for Forum participants was the adequacy of their consent to participate in such arrangements. To what extent do women enter into these contracts as an expression of personal autonomy, with full understanding of the potential consequences of their action? To what extent are they motivated by structural conditions such as poverty, economic inequality, and gender inequality; influenced by unethical recruiting practices and/or lack of adequate information about risks and potential side effects; or subjected to family pressures and cultural or industry discourses that present contract pregnancy as a form of altruism and simultaneously a way to a better life? Does the combination of these influences constitute coercion?

Many of these questions have been empirically investigated, and the answers differ greatly depending on the social context in which such arrangements are made. Some excellent research yielding valuable insights was presented at the Forum and these findings are discussed above (Sections 2.1.3 to 2.1.8) by country (see e.g., Deomampo, 2013a and 2013b; Pande, 2014a and 2014b; Sama, 2010; Sama, 2012).

Forum participants pointed out that accurately answering these questions requires, first and foremost, inclusion of the voices of the women themselves. They discussed the dilemma of how to understand the tension between social constraints and individual agency, especially in situations where socioeconomic status and social pressures most strongly shape personal options, Anthropologist Rayna Rapp has described this tension as a form of 'constrained, but real, agency'. In the context of international surrogacy arrangements, it was noted, most surrogate mothers are in great need of the income a contract pregnancy offers. Some see no other way out of oppressive conditions, may not feel free to answer candidly, may not have had independent legal counsel, and may not have been fully informed of the risks involved. Sampling is another key issue in evaluating such reports, as women who have been unsuccessfully impregnated or had other types of problematic experiences may not have been included or sufficiently represented in research studies.

Restrictions of Personal Liberty

While some observers view contract pregnancies as expressions of personal liberty and a path to improved living standards, others see them as the relinquishment of liberty. In India, for example, women may prefer becoming a gestational mother over other forms of available income-generating activity, but many are required to live away from their families in hostels with other surrogates in situations facilitating round-the-clock medical, mobility and dietary control (Deomampo, 2013b; Shalev, 2014). On one hand, earning income as a gestational surrogate might be liberating as the payment is greater than that which would be offered for domestic or street work. However, surrogates' liberty may be restricted and they may be cut off from their families while living in hostels.

Marital and parent-child relations are disrupted, synthetic hormones are administered, and multiple embryos are often implanted. Surrogates may be

coerced into continuing a difficult pregnancy they would prefer to terminate, or be required to undergo foetal reduction in cases of multiple pregnancies, or pregnancy termination if there are foetal complications or unwanted traits. Non-medically indicated caesarean sections seem to be routine in some countries and clinics. In India, as elsewhere, such interventions may be expected of the surrogate with little-to-no negotiation and financial penalties if she refuses.

Financial Issues

Central to any regulation of commercial surrogacy is the question of whether or not surrogacy should be considered work. An advantage of accepting this definition is that it may empower women to demand better working conditions, health protections and higher financial compensation (Pande, 2014b). At least hypothetically, such a definition could bring labour and occupational health policies to bear in support of women entering into contract pregnancies.

Some observers, however, contend that defining commercial surrogacy as work implies that the baby is a product. If surrogacy arrangements are not to be seen as baby selling, some argue that payment to gestational mothers must not depend on the success of the pregnancy or the health of the child.

If surrogacy is regulated as a form of work, questions of what constitutes fair compensation and acceptable working conditions must be addressed. Forum participants who have worked on commercial surrogacy in India reported numerous cases of promised payments that were never made, reduced payments in cases of miscarriage or birthing a child with a disability, and statements by many women that they are not paid enough for their role. Issues of stratified payment and treatment depending on the caste of the gestational mothers were also raised. Similar issues of stratified payment exist for egg providers, depending on their skin color, ethnic background, and nationality (Deomampo, Forthcoming b).

Forum participants noted a need to guarantee women's follow-up care and long-term health care, and to specify who should pay for these. They asked, but did not answer, whether it is possible (or desirable) to establish a global standard of financial compensation when economic situations vary so widely among countries and regions.

There was concern amongst some Forum participants that viewing commercial surrogacy as work may simply serve to maintain social, class and economic inequities, and that women's needs would better be served by providing education, training, and other opportunities (such as building a sustainable small business). This is particularly so as surrogacy cannot provide an ongoing income for women in financial need or poverty (which is often the reason for their entering such arrangements in the first place).

Medical Issues

Contract pregnancies carry a number of risks that may make them more dangerous than normal pregnancies or other IVF pregnancies. Gestational surrogacy, as distinguished from traditional surrogacy, requires in vitro fertilization and carries the same risks of that process (HFEA, 2014). The rates and severity of such risks are poorly researched, vary by country and by clinic, and are diffi-

cult to ascertain because of inadequately transparent clinical guidelines and practices. They include side effects of the fertility drugs that surrogate mothers (as well as egg providers) are typically required to take, and medical risks of undergoing foetal reductions (sometimes very late in the pregnancy); multiple births (which are far more common with IVF than conventional pregnancies, and which may be even higher for contract-pregnancy IVF because of financial considerations on the part of commissioning parents); and unnecessarily elevated caesarean section rates (Merritt, 2014). A researcher who has worked extensively in India has noted that medical risks tend to be erased from view, while surrogate mothers' suffering is normalised (Deomampo (2014b).

Multiple studies report that pregnancies using eggs from unrelated 'donors', as is by definition the case with gestational surrogacy, are associated with a higher incidence of pregnancy-induced hypertension and placental pathology (Van der Hoorn et al., 2010), which may include bleeding complications during the first trimester, pregnancy-induced hypertension, preeclampsia, or preterm birth (Martinez-Varea, 2014). This may be related to an immune response by the gestational mother to foreign tissue (Gundogan, 2010).

Any informed consent processes involving contract pregnancy should be based on better data than currently exists in most settings. Medical issues requiring better research and disclosure to facilitate 'informed consent' include the following:

- How many attempts at impregnation will be made? How will the gestational mother be compensated when they fail?
- What are the expected miscarriage rates? How will the gestational mother be compensated if one occurs?
- What are the clinic's rate of and policies regarding single as opposed to multiple embryo implantations?
- What are the clinic's rate of and policies regarding caesarean sections?
- What are the clinic's rate of and policies regarding 'foetal reduction' for multiple pregnancies and gender selection?
- How many times can one woman serve as a surrogate? How long must she wait between pregnancies?
- How are questions about terminating a pregnancy handled? Who is authorised to make the final decision?
- How safe are the medications being administered?
- What kind of follow-up care is provided for recovery from caesarean sections, and in cases of unexpected birth outcomes and trauma?

Psychological Issues

Opposition to commercial surrogacy often rests on the assumption that the processes of pregnancy and birth create not only a social but also a special biological bond between child and birth mother that when deliberately broken, victimises both (Gössl, 2013; Trimmings and Beaumont, 2013). According to this view, relinquishment of the child would be emotionally difficult for the contract pregnant woman.

The recent history of contract pregnancies includes some dramatic cases in which surrogate mothers have resisted relinquishing the child as previously agreed. In a famous American case, in 1985 Mary Beth Whitehead entered into a contract to be impregnated with the sperm of a man whose wife's health made it unadvisable for her to bear a child. Following the birth Whitehead changed her mind and a long and contentious custody battle ensued (Heberman, 2014).

In a more recent British case, a surrogate mother in her mid-twenties refused to hand over the baby girl she had previously agreed to bear for a wealthy couple in which the woman was infertile as a result of cancer treatment (Sawer, 2011). In this case, the court ruled in favour of the surrogate mother. Such cases are by no means unique. One young woman, who had agreed to be inseminated with sperm from her stepfather to bear a child for her mother backed out of the agreement explaining, 'My bond to my baby was greater than my bond to my mum' (Anderson, 2014).

The strength of the bond birth mothers feel with the babies they bear may vary not only from woman to woman, but over time. One American woman has written of being paraded around the country by her physician-broker to speak publicly about the rewards of surrogate motherhood. In her book, written much later, she remembers, 'I told myself daily during the entire pregnancy that this child was not mine, words frequently echoed by my baby broker'. Only several months following the birth was she able to acknowledge the sorrow of giving him away, which led to a deep depression in which she contemplated suicide (Kane, 1989).

On the other hand, in her study of gestational surrogacy in a Jewish Israeli context, Teman (2010) offers a counterpoint to theory-driven critiques of surrogacy arrangements that focus on the fragmentation of women's bodies and alienation of the body from the self. Though she recognises the potential for exploitation, Teman suggests that the voices of surrogates themselves hint that surrogacy provides them a degree of appreciation from partners or society at large that they otherwise lack. This position is consistent with findings of others suggesting that the majority of surrogates report no psychological problems as a result of relinquishment (Baslington, 2002; Blyth, 1994; Jadva et al., 2003).

Most cases in which we have examples of psychological problems related to relinquishment of children born via surrogacy involved traditional rather than gestational surrogacy. The absence of a genetic connection between the surrogate mother and the child may be a significant factor in softening potential emotional distress experienced by the birth mother. Certainly if the practice is permitted there should be follow-up research on short- and long-term psychological consequences for the birth mother.

The issue of openness versus anonymity may also have significant psychological consequences for the surrogate mothers – many of who reportedly desire information about how the children to whom they have given birth are faring and some of whom long for contact following relinquishment. At the same time, many surrogate mothers in countries such as India report that they go to great efforts to keep their role in such arrangements secret for fear of the stigma that they may face in their home communities.

Gamete Providers

International gestational surrogacy arrangements often are dependent on the use of gametes provided by persons other than the intending parents. The Permanent Bureau has acknowledged that both 'physical and psychological risks to any egg and sperm donors involved in an [international surrogacy arrangement]…have to be taken into consideration' (Hague Conference Permanent Bureau, 2014: 89). Since surrogacy is primarily a response to female infertility, the use of third-party eggs is more common than use of third-party sperm. And, of course, 'donor' eggs are required when there is no female intended parent.

The physical health risks involved in procuring male and female gametes are sharply different. Sperm 'donation' typically involves virtually no physical health risks since it requires none of the hormonal stimulation, surgery, or anaesthesia used in egg harvesting. The latter, in contrast, involves a wide range of potentially serious short and long-term health risks (Guidice et al., 2007:21). These were a major focus of concern for Forum participants, as they have long been for many women's health advocates (Norsigian, 2005).

Medical Issues

The major medical concerns raised during the Forum were related to the lack of evidence-based information on the long-term health risks of the hormonal manipulation (typically suppression followed by stimulation) of the female endocrine system, as well as the minimal information available on short-term risks (Pearson, 2006). What is known about risks is based primarily on studies of women undergoing ovarian stimulation to retrieve eggs for their own use as part of fertilization. Experts acknowledge that egg providers, by virtue of their average younger ages, tend to be more sensitive to the drugs used in the process, and therefore, likely face even greater risks of ovarian hyperstimulation syndrome (Guidice et al., 2007:21). Future infertility, a risk that egg providers also encounter, is less relevant to women already being treated for infertility (Wei, 2013). Risks also vary widely depending on drug and egg harvesting protocols used by different practitioners. In India, recent egg provider deaths have been documented (Janwalkar, 2012; Majumdar, 2014). For all these reasons, it is essential that regional or national registries be established to enable long-term follow-up of egg providers and to facilitate future informed consent.[10]

Nearly all egg procurement takes place in a commercial context. Though many fertility doctors may appropriately treat egg providers as patients, their paying clients are the intending parents. This can exacerbate health risks by fostering inadequate medical assessment of candidates before and during the retrieval process. Economic incentives can encourage clinics to maximise stimulation in order to retrieve as many eggs as possible. This practice is more likely in the absence of independent medical advice or follow-up care for the providers of these eggs.

[10] One such effort in the United States, which has had only limited success in attracting participation by fertility clinics, is the Infertility Family Research Registry. See https://www.ifrr-registry.org/

Consent and Agency

If international surrogacy arrangements using third-party eggs are to be regulated rather than prohibited, there are a number of issues related to consent and agency in egg retrieval that Forum participants would like to see addressed. Recruitment practices must be regulated to ensure that women considering or undergoing egg retrieval in a commercial context receive independent legal counsel and medical advice. These are essential components of meaningful informed consent especially when one's future health and fertility are placed at risk.

Forum participants were also concerned about reports of unethical practices by agents and brokers in recruiting gamete providers. These include advertisements that emphasise financial gains of becoming an egg provider but omit any mention of health risks. Recruitment practices also include other forms of 'undue inducement' such as offers of 'exotic tours' to locales where egg retrieval takes place. Some Forum participants also expressed concern about the inequality and eugenic implications implicit in offering much greater sums of money to women with certain phenotypes, as happens in some jurisdictions (see Deomampo, Forthcoming a).

Psychological Issues

In many jurisdictions, third-party gamete provision is typically or always done anonymously. Evidence has emerged that both men and women who provide gametes in their young adulthood may later desire information about whether or not they have genetic children who wish to contact them (Daniels et al., 2012). They may regret their earlier decision or their lack of information about children who may have been born. There is also increasing recognition that children have the right to information about their biological origins. These shifts have generated activity in voluntary registries and social media, and have resulted in a trend toward greater openness and underscore the need for better record keeping.[11]

Anonymity of providers is problematic not just because it deprives provider and offspring of the future option of ever learning about each other's identity, but also because it limits families' access to information on newly discovered genetic risks that may have been passed on inadvertently. In addition, because anonymity makes it impossible to trace eggs to the women who provide them, it facilitates their illicit exchange and sale, and encourages ovarian overstimulation in order to obtain greater numbers of eggs.

The issues associated with payment for women's eggs were also discussed at the Forum. Some participants raised the concern that egg 'donation' under

[11] Countries and jurisdictions prohibiting anonymous gamete donation include Austria, Finland, New Zealand, Norway and Sweden. Netherlands, the UK, and the US state of Washington give donor-conceived people access to information about the identity of their donors. Australian fertility clinics now must collect and maintain records, including identifying information about donors. In 2013, the Ethics Committee of the American Society for Reproductive Medicine acknowledged a strong trend in favor of encouraging disclosure of donor conception to offspring and noted that professional opinion in the USA changed from recommending anonymous donation in 1993 to accepting known donation in 2002 (Kirkman, et al., 2014).

the rhetoric of altruism may have coercive aspects. That is, 'women are expected to be emotionally invested in the families they donate to, and…such an investment draws on ideals of motherhood and encourages sacrifice and risk-taking in a way that compensation does not' (Curtis, 2010).

Others argued that recognising the risk of coercive aspects in altruistic oocyte donation arrangements should not imply that commercial oocyte donation is preferable. There was concern that such a position would be counter to social views, policies and laws in a number of countries that prohibit the sale of gametes or commercialization of human reproductive capabilities. Such views are often underpinned by an emphasis on human dignity and opposition to commodification.

Intending (Commissioning) Parents

The Hague Conference Permanent Bureau has identified (mis)information provided to intending parents as an area of concern and Forum participants concurred. People considering intercountry surrogacy may not be provided with sufficient information about legal issues that may arise upon returning to their home State, and as a result may find themselves faced with serious practical difficulties. While some agencies insist that intending parents receive independent legal advice, this may be the exception rather than the norm (Permanent Bureau, 2014a: 90).

Forum participants agreed that marketing by surrogacy agencies and fertility clinics often seeks to persuade people that commercial surrogacy is a desirable and unproblematic way to have children, leaving them ignorant of inevitable complications, and of other problems that may arise.

Participants felt that intending parents should be provided with education on issues including care of infants, health risks of depriving a child of breastfeeding and alternative approaches to breastfeeding, children's rights to know their origins, and the potential psychological consequences of revealing or concealing this knowledge. Some felt it was appropriate that intending parents be informed about the reality of the motivations and circumstances under which women agree to serve as surrogate mothers, as well as the conditions under which such agreements are carried out.

Participants raised a number of additional questions about intending parents. Should they be counselled regarding their responsibilities in the event that the child does not meet their expectations, as are adoptive parents? What about their responsibilities to the surrogate mother? Should they be required to pay for medical and life insurance to mitigate the risks she is assuming? Should they be educated about appropriate ways of relating to her, including continuing contact and what that might mean? What rights do parents have to determine whether the child will be informed of his/her origins, and if these are limited, how will this be enforced? If they change their minds or this information later becomes of interest to the child, will they have access to information about the birth mother or egg provider to pass on to the child?

Forum participants were also concerned about harms to intending parents. In a presentation at one of the Global Surrogacy Practices sessions, Lisa Ikemoto gave a brief presentation on a series of cases in California in which

brokers embezzled commissioning parents' money, and in some instances also absconded with the funds due to surrogates who were in the middle of pregnancies (Devine and Stickney, 2012). Given this record of repeated scandals, how might commissioning parents be protected from unscrupulous clinics, brokers and other intermediaries? How might they be assured of receiving complete and accurate information on the legal requirements of their own country and those of the country where the birth takes place?

Another key question recognised by the Permanent Bureau is whether, in the interests of protecting the welfare of any child born in an intercountry surrogacy arrangement, basic background checks about the intending parents should be conducted to identify any who have records of child abuse or criminal activities (Hague Conference Permanent Bureau, 2014). Forum participants cited several cases of paedophiles and convicted child abusers acquiring infants via surrogacy (News.com, 2014).

Other eligibility criteria, including limits on the maximum permissible age of intending parents, were also proposed. Forum participants opposed discrimination based on race, marital status or sexual orientation, but raised questions as to whether a requirement should be that one or both intended parents be required to be genetically related to the child, as some jurisdictions mandate. Also mentioned was concern about intending parents who might wish to experiment with new forms of human genetic modification on the horizon, and whether this should be proscribed in surrogacy arrangements.

CONCLUSION

Intercountry surrogacy arrangements emerged around the turn of the millennium following the development of IVF. The first major destination country was the United States, where commercial gestational surrogacy, which eliminates the genetic link between the surrogate mother and the child, had developed over the previous two decades. During this period, other countries established legal prohibitions on commercial surrogacy, prompting some of their citizens to travel elsewhere to arrange contract pregnancies.

In 2002, commercial surrogacy was legalised in India, which soon became the leading destination for those seeking a less expensive alternative to contract pregnancy in the US. More recently, jurisdictions including Thailand, Mexico, and Ukraine have emerged as destinations for intercountry surrogacy arrangements.[12]

While only a minority of countries permit commercial surrogacy (either passively or actively), there is a growing industry driven by significant profits for intermediaries, lawyers and providers that encourages such cross-border transactions. The global patchwork of often-conflicting surrogacy-related laws and regulations has created a range of problems that has drawn the attention of scholars, activists and policy makers from around the world. For example, sustained investigation has been undertaken by the Permanent Bureau of the Hague Conference on Private International Law at the request of members of the Hague Conference in order that they can consider the desirability and feasibility of further international work in this area.

The Global Surrogacy Practices thematic area of the August 2014 International Forum on Intercountry Adoption and Global Surrogacy brought together some 25 women's health and human rights advocates, scholars, and policy experts who have engaged with the issues surrounding international surrogacy from numerous angles and using a range of approaches. The Forum provided a venue for them to share their findings and thinking with each other, and to engage with the experts on inter-country adoption who had gathered for the Forum's other four thematic areas. These proved to be fruitful exchanges. Participants whose work to date has focused primarily on surrogacy-related issues deeply appreciated the opportunity to interact with intercountry adoption experts from many countries and to learn from their experiences.

Many participants noted that the conversations over the previous days had deepened their understanding and appreciation of the complexity of the issues related to intercountry surrogacy. Some said that their opinions had shifted. Many whose work had previously focused on intercountry adoption voiced appreciation for what they had learned from those whose focus had been on intercountry surrogacy, and vice versa.

[12] Note that following the above-mentioned highly publicised cases of abandoned babies that occurred in Thailand, laws that restrict the practice of surrogacy to altruistic arrangements amongst relatives domiciled within the country have changed this.

Concerns about Parties to Intercountry Surrogacy Arrangements

The Permanent Bureau has identified pressing problems associated with international surrogacy arrangements, including those related to the citizenship and legal status of children resulting from these arrangements. Global Surrogacy Practices participants concurred that parentage and citizenship issues for children are, indeed, issues that need to be resolved. They also focused on a number of additional issues of serious concern, many of which were also mentioned in the Permanent Bureau 2014 Study (Hague Conference Permanent Bureau, 2014a: 84-94). Based on their investigations of intercountry surrogacy, many participants highlighted the need for greater attention, from a human rights perspective, to women working as surrogate mothers and egg providers, as well as to children born of these arrangements.

Children Born from Surrogacy Arrangements

Concerns regarding children born from surrogacy arrangements are not limited to the legal issues of parentage and citizenship. Recent news reports about cases in which children born via transnational surrogacy have been rejected, abandoned or abused strengthened the argument for requiring at least minimal screening and counselling of commissioning parents, recognising that this nevertheless would not prevent some people from falling 'under the radar'. Other concerns about children resulting from intercountry surrogacy arrangements include:

- Medical risks that tend to be exacerbated by third-party reproduction and the commercialization of pregnancy
    - Increased frequency of multiple births associated with in vitro fertilization, with accompanying higher than normal rates of co-morbidities including stillbirth and foetal anomalies
    - Excessive exposure to synthetic hormones at all stages of the IVF process, from egg harvesting through implantation, with inadequately studied long-term health consequences
    - Failure to provide infants with the benefits of breastfeeding
- Psychological consequences
    - Inadequate evidence about psychological (as well as physical) consequences of separating a newborn from its birth mother
    - Lack of information about one's gestational as well as genetic origins, which may become significantly problematic for individuals created through surrogacy arrangements

Surrogate Mothers

Participants expressed serious concern about specific aspects of international commercial surrogacy affecting women who serve as surrogate mothers. While the intensity of these concerns will vary depending upon the countries involved, the following issues were considered to be particularly troubling:

- Unnecessary health risks from excessive exposure to synthetic hormones
- Restrictions on personal autonomy associated with the surrogacy process

    - Enforced isolation/separation from children, families and communities
    - Non-negotiable foetal reductions and abortions if desired by commissioning parents
    - Pressure to continue a pregnancy even if the surrogate mother desires termination
    - Mandated and non-medically indicated caesarean sections (routine in some clinics)
    - Constant monitoring of diet, sleep and mobility
    - Inadequate exercise and restricted movement outside the surrogacy residence
- Practices and conditions that make meaningfully informed consent challenging or impossible
    - Lack of independent legal counsel or advocates for surrogate mothers
    - Irregularities related to contractual agreements (e.g., contracts not in surrogate's own language or of an inappropriate literacy level)
    - Inadequate information about medical risks, and inadequate communication about how little is known about them
    - Inadequate information about long-term psychological effects, and inadequate communication about how little is known about them
- Coercion and undue inducement of women, especially in low-income countries and regions
    - Structural conditions such as poverty, economic inequality and gender inequality conspire to limit women's agency
    - Recruitment practices sometimes include deception (as in the case of the Theresa Erickson scandal, discussed above)
- Inadequate post-pregnancy medical care and health insurance

Gamete Providers

Global Surrogacy Practices participants commended the Permanent Bureau for acknowledging the physical and psychological risks to egg and sperm providers, as these are often ignored in discussions of cross-border surrogacy. They emphasised that egg harvesting is associated with particularly serious risks because of the hormonal stimulation, surgery, and anaesthesia involved. The following areas were considered particularly problematic:

- Practices and conditions that make meaningfully informed consent challenging or impossible
    - Inadequate evidence-based information about long-term health risks of hormonal manipulation, and lack of communication on the absence of data
    - Inadequate evidence-based information about rates of short-term risks and best protocols for minimizing risks, and inadequate communication of the limitations of available data
- Consequences of gamete provider anonymity
    - Deprives gamete provider and offspring of the future option of learning each other's identity

- Encourages hormonal overstimulation of women to produce greater numbers of eggs
- Can facilitate illicit exchange and sale of eggs

Commissioning Parents

Global Surrogacy Practices participants identified incorrect and incomplete information provided to intending parents as an area of concern. This gap in reliable information begins early on, when those considering intercountry surrogacy explore online sources. Claims made by fertility clinics and surrogacy agencies that transnational commercial surrogacy is a desirable and unproblematic way to have children, often leave prospective parents ignorant of the many legal and other complications that may arise.

- They may be unaware of the reality of the conditions under which women agree to serve as surrogate mothers
- They may be unprepared emotionally or financially for the possibility of illness or disability in children acquired through surrogacy
- They are vulnerable to financial and emotional victimization by unscrupulous clinics, brokers, and other intermediaries

Intermediaries

In the United States, India, and elsewhere, intermediaries in commercial surrogacy arrangements, including those that take place transnationally, operate with little regulation or oversight, and within a patchwork of inconsistent laws from country to country. As has been found in intercountry adoption, surrogacy agents and brokers motivated primarily by profit may be tempted to engage in unethical or ethically marginal practices. For this reason, as well as to ensure adequate long-term record keeping, Global Surrogacy Practices participants raised the question of whether the continued existence of for-profit agencies involved in intercountry surrogacy arrangements is appropriate.

Regulation vs. Prohibition: Mutually Exclusive Alternatives?

Participants were divided about whether intercountry commercial surrogacy should be more effectively regulated, or prohibited altogether. Some held a strong position; some were uncertain. Many were open to the possibility that an international convention could mitigate many of the problematic practices and consequences associated with intercountry surrogacy.

Some Forum participants, however, questioned whether an international convention might wind up undermining the prohibitions on commercial surrogacy that many jurisdictions have put in place, often on the grounds that the practice violates the human dignity of both the child and the gestational mother. From this point of view, there was concern that an international convention might normalise commercial surrogacy, and/or fail to significantly reduce the human rights violations it entails. Questions were also raised about whether intercountry surrogacy might, at least in some circumstances, constitute baby selling, or violate the Convention on the Rights of the Child by failing to preserve his or her identity, nationality and family relations.

Other participants, whatever their assessment of the potential likelihood and efficacy of an international convention, supported regulation of commercial surrogacy rather than prohibition for reasons based in pragmatism, principle or both. Some argued for regulation as the most effective way to provide urgently needed protections for the women and children involved in commercial surrogacy arrangements. Others pointed out that bans on commercial surrogacy would be politically very difficult to enact in many of the jurisdictions in which it is currently established practice, and that regimes permitting altruistic but not commercial surrogacy arrangements would be difficult to oversee. Some base their support for permitting effectively regulated commercial surrogacy on principled arguments about women's agency, and point to evidence that many women working as surrogates are grateful for the opportunity to earn a significant amount of money. They simply want better working conditions and protections against health risks, as well as a reduction in stigma associated with such arrangements.

Despite the tendency of some to consider 'prohibition' and 'regulation' of commercial surrogacy as opposed and non-overlapping positions, it is possible to envision a wide range of legal or policy approaches that might effectively minimise or eliminate the problematic aspects of intercountry surrogacy. These could include criminal or civil sanctions against intermediaries but not other parties involved with surrogacy arrangements; a variety of rules about legal parentage of resulting children and preservation of records; requirements about the content, timing and enforceability of surrogacy contracts; requirements about the status and/or conduct of intermediaries; rules prohibiting discrimination against commissioning parents or surrogates on the grounds of marital status, sexual orientation, and disability; enforceable protections for the health and safety of surrogates; screening requirements for commissioning parents, etc. There might also be laws to restrict commercial arrangements to people domiciled within the countries that accept them, and/or to limit transnational arrangements to situations in which both countries agree to recognise legal parentage and citizenship of any resulting child.

Specific policy recommendations on which there was wide agreement among Global Surrogacy Practices participants were:

- Elimination of practices that pose unnecessary medical risks to surrogates and children
- Elimination of restrictions on personal autonomy of surrogates
- Establishment and maintenance of records to give participants in surrogacy arrangements the option of acquiring information on their origins and/or future contact should the mutual desire or need for it arise
- Basic screening of commissioning parents to reduce risks of abandonment or abuse of children born via surrogacy
- Provision of evidence-based information about known and potential risks, living conditions and outcomes for surrogate mothers, gamete providers and commissioning parents
- Heightened regulation and oversight of intermediaries

In addition, there was widespread agreement that our understanding of the health implications and social consequences of intercountry surrogacy remains inadequate, and yet the practice continues to grow rapidly. There is an

urgent need for additional investigation by scholars and advocates, and effective intervention by policy makers. The issues raised by commercial and intercountry surrogacy arrangements also call for broader public dialogue and thoughtful attention to their implications for our human future.

REFERENCES

Alberta, H., R. M. Berry and A. D. Levine (2014) 'Risk Disclosure and the Recruitment of Oocyte Donors: Are Advertisers telling the Full Story?', *Journal of Law, Medicine and Ethics* 42(2): 232-43.

Adams, D. and S. Allan (2013) 'Building a Family Tree: Donor-Conceived People, DNA Tracing and Donor "Anonymity"', *Australian Journal of Adoption* 7(2). http://www.nla.gov.au/openpublish/index.php/aja/article/view/3024/3520 Accessed 12 November 2014.

Allan, S. (2011) 'Psycho-Social, Ethical and Legal Arguments For and Against the Retrospective Release of Information about Donors to Donor-Conceived Individuals in Australia', *Journal of Law and Medicine* 19(1): 354-76.

Allan, S. (2012a) 'Donor Conception, Secrecy, and the Search for Information', *Journal of Law and Medicine* 19(4): 631-50.

Allan, S. (2012b) 'A Cross-Jurisdictional Study of Regulatory Requirements and Practice Regarding the Recording of Donor Information and its Release to Donor Conceived People', report prepared for the Winston Churchill Memorial Trust.

Allan, S. (2013) 'Access to Information about Donors by Donor Conceived Individuals: A Human Rights Analysis', *Journal of Law and Medicine* 20(3): 655-70.

Almond, D. and J. Currie (2011) 'Killing Me Softly: The Fetal Origins Hypothesis', *Journal of Economic Perspectives* 25(3): 153-72.

ASRM (American Society for Reproductive Medicine) (2012) 'Multiple Pregnancy and Birth: Twins, Triplets, and High-order Multiples'. http://www.asrm.org/BOOKLET_Multiple_Pregnancy_and_Birth/. Accessed 15 October 2014.

Anderson, S. (2014) 'She was supposed to act as a surrogate for her mother. But then she decided to keep the baby', *Mamamia*. 27 May. http://www.mamamia.com.au/news/surrogate-refuses-to-give-up-baby/. Accessed 16 October 2014.

Article 153-164, Chapter VI of the Law No. 95/2006, based on the EU Cell and Tissue Directive http://www.eshre.eu/Guidelines-and-Legal/Legislation-for-MAR-treatments/Specific-legislation-for-MAR-treatments.aspx Accessed 1 December 2014.

ATDT (America Tonight Digital Team) (2014) 'Outsourcing Surrogacy: It Takes a Global Village', *Al Jazeera*. 15 May. http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/5/15/outsourcing-surrogacyittakesaglobalvillage.html. Accessed 19 November 2014.

Australia's Attorney-General (2012) 'Australia's Response to the List of Issues: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography'. http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Pages/default.aspx. Accessed 28 October 2014.

Baslington, H. (2002) 'The Social Organization of Surrogacy: Relinquishing a Baby and the Role of Payment in the Psychological Detachment Process', *Journal of Health Psychology* 7(1): 57–71.

Beeson, D., P. Jennings and W. Kramer (2011) 'Offspring Searching for their Sperm Donors: how Family Type Shapes the Process', *Human Reproduction* 26(9): 2415-24.

Beeson, D., M. Darnovsky and A. Lippman (2014) 'What's in a Name? Variations in Terminology of Third-Party Reproduction', paper prepared at International Forum on Intercountry Adoption and Global Surrogacy, The Hague (11-13 August).

Blyth, E. (1994) 'I Wanted to be Interesting. I Wanted to be Able to Say "I've Done Domething Interesting with my Life": Interviews with Surrogate Mothers in Britain,' *Journal of Reproductive and Infant Psychology* 12(3): 189–98.

Blyth, E. (2011) 'Donor anonymity and secrecy versus openness concerning the genetic origins of the offspring: international perspectives', report for Dr. Falk Schlesinger Institute for Medical-Halachic Research. http://98.131.138.124/articles/JME/JMEM10/JMEM.10.1.asp. Accessed 16 October 2014.

Brian C. (2006) 'Son of a Surrogate', *Tripod*. 9 August. http://sonofasurrogate.tripod.com/. Accessed 28 October 2014.

Cahn, N. and E. B. Donaldson (2011) 'Old Lessons for a New World: Applying Adoption Research and Experience to ART', *Journal of the American Academy of Matrimonial Lawyers* Vol. 24, 2011; GWU Legal Studies Research Paper No. 532; GWU Law School Public Law Research Paper No. 532.

California Legislative Information (2011) Assembly Bill 1217, Surrogacy Agreements. http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB1217. Accessed 28 October 2014.

Cassell, H. (2014) 'Surrogacy Provider Faces Forced Bankruptcy', *Bay Area Reporter*. 20 March. http://www.cpanel.ebar.com/news/article.php?sec=news&article=69574. Accessed 11 November 2014.

Cooper, C., A. May and A. Christiansen (2014) 'Desperate for a baby: Scammed in global surrogacy's newest frontier', *Al Jazeera America*. 15 May. http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/5/14/desperate-for-a-babyscammedinglobalsurrogacysnewestfrontier.html. Accessed 11 November 2014.

Cowan, J. and B. Reed (2014) 'Would-be parents fleeced, surrogates abandoned by Mexican surrogacy operation Planet Hospital', *ABC News*. 8 July. http://www.abc.net.au/news/2014-07-08/would-be-parents-fleeced-by-mexican-surrogacy-operation/5572262. Accessed 28 October 2014.

Curtis, A. (2010) 'Giving Til It Hurts: Egg Donation and the Costs of Altruism', *Feminist Formations*. 22(2): 80-100.

Daniels, K.R., W. Kramer and M.C. Perez-y-Perez (2012) 'Semen Donors who are Open to Contact with their Offspring: Issues and Implications for them and their Families', *Reproductive Biomedicine Online* 25(7): 670-7. https://www.donorsiblingregistry.com/sites/default/files/files/Sperm%20Donor%20Paper%281%29.pdf. Accessed 29 October 2014.

Darling, M. (2014) 'A Welfare Principle Applied to Children Born and Adopted in Surrogacy', in DasGupta, S. and S. Das Dasgupta (eds) *Globalization and Transnational Surrogacy in India: Outsourcing Life*, Chapter 9. New York: Lexington Books.

Darnovsky, M. (2014a) 'An International Agreement on Commercial Surrogacy?', *Biopolitical Times*. 4 September. http://www.biopoliticaltimes.org/article.php?id=8036. Accessed 28 October 2014.

Darnovsky, M. (2014b) 'Forum on Cross-Border Surrogacy, Adoption Attracts Scholars, Human Rights Activists and Policymakers', *Our Bodies Our Blog*. 18 Septem-

ber. http://www.ourbodiesourselves.org/2014/09/international-forum-cross-border-surrogacy/. Accessed 28 October 2014.

Dean, S., L. Cheer, D. Mills (2014) 'I Will Take Care of Gammy on my Own: Thai Surrogate Mother says She Will Take Care of the Critically-ill Down's Syndrome Baby as Fundraising for his Medical Care Tops $155,000.' *Daily Mail Australia*. 31 July. http://web.archive.org/web/20140804183106/http:/www.dailymail.co.uk/news/article-2712562/Australian-couple-abandon-six-month-old-Down-syndrome-baby-poverty-Thai-surrogate-mother-healthy-twin-sister.html. Accessed 28 October 2014.

Demény, E. (2012) 'An Overview of Some Illegal Cases of Egg Harvesting', paper presented at the European Science Foundation Workshop: Transnationalizing Reproduction: Gamete and Embryo Donation in the Globalized World, Essex, UK (12 September).

Demény, E. (2013) 'Medically Assisted Reproduction: Challenges for Regulation in Romania', in J. Sandor (ed) *Studies in Biopolitics,* pp. 91-101. Budapest: Center for Ethics and Law in Biomedicine.

Deomampo, D. (2013a) 'Transnational Surrogacy in India: Interrogating Power and Women's Agency', *Frontiers: A Journal of Women's Studies* 34(3): 167-88.

Deomampo, D. (2013b) 'Gendered Geographies of Reproductive Tourism', *Gender & Society* 27(4): 514-37.

Deomampo, D. (2014a) 'Beyond "Wombs for Rent": Indian Surrogates and the Need for Evidence-Based Policy', *Somatosphere*. 5 June. http://somatosphere.net/2014/06/beyond-wombs-for-rent-indian-surrogates-and-the-need-for-evidence-based-policy.html. Accessed 3 December 2014.

Deomampo, D. (2014b) 'Biosociality and how bodies suffer: Cesarean delivery and commercial surrogacy in India', paper presented at Conference on Population and Development: Anthropological Perspectives, Population Studies and Training Center, Brown University, Providence, RI (15 March).

Deomampo, D. (Forthcoming a) 'Race, Nation, and the Production of Intimacy: Transnational Egg Donation in India', *positions: asia critique* 24(1).

Deomampo, D. (Forthcoming b) 'Defining Parents, Making Citizens: Nationality and Citizenship in Transnational Surrogacy', *Medical Anthropology* 34(3). Advance online publication. DOI: 10.1080/01459740.2014.890195.

Dennis, L. (2014) *Adoption Therapy: Perspectives from Clients and Clinicians on Processing and Healing Post-Adoption Issues*. Redondo Beach, Ca: Entourage Publishing.

Devine, R. and R. Stickney (2012) 'Convicted Surrogacy Attorney: I'm Tip of Iceberg', *NBC Universal Media*. 29 February. http://www.nbcsandiego.com/news/local/Theresa-Erickson-Surrogacy-Abuse-Selling-Babies-140942313.html. Accessed 28 October 2014.

Dhillon, A. (2012) 'Mothers for hire', *The Sydney Morning Herald*. 7 September. http://www.smh.com.au/national/mothers-for-hire-20120906-25hi1.html. Accessed 2 December 2014.

Diicot (2014) '12 mame-surogat, implicate în traficul cu ovule umane de la Spitalul Athena din Timişoara', *AGERPRES*. 30 May. http://www.agerpres.ro/justitie/2014/05/30/diicot-12-mame-surogat-implicate-in-traficul-cu-ovule-umane-de-la-spitalul-athena-din-timisoara-14-54-02. Accessed 3 December 2014.

ECHR (European Court of Human Rights) (2014) 'Totally prohibiting the establishment of a relationship between a father and his biological children born follow-

ing surrogacy arrangement abroad was in breach of the Convention'. Press Release issued by the Registrar of the Court. ECHR 185. (26 June.) http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{%22fulltext%22:[%22Mennes on%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-145389%22. Accessed 4 December 2014.

ESHRE (European Society of Human Reproduction and Embryology) (2009) 'Comparative Analysis of Medically Assisted Reproduction in the EU: Regulation and Technologies - Final Report'. http://www.eshre.eu/~/media/emagic%20files/Guidelines/MAR%20report.pdf. Accessed 28 October 2014.

FBI (Federal Bureau of Investigation) (2011) 'Baby-selling Ring Busted'. http://www.fbi.gov/sandiego/press-releases/2011/baby-selling-ring-busted Accessed 12 October 2014.

FBI (Federal Bureau of Investigation Eastern District of California, U.S. Attorney's Office Eastern District of California) (2013) 'Modesto Surrogate Parenting Agency Owner Pleads Guilty in $2 Million Fraud Scheme'. http://www.fbi.gov/sacramento/press-releases/2013/modesto-surrogate-parenting-agency-owner-pleads-guilty-in-2-million-fraud-scheme Accessed 28 October 2014.

Girija, P. (2008) 'Anaemia among Women and Children of India', *Ancient Science of Life*. Jul-Sep; 28(1): 33-36. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3336343/. Accessed 12 December 2014.

Gössl, S.I. (2013) 'Germany', in K. Trimmings and P. Beaumont (eds) *International Surrogacy Arrangements: Legal Regulation at the International Level,* ch. 8. Oxford: Hart Publishing.

Guardian (2014) 'Australian Father of Surrogate Twins Charged with Sexually Abusing Them', *Australian Associated Press.* 1 September. http://www.theguardian.com/world/2014/sep/02/australian-father-of-surrogate-twins-charged-with-sexually-abusing-them. Accessed 16 October 2014.

Guidice, L., E. Santa and R. Pool (eds) (2007) *Assessing the Medical Risks of Human Oocyte Donation for Stem Cell Research: Workshop Report.* Washington, DC: The National Academies Press.

Gundogan, F., D.W. Bianchi, S.A. Scherjon and D.J. Roberts (2010) 'Placental Pathology in Egg Donor Pregnancies', *Fertility and Sterility* 93(2): 397-404. http://www.ncbi.nlm.nih.gov/pubmed/19249031. Accessed 16 October 2014.

Hague Conference Permanent Bureau (2011) 'Private International Law Issues Surrounding the Status of Children, Including Issues Arising from international Surrogacy Arrangements', Preliminary Document No 11. The Hague: Hague Conference on Private International Law (March).

Hague Conference Permanent Bureau (2012) 'A Preliminary Report on the Issues Arising from International Surrogacy Arrangements', Preliminary Document No 10. The Hague: Hague Conference on Private International Law (March).

Hague Conference Permanent Bureau (2014a) 'A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements', Preliminary Document No 3 C. The Hague: Hague Conference on Private International Law (March).

Hague Conference Permanent Bureau (2014b) 'The desirability and feasibility of further work on the Parentage/Surrogacy Project', Preliminary Document No 3 B. The Hague: Hague Conference on Private International Law (April).

Heberman, C. (2014) 'Baby M and the Question of Surrogate Motherhood', *The New York Times*. http://www.nytimes.com/2014/03/24/us/baby-m-and-the-question-of-surrogate-motherhood.html. Accessed 16 October 2014.

Infertility Network (2014) 'Lawsuit by Olivia Pratten/Canadian Donor Conception'. https://www.infertilitynetwork.org/news_dc_cda_pratten. Accessed 15 October 2014.

ISS (International Institute of Social Studies) (2014a) 'Press Release: International Forum on Intercountry Adoption and Surrogacy to be held in The Hague'. 1 August. http://www.iss.nl/fileadmin/ASSETS/iss/Documents/Press_releases/Press_Release_ICA_forum_Aug2014_ENG.pdf. Accessed 28 October 2014.

ISS (International Institute of Social Studies) (2014b) 'International Forum on Intercountry Adoption & Global Surrogacy Website'. http://www.iss.nl/adoption_surrogacy. Accessed 12 December 2014.

IFFS (International Federation of Fertility Societies) (2013) 'IFFS Surveillance 2013'. October. http://c.ymcdn.com/sites/www.iffs-reproduction.org/resource/resmgr/iffs_surveillance_09-19-13.pdf?hhSearchTerms=%22surrogacy%22. Accessed 28 October 2014.

Jadva, V., C. Murray, E. Lycett, F. MacCallum and S. Golombok (2003) 'Surrogacy: the experiences of surrogate mothers', *Human Reproduction* 18(10): 2196–204.

Jaipuriar, V. (2014) 'Dowry Cry in Surrogacy Death'. *The Telegraph*. 2 August. http://www.telegraphindia.com/1140802/jsp/jharkhand/story_18678366.jsp#.VH6lvr5tlMJ Accessed 2 December 2014.

Janwalkar, M. (2012) '17-yr-old egg donor dead, HC questions fertility centre's role', *Journalism of Courage Archive*. 12 July. http://archive.indianexpress.com/news/17yrold-egg-donor-dead-hc-questions-fertility-centres-role/973327/0 Accessed 2 December 2014.

Kane, E. (1989) 'Surrogate Parenting: A Division of Families, Not a Creation', *Reproductive and Genetic Engineering: Journal of International Feminist Analysis* 2(3). http://www.finrrage.org/pdf_files/RepTech%20General/Surrogate_Parenting_Kane.pdf. Accessed 12 December 2014.

Kern, J. 'I am a Product of Surrogacy', *Blogspot: The Other Side of Surrogacy*. http://theothersideofsurrogacy.blogspot.com/. Accessed 28 October 2014.

Kinsella, M. T. and C. Monk (2009) 'Impact of Maternal Stress, Depression & Anxiety on Fetal Neurobehavioral Development', *Clinical Obstetrics and Gynecology 52(3): 425-40.*

Kirkman, M., K. Bourne, J. Fisher, L. Johnson and K. Hammarberg (2014) '"Gamete Donors": Expectations and Experiences of Contact with their Donor Offspring', *Human Reproduction* Apr; 29(4): 731-8.

Kramer, W. and N. Cahn (2013) *Finding Our Families: A First of Its-Kind Book for Donor-Conceived People and Their Families*. New York: Avery.

Kuzawa, C. and E. Quinn (2009) 'Developmental Origins of Adult Function and Health: Evolutionary Hypotheses', *Annual Review of Anthropology* 38: 131-47.

Levine, A. D. (2010) 'Self-Regulation, Compensation and the Ethical Recruitment of Oocyte Donors', *Hastings Center Report*, pp. 25-36.

Majumdar, S. (2014) 'Donor Deaths in India Highlight Surrogacy Perils', *We.news*. 17 June. http://womensenews.org/story/reproductive-health/140616/donor-

deaths-in-india-highlight-surrogacy-perils#.VH6ooL5tlMJ. Accessed 2 December 2014.

Marinas, R. (2009) 'Israelis held in Romania over human egg trafficking', *Reuters*. 20 July. http://www.reuters.com/article/2009/07/20/idUSLK46318. Accessed 3 December 2014.

Martínez-Varea, A., B. Pellicer, A. Perales-Marín and A. Pellicer (2014) 'Relationship between Maternal Immunological Response during Pregnancy and Onset of Preeclampsia', *Journal of Immunology Research*. Article ID 210241. http://www.hindawi.com/journals/jir/2014/210241/. Accessed 16 October 2014.

McCloud, C. and A. Botterell (2014) 'A Hague Convention on Contract Pregnancy (or 'Surrogacy'): Avoiding Ethical Inconsistencies with the Convention on Adoption', *International Journal of Feminist Approaches to Bioethics* 7(2): 219-35.

Merritt, T.A., M. Goldstein, R. Philips, R. Peverini, J. Iwakoshi, A. Rodriguez and B. Oshiro (2014) 'Impact of ART on Pregnancies in California: An Analysis of Maternity Outcomes and Insights into the Added Burden of Neonatal Intensive Care', *Journal of Perinatology 1-6*.

Michael, S., D. Piotrowski and R. Shears (2014) '"You have Robbed them of the Opportunity to have a Normal Life": What Judge told Pedophile Father Convicted of TWENTY-TWO Child Sex Offences - as Welfare Officers Step up Hunt for Couple in Baby Gammy Case', *Mail Online*. http://www.dailymail.co.uk/news/article-2717364/Australian-parents-Gammy-met-Chinese-mail-order-bride-agency.html Accessed 13 October 2014.

Nayak, P. (2014) 'The Three Ms of Commercial Surrogacy in India: Mother, Money, and Medical Market', in S. DasGupta and S. Das Dasgupta (eds) *Globalization and Transnational Surrogacy in India*. Chapter 1.UK: Lexington Books.

News.Com.au (2014) 'Gammy Surrogacy Scandal Deepens'. 5 August. http://www.news.com.au/national/breaking-news/gammys-dad-spent-time-in-jail-report/story-e6frfku9-1227013680751. Accessed 29 October 2014.

New South Wales (2010) 'Surrogacy Bill 2010'. http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/71c024816771a264ca2577c100195683/$FILE/b2010-117-d11-House.pdf. Accessed 30 October 2014.

Nicole, G. and A. May (2014) 'Going Global for a Family: Why International Surrogacy is Booming', *Al Jazeera America*. 12 May 12. http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/5/12/going-global-forafamilywhyinternationalsurrogacyisbooming.html. Accessed 29 October 2014.

Norsigian, J. (2005) 'Egg Donation Dangers', *Genewatch*. http://www.councilforresponsiblegenetics.org/ViewPage.aspx?pageId=103. Accessed 29 October 2014.

OPCRC (2002) *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,* opened for signature 25 May 2000, 2171 UNTS 227 (entered into force 18 January 2002), art 2(a).

Overdorf, J. (2013) 'Israeli Sex Offender Taps India's Booming Surrogacy Trade For Baby Girl', *Global Post*. 10 June. http://www.globalpost.com/dispatch/news/regions/asia-pacific/india/130610/india-israeli-sex-offender-taps-indias-booming-surro. Accessed 5 December 2014.

Pande, A. (2014a) *Wombs in Labor: Transnational commercial Surrogacy in India*. New York: Columbia University Press.Pande, A. (2014b) 'The Power of Narratives: Negoti-

ating Commercial Surrogacy', in S. DasGupta and S. Das Dasgupta (eds) *Globalization and Transnational Surrogacy in India: Outsourcing Life*, chapter 5. New York: Lexington Books.

Pearlman, J. (2014) 'Surrogacy Case: the History of Sex Offences of the Australian Accused of Leaving Surrogate Baby in Thailand', *Telegraph*. 6 August. http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/australia/11015898/Surrogacy-case-the-history-of-sex-offences-of-the-Australian-accused-of-leaving-surrogate-baby-in-Thailand.html Accessed 28 October 2014.

Pearson, P. (2006) 'Health Effects of Egg Donation may take Decades to Emerge', *Nature* 442: 607-8.

Rawlinson, K. (2014) 'Interpol investigates 'Baby Factory' as Man Fathers 16 Surrogate Children', *The Guardian*. 23 August. http://www.theguardian.com/lifeandstyle/2014/aug/23/interpol-japanese-baby-factory-man-fathered-16-children Accessed 28 October 2014.

Rifkin-Graboi, A., J. Bai, H. Chen, W.B. Hameed, L.W. Sim, M.T. Tint, B. Leutscher-Broekman, Y.S. Chong, P.D. Gluckman, M.V. Fortier, M.J. Meaney and A. Qui (2013) 'Prenatal Maternal depression Associates with Microstructure of Right Amygdala in Neonates at Birth', *Biological Psychiatry* 74(11): 837-44. Doi: 10.1016/j.biopsych.2013.06.019

Romascan, A., D. Even, B. Ravid and F. Eyadat (2019) 'Israeli Doctors Held in Bucharest over Alleged Illegal Egg Donor Clinic', *Haaretz*. 22 July. http://www.haaretz.com/print-edition/news/israeli-doctors-held-in-bucharest-over-alleged-illegal-egg-donor-clinic-1.280395 Accessed 3 December 2014.

Sama (Sama Resource Group for Women and Health) (2010) 'Constructing Conceptions: The Mapping of Assisted Reproductive Technologies in India'. New Delhi, India. http://www.samawomenshealth.org/downloads/Constructing%20Conceptions.pdf Accessed 5 December 2014.

Sama (Sama Resource Group for Women and Health) (2012) 'Birthing a Market: A Study on Commercial Surrogacy'. New Delhi, India. http://www.samawomenshealth.org/downloads/Birthing%20A%20Market.pdf Accessed 5 December 2014.

Sawer, P. (2011) 'Surrogate Mum Tells Why She Refused to Hand Over her Baby', *The Telegraph*. http://www.telegraph.co.uk/women/mother-tongue/8320175/Surrogate-mum-tells-why-she-refused-to-hand-over-her-baby.html Accessed 16 October 2014.

Schneider, J. (2008) 'Fatal Colon Cancer in a Young Egg Donor: A Physician Mother's Call for Follow-up and Research on the Long-term Risks of Ovarian Stimulation', *Fertility and Sterility* 90(5): 2016.e1–2016.e5, November.

Shalev, C. (2014) 'International Surrogacy, Global Consumerism, Harms to Women and Children', *Biopolitical Times*. http://www.biopoliticaltimes.org/article.php?id=8061 Accessed 16 October 2014.

Steatman, J. and G. T. McCloskey (1987) 'The Prospect of Surrogate Mothering: Clinical Concerns', *Canadian Journal of Psychiatry* Vol. 32, October.

Teman, E. (2010) *Birthing a Mother: The Surrogate Body and the Pregnant Self*. Berkeley: University of California Press.

Trimmings, K. and P. Beaumont (eds) (2013) *International Surrogacy Arrangements: Legal Regulation at the International Level*. Portland, Oregon: Hart Publishing.

United Nations Treaty Collection (1989) 'Convention on the Rights of the Child'. Articles 7, 8 & 9. http://www.ohchr.org/en/professionalinterest/pages/crc.aspx Accessed 28 October 2014.

UN News Centre (2014) 'Simple, Smart, Cost-effective, Breastfeeding Provides Benefits that Last a Lifetime-UN'. http://www.un.org/apps/news/story.asp?NewsID=48391#,VBlowEjX2cx. Accessed 15 October 2014.

van der Hoorn, M.L.P., E.E.L.O. Lashley, D.W. Bianchi, F.H.J. Claas,

C.M.C. Schonkeren and S.A. Scherjon (2010) 'Clinical and Immunologic Aspects of Egg Donation', *Human Reproduction* 16(6): 704-12. http://humupd.oxfordjournals.org/content/16/6/704.long. Accessed 16 October 2014.

van Wichelen, S. (2014) 'What Chance for International Surrogacy Laws?' *ABC The Drum*. http://www.abc.net.au/news/2014-08-21/van-whichelen-what-chance-for-international-surrogacy-laws/5683746. Accessed 15 November 2014.

Verrier, N. (1993) *The Primal Wound: Understanding the Adopted Child.* Baltimore, MD: Gateway Press.

Wei, S. (2013) 'Testimony to California State Senate Health Committee'. *Center for Genetics and Society*. http://www.geneticsandsociety.org/article.php?id=6948 Accessed 12 November 2014.

WHO (World Health Organization) (ND) 'Health Topics "Breastfeeding"'. http://www.who.int/topics/breastfeeding/en/. Accessed 12 December 2014.

APPENDIX A: PARTICIPANTS IN THE GLOBAL SURROGACY PRACTICES THEMATIC AREA

These participants in the International Forum on Intercountry Adoption and Global Surrogacy indicated that 'Global Surrogacy Practices' was their primary interest, and attended most if not all sessions of that thematic area.

1. Sonia Allan, Macquarie University
2. Randall Barlow, American Adoption Pros Abroad
3. Françoise Baylis, Dalhousie University
4. Diane Beeson, Alliance for Humane Biotechnology; California State University, East Bay
5. Hervé Boechat, International Social Service, International Reference Centre
6. Andrew Botterell, University of Western Ontario
7. Marsha Darling, Adelphi University
8. Miranda Davies, *Adoption and Fostering*
9. Marcy Darnovsky, Center for Genetics and Society
10. Eniko Demény, Central European University
11. Daisy Deomampo, Fordham University
12. Hedva Eyal, Isha l'Isha
13. Isabel Fulda Graue, Grupo de Información en Reproducción Elegida
14. Jyotsna Agnihotri Gupta, University of Humanistic Studies
15. Lisa Ikemoto, University of California Davis School of Law
16. Carolyn McLeod, University of Western Ontario; International Network on Feminist Approaches to Bioethics
17. Shree Mulay, Memorial University of Newfoundland
18. Victoria Nichols, Center for Genetics and Society
19. Amrita Pande, University of Cape Town
20. Carmel Shalev, Haifa University Faculty of Law
21. Bep van Sloten, Save the Children
22. Sally Whelan, Our Bodies Ourselves
23. Sonja van Wichelen, University of Western Sydney
24. Deepa Venkatachalam, Sama Resource Group for Women and Health

In addition, Hannah Baker of the Hague Conference Permanent Bureau attended the Global Surrogacy Practices sessions as an observer.

APPENDIX B: GLOBAL SURROGACY PRACTICES SCHEDULE OF SESSIONS

Preliminary session, Monday August 11, 11:30 am-12:30 pm – Introductions & Agenda Review

- Goal: Begin to get to know one another and our respective expertise, work, and perspective
- Activities
    - Intro: Welcome, agenda review for Theme 5 sessions
    - Personal introductions: Each person gives name and affiliation
    - Small group introductions / interviews

Session 1, Monday August 11, 2:00 pm-4:30 pm – Overview of Concerns about Cross-border Surrogacy: What Do We Know; What Do We Need to Know; What Do We Call It?

- Goals: Get the numerous concerns about cross-border surrogacy 'out on the table' and begin to understand level of concern about each
- Facilitator: Sally Whelan
- Reflector: Daisy Deomampo
- Activities
    - Introduction; review agenda for this session; explain exercise
    - Small-group carousel exercise based on 'Concerns about Cross-Border Surrogacy: A Preliminary List'
    - Brief presentation on terminology
    - Large group discussion

Session 2, Tuesday August 12, 10:30 am-12:30 pm – Mapping the Industry and Policy Prospects

- Goals: Bring the larger commercial and policy contexts into view. Review the full range of players in cross-border surrogacy arrangements. Name and discuss possible approaches to establishing policy on cross-border surrogacy, consider strengths, weaknesses, potential scope, and feasibility.
- Facilitator: Lisa Ikemoto
- Reflector: Marsha Darling
- Activities
    - Introduction and agenda for this session
    - Small-group exercise on 'Mapping the Industry'
    - Large group: Facilitator comments on possible policy approaches
    - Brief presentations
    - Large group discussion, focusing on the strengths, limits, potential scope and feasibility of the different policy options

Session 3, Tuesday August 12, 2:00 pm-4:00 pm – Joint session, The Role of Intermediaries in Inter-country Adoption and Cross-border Surrogacy

- Goals: Share information between tracks about role of intermediaries in inter-country adoption and cross-border surrogacy; for surrogacy theme,

begin consideration of possible steps toward regularizing / regulating intermediaries in cross-border surrogacy.

- Facilitator: Jan Vroomans
- Reflector: Carolyn McLeod
- Activities
    - Introduction and session review
    - Brief presentations
    - Small-group discussions based on 'Key Topics'
    - Large-group facilitated discussion

Session 4, Wednesday August 13, 10:30 am-12:30 pm – Joint session, Coercion Versus Agency in Inter-country Adoption and Cross-border Surrogacy

- Goals: Distinguish between 'force', 'fraud' and 'coercion' as they apply (or don't apply) to inter-country adoption and to cross-border surrogacy; share instances of each.
- Facilitator: Karen Rotabi
- Reflector: Françoise Baylis
- Activities
    - Introduction and session review
    - Brief presentations
    - Whole-group facilitated discussion with special emphasis on how exploitation is defined and what are the implications for birth mothers and surrogate mothers
    - Small-group table discussions

Session 5, Wednesday August 13, 2:00 pm-4:00 pm – Next steps

- Goals: Allow time for additional consideration of pressing issues that have emerged over the past 3 days. Identify areas of broad agreement and of differences. Share information about individual plans for future efforts and possible collaborations (research, policy interventions, advocacy)
- Facilitator: Marcy Darnovsky
- Reflector: Shree Mulay
- Activities: Discussion and reflection

APPENDIX C: CONCERNS ABOUT CROSS-BORDER SURROGACY: A PRELIMINARY LIST

This document was prepared in advance of the Forum to serve as a basis for the group exercise and discussion in the Monday afternoon session of the Global Surrogacy Practices thematic area.

Children

- Legal status: parentage and citizenship
- Medical issues: twin and higher-order pregnancies, other IVF long-term health effects; medically unnecessary caesarean sections; less likely breast-feeding; effects of birth mother's pre-pregnancy health upon child
- Psychological issues: separation from birth mother; knowledge of identities of birth mother (and egg provider) and of surrogacy arrangement; issues of cultural identity
- Effects on children of women working as surrogates

Women who are pregnant in surrogacy arrangements

- Consent and agency: need for independent legal counsel/representation; recruitment practices; full disclosure of relevant information in local languages and culturally appropriate forms; undue influence of coercion by family members; effects of dire economic circumstances; vulnerability to exploitation
- Restrictions of personal liberty during pregnancy: living arrangements; family visits; diet; activity; medical supervision; medical decision-making power re number of implanted embryos, foetal reduction, pregnancy termination or caesarean section
- Financial considerations: non-receipt of promised payment; payment in the case of miscarriage; lack of health care; lack of health or life insurance in case of complications; differential fees based on appearance, other traits and education of surrogate mothers
- Medical issues: lack of independent medical advice and follow-up health care after birth; side effects of hormonal stimulation; twin and higher-order pregnancies; repeat pregnancies; medically unnecessary caesarean sections
- Psychological issues: stigmatization and secrecy; relationship with spouse and children; separation from bab(y/ies); relationship before, during and after pregnancy with intending parents and child(ren)

Intending (or commissioning) parents

- Understanding of surrogacy arrangements, including living and working conditions of surrogates
- Preparation for parenthood: should pre-adoption-type screening process be implemented?
- Discrimination against people due to marital status, sexual orientation, or gender identity
- Difficulties in home countries re legal status of resulting children: citizenship, parentage (birth certificates and/or court orders)

- Financial considerations: unscrupulous practices by intermediaries, clinics, surrogate mothers
- Disclosure to child(ren) of their origins

Egg providers

- Consent and agency: challenges to meaningful informed consent; need for independent legal counsel; recruitment practices; full disclosure of relevant information in local languages and culturally appropriate forms; effects of dire economic circumstances; vulnerability to exploitation
- Medical issues: minimal evidence-based information on health risks of hormonal stimulation (especially long term) and of retrieval process; lack of independent medical advice and follow-up health care; side effects of hormonal stimulation
- Psychological issues: lack of reciprocity in sharing identity and personal information with intended parent(s); lack of information about any children born; little or no access to other egg providers for emotional support

APPENDIX D: KEY TOPICS FOR DISCUSSION: THE ROLE OF INTERMEDIARIES IN INTERCOUNTRY ADOPTION AND CROSS-BORDER SURROGACY

This document was prepared in advance of the Forum to serve as a conceptual guide for discussion in the Tuesday afternoon joint session of the 'Global Surrogacy Practices' and 'Intercountry Adoption Agencies and the HCIA' thematic areas.

1. Overview topics: Intermediaries (agencies) in inter-country adoption
   - Brief history, before and after the HCIA
   - How effective is the HCIA process of agency accreditation?
   - Current roles, from preparation groups and home-study to post-adoption
   - Commercial vs. not-for-profit status; financial considerations
   - Are we seeing adoption agencies moving into cross-border surrogacy? If yes, why?

2. Overview topics: Intermediaries in cross-border surrogacy
   - Identify intermediaries (recruiters, brokers, clinics, attorneys) and their current roles, financial considerations and marketing practices
   - Examples of problems (special focus on California brokers and on India recruiters)
   - Existing licensing / accreditation arrangements in 'surrogacy friendly' jurisdictions, or lack of them. Is there a need for agency accreditation in surrogacy? If so, how would this differ from recommendations for accreditation of intercountry adoption agencies?
   - What is the feasibility of accreditation of intermediaries in cross-border surrogacy?
   - What role(s) should intermediaries play in protecting all parties?

3. Focus topic: Preparation and/or screening of prospective parents
   - In inter-country adoption, agencies or public authorities currently fulfill this role, and it is seen as important. How well do inter-country adoption agencies carry out this role, and successfully ensure that adoption is in the best interests of the child?
   - In cross-border surrogacy, what little preparation or screening that exists (beyond jurisdictional rules about who is eligible to commission a surrogate) is done informally by clinics or brokers. Should intermediaries in cross-border surrogacy arrangements help ensure that surrogacy is in the best interests of the child? What would this mean?

4. Focus topic: The role of agencies regarding record-keeping, and its relevance to openness with / disclosure to children in inter-country adoption and cross-border surrogacy arrangements
   - We now recognise that most internationally adopted persons want to learn more about their country of origin and biological/first families.

We also know that many children born through the provision of third-party sperm or eggs want more information about the gamete providers.

- Will some or many children born through surrogacy be told of the circumstances of their birth, and if so, will they want more information about the woman who gave birth to them?
- Will some or many parents want to establish and maintain a relationship with the surrogate who gestated their child?
- What role should intermediaries be encouraged or required to play in these situations?
- What is the current situation on these issues in inter-country adoption vs. cross-border surrogacy?

APPENDIX E: KEY TOPICS FOR DISCUSSION: COERCION VS. AGENCY IN INTERCOUNTRY ADOPTION AND CROSS-BORDER SURROGACY

This document was prepared in advance of the Forum to serve as a conceptual guide for discussion in the Wednesday morning joint session of the 'Global Surrogacy Practices', 'Force, Fraud, Coercion', and 'Intercountry Adoption, Countries of Origin, and Biological Families' thematic areas.

- What do the women involved say?
    - Do birth mothers in inter-country adoption act under pressure or make a voluntary decision or both under their own descriptions?
    - Do women working as surrogates report exploitation, empowerment or both?

- What constitutes coercion, exploitation or violation of human rights?
    - In recruitment, consent, payment and/or conditions of work in cross-border surrogacy?
    - In recruitment, consent, and/or post-adoption experiences in inter-country adoption?

- Illegal activities such as trafficking, fraud and human rights violations
    - Fraud and trafficking in inter-country adoption and how it is tackled by the Hague Convention
    - Fraud and trafficking in cross-border surrogacy and how could it be tackled

- Other forms of coercion (apart from outright fraud); 'legally ethical' but potentially exploitative aspects
    - Is poverty a justifiable basis for inter-country adoption?
    - Is the free global market a justifiable basis for cross-border surrogacy?
    - What role does economic need play in women's decisions to undertake contract pregnancy or relinquish a child?
    - How might increasing demand for small children constitute a risk?
    - How voluntary is voluntary relinquishment or voluntary contract pregnancy?
    - What role does pressure by husbands or other family members play in women's decisions to undertake contract pregnancy or relinquish a child?
    - What measures or policy initiatives are there to prevent these forms of coercion?
    - What are, and what should be, the rights of birth mothers and women working as surrogates?
    - What should future research focus on?