

Sold Into Adoption:

The Hunan Baby Trafficking Scandal Exposes Vulnerabilities  
in Chinese Adoptions to the United States

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## I. Introduction

### A. The Story: Babies Sold Into Adoption

On Friday, November 11, 2005, at three o'clock in the afternoon, two women carrying three babies emerged from the Hengyang County train station in the southern China province of Hunan.<sup>1</sup> The women walked directly to a black car parked in front of the station.<sup>2</sup> Chinese law enforcement officers—generally on alert for baby traffickers in China, especially at train stations<sup>3</sup>—intervened. China has a long history of and continuing problems with child trafficking.<sup>4</sup> The police probably were not surprised to learn the women were professional baby traffickers. However, they likely *were* surprised to learn who planned to buy the babies.<sup>5</sup> Sitting inside the car were top officials from a local orphanage and a local senior citizens' home, Wang Weihong and Zhang Heyun.<sup>6</sup>

Why would an orphanage director buy babies? The answer lies in the large amounts of money donated to orphanages when foreign parents adopt children. As would come out later at trial, since 2002 the Hengyang Social Welfare Institute had been buying babies from traffickers.<sup>7</sup> At first, officials acted as baby brokers, selling the children to other orphanages, which placed the children for adoption internationally and collected \$3000 in mandatory contributions for each. In 2004, the Hengyang orphanage obtained permission to participate in China's intercountry adoption program itself, at which point it began placing the trafficked children directly with Western adoptive parents and collecting the donations.<sup>8</sup>

Why would the head of the retirement home buy babies? The orphanage director and the senior citizen home director—both county officials—were working together to make money by buying babies for adoption.<sup>9</sup> As the Washington Post reported, “Some orphanage directors have used proceeds from foreign adoptions to build profit-making homes for senior citizens.”<sup>10</sup>

The six identified orphanages placed hundreds, perhaps even 1000, trafficked babies with Western adoptive parents between 2002 and 2005.<sup>11</sup> The profit potential is clear. Even if only half of the estimated number of children were adopted to foreign families, at \$3000 per baby the orphanages would have collected \$1.5 million. Someone made money each time a baby changed hands. The mother of one of the traffickers said her son was paid \$36 for each child.<sup>12</sup> The Hengyang orphanage paid between \$400 and \$558 apiece for the babies.<sup>13</sup> Hengyang officials sold the children to the neighboring orphanages for \$1000 each.<sup>14</sup>

The traffickers brought the children from neighboring Guangdong province.<sup>15</sup> It is unclear how the traffickers obtained the children. The lawyer of one defendant insisted all the children were abandoned.<sup>16</sup> He said a woman in southwestern Guangdong Province, who “was quite well known locally for being warm-hearted and taking care of abandoned babies,” accepted foundlings and arranged with traffickers to transport them to Hengyang.<sup>17</sup> However, when that lawyer’s client, the director of the Hengdong County Social Welfare Institute, was sentenced to a year in prison, the verdict said he “was cognizant of the fact that he had purchased babies that had been abducted.”<sup>18</sup> A local police chief said, “The suspects said that they were doing good work to save the abducted children from death. However, we found that they paid more to buy children when there was demand.”<sup>19</sup> According to the Post, the Guangdong-based traffickers targeted the children of migrant workers because they thought police would not take such workers’ complaints seriously.<sup>20</sup> The Washington Post reported that “sources familiar with the investigation said many children were abducted.”<sup>21</sup>

Chinese officials arrested 27 suspects in November 2005.<sup>22</sup> The Hengdong SWI director’s one-year sentence was the lightest. The court sent three of the traffickers to prison for 15 years and fined them each 50,000 yuan (U.S. \$6250).<sup>23</sup> It sentenced another six traffickers to

between three and thirteen years.<sup>24</sup> Also, the government fired 23 county officials in Hengyang and prohibited intercountry adoptions from Hunan Province for several months.<sup>25</sup> Shortly after the trial, the Chinese government shut down all media reports on the story.<sup>26</sup>

Many questions remain about the Hunan case, including who the children were, how traffickers obtained them, where they ended up, whether any of them were abducted, and whether birth families are looking for them.<sup>27</sup> The prohibition on reporting about the case means these questions likely will not be answered. Without complete information or open discussion, it is hard to gauge whether the Hunan case is isolated. Common sense says it is not. In any case, the trafficking of perhaps 1000 babies from Guangdong to Hunan over three years for intercountry adoption exposes serious vulnerabilities in the process by which thousands of Chinese children annually immigrate through adoption to Western countries.<sup>28</sup>

Neither the receiving countries nor China have made significant changes to the system of intercountry adoption from China since the Hunan scandal.<sup>29</sup> The same incentives to traffic children for intercountry adoption remain. The Hunan case reveals problems that threaten the credibility of what was considered one of the most dependable intercountry adoption programs.<sup>30</sup> At worst, the case serves as a warning: Trafficking for intercountry adoption happens in China.

#### B. The Roots of the Problem

How could this happen in an intercountry adoption program as tightly controlled and well-respected as that of China? The answer lies in the intersection of three phenomenon: the supply and demand forces that drive the market for intercountry adoption, the long and pervasive history of child trafficking in China, and the failure of both China and the United States to close opportunities for traffickers to profit from intercountry adoption.

To prevent child trafficking in China's intercountry adoption program policymakers must take action to address all three areas. First, adoption reforms must put the needs of the child above the demand for "adoptable" children. Second, China must continue its nascent efforts to prevent domestic child trafficking. And third, China and the United States must both use all the tools available to them to protect Chinese children from being trafficked for adoption.

Laws exist to address child trafficking for intercountry adoption, which suggests a problem of implementation. At the international level, the Hague Convention on Protection of Children and Respect of Intercountry Adoption articulates a framework for ethical intercountry adoption that puts the interests of the child first and clearly condemns child abduction, purchase, or sale in intercountry adoption.<sup>31</sup> However, enforcement is left to each nation, which means the law is only as effective as any individual country's implementing legislation. Individual country regulations must close opportunities for traffickers to profit from adoption.

China criminalizes trafficking for adoption in its anti-trafficking law.<sup>32</sup> China does not hesitate to prosecute human traffickers, including those who sell children for adoption. Prosecution does not prevent further incidences, however. There is little indication that China changed any policies or processes in the wake of the Hunan baby trafficking case. The same incentives remain to traffic children for adoption.<sup>33</sup> Where there is incentive and opportunity to profit from baby sales for adoption, trafficking will occur.<sup>34</sup>

American laws are similarly ineffective in preventing trafficking for adoption. The United States allows immigration officers to deny an orphan visa when they suspect corruption. However, the standard of proof for denying a visa is so high that visas seldom are denied.<sup>35</sup> Additionally, the United States actively targets human trafficking through its robust Trafficking Victims Protection Act.<sup>36</sup> However, American lawmakers hobble themselves by limiting the

reach of the law. The TVPA only applies to “severe forms of trafficking,” and that term does not apply to trafficking for adoption.<sup>37</sup> The law is written to exclude trafficking that is not for an “exploitive” purpose. Adoption appears to be the only purpose that is considered non-exploitive.

To prevent baby selling for adoption, China and the United States must implement regulations that effectively enforce international laws, create policies that remove incentives for traffickers, and use *all* of the laws available to them including those designed to fight trafficking. Laws, regulations, and policies must all put the child’s interests first in fact rather than in theory.

In China, putting the interests of Chinese children first means addressing the underlying problems that lead to trafficking, abandonment, and intercountry adoption. These issues include birth family poverty and vulnerability, pervasive human trafficking in China, little oversight of local social welfare institutes, and barriers to domestic adoption. Protecting children may well mean limiting the number of intercountry adoptions to control the demand for a certain kind of infant. In the United States, putting the needs of potential adoptees first means providing more oversight of adoption agencies, holding adoption agencies responsible for their foreign colleagues and contractors, closely monitoring the money adoptive parents pay for services, and recognizing trafficking for adoption as a “severe form of trafficking.”

### C. Scope of This Paper

This paper focuses on intercountry adoption from China to the United States. Although the Hunan case involved adoptions to several Western countries, most of the children were likely adopted by Americans. Americans adopt more children internationally than parents from any other country.<sup>38</sup> China’s intercountry adoption program is the most popular with U.S. adoptive parents.<sup>39</sup> Additionally, China sends more children overseas for adoption by foreigners than any

other nation.<sup>40</sup> Therefore, any improvement in the process between the United States and China constitutes a large step toward reforming intercountry adoption globally.

The next section provides background information on the China's intercountry adoption program, domestic adoption practices, and child trafficking. Section III moves to a discussion of the international, Chinese, and U.S. laws that govern American adoptions from China, as well as the U.S. Trafficking Victims Protection Act, which this paper suggests should be employed to fight trafficking for adoption. Section IV makes further suggestions.

## II. Background

This section provides background to the Hunan case by examining the Chinese intercountry adoption program, domestic adoption, and experience with child trafficking.

### A. China's Intercountry Adoption Program

An understanding of the history of the intercountry adoption program informs a discussion of trafficking for adoption. The program grew from the need to take care of thousands of children abandoned in the wake of the government's imposition of population control measures on a society with a strong preference for sons. The China Center for Adoption Affairs (CCAA) administers the program. Participation imposes requirements on orphanages, prospective adoptees, and the foreign parents.

#### 1. Gender Preferences, Disabilities Fill Orphanages

Most children in Chinese social welfare institutions are not orphans.<sup>41</sup> On the contrary, they have been abandoned by parents because they are girls or because they have serious health needs poor families cannot address.<sup>42</sup>

Healthy children in orphanages overwhelmingly are abandoned girls.<sup>43</sup> China imposed a "one-child policy" on families in 1979.<sup>44</sup> Although the government recently relaxed some

provisions, when first implemented the policy strictly limited urban families to one child.<sup>45</sup> In some rural areas, the policy allows parents to have a second child if their first-born is a girl.<sup>46</sup>

Traditionally, Chinese families favored boys. Sons carry the family name.<sup>47</sup> Parents have long depended on eldest sons to care for them in their old age.<sup>48</sup> Custom dictated that a daughter, on the other hand, move to her in-laws' home upon marriage to help her husband care for his parents.<sup>49</sup> Traditional maxims reflect this bias, referring to the birth of a daughter with a tone of condolence. An old Chinese saying says: "a married daughter is just like spilt water." Once the government restricted families to one child, the need to have a son took on added importance.<sup>50</sup>

China has a long tradition of infanticide and infant abandonment.<sup>51</sup> Before the one-child policy, these practices appeared to be on the wane.<sup>52</sup> However, when the family restrictions collided with the historical preference for a son, Chinese families again resorted to abandoning daughters.<sup>53</sup> "The crisis came to a head in the late 1980s and early 1990s, in part because of crackdowns in the enforcement of the family-planning policy. The resulting upsurge of abandoned children increased the burden on the cash-strapped social welfare system in China, where facilities were quite basic; per-child allowances for food, clothing, and medical care were minimal; and caregivers' salaries even in the year 2000 were rarely more than 400 RMB (U.S. \$50) per month."<sup>54</sup>

Estimates of the number of girls abandoned today vary widely. The government does not release official figures.<sup>55</sup> "CCAA provides little reliable information on the number of orphans or orphanages in China."<sup>56</sup> Academic sources say "many tens of thousands, perhaps hundreds of thousands, of children are abandoned each year."<sup>57</sup> A medical guide to international adoption estimates that 15 million baby girls have been abandoned since 1980.<sup>58</sup> The same source says between 1986 and 1990 in Hunan Province, more than 16,000 abandoned children entered



government care; 92% were girls and 25% were handicapped.<sup>59</sup> Some of the girls are first-born daughters, but more often they are second-born girls who are given up to make way for a boy.<sup>60</sup> Usually babies are abandoned shortly after birth.<sup>61</sup> In the last several years, in the wake of public awareness campaigns on the value of daughters and social welfare benefits for parents of daughters, less traditional thinking about the value of daughters, and rising rates of domestic adoption, most observers believe the abandonment of girls is decreasing.<sup>62</sup>

The combination of serious health issues and poverty also sends many children to social welfare institutions. Although stories of the new wealthy class in China have filled the news in the last several years, the majority of the population continues to be very poor.<sup>63</sup> The median annual income in rural areas of provinces such as Hunan is 9000-14,000 yuan (\$1250-\$1600) per household.<sup>64</sup> Poor families sometimes abandon even healthy infants because of crushing poverty. However, when poor parents in China give birth to a baby with health problems, they may have little choice other than to abandon the infant.<sup>65</sup> China has no comprehensive system of health care insurance.<sup>66</sup> When a baby needs medical attention, even for a condition that is relatively easily corrected in many parts of the world, the family simply cannot obtain the needed treatment.<sup>67</sup> Parents abandon the baby in the hope that the orphanage will procure the care the child needs.<sup>68</sup> For this reason, many of the children in the social welfare institutions are children with special health needs.

## 2. Adoption Program Seems Like a Win-Win Proposition

In 1991, faced with a deluge of mostly baby girls in state-supported social welfare institutions, China opened the doors to foreign adoptions.<sup>69</sup> The country had allowed isolated adoptions of Chinese children by foreigners previously. From 1981-89, foreigners and overseas Chinese including individuals in Macau, Hong Kong, and Taiwan, adopted about 10,000 children

from China.<sup>70</sup> However, 1992 marked the beginning of a comprehensive program of intercountry adoption.<sup>71</sup> At first, the number of adoptions was small and the process was unpredictable. Only about 200 babies left China via the adoption program in 1992.<sup>72</sup>

China set out to create a model program of intercountry adoption, and it succeeded.<sup>73</sup> The number of adoptions grew each year through the 1990s and early 2000s. By 2006, more than 10,000 Chinese children emigrated from China through adoption, with most of them going to the United States.<sup>74</sup> The program offers exactly what most Western adoptive parents want: relatively young, healthy, female children whose birth parents are unlikely to reappear to complicate the adoption.<sup>75</sup> The process works predictably.<sup>76</sup> At least until the Hunan scandal, the possibility of corruption seemed remote both because the government maintained tight control and because China had so many abandoned children in its orphanages.<sup>77</sup> The number of adoptions peaked in 2005, when Americans adopted 7,906 Chinese children.<sup>78</sup> The following year, 6,493 Chinese children became Americans.<sup>79</sup> And in 2007, the number was 5,453.<sup>80</sup>

The dropping numbers in the last three years do not indicate a drop in demand. On the contrary, the number of applications from prospective American adopters has grown each year.<sup>81</sup> Rather, the drop seems to reflect a deliberate effort by China to restrict demand in the face of diminishing supply.<sup>82</sup> The number of children available for adoption has decreased.<sup>83</sup> Observers attribute the decrease to fewer abandonments, possibly because the new wealth in China allows more families to pay the “social compensation fee” associated with having over-quota children, and increased domestic adoption within China.<sup>84</sup> “As China becomes wealthier and domestic adoptions rise, the director [of the CCAA] maintains, stricter requirements on foreign adoptions are simply a product of supply and demand.”<sup>85</sup>

#### a. Intercountry Adoption Means Money for Orphanages

Social welfare institutions that participate in intercountry adoption enjoy larger budgets, better facilities, and public recognition.<sup>86</sup> However, not all social welfare institutions qualify to send children's files to CCAA for intercountry adoption. Most orphanages do not participate.<sup>87</sup> One researcher estimated only 292 social welfare institutions participate.<sup>88</sup> He based his estimate on the number of Yahoo Newsgroups established for families that have adopted from individual institutions and on additional social welfare institutions that place "finding ads," which constitute the first step in placing a child for intercountry adoption.<sup>89</sup> The Chinese government said at the end of 2006 there were 39,000 SWIs caring for 1.36 million elderly persons, disabled individuals, and abandoned children.<sup>90</sup> The report did not further break down the number of institutions serving each of those populations. Another adoption researcher said in several provinces she visited, about a quarter of the social welfare institutes participated.<sup>91</sup> "To become part of the system, they had to meet requirement of staff-to-child ratios, hygiene, facilities and equipment, and so forth. . . . It is difficult for orphanages to meet these externally imposed standards, since the state funds allocated to them are so limited."<sup>92</sup>

Government subsidies of orphaned and abandoned children are meager.<sup>93</sup> "In many places, social security funds only have symbolic meaning. The largest [subsidies cover] less than a quarter of ordinary children's living costs. The amount in many regions is even less than one tenth," said Professor Shang Xiaoyuan.<sup>94</sup> Shang, along with the Ministry of Civil Affairs and Save the Children, studied China's orphaned and abandoned children in 2005.<sup>95</sup> Shang visited many orphanages. "Surprising poverty is always the first impression," he said. "This is especially obvious in the countryside."<sup>96</sup>

Government subsidies per child vary from one region to another. The 2005 report cited "urban subsistence allowances" of 3000-4000 yuan (approximately U.S. \$375-\$500) per year for

each orphaned or abandoned child in the cities of Beijing, Tianjin, and Shanghai. The rate dropped to about 1000 yuan (U.S. \$125) per year in the provinces of Henan, Gansu, and Ningxia. Government support dropped further in the provinces of Guangxi, Guizhou, and Hunan, where payments were less than 600 yuan (U.S. \$75) per year. As low as the urban subsidies are, a second system for rural areas provides even less support. In 10 provinces under this system, the “rural poverty support” cited in the report was 300-500 yuan (U.S. \$37.50-\$62.50) per child annually. Seven provinces made payments of 200-300 yuan (U.S. \$25-\$37.50) per child per year. Two provinces supplied less than 200 yuan (U.S. \$25). And one province, Qinghai, paid just 110 yuan (U.S. \$13.75) to support a child for a year.

Participating in intercountry adoption means more money for a social welfare institution. Those that participate retain most of the mandatory U.S. \$3000-\$5000 donation from foreign parents who adopt a child.<sup>97</sup> Parents pay the fee to the provincial officials, not the CCAA, usually in cash.<sup>98</sup> In the Hengyang area, the orphanages paid the Hunan Province Civil Affairs Office 5% of the fee, or U.S. \$150, and kept the rest.<sup>99</sup>

Orphanages that participate also receive financial benefits in less direct ways. Adoptive families often take a continuing interest in the social welfare institution. Many send regular donations of goods. Others organize and participate in fund-raising drives for the orphanages. The families want to express their appreciation for the care their daughters received, to support the children “left behind,” and to maintain a connection to the orphanage for their children. Whatever the goals, the bottom line is continuing benefits to the orphanages.

Participating orphanages are supposed to use donations to improve facilities and care.<sup>100</sup> Many update or build new facilities, hire more staff, provide better nutrition, and expand programs for children soon after they start to place children for intercountry adoption.<sup>101</sup>

Orphanages that regularly participate often are recognized as providing better care for children than those new to the system.<sup>102</sup> “Orphanages can become ‘distinguished’ for international adoption through a kind of historical overdetermination of material and symbolic resources. They gain reputations as having the best conditions and therefore the ‘best children.’”<sup>103</sup>

Misuse of the funds is not unusual, however. “While there is only limited direct evidence of corruption, a number of adoption practitioners expressed concerns that, as one facilitator put it, ‘some money is stopped in the middle’ by local civil affairs officials. . . . [S]ome people are getting cell phones and nice cars.”<sup>104</sup> A Western aid worker told the Washington Post that “[p]erhaps 5 to 10 percent of what’s given by central, provincial and local governments actually benefits the kids.”<sup>105</sup> The newspaper further reported that “a former worker at an orphanage in central China said she routinely witnessed local staff members carting off goods donated by aid groups—medical equipment, blankets, formula.”<sup>106</sup> Indeed, the first signs something was amiss in the Hunan trafficking case were outward displays of wealth by those employed by the Hengyang Country Social Welfare Institute. “Staffers began erecting new houses. The director navigated the area’s muddy roads in a chauffeured sedan,” the Washington Post reported.<sup>107</sup>

Continued foreign revenue for the social welfare institutes, of course, relies on continued participation in intercountry adoption. But a steady supply of healthy, young, children appropriate for adoption can be difficult to sustain. “In some cases, small rural orphanages are indirectly articulated into the system by sending their healthy infants to larger urban facilities that are ‘running low’ on children—namely, healthy infants—for international adoption.”<sup>108</sup> There is evidence children were moved from one institution to another in Hunan to keep a steady stream of files going to the CCAA in Beijing.<sup>109</sup> In other cases, healthy infants are procured in other ways. The Hunan Province orphanages started by paying small sums to people who

brought them infants. “At the beginning it was only 200 yuan [U.S. \$25] given in a traditional red envelop,” according to the Phoenix Weekly.<sup>110</sup> Later, the orphanages paid “intermediaries” for children.<sup>111</sup> They also rewarded employees who acquired babies.<sup>112</sup> The Hengyang County Welfare Institute rewarded employees who brought in three children a year. Then the employees “could be said to have completed their work duties for the year and [were] able to receive an extension of their salary and also a bonus at the year's end.”<sup>113</sup>

#### b. How a Child Becomes an Adoptee

The intercountry adoption process affects each participant differently. For an abandoned Chinese child, generally, the Chinese process works like this: An individual finds a child in a public place, most commonly at the gates of orphanages, hospitals, and government offices.<sup>114</sup> The finding person takes the child to a police station, and the police take the child to the social welfare institute.<sup>115</sup> The social welfare institute decides whether to make the child “paper ready” for intercountry adoption. The orphanages do not make all children available for intercountry adoption, so the question becomes which children to select children for referral to international adoption.<sup>116</sup> “[T]he director of Hongqi Orphanage . . . said that the CCAA had certain *yaogiu* (requirements): children as healthy and young as possible.”<sup>117</sup>

If the orphanage decides to submit a child’s file to the CCAA for intercountry adoption, the first step is to publish a “finding ad” in a local newspaper.<sup>118</sup> The ad describes the child and the finding location. After 60 days, officials declare the child officially abandoned and available for international adoption.<sup>119</sup> Finding ads are not published for children adopted domestically until the adoption is final.<sup>120</sup> One researcher considers the term “finding ad” a misnomer.<sup>121</sup> “The ads are not published to locate birth parents, but rather are legal notices transferring legal custody of the child from her birth family to the state, allowing for her adoption.”<sup>122</sup>

The process is easy to corrupt. Orphanages simply obtain fraudulent documents for babies by telling police the baby was found. This is what happened in Hunan. “One participant told [Phoenix] Weekly: ‘We would just randomly choose some place to say that we had picked up the abandoned infant from, and then we would say that we had been informed about the infant from the public hotline. The police and the notary office didn't find anything unusual.’”<sup>123</sup>

### c. Paperwork Marks Adoptive Family’s Process

The adoptive parent’s road to adoption starts with an application to a CCAA-approved adoption agency.<sup>124</sup> Once approved, the parents pursue state permission to adopt.<sup>125</sup> States require a successful “home study” with a licensed social worker. The parents also seek U.S. federal government permission to adopt internationally, which comes from the Bureau of Citizenship and Immigration Services in the Department of Homeland Security.<sup>126</sup> When all the American permissions are in hand, parents send their completed “dossier” to the CCAA in Beijing.<sup>127</sup> The CCAA matches prospective parents with children, sending them the child’s “referral” photograph and about a page of basic information.<sup>128</sup> Parents have the option of turning down the referral, but if they do, CCAA provides no assurance that another referral will follow.<sup>129</sup> Currently, wait times run about two years from submitting a dossier to referral.<sup>130</sup>

Each step of the process involves fees. Total costs vary widely depending on agency fees and travel expenses. Most agencies quote cost estimates of \$15,000-\$20,000 for an adoption from China.<sup>131</sup> The largest fee in China is the orphanage contribution, sometimes called a “child-rearing fee,” of \$3000-\$5000.<sup>132</sup>

### B. Domestic Adoption Common but Not Formalized

Contrary to popular thought, domestic adoption is common in China.<sup>133</sup> “[I]t is argued that Chinese attitudes and culture make it harder for abandoned Chinese children to find loving

adoptive homes in China than in the United States.”<sup>134</sup> However, “historical and anthropological literature on the Chinese family indicates that adoption has been integral to the construction of kinship in China for a very long time.”<sup>135</sup> Noted China researcher Kay Johnson undertook a study in the late 1990s that confirmed the continued popularity of adoption. “What we learned from information gathered from nearly 800 adoptive families between 1996 and 1999 was that adoption, viewed as a permanent and complete transfer of children into the adoptive family, was common in many rural areas, that it involved girls far more than boys, and that only a minority involved relatives or close friends.”<sup>136</sup>

Assessing the extent of domestic adoption is difficult for two reasons: parents almost never adopt children through formal channels and few researchers study domestic adoption in modern China.<sup>137</sup> The few studies that have been published show the vast majority of domestic adoptions are informal.<sup>138</sup> “Nearly 50% of the adoptions took place through intermediaries, 26% from kin, and 23% adopted children who were abandoned directly or with the assistance of their friends, kin or neighbors. Less than 1% of children [were] adopted from the State orphanages.”<sup>139</sup> Most of adoptions involve parents adopting children from strangers.<sup>140</sup> “Many adoptive families indicated that they would like to adopt children from strangers. Adopting the children of strangers, often through intermediaries, could help protect adoptive ties from birth parents and ensure the adopted children not return to their birth families.”<sup>141</sup>

In the mid-1980s, the government started regulating adoption as a component of its population control policies. “Official intervention . . . was mainly for preventing reproductive couples from using fake adoption as a strategy to escape from family planning penalties.”<sup>142</sup> Chinese officials imposed limits on adoption to prevent couples who violated the one-child policy from claiming a birth child was an adopted foundling.<sup>143</sup> The limitations came in the same



law that allowed intercountry adoption. “The 1991 national adoption law, heralded as paving the way for international adoption, simultaneously codified a highly restrictive adoption policy that limited the adoption of foundlings to childless parents over the age of 35.”<sup>144</sup>

Even as the state struggled to care for the wave of girls in its orphanages in the late 1980s and early 1990s, it enforced a policy that precluded families who wanted to raise them. “Little effort was made on a systemwide basis to find adoptive families within China for the increasing number of orphanage foundlings.”<sup>145</sup> Instead the government focused on a systematic intercountry system. In so doing, the government also created a funding stream for the social welfare institutions that *depended* on intercountry adoption.<sup>146</sup>

The adoption law was revised in 1999 to lower the age of parents to 30 and allow families with children to adopt healthy abandoned infants, but the final regulations required adopting parents to adopt from social welfare institutions.<sup>147</sup> By then, the patterns were set. Families interested in adoption were accustomed to using informal networks to procure infants.<sup>148</sup> And orphanages were reluctant to place children domestically for two reasons. One, they depended on the income from intercountry adoptions to take care of the children who would never be adopted.<sup>149</sup> Two, there was a clear, systematic process for adopting children internationally, but no such system for domestic adoptions.<sup>150</sup>

Still, throughout the 1980s and 1990s, domestic adoption grew dramatically.<sup>151</sup> The Ministry of Civil Affairs of China reported 2,900 registered adoptions in 1992 and more than 55,000 in 2001.<sup>152</sup> “However, these accounted for probably a small proportion of all adoptions in China because many adopted children were adopted informally without official registrations.”<sup>153</sup> The demand for healthy infants to adopt continues to grow in China.<sup>154</sup> “Researchers in China say local data and anecdotal evidence show what sketchy national statistics don't: that record

numbers of Chinese are adopting.”<sup>155</sup> Adoptive parents continue to use informal networks to locate children, turning now to internet postings as well as asking friends to “put out word” that they seek a child to adopt.<sup>156</sup>

Potential adoptive parents in China want the same kinds of children foreign parents want: healthy infant girls.<sup>157</sup> This desire puts them in direct competition with the social welfare institutions supplying babies for intercountry adoption. Those social welfare institutions not only have no incentive to supply children for domestic adoption, they stand to lose their very livelihood if they do. “Given the realities of managing an orphanage, any conscientious director would likely do what he or she can to obtain as many financial resources as possible to improve the quality of care in his or her institution.”<sup>158</sup> Therefore, orphanages often put up significant barriers to requests for domestic adoptions.<sup>159</sup> In a survey of all of 259 orphanages participating in intercountry adoption, 88% said they had no healthy infants available for domestic adoption even as most of them continued to submit healthy children for intercountry adoption.<sup>160</sup>

### C. Child Trafficking Is Firmly Entrenched in China

Human trafficking is rampant in China. Traffickers abduct and sell adults and children for forced labor and prostitution. Additionally, organized crime networks trade in children for adoption, domestic service, and, although rarely anymore, as future wives for sons.<sup>161</sup> This section briefly describes human trafficking in China, looks more specifically at the country’s ongoing problem of child trafficking, discusses the attitudes that enable traffickers to continue their activities, and describes grassroots organizations of parents looking for missing children.

#### 1. Trafficking Pervades China

China is a traditional source, transit, and destination country for human trafficking.<sup>162</sup> Chinese women and children are trafficked for commercial sex and forced labor to Malaysia,

Thailand, the United Kingdom, the United States, Australia, Europe, and other countries.

Trafficked victims also move through China to Thailand and Malaysia for commercial sexual exploitation, forced marriage, and forced labor.<sup>163</sup> Victims are brought into China for forced labor, sexual exploitation, marriage, and adoption.<sup>164</sup>

The majority of human trafficking in China is internal. The U.S. State Department estimates a minimum of 10,000 to 20,000 victims are trafficked within China each year.<sup>165</sup> China has a significant amount of domestic trafficking of children for sexual and labor exploitation. China's Ministry of Public Security reports police uncovered cases involving a total of 2,500 children and women trafficking victims in 2006.<sup>166</sup>

There are many causes of human trafficking in China. The most prominent anti-trafficking non-governmental organization in China, the All-China Women's Federation reports that rapid economic development along China's east coast has prompted massive internal migration of unemployed laborers in rural areas.<sup>167</sup> This mass movement creates opportunities for traffickers. Women and girls often migrate at younger ages and with less education than men, which makes them particularly vulnerable to traffickers. International organizations report that 90% of internal trafficking victims are women and children.<sup>168</sup> Traffickers take victims primarily from Anhui, Henan, Hunan, Sichuan, Yunnan, and Guizhou Provinces to prosperous provinces along the east coast.<sup>169</sup> The United Nations Inter-Agency Project on Human Trafficking argues that poor rural residents in remote areas lack the legal knowledge and sophistication to protect themselves from victimization.<sup>170</sup>

The one-child policy also has spurred the market for trafficked infants, most under the age of 1. Traffickers often sell baby boys to families unable to have a son and sell girls to couples who have a son but want to add a girl. This practice is bolstered by Chinese culture's

traditional preference for boys.<sup>171</sup> Families with more than one girl want to give away daughters so they can have a chance to give birth to a boy and families without boys want to adopt one. Some families who have trouble conceiving believe that adopting a daughter will “lead in” a pregnancy that produces a son.<sup>172</sup> Families who adopt domestically often seek to achieve a harmonious balance in the family. One boy and one girl is considered ideal.<sup>173</sup> “While the felt need for at least one son remains prevalent, most people report that their ideal family includes a daughter as well and that the ideal family is a small one, with one boy and one girl.”<sup>174</sup>

## 2. Traffickers Shift Efforts to Girls

Between the demand for healthy girls to supply intercountry adoption and the demand for healthy girls for domestic adoption, female infants have become a hot commodity among traffickers. “In the past, most babies rescued from traffickers had been boys, but in some areas this year more than 80% have been girls,” China Daily reported in 2005.<sup>175</sup> In one case in Xinxiang, police rescued 33 babies, 29 of which were girls. Officials issued notices urging parents to claim their babies. They were inundated with calls, 800 in one day, but none of the callers were birth parents. “They were all keen to adopt the baby girls. . . . Girls have never been so popular.”<sup>176</sup>

To meet that demand, child traffickers often target migrant workers’ children for purchase or abduction. These rural workers come to cities to earn more money. China had 113.9 million migrant workers from rural areas in 2003, who accounted for 23.2 per cent of the total rural laborers, according to a survey carried out by China’s State Statistical Bureau.<sup>177</sup> These workers do not have much time to look after their children, often leaving them in the supervision of only slightly older children. Migrant workers also do not have many connections in the cities where they work, or resources to use to search for missing children. Government officials and

police find it easy to ignore the rights of these migrant workers, as well as the rights of the workers' children. For all these reasons, traffickers often target children of migrant workers.

### 3. Grassroots Organizations Help Parents Search for Missing Children

Without the help of police, parents are left to search on their own. While rarely discussed outside of China, parents and volunteers have created many grassroots organizations to find abducted children. Gu Er Net (Orphan Net) is one of them.<sup>178</sup> *Bao Bei Hui Jia* ("Babies Come Back Home") is another example.<sup>179</sup> These websites were created by non-profit organizations to provide families a place to post information about lost children. Parents hope people might recognize missing children and report the sightings to officials who can rescue them.<sup>180</sup>

Recently, a group of 400 fathers looking for missing children uncovered a large human trafficking situation at a brick kiln in Shanxi. The case involved hundreds of children and adults forced to work long hours in grueling conditions without pay at brick factories.<sup>181</sup> The well-organized, smoothly run operation shocked the nation.<sup>182</sup> Many victims were rescued, but according to the fathers, local governments showed little desire to assist parents in sifting through the kilns to find their children. China Daily reported that a letter asking for help and "signed by 400 fathers whose children went missing" was virtually ignored by local officials. It is certainly possible that China's size and multitude of provincial and municipal governments could hinder the central government's ability to monitor daily happenings across the country. It is also possible that the slave trade has aided local economies in China's poorest rural areas, providing incentive for local governments to look the other way.

### 4. Government Programs Fight Trafficking

The Chinese government's anti-trafficking work falls under the jurisdiction of the Ministry of Public Security. Recently, the government implemented several programs to address

trafficking. In 2005, the Bureau of Public Security of Dongxing Prefecture, Guangxi Province established a shelter for victims, the Transitional Center for Rescued Foreign Women and Children.<sup>183</sup> The government also is working with UNICEF on a National Plan of Action to fight human trafficking.<sup>184</sup>

China has extensive laws to prosecute trafficking crimes. Recently the government shifted from solely prosecuting trafficking to implementing programs designed to prevent it.<sup>185</sup> China's prevention work to date is limited to certain provinces rather than being comprehensive. This means that some affected regions are not yet receiving crucial preventative education, and that the cycle of trafficking can continue unchecked.<sup>186</sup>

#### 5. Attitudes Show Tolerance for Buying Children for Adoption

People in China condemn stealing and selling children, although they generally show more sympathy to buying and selling abandoned or unwanted children for adoption. The thinking is that the buyer helps the families that cannot support the children, and that the children are likely to benefit from more attention, better education, and improved opportunities as well. Legal restrictions on buying and selling children for adoption may be simply ignored at the local level: rural families, including village cadres, do not know the specific regulations. Even when local officials know adoption law, they may often turn a blind eye to numerous informal adoptions, thinking that buying a child for adoption is a personal matter that has nothing to do with the state. Sometimes neighbors even will try to protect the buyers when police try to rescue such children.<sup>187</sup>

### III. The Laws

The ease with which an infant can become a legal "orphan" and the amount of money changing hands in intercountry adoption creates opportunity and incentive for traffickers. Set

against a backdrop of pervasive child trafficking and established rings of criminals willing to buy and sell individuals in China, and a seemingly insatiable Western demand for healthy infants to adopt, it is easy to see how the Hunan case developed. The next obvious questions are what laws should have prevented the situation, and why didn't they?

A bevy of international, Chinese, and American laws exist to regulate intercountry adoption and to prevent and punish human traffickers. This section examines the international and national laws that are designed to prevent child trafficking for intercountry adoption.

#### A. International law

International law addresses intercountry adoption from a human rights perspective, primarily through the 1989 United Nations Convention on the Rights of the Child (CRC) and the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention).<sup>188</sup> The CRC relies on the “best interests of the child” standard.<sup>189</sup> “State Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall . . . [t]ake all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved.”<sup>190</sup> The CRC considers intercountry adoption appropriate only when “the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin.”<sup>191</sup>

The Hague Convention reinforces the CRC.<sup>192</sup> The Hague Convention places the best interests of the child above all other considerations in intercountry adoption.<sup>193</sup> It also echoes the CRC’s preference for in-country over intercountry adoption.<sup>194</sup> Additionally, “The Hague Convention shares with the CRC a concern for child trafficking and attempts to specifically ensure that adoption is not used as a means of child trafficking.”<sup>195</sup>

Hague Convention measures are binding only between countries that both have entered into the agreement.<sup>196</sup> China ratified the Hague Convention on September 16, 2005.<sup>197</sup> The United States ratified it on December 12, 2007, and expects to enter into force with it on April 1, 2008.<sup>198</sup> The Hague Convention requires each ratifying state to establish a Central Authority to oversee intercountry adoptions.<sup>199</sup> The Central Authority's responsibilities include cooperating with other countries' Central Authorities and taking "all appropriate measures to prevent improper financial or other gain in connection with an adoption."<sup>200</sup> China's Central Authority is the Ministry of Civil Affairs, which delegates the CCAA to perform certain Hague Convention articles.<sup>201</sup> The United States' Central Authority is the State Department.<sup>202</sup>

The CRC and the Hague Convention each lack enforcement mechanisms, however. "The primary effect of broadly adopted human rights treaties is often to identify and express international ideals and standards, rather than to provide an effective means of enforcement. Thus, the CRC and the Hague Convention can be viewed as expressions of international ideals and standards."<sup>203</sup> Each country must lay its own mantle of rules and regulations upon the framework created by the CRC and Hague Convention. Individual sending and receiving nations also must find the political will to effectively implement and enforce the CRC and the Hague Convention.

#### B. Chinese Law Criminalizes Trafficking for Adoption

China's Adoption Law clearly precludes trafficking for adoption. "It is strictly forbidden to buy or sell a child or to do so under the cloak of adoption."<sup>204</sup> Chapter V alludes to the fact that such activity could lead to criminal charges. "Whoever abducts and traffics in a child under cloak of adoption shall be investigated for criminal responsibility in accordance with the law."<sup>205</sup>



The same chapter warns that abandoning or selling a baby may lead to criminal sanctions, although these provisions do not say the sale or abandonment has to be in connection with an adoption. “Whoever sells his or her own child shall be imposed a fine with his or her illegal proceeds confiscated by the public security organ; if the circumstances constitute a crime, the offender shall be investigated for criminal responsibility in accordance with law.”<sup>206</sup> On infant abandonment, the law says, “Whoever abandons an infant shall be imposed upon a fine by the public security organ; if the circumstances constitute a crime, the offender shall be investigated for criminal responsibility in accordance with law.”<sup>207</sup> The law provides no direction on the punishment of traffickers.

The Adoption Law lays out many more restrictions for adoption, but only one more includes a reference to possible corruption in the process. “If the adopter pays the rearing fee to the social welfare institution, such fee can only be used for the improvement of the welfare institution’s facilities and cannot be diverted for other purposes.”<sup>208</sup>

The government depends on the Criminal Law to prosecute traffickers.<sup>209</sup> Anyone who traffics a woman or child faces a base sentence of not less than five years but not more than ten years in prison.<sup>210</sup> The law defines abducting and trafficking a woman or child as “any of the following acts: abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman or child, for the purpose of selling the victim.”<sup>211</sup> Aggravating circumstances earn traffickers harsher punishments. Kidnapping for extortion earns 10 years to life. A kidnapper who causes the victim’s death may be sentenced up to life imprisonment or death.<sup>212</sup>

Chinese law treats buyers less harshly than sellers. Those who buy trafficked children face sentences of “not more than three years.”<sup>213</sup> Those who buy a victim, depriving the victim of personal freedom or committing criminal acts as well, are subject to increased punishment.<sup>214</sup>

Buying a child and then selling the child also qualifies for harsher treatment. However, the law allows the court to not punish a buyer at all if the victim is not hurt. “Whoever buys an abducted . . . child but does not . . . maltreat the child nor obstruct his or her rescue may be exempted from being investigated for criminal responsibility.”<sup>215</sup>

The director of the Hengdong County Social Welfare Institute argued this provision absolved him of criminal liability in the Hunan case. According to the director’s attorney, “the center provided staff with the sole duty of caring for these infants as well as doctors, the children had high-quality powdered milk to drink, and in the event of illness they could receive timely treatment, thus, he argued, there was emphatically no maltreatment of the infants.”<sup>216</sup> Although he still was convicted and sentenced to prison, this measure of the Criminal Law may explain why the court sentenced him to a relatively light one-year term, as opposed to the 15-year-sentences handed down to several of the other traffickers in the case.<sup>217</sup>

### C. American Law Focuses on Adoption Regulation

The United States signed the Hague Convention in 1994.<sup>218</sup> However, Congress did not pass legislation implementing the treaty until 2000.<sup>219</sup> The implementing legislation of the Hague Convention is the Intercountry Adoption Act of 2000 (IAA).<sup>220</sup> Among the IAA’s three stated purposes is “to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention, and to ensure that such adoptions are in the children’s best interests.”<sup>221</sup>

In 2007, Congress finally passed rules and regulations for the Hague convention, clearing the way for ratification on December 12, 2007.<sup>222</sup> The State Department anticipates the Hague Convention will enter into force for the United States on April 1, 2008.<sup>223</sup> For years, individuals interested in intercountry adoption reform predicted the Hague Convention would be the vehicle

for achieving needed changes.<sup>224</sup> However, now that the United States has passed regulations, advocates for ethical adoption practices express disappointment.<sup>225</sup> “[T]he regulations fail to address the vast majority of the most problematic features of current intercountry adoption practice. In several critical areas of child and family protection, the regulations may actually worsen current conditions. On the whole, the regulations are a bitter disappointment for those who had hoped that their release would signal meaningful and effective regulation.”<sup>226</sup>

The regulations create a broad exception to the prohibitions in the Hague Convention on “payment of compensation of any kind” and in the Intercountry Adoption Act against any “inducement by way of compensation” relating to an adoption under the Hague Convention.<sup>227</sup> First the regulations disallow payments.

“Neither the applicant/petitioner, nor any individual or entity acting on behalf of the applicant/petitioner may, directly or indirectly, pay, give, offer to pay, or offer to give to any individual or entity or request, receive, or accept from any individual or entity, any money (in any amount) or anything of value (whether the value is great or small), directly or indirectly, to induce or influence any decision concerning: (1) The placement of a child for adoption; (2) The consent of a parent, a legal custodian, individual, or agency to the adoption of a child; (3) The relinquishment of a child to a competent authority, or to an agency or person as defined in 22 CFR 96.2, for the purpose of adoption; or (4) The performance by the child's parent or parents of any act that makes the child a Convention adoptee.”<sup>228</sup>

Then, the regulations create an exception, specifying the kinds of payments that *are* allowed:

Paragraph (a) of this section does not prohibit an applicant/petitioner, or an individual or entity acting on behalf of an applicant/petitioner, from paying the reasonable costs incurred for the services designated in this paragraph. . . . The permissible services are: (1) The services of an adoption service provider in connection with an adoption; (2) Expenses incurred in locating a child for adoption; (3) Medical, hospital, nursing, pharmaceutical, travel, or other similar expenses incurred by a mother or her child in connection with the birth or any illness of the child; (4) Counseling services for a parent or a child for a reasonable time before and after the child's placement for adoption; (5) Expenses, in an amount commensurate with the living standards in the country of the child's habitual residence, for the care of the birth mother while pregnant and immediately following the birth of the child; (6) Expenses incurred in obtaining the home

study; (7) Expenses incurred in obtaining the reports on the child as described in 8 CFR 204.313(d)(3) and (4); (8) Legal services, court costs, and travel or other administrative expenses connected with an adoption, including any legal services performed for a parent who consents to the adoption of a child or relinquishes the child to an agency; and (9) Any other service the payment for which the officer finds, on the basis of the facts of the case, was reasonably necessary.<sup>229</sup>

The permissible payment exceptions are so broad that they encompass most of the actions that constitute trafficking. Especially disconcerting are the exceptions for “expenses incurred in locating a child for adoption,” and the catch-all exception for “any other service.” The exception for finding fees sanctions practices that come perilously close to, if not actually constituting, baby buying. “International adoption offers child locators an unparalleled opportunity to earn what amount to commissions, the amounts of which are likely to be greatly in excess of the per capita incomes of the sending country. The potential to earn large incomes from international adoption activities in turn greatly increases the risk that in-country facilitators will have significant incentives to solicit large numbers of children (who may or may not be orphans) for international adoption.”<sup>230</sup> The catch-all exception is even more broad, essentially providing a “loophole within a loophole” that allows any payment deemed “reasonably necessary.”<sup>231</sup>

The Hague Convention and the IAA augment U.S. immigration law, which is intended to discourage child trafficking in adoption.<sup>232</sup> The Immigration and Nationality Act defines who can immigrate to the United States as an adopted child from another country.<sup>233</sup> Such a child immigrates as the “immediate relative of a U.S. citizen” if two conditions are met. One, the child is an orphan as defined by the Immigration and Nationality Act.<sup>234</sup> Two, the adoptive parents have demonstrated they can and will provide proper care for the child.<sup>235</sup> The Act defines an orphan as a child “who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for

emigration and adoption.”<sup>236</sup> Regulations under the Act further define “abandonment by both parents” to mean:

[T]hat the parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer, or without transferring, these rights to any specific person(s). Abandonment must include not only the intention to surrender all parental rights, obligations, and claims to the child, and control over and possession of the child, but also the actual act of surrendering such rights, obligations, claims, control, and possession.<sup>237</sup>

The regulations continue with provisions aimed at precluding arrangements that come perilously close to buying children, including dealings directly between birth parents and adoptive parents or between birth parents and unauthorized third parties:

A relinquishment or release by the parents to the prospective adoptive parents or for a specific adoption does not constitute abandonment. Similarly, the relinquishment or release of the child by the parents to a third party for custodial care in anticipation of, or preparation for, adoption does not constitute abandonment unless the third party (such as a governmental agency, a court of competent jurisdiction, an adoption agency, or an orphanage) is authorized under the child welfare laws of the foreign-sending country to act in such a capacity.<sup>238</sup>

The law clearly declares that buying children is not allowed:

An orphan petition must be denied under this section if the prospective adoptive parents or adoptive parent(s), or a person or entity working on their behalf, have given or will give money or other consideration either directly or indirectly to the child's parent(s), agent(s), other individual(s), or entity as payment for the child or as an inducement to release the child. Nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings.<sup>239</sup>

“The law seems straightforward: If the adoptive parent, or someone working on the adoptive parent’s behalf, gives money or other consideration to the child's parents, except for the payment of the necessary reasonable expenses outlined in the regulation, then the petition must be denied on the grounds of child buying.”<sup>240</sup> In contrast to the regulations implementing the Hague Convention, the “necessary reasonable” expenses are limited to payments related to the

adoption. “Nothing in this paragraph shall be regarded as precluding reasonable payment for necessary activities such as administrative, court, legal, translation, and/or medical services related to the adoption proceedings.”<sup>241</sup>

This narrower exception would seem to appropriately limit the exchange of money to prevent trafficking. However, immigration officers face an almost impossible job when they seek to enforce this measure and deny an orphan visa.<sup>242</sup> The standard of proof requires that foreign service officers show suspected trafficking in adoption through either an admission of guilt or direct evidence.<sup>243</sup> “Short of a confession, it is hard to fathom what kind of direct evidence [they] could possibly unearth to support the charge of child buying. Indeed, under this interpretation of the law, it would seem that anyone could traffic in children with impunity provided that they a) hired a "runner" or other non-employee to deliver the cash or contact the birth mothers; and b) the birth mother states that she intended to place the child irrespective of the payment she received. This statement is one that a mother can easily be coached to make.”<sup>244</sup>

To date, U.S. policymakers have depended on immigration law and adoption law to prevent trafficking in intercountry adoption, and those laws have not done the job. The applicable laws clearly forbid buying, selling, or stealing children to profit from adoption, yet child trafficking in adoption persists. Given the ineffectiveness of immigration law and the disappointing implementation of the Hague Convention regulations, trafficking for adoption to the United States seems destined to continue. But there may be another viable approach: with one small change to a definition in the U.S. anti-trafficking statute, lawmakers could attack the problem of trafficking in intercountry adoption by going after the trafficking rather than regulating the adoption.

The United States leads the fight against human trafficking worldwide.<sup>245</sup> The Trafficking Victims Protection Act of 2000 (TVPA) and its subsequent reauthorizations take a three-pronged approach.<sup>246</sup> The Act combats trafficking through prevention, protections for victims, and prosecution.<sup>247</sup>

Prevention measures include funding for a wide variety of programs, including “international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking,” public awareness campaigns, border interdiction measures, and consultation with non-governmental organizations.<sup>248</sup> Additionally, the TVPA requires the U.S. State Department to monitor human trafficking in other countries and publish a Trafficking in Persons (TIP) Report each year.<sup>249</sup> The report ranks countries in a tier system and provides for sanctions against countries that do not meet minimum standards for the elimination of trafficking and do not make significant efforts to come into compliance with those standards.<sup>250</sup> Victim protection measures include a provision that allows victims to sue traffickers for civil damages.<sup>251</sup>

The prosecution prong is based on the statute’s criminalization of “severe forms of trafficking.”

The term ‘severe forms of trafficking in persons’ means (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”<sup>252</sup>

Under that definition, the purpose for which a person is trafficked determines whether the trafficking is criminal under TVPA. If the person is forced to work or to participate in the commercial sex industry, the trafficking is criminal.<sup>253</sup> If a child is bought, sold, or stolen for adoption, it is not.<sup>254</sup> This means that abducting a baby or buying a baby from desperately poor

parents and selling it to an orphanage for intercountry adoption, as happened in Hunan, is not considered trafficking. The State Department reinforced the distinction between “illegal adoption and baby selling” and human trafficking in the 2005 Trafficking in Persons Report.<sup>255</sup>

“Unless adoption occurs for the purpose of commercial sexual exploitation or forced labor, adoption does not fall under the scope of the Trafficking Victims Protection Act. . . . The purposes of baby selling and human trafficking are not necessarily the same. Some individuals assume that baby selling for adoption is a form of human trafficking because trafficking and baby selling both involve making a profit by selling another person. However, illegally selling a child for adoption would not constitute trafficking where the child itself is not to be exploited. Baby selling generally results in a situation that is nonexploitative with respect to the child. Trafficking, on the other hand, implies exploitation of the victims. If an adopted child is subjected to coerced labor or sexual exploitation, then it constitutes a case of human trafficking.”<sup>256</sup>

The TVPA distinction is forced and artificial. According to the logic of the TVPA, selling a person is only trafficking if the sale is made for an exploitive purpose: “Trafficking . . . implies exploitation of the victims.”<sup>257</sup> Stealing or buying and selling a baby for adoption to another country does not meet the Act’s threshold as exploitive: “Baby selling generally results in a situation that is nonexploitative with respect to the child.”<sup>258</sup> Such an assertion strains credibility. The American Heritage Dictionary defines “to exploit” as “to make use of selfishly or unethically.”<sup>259</sup> Certainly any practice that harvests newborn infants “like the cash crop they have become” is exploitive.<sup>260</sup>

The TVPA definition of severe forms of trafficking insinuates that the ends justify the means, or in this case that the ends criminalize the means. A child who is stolen from her parents and forced to work as in a factory is trafficked. But a child who is stolen from her parents and sold to an orphanage to be sent to another country is not.<sup>261</sup> In both cases the offensive action is the same: traffickers stole a child. In the first case, the government can prosecute the traffickers under TVPA. In the second case, the government cannot. Such a policy seems to serve no purpose, although it may encourage child traffickers to focus their business on supplying



orphanages rather than factories. The TVPA distinction in what constitutes human trafficking would be a distinction without a difference if the consequences for children and families were not so monumental.

Certainly the distinction drawn in the TVPA minimizes the harm done to children and families by corruption in adoption. Excluding this type of trafficking from the reach of the anti-trafficking statute allows it to continue, both by shielding the traffickers from prosecution and by insinuating that child trafficking for adoption is less offensive than other human trafficking. Excluding child trafficking for adoption from the reach of general anti-trafficking measures hobbles the law without any apparent benefit.

The United States should expand the scope of the TVPA to employ it against the traffickers who profit from selling children for adoption because the using the TVPA to protect children is consistent with the intent of the CRC, the Hague Convention, and the United States' own statutes relevant to intercountry adoption. The CRC directs officials to “[t]ake all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved.”<sup>262</sup> The Hague Convention requires the U.S. Central Authority, i.e., the State Department, to take “all appropriate measures to prevent improper financial or other gain in connection to an adoption.”<sup>263</sup>

The TVPA protections are an appropriate measure to help ensure intercountry adoption does not result in improper financial gain. The State Department-produced TIP Report evaluates foreign countries' anti-trafficking efforts. Countries are ranked on a tier system, with sanctions available against countries that do not make significant efforts to combat human trafficking. If TVPA was extended to trafficking for adoption, the State Department could use trafficking for adoption as an additional evaluative criteria. Countries that do not make significant progress in

fighting trafficking for adoption could be subjected to sanctions. The threat of a poor tier placement and sanctions might motivate foreign governments to enforce measures against improper financial gain in adoptions.

The IAA's stated intent is "to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents . . . and to ensure that such adoptions are in the children's best interests."<sup>264</sup> Two of the TVPA's three prongs are in line with the IAA's purpose. The TVPA aims to prevent human trafficking and to protect victims. The victims of trafficking for adoption include the children, the birth parents, and the adoptive parents. If the definition of "severe forms of trafficking" was expanded, the TVPA could protect these victims of trafficking.

The third prong of the TVPA, i.e., prosecution, would fill an identified need in adoption law: the need for criminal sanctions for baby selling. One criticism of the Hague Convention is that it fails to mandate that each country criminalize child trafficking for adoption or punish such traffickers.<sup>265</sup> "The most detrimental failure of the Hague Convention is the fact that it does not provide for specific enumerated punishments for participation in the black market."<sup>266</sup> The TVPA criminalizes human trafficking. Although its jurisdictional reach might not extend to foreign country baby brokers, the prosecutorial measures of the TVPA could be employed to hold U.S. adoption facilitators responsible for their overseas contractors. And even that much reach might provide some deterrent value. "If the international community is aware of the punishments that may be imposed for baby selling, those who profit from this practice may be much less likely to participate in the black market."<sup>267</sup>

By removing the distinction between child trafficking for adoption and human trafficking for forced labor or paid commercial sex, Congress would strengthen overall U.S. efforts to combat human trafficking. Currently, the TVPA creates different "levels" of human trafficking.

It identifies severe forms, which are subject to prosecution, and leaves unaddressed everything else. The implication is that some kinds of trafficking are not worth prosecuting. Without prosecution, there is no deterrence. The effect of no deterrence may be to actually encourage the “less severe” types of human trafficking. The trafficking rings that profit from selling individuals might traffic more children for adoption specifically because the consequences of being caught are less severe. Traffickers often operate within organized criminal networks.<sup>268</sup> Like legitimate businesses, crime rings make cost-benefit analysis decisions. An impression that trafficking infants for adoption is less risky than trafficking adults for prostitution makes child trafficking for adoption more attractive. Conversely, expanding the TVPA to include trafficking for adoption sends a clear message that all human trafficking is severe forbidden.

The TVPA offers an additional advantage over other options for fighting trafficking for adoption. Remedies for victims of trafficking in intercountry adoption are sorely missing from existing intercountry adoption laws. The TVPA creates an opportunity for victims to sue for civil damages.<sup>269</sup> Again, civil remedies may be out of reach when the trafficker is in another country, but affiliations between U.S. adoption agencies and their foreign contractors may make it possible for victims to recover from U.S. adoption agencies. Such actions, if successful, could provide additional motivation for U.S. adoption providers to operate ethically.

Finally, this change would be relatively easy to implement. The U.S. State Department is a key player in both intercountry adoption and the American efforts to fight human trafficking. The United States named the State Department its Central Authority for purposes of the Hague Convention. The State Department also regulates immigration, including the process by which foreign children gain visas to come to the United States. Additionally, the State Department administers the TVPA tier system and evaluates foreign states’ efforts to fight trafficking in

persons each year. Because the State Department is so involved in both adoption and trafficking, it should be easy for the state department to incorporate trafficking for intercountry adoption into the criteria used to evaluate countries for purposes of its annual TIP Report.

#### IV. Additional Recommendations

Trafficking for adoption is a complex issue. Successful prevention will require more than laws saying it is not allowed. It is, at its core, a human trafficking issue and needs to be addressed with all the seriousness of trafficking for other purposes. “Human trafficking, like drug trafficking, must be fought on three fronts: Supply, demand, distribution. You have to address all three at one time instead of just one or the other. Preventive campaigns without the interdiction, without the high penalties that make it high risk, will not work. Likewise, it is important to address the demand side: the customers who purchase trafficked humans. . . . [T]he best possible result, the end goal, is for countries to address their own trafficking problems, to have a national plan of action, to have their own preventive programs and their own law enforcement efforts.”<sup>270</sup>

##### A. China

China’s recent move to limit intercountry adoptions by restricting the demand is a step in the right direction. Also, the country’s initiatives to address trafficking in general should be employed to educate and address trafficking for adoption.

Additionally, China could consider:

- a. Changing its law to make buying children a serious offense.

Currently, while it is illegal to abandon, steal, or sell a child, it is not necessarily illegal to buy one. Child buyers who do not harm the children or obstruct rescue operations may not face charges at all. Criminalizing child buying may provide a disincentive to child trafficking in

general. It also would provide an additional measure under which to prosecute orphanage officials who engage specifically in trafficking for adoption.

b. Creating mechanisms to more closely monitor local-level social welfare institutes.

China has developed a well-regulated national system of intercountry adoption. Local level operations, however, remain largely independent. The government needs processes that allow better monitoring of the children coming into the orphanages and the money contributed to them. Transparency and accountability must drive operations at all levels.

c. Better funding social welfare institutions.

Intercountry adoption proceeds currently fund the operations of participating orphanages. These institutions have come to depend on intercountry adoption, which prompts them to discourage domestic adoption and procure as many babies as possible for foreign adoption. The government must revamp the subsidy system that supports social welfare institutions to minimize the dependence on intercountry adoption as a revenue stream.

d. Encouraging private adoption.

China officially prioritizes domestic adoption over adoption by foreigners. There is robust demand for children to adopt domestically. However, only 1% of domestic adoptions involve children in the social welfare institutions. China needs to revise its adoption law to actually encourage domestic adoption. It needs to regulate how orphanages respond to domestic requests to adopt children, and how they charge fees for those adoptions. Basically, the country needs to create a system of domestic adoption.

e. Creating a penalty-free mechanism for parents to relinquish children who they would otherwise abandon or sell.

Current Chinese law criminalizes abandonment of a child. To avoid criminal sanctions, parents who decide not to raise a child abandon it anonymously. This involves immediate safety risks to the children, of course, but the practice also creates an easy entry for child traffickers. If China decriminalized child relinquishment, it could better regulate the source of children. Additionally, a system of relinquishment would serve the goals of transparency and accountability in intercountry adoption. Records would be created. Voluntary statements of relinquishment would exist. The circumstances of giving up the baby would be recorded, which protects the rights of all parties involved, birth parents, child, and adoptive parents.

#### B. The United States

Current measures aimed at regulating adoptions to the United States do little to prevent trafficked children from being adopted. Policymakers should continue to revise regulations to close loopholes that allow corruption in intercountry adoption. Payments for services need particular scrutiny. The U.S. anti-trafficking legislation provides potent tools to fight human trafficking, but does not reach the practice of buying and selling children for adoption. Lawmakers should consider revising the statute to extend its reach.

Additionally, the United States should consider:

##### a. More strictly regulating U.S. adoption agencies.

Adoption agencies are subject to little or no regulation. Recently, under the Hague Convention, the U.S. government has required them to be certified. This is a step in the right direction. The next step might be to holding adoption agencies accountable for foreign colleagues and contractors. Currently, agencies have little responsibility for the actions of their foreign associates. To carry the market analogy of adoption forward, consumers expect U.S. companies to ensure goods imported from another country meet minimum standards. Adoption

agencies should similarly be expected to ensure they are working with reputable colleagues who put the interests of children, rather than profits, first.

b. Encouraging documented histories of adoptees.

As opposed to domestic U.S. adoptions, the children adopted from other countries often come with little or no pre-adoption history. As the largest receiving country, the United States is in a position to encourage sending countries to document the children available for adoption. More detailed histories are a step toward transparency that protects all parties involved.

## V. Conclusion

The Hunan baby trafficking case uncovered vulnerabilities in China's system of intercountry adoption that have yet to be addressed. The process by which children become available for adoption is nothing but an opportunity for child traffickers. The amount of money that adoptive parents contribute to an orphanage when they adopt provides a huge incentive for orphanage officials to buy babies from traffickers. That incentive is exacerbated by the de facto revenue source that intercountry adoption has become for Chinese social welfare institutions. The Chinese system of intercountry adoption created barriers to domestic adoption, despite a large demand within China for children to adopt. The barriers to officially sanctioned domestic adoption further drive child trafficking as criminal rings take advantage of the opportunity to provide children to Chinese parents who want to adopt them. Internationally placing children who could be placed domestically directly contravenes the intent of the Hague Convention.

The Hunan case also exposed continuing problems in the American regulation of adoption. Despite laws that clearly prohibit buying and selling children for adoption, regulations that implement those laws leave gaping holes that continue to allow brokered children to be placed in American families. The incredible demand for adoptable children drives the process.

As long as demand is strong and regulations do not effectively preclude trafficking for adoption, baby buying for adoption will continue. Policymakers need to put the interests of children first in fact, as well as in theory. To do so, they should close regulatory loopholes and recognize that buying and selling babies for adoption as human trafficking. By calling baby buying what it is—human trafficking—the United States can bring the powerful measures of the TVPA to bear against the crime of trafficking for adoption.

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<sup>1</sup> Deng Fei, *The Hengyang Infant Dealing Case Benevolence or vice? That question has generated far-reaching controversy*, PHOENIX WEEKLY, April 11, 2006, <http://www.phoenixtv.com/phoenixtv/83932384042418176/20060411/776299.shtml>, translation available at <http://research-china.blogspot.com/2006/10/hunan-one-year-after-part-one.html>.

<sup>2</sup> *Id.*

<sup>3</sup> <http://www.humantrafficking.org/countries/china>

<sup>4</sup> Brian Stuy, *Haunting Faces on a Page*, May 23, 2006, <http://research-china.blogspot.com/2006/05/haunting-faces-on-page.html>. See also, XIN REN, *TRAFFICKING IN CHILDREN: CHINA AND ASIAN PERSPECTIVE*, presented at Conference on Making Children's Rights Work: National & International Perspectives, International Bureau for Children's Rights, Montreal, Canada, (Nov. 20, 2004); and, *Combating Human Trafficking in China: Domestic and International Efforts: Hearing Before the Congressional-Executive Commission on China*, 109th Cong. 2 (March 6, 2006), available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_house\\_hearings&docid=f:26671.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_house_hearings&docid=f:26671.pdf); and U.S. DEPARTMENT OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS, CHINA, available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm>.

<sup>5</sup> Fei, *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Peter S. Goodman, *Stealing Babies for Adoption: With U.S. Couples Eager to Adopt, Some Infants Are Abducted and Sold in China*, WASHINGTON POST, March 12,



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2006, at A01,

[http://www.washingtonpost.com/wpdyn/content/article/2006/03/11/AR200603110094\\_2\\_pf.html](http://www.washingtonpost.com/wpdyn/content/article/2006/03/11/AR200603110094_2_pf.html).

<sup>11</sup> Fei, *supra* note 1. See also, Goodman, *supra* note 10.

<sup>12</sup> *Id.*

<sup>13</sup> *23 officials punished for child-trafficking*, XINHUA (Feb. 26, 2006), [http://english.gov.cn/2006-02/26/content\\_211254.htm](http://english.gov.cn/2006-02/26/content_211254.htm). See also, Goodman *supra* note 10, and Fei *supra* note 1.

<sup>14</sup> Goodman *supra* note 10.

<sup>15</sup> *Id.* See also Fei *supra* note 1.

<sup>16</sup> Goodman *supra* note 10.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> XINHUA *supra* note 13.

<sup>20</sup> *Id.*

<sup>21</sup> Goodman *supra* note 10.

<sup>22</sup> *Id.*

<sup>23</sup> XINHUA *supra* note 13. See also, Goodman *supra* note 10.

<sup>24</sup> *Id.*

<sup>25</sup> Fei *supra* note 1.

<sup>26</sup> Geoffrey York, *China shuts down reports about baby trafficking*, THE (TORONTO) GLOBE AND MAIL, as published in SEATTLE POST-INTELLIGENCER, Dec. 16, 2005, [http://seattlepi.nwsource.com/national/252260\\_babysmuggle16.html](http://seattlepi.nwsource.com/national/252260_babysmuggle16.html).

<sup>27</sup> Brian Stuy, *Hunan—One Year After—Part One*, RESEARCH-CHINA.ORG, Oct. 9, 2006, <http://research-china.blogspot.com/2006/10/hunan-one-year-after-part-one.html>.

<sup>28</sup> Nili Luo & David M. Smolin, *Intercountry Adoption and China: Emerging Questions and Developing Chinese Perspectives*, 35 CUMBERLAND L. REV. 597, 597 (2005) ("China has . . . emerged as the most important sending country in the world in terms of numbers of children placed. For the last five years, China has been the top sending country for the United States, which is the most significant recipient nation." )

<sup>29</sup> Stuy *supra* note 27.

<sup>30</sup> Luo & Smolin *supra* note 28.

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<sup>31</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, art. 4, May 29, 1993, S. Treaty Doc. No. 105-51.

<sup>32</sup> PRC Adoption Law (adopted at the 23rd meeting of the Standing Comm. of Nat'l People's Cong., Dec. 29, 1991, promulgated by Order No. 54 of the president, Dec. 29, 1991, effective April 1, 1992) and PRC Criminal Law (adopted by the second session of the fifth Nat'l People's Cong., July 1, 1979, amended by the fifth session of the eighth Nat'l People's Cong., Mar. 14, 1997)

<sup>33</sup> *Stuy supra* note 27.

<sup>34</sup> *See generally* David M. Smolin, *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children*, 52 WAYNE L. REV. 113 (2006).

<sup>35</sup> *Ethica*, *Child Trafficking: Why Can't the Immigration Service Prove It?* at 4 (June 6, 2003), <http://www.ethicanet.org/INSEvidence.pdf>.

<sup>36</sup> *See generally*, Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C.A. § 2002.

<sup>37</sup> *Id.*

<sup>38</sup> Luo & Smolin *supra* note 28

<sup>39</sup> U.S. Department of State, Immigrant Visas Issued to Orphans Coming to the U.S., [http://travel.state.gov/family/adoption/stats/stats\\_451.html](http://travel.state.gov/family/adoption/stats/stats_451.html).

<sup>40</sup> *See generally* Luo & Smolin *supra* note 28.

<sup>41</sup> *See generally* KAY ANN JOHNSON, *WANTING A DAUGHTER, NEEDING A SON*, Yeong & Yeong Book Co (2004).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *See generally* Luo & Smolin *supra* note 28.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Johnson *supra* note 41.

<sup>48</sup> Clare Dwyer Hogg, *Has Anyone Seen Our Child?* THE OBSERVER, Sept. 23, 2007, <http://observer.guardian.co.uk/magazine/story/0,,2173231,00.html>.

<sup>49</sup> Johnson *supra* note 41.

<sup>50</sup> *Id.*

<sup>51</sup> Luo & Smolin *supra* note 28 at 600.

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<sup>52</sup> *Id.* (citing Johnson at 53).

<sup>53</sup> *Id.*

<sup>54</sup> SARA K. DOROW, *TRANSNATIONAL ADOPTION: A CULTURAL ECONOMY OF RACE, GENDER, AND KINSHIP*, 57 (New York University Press 2006).

<sup>55</sup> Johnson *supra* note 41 at 49. See also, Kent Ewing, *The mystery of China's lost girls*, ASIA TIMES (Feb. 13, 2007), <http://www.atimes.com/atimes/China/IB13Ad01.html>; and, Calum MacLeod, *Foreign adoptions from China fall*, USA TODAY, (Nov. 20, 2007) [http://www.usatoday.com/news/world/2007-11-20-chinaadopt\\_N.htm](http://www.usatoday.com/news/world/2007-11-20-chinaadopt_N.htm).

<sup>56</sup> Ewing *supra* note 55.

<sup>57</sup> Johnson *supra* note 41 at 50.

<sup>58</sup> LAURIE C. MILLER, *THE HANDBOOK FOR INTERNATIONAL ADOPTION MEDICINE: A GUIDE FOR PHYSICIANS, PARENTS, AND PROVIDERS*, 51 Oxford Press US (2005).

<sup>59</sup> *Id.*

<sup>60</sup> Johnson *supra* note 41 at 83-86.

<sup>61</sup> Brian Stuy, *Trees in the Forest III—Age and Timing*, RESEARCH-CHINA.ORG, <http://research-china.blogspot.com/2007/10/trees-in-forest-iii-age-and-timing.html>.

<sup>62</sup> See generally, Weiguo Zhang, *Child Adoption in Contemporary Rural China*, 27 JOURNAL OF FAMILY ISSUES 301, 332 (2006); and Calum MacLeod, *China shedding adoption stigma, may tighten rules*, USA TODAY (Nov. 20, 2007), [http://www.usatoday.com/news/world/2007-11-20-Chinainside\\_N.htm](http://www.usatoday.com/news/world/2007-11-20-Chinainside_N.htm); and Brian Stuy, *The Hague Agreement and China's International Adoption Program*, RESEARCH-CHINA.ORG, (June 8, 2006), <http://research-china.blogspot.com/2006/06/hague-agreement-and-chinas.html>.

<sup>63</sup> Luo & Smolin *supra* note 28 at 598 ("China is still a developing nation with a per capita income of less than \$1000.")

<sup>64</sup> XIAOHUI ZHANG AND ALLAN RAE, *SMALLHOLDERS, LIVESTOCK AND HOUSEHOLD INCOME IN RURAL CHINA*, [http://econ.massey.ac.nz/caps/WP\\_1\\_07.pdf](http://econ.massey.ac.nz/caps/WP_1_07.pdf).

<sup>65</sup> Johnson *supra* note 41.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

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- <sup>70</sup> JIANG XINMIAO, INTERNATIONAL ADOPTION LAWS IN CHINA: A BRIEF ANALYSIS, <http://china.findlaw.cn/info/hy/shewaihunyin/shewaishouyang/58722.html>.
- <sup>71</sup> U.S. State Department *supra* note 39.
- <sup>72</sup> *Id.*
- <sup>73</sup> See generally Luo & Smolin *supra* note 28.
- <sup>74</sup> U.S. State Department *supra* note 39.
- <sup>75</sup> See generally Kay Ann Johnson, *Politics of International and Domestic Adoption in China*, 36 LAW & SOCIETY REVIEW 379, 388 (2002).
- <sup>76</sup> *Id.*
- <sup>77</sup> Luo & Smolin *supra* note 28.
- <sup>78</sup> U.S. Department of State *supra* note 39.
- <sup>79</sup> *Id.*
- <sup>80</sup> Associated Press, *For third straight year, foreign adoptions in U.S. decline*, CHICAGO SUN-TIMES, Dec. 1, 2007, <http://www.suntimes.com/lifestyles/676421,adopt120107.article>.
- <sup>81</sup> *New Criteria Spelt Out for Adoption by Foreigners*, CHINA DAILY, December 25, 2006. See also, Pam Belluck and Jim Yardley, *China Tightens Adoption Rules for Foreigners*, NEW YORK TIMES, Dec. 20, 2006, <http://www.nytimes.com/2006/12/20/us/20adopt.html?>
- <sup>82</sup> Ewing *supra* note 55.
- <sup>83</sup> Clifford Coonan, *China Tightens Adoption Criteria for Foreigners*, IRISH TIMES, Dec. 27, 2006, at 12.
- <sup>84</sup> Ewing *supra* note 55.
- <sup>85</sup> *Id.*
- <sup>86</sup> Johnson *supra* note 75 at 388. See also, Dorow *supra* note 54 at 73.
- <sup>87</sup> Dorow note 54 at 73.
- <sup>88</sup> Brian Stuy, *The Hague Agreement and China's International Adoption Program*, RESEARCH-CHINA.ORG, June 8, 2006, <http://research-china.blogspot.com/2006/06/hague-agreement-and-chinas.html>.
- <sup>89</sup> *Id.*
- <sup>90</sup> CHINA CIVIL AFFAIRS STATISTICAL YEARBOOK, <http://www.stats.gov.cn/tjsj/ndsj/2006/indexee.htm>.
- <sup>91</sup> Dorow *supra* note 54 at 73.
- <sup>92</sup> *Id.*

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<sup>93</sup> Li Xiaohua, *200,000 Children Need More Support*, Oct. 24, 2005, <http://www.china.org.cn/english/2005/Oct/146340.htm>.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Dorow *supra* note 54 at 73. See also, DEPARTMENT OF STATE, INTERCOUNTRY ADOPTION, CHINA (2007) [http://travel.state.gov/family/adoption/country/country\\_365.html](http://travel.state.gov/family/adoption/country/country_365.html), up-to-date figures on contribution amounts).

<sup>98</sup> *Id.*

<sup>99</sup> Fei *supra* note 1.

<sup>100</sup> PRC Adoption Law (adopted at the 23rd meeting of the Standing Comm. of Nat'l People's Cong., Dec. 29, 1991, promulgated by Order No. 54 of the president, Dec. 29, 1991, effective April 1, 1992), Article 17.

<sup>101</sup> Johnson *supra* note 75 at 388.

<sup>102</sup> Dorow *supra* note 54 at 74.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 95.

<sup>105</sup> Goodman *supra* note 10.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> Dorow *supra* note 54 at 74.

<sup>109</sup> Fei *supra* note 1.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> Stuy *supra* note 61.

<sup>115</sup> *Id.*

<sup>116</sup> Dorow *supra* note 54 at 74.

<sup>117</sup> *Id.*

<sup>118</sup> Stuy *supra* note 61.

<sup>119</sup> *Id.*

<sup>120</sup> Stuy *supra* note 88.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

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- <sup>123</sup> Fei *supra* note 1.
- <sup>124</sup> Department of State, *supra* note 97.
- <sup>125</sup> *Id.*
- <sup>126</sup> *Id.*
- <sup>127</sup> *Id.*
- <sup>128</sup> *Id.*
- <sup>129</sup> *Id.*
- <sup>130</sup> *Id.*
- <sup>131</sup> Families With Children From China, *Frequently Asked Questions About Adoption From China*, <http://www.fwcc.org/FAQ.htm>.
- <sup>132</sup> Department of State, *supra* note 97.
- <sup>133</sup> Johnson *supra* note 75 at 382.
- <sup>134</sup> *Id.* at 381.
- <sup>135</sup> *Id.* at 383.
- <sup>136</sup> *Id.* at 382.
- <sup>137</sup> *Id.*
- <sup>138</sup> *Id.*
- <sup>139</sup> Weiguo *supra* note 62 at 319.
- <sup>140</sup> Johnson *supra* note 75 at 382.
- <sup>141</sup> Weiguo *supra* note 62 at 318.
- <sup>142</sup> *Id.* at 327.
- <sup>143</sup> *Id.*
- <sup>144</sup> Johnson *supra* note 75 at 389.
- <sup>145</sup> *Id.* at 387.
- <sup>146</sup> *Id.* at 388.
- <sup>147</sup> *Id.* at 390.
- <sup>148</sup> Weiguo *supra* note 62 at 332. See also Calum MacLeod, *China shedding adoption stigma, may tighten rules*, USA TODAY (Nov. 20, 2007), [http://www.usatoday.com/news/world/2007-11-20-Chinainside\\_N.htm](http://www.usatoday.com/news/world/2007-11-20-Chinainside_N.htm).
- <sup>149</sup> Stuy *supra* note 88.
- <sup>150</sup> Johnson *supra* note 75 at 388-89.
- <sup>151</sup> Weiguo *supra* note 62 at 308.
- <sup>152</sup> *Id.*
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<sup>181</sup> Zhu Zhe, *More than 460 rescued from brick kiln slavery*, CHINA DAILY, June 16, 2007, [http://www.chinadaily.com.cn/china/2007-06/15/content\\_894802.htm](http://www.chinadaily.com.cn/china/2007-06/15/content_894802.htm) (Since the scandal broke, more than 8,000 kilns and small coal mines in Shanxi and Henan provinces have been raided, with 591 workers freed, including 51 children, according to state media.)

<sup>182</sup> Christopher Bodeen, *China Arrests 2 Officials in Slave Scam*, WASHINGTON POST, June 22, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/21/AR2007062100487.html>.

<sup>183</sup> CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, COMBATING HUMAN TRAFFICKING IN CHINA: DOMESTIC AND INTERNATIONAL EFFORTS, <http://www.cecc.gov/pages/hearings/2006/20060306/index.php>.

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<sup>185</sup> Congressional-Executive Commission on China *supra* note 189.

<sup>186</sup> *Id.*

<sup>187</sup> Zhang *supra* note 64.

<sup>188</sup> See generally, Nicole Bartner Graff, *Intercountry Adoption and the Convention on the Rights of the Child: Can the Free Market in Children Be Controlled?* 27 SYRACUSE J. INT'L. L. & COM. 405, (2006).

<sup>189</sup> David M. Smolin, *The Two Faces of Intercountry Adoption: The Significance of the Indian Adoption Scandals*, 35 SETON HALL L. REV. 403, 409 (2005).

<sup>190</sup> Convention on Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), art. 21(d), 28 I.L.M. 1448.

<sup>191</sup> Smolin *supra* note 194 at 407-08, *citing* Convention on Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989), art. 21(b), 28 I.L.M. 1464.

<sup>192</sup> Graff *supra* note 188 at 420.

<sup>193</sup> Elisabeth J. Ryan, *For the Best Interests of the Children: Why the Hague Convention on Intercountry Adoption Needs to Go Farther, As Evidenced by Implementation in Romania and the United States*, 29 B.C. INT'L & COMP. L. REV. 353, 363 (2006). See also, Hague Convention *supra* note 31 at 1134, preamble.

<sup>194</sup> Smolin *supra* note 189 at 408.

<sup>195</sup> *Id.* at 417.

<sup>196</sup> Hague Convention *supra* note 31.



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<sup>197</sup> CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION, STATUS TABLE, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

<sup>198</sup> *Id.*

<sup>199</sup> Hague Convention *supra* note 31 at 1134.

<sup>200</sup> *Id.*

<sup>201</sup> CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION, AUTHORITIES, [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=678](http://www.hcch.net/index_en.php?act=authorities.details&aid=678).

<sup>202</sup> Intercountry Adoption Act of 2000, 42 U.S.C. § 14901-14945 (2000).

<sup>203</sup> Smolin *supra* note 189 at 407.

<sup>204</sup> PRC Adoption Law *supra* note 32, Article 20. (English translation of China's Adoption Law available on Families With Children from China website.

[http://www.fwcc.org/China\\_adoption\\_law\\_98.htm](http://www.fwcc.org/China_adoption_law_98.htm). "The English translation has not been examined and approved by the legislative body and cannot be used as basis for law enforcement and public prosecution. Therefore it is for your reference only." We use it here with some confidence because noted China adoption scholar Kay Ann Johnson also cites it. *See* Johnson *supra* note 44 at 248 n.17.)

<sup>205</sup> PRC Adoption Law *supra* note 32. Article 31.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at Article 17.

<sup>209</sup> PRC Criminal Law *supra* note 32.

<sup>210</sup> *Id.* at Article 240.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.* at Article 239.

<sup>213</sup> *Id.* at Article 241.

<sup>214</sup> *Id.* at Article 241.

<sup>215</sup> *Id.* at Article 241.

<sup>216</sup> Fei *supra* note 1.

<sup>217</sup> *Id.*

<sup>218</sup> CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION, STATUS TABLE, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

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<sup>219</sup> Intercountry Adoption Act of 2000, 42 U.S.C. § 14901-14945 (2000).  
<sup>220</sup> *Id.*  
<sup>221</sup> 42 U.S.C.A. § 14901(b)(2)  
<sup>222</sup> Convention of 29 May 1993 *supra* note 223.  
<sup>223</sup> INTERPRETER RELEASES DAILY, DOS PROJECTS APRIL 2008 EFFECTIVE DATE FOR HAGUE CONVENTION ON INTERCOUNTRY ADOPTION, 1, Nov. 20, 2007.  
<sup>224</sup> Graff *supra* note 188.  
<sup>225</sup> Ethica, *Comments on the Final Regulations Implementing the Hague Adoption Convention*, 1, March 2006, <http://www.ethicanet.org/HagueRegComments.pdf>.  
<sup>226</sup> *Id.*  
<sup>227</sup> Ethica, *Comments on Department of Homeland Security Regulations: Classification of Aliens as Children of United States Citizens Based on Intercountry Adoptions Under the Hague Convention*, Nov. 2007, DHS Docket No. USCIS-2007-0008.  
<sup>228</sup> 8 C.F.R. § 204.304.  
<sup>229</sup> 8 C.F.R. § 204.304.  
<sup>230</sup> Ethica *supra* note 232.  
<sup>231</sup> *Id.*  
<sup>232</sup> *Id.*  
<sup>233</sup> 8 U.S.C.A. § 1101.  
<sup>234</sup> 8 U.S.C.A. § 1101(b)(1)(F).  
<sup>235</sup> 8 U.S.C.A. § 1101(b)(1)(F).  
<sup>236</sup> 8 U.S.C.A. § 1101(b)(1)(F)(i).  
<sup>237</sup> 8 C.F.R. § 204.3(b).  
<sup>238</sup> 8 C.F.R. § 204.3(b).  
<sup>239</sup> 8 C.F.R. § 204.3(i).  
<sup>240</sup> Ethica *supra* note 35 at 1.  
<sup>241</sup> 8 C.F.R. § 204.3.  
<sup>242</sup> Ethica *supra* note 35 at 4.  
<sup>243</sup> *Id.*  
<sup>244</sup> *Id.*  
<sup>245</sup> See generally, Angela D. Giampolo, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. TRS. L. REV. 195 (2006).  
<sup>246</sup> 22 U.S.C.A. § 7101.

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<sup>247</sup> 22 U.S.C.A. § 7101.

<sup>248</sup> 22 U.S.C.A. § 7104.

<sup>249</sup> 22 U.S.C.A. § 7101.

<sup>250</sup> 22 U.S.C.A. § 7107.

<sup>251</sup> 22 U.S.C.A. § 7101.

<sup>252</sup> 22 U.S.C.A. § 7102(8).

<sup>253</sup> 22 U.S.C.A. § 2002.

<sup>254</sup> *See generally*, Trafficking Victims Protection Act of 2000 (TVPA), 22 U.S.C.A. § 2002.

<sup>255</sup> U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 2005, 21, (2005), <http://www.state.gov/g/tip/rls/tiprpt/2005/46606.htm>.

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> exploited. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, FOURTH EDITION. Retrieved November 29, 2007, from Dictionary.com website: <http://dictionary.reference.com/browse/exploited>

<sup>260</sup> Graff *supra* note 188 at 410.

<sup>261</sup> U.S. Department of State *supra* note 255.

<sup>262</sup> Convention on Rights of the Child *supra* note 201.

<sup>263</sup> Hague Convention *supra* note 31.

<sup>264</sup> 42 U.S.C.A. § 14901(b)(2).

<sup>265</sup> Kathleen L. Manley, *Birth Parents: The Forgotten Members of the International Adoption Triad*, 35 CAP. U. L. REV. 627, 657 (2006) (citing Jonathan G. Stein, *A Call To End Baby Selling: Why the Hague Convention on Intercountry Adoption Should Be Modified To Include the Consent Provisions of the Uniform Adoption Act*, 24 T. JEFFERSON L. REV. 39, 45 (2001)).

<sup>266</sup> *Id.* at 661.

<sup>267</sup> *Id.* at 657.

<sup>268</sup> Vittorio Hernandez, *Guatemala Study Shows Baby Adoptions Controlled by A Criminal Ring*, AHN (2007), <http://www.feedsyndicate.com/articles/7009239458>.

<sup>269</sup> 22 U.S.C.A. § 2002.

<sup>270</sup> David Denton and Caroline Vasquez, *Trafficking as a Law Enforcement Issue*, interview with Laura J. Lederer, Senior Advisor on Trafficking, Office for

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<http://www.state.gov/g/tip/rls/48311.htm>.