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THE RUMOR ON ADOPTING CHILDREN FOR THEIR ORGANS: A COMPELLING REASON TO ADDRESS A THRIVING ORGAN BLACK MARKET AND THE PREVALENCE OF CHILDREN BEING TRAFFICKED INTO ADOPTION

Dorothy Franks*

"[F]oreigners [are] adopting handicapped children apparently for humanitarian reasons, but . . . they . . . [are] in fact dismembering these unfortunates and selling the organs in North America for perhaps \$10,000 each." – Leonardo Villeda Bermudez, former Secretary General of the Honduran Committee for Social Welfare¹

INTRODUCTION

From Latin America, across to Europe, down to Africa, and up through Asia, there have been murmurings of a rumor that children adopted to Western countries are not going to new, loving homes.² Instead, children are adopted so that their healthy organs may be harvested and transplanted into the new family's sick biological child.³ Although there is significant trafficking of children for profitable adoption and impoverished adults selling organs on the black market, the rumor that children are

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¹ David Samper, *Cannibalizing Kids – Rumor and Resistance in Latin America*, 32 J. FOLKLORE RES. 1, 1 (Jan.- Apr., 2002) (quoting statement pinpointed as start of baby parts rumor).

² See DAVID PETECHUK, *ORGAN TRANSPLANTATION* 164 (Greenwood Press, 2006) (describing global awareness of a baby parts rumor); Nancy Scheper-Hughes, *Theft of Life: The Globalization of Organ Stealing Rumours*, 12 ANTHROPOLOGY TODAY 3, 3-11 (1996) [hereinafter *Scheper Rumor*] (describing rumor heard all over the world). "Soon I began to hear variants of the story from anthropologists working in Argentina, Colombia, Peru, Guatemala, Honduras, Mexico, and Korea." *Scheper Rumor*, *supra*, at 3.

³ *Id.* at 3 (explaining details of rumor about children being adopted for their organs).

adopted for their organs (“the adoption organ rumor” or “the rumor”) has yet to be substantiated.⁴ Nonetheless, people around the globe believe this rumor.⁵

Rumors, like the adoption organ rumor, are typically debunked before they produce a significant impact.⁶ The adoption organ rumor gained so much power because

⁴ See PETECHUK, *supra* note 2, at 172-74 (labeling the term “baby parts” rumor). Todd Leventhal, Senior Policy Officer at Countering Misinformation and Disinformation at the United States Information Agency, claims no evidence has been found in support of the adoption baby rumor. *Id.* See also Samper, *supra* note 1, at 10-11 (stating that there is no evidence supporting adoption organ rumor). Todd Leventhal specifies “no government, international body, non-government organization or investigative journalist has ever produced any credible evidence to verify the [adoption organ] rumor.” *Id.*

⁵ See *Scheper Rumor*, *supra* note 2 (stating adoption organ rumor is false but its political and social impact is true); Samper, *supra* note 1, at 2, 4 (explaining the theory of rumors as collective interpretations). “Rumors, shaped by the historically constituted experience of a community, allow people some measure of joint control over ambiguous, stressful situations; they affect the solidarity of a group, creating a public that can then participate in collective action. As counter-hegemonic discourse, rumors may lead to resistance.” *Id.* at 2. Rumors, like urban legends, rest on people believing they are true, that they are set in recent times and involve human beings, that they are told in the course of conversation, and that they often refer to a legitimizing element. *Id.* at 4. Rumors can be seen as “collective representation[s] of fears and anxieties.” *Id.* at 5; TAMOTSU SHIBUTANI, *IMPROVISED NEWS: A SOCIOLOGICAL STUDY OF RUMOR* (Bobbs-Merrill ed. 1966) (theorizing on reasons rumors occur). In situations where there is high uncertainty, rumors have been highlighted as a way of “collective sense making.” SHIBUTANI, *supra*, at 60; see also NICHOLAS DIFONZO & PRASHANT BORDIA, *RUMOR PSYCHOLOGY: SOCIAL AND ORGANIZATIONAL APPROACHES* 89-111, 205-27 (Am. Psychological Ass’n ed. 2007) (explaining life of rumor and reporting trends in rumor stages). The life stages of a rumor are generation, evaluation, and transmission. DIFONZO & BORDIA, *supra*, at 89. In the generation stage, participants become motivated to receive rumor in an attempt to relieve anxiety or dispel uncertainty. *Id.* “In the transmission period, rumors are communicated through social interchanges [and in the intervening] evaluation phase . . . a rumor’s likelihood of being true is assessed.” *Id.* “This assessment has implications for the life of any rumor . . . people are more inclined to pass along a rumor they believe is true than one they believe is false.” *Id.* at 90. “If a rumor supports or accords with what the actor already holds to be true, it is plausible that the actor would assign greater credence to it.” *Id.* at 92. “The psychological literature on rumor has identified five variables related to rumor transmission: uncertainty, importance or outcome relevant involvement, lack of control, anxiety, and belief.” *Id.* at 69. In the absence of information from formal channels explaining ambiguous events, group members may engage in a collective problem-solving process, during which they share and evaluate information that explains the ambiguous situation. DIFONZO & BORDIA, *supra*, at 69. Rumors are also seen as attempts to gain “secondary control” over situations where there is low “primary control.” *Id.* at 73. “Primary control refers to action-focused coping responses: managing or changing one’s circumstances in the desired direction.” *Id.* The rumor takes effect even when the person transmitting the rumor or receiving the rumor may not believe it. *Id.* at 42.

⁶ See DIFONZO & BORDIA, *supra* note 5, at 205-27 (describing how to manage and quell a rumor). Quelling rumors can be addressed from all of the rumor’s life-stages: generation, evaluation (or belief), and transmission. *Id.* at 206. “The most common recommendation for reducing generation of rumors is to reduce uncertainty.” *Id.* at 210. “This goal can be achieved by

it was fueled by the real problems occurring from an insatiable organ black market and the prevalence of children trafficked for adoption.⁷ In the organ black market, a body is commodified into parts, and often bodies are more valuable dead than alive because the organ black market is highly profitable.⁸ Countries, that generally send adoptees to other countries, have found that their adoptees include children who were trafficked by methods like being kidnapped from their homes and sold to orphanages.⁹ The high

providing accurate and timely information and having open channels of communication.” *Id.* Additionally, reducing anxiety and the other variables related to rumor transmission can reduce the start of rumors. *Id.* at 69. The most common strategy to combat an actively spreading rumor is to rebut the truth of the rumor. *Id.* at 212. The source of the rebuttal matters; a rebuttal from a neutral party is more effective than a rebuttal from a dependent party. DIFONZO & BORDIA, *supra* note 5, at 213. An essential aspect of stopping a rumor is timing. *Id.* at 255. The rebuttal must occur quickly because otherwise, the evolution of the rumor and the repetition make it harder to contain. *Id.* “Indeed, social cognition literature on belief perseverance has found that impressions, once formed, are highly resistant to evidence to the contrary” making rumors already widespread hard to dispel. *Id.* at 222; *see also About Us*, SNOPEs, <https://www.snopes.com/about-snopes/> (last visited Apr. 15, 2018) (dedicating significant resources and more than fifteen staff members to debunking rumors with fact-checking).

⁷ See J. MARTIN MANNING ET AL., *HISTORICAL DICTIONARY OF AMERICAN PROPAGANDA* 21-23 (Greenwood Press 2004) (explaining how prevalence of human trafficking and selling organs makes rumor plausible). “There is every reason to consider the child organ trafficking rumors as a modern ‘urban legend,’ a false story that is commonly believed because it encompasses, in story form, widespread anxieties about modern life.” *Id.*; *see also* Nancy Scheper-Hughes, *The Global Traffic in Human Organs*, 41 *CURRENT ANTHROPOLOGY* 191, 202 (2000) [hereinafter *Scheper Traffic*] (analyzing confusion around the adoption organ rumor). The adoption organ rumor has become intermingled with tales of children being kidnapped and sold to orphanages for international adoption, as well as people selling parts of their bodies for transplanting into other people. *Scheper Traffic, supra*. “The rumor condensed the black markets for organs and babies into a single frightening story.” *Id.* at 202; Veronique Campion-Vincent, *Organ Theft Narratives as Medical and Social Critique*, 39 *J. FOLKLORE RES.* 33, 35 (2002). (pointing to other causes of the rumors). Advances in medicine, the subsequent distrust of the medical establishment, and the demonization of other cultures fuel the adoption organ rumor. *See* Campion-Vincent, *supra*. The organ transplant has an element of “miracles” because it “changes the limits of life and death . . .” *Id.*

⁸ *See Scheper Traffic, supra* note 7, at 208 (emphasizing idea of a body more valuable dead than alive); *see also* SCOTT CARNEY, *THE RED MARKET: ON THE TRAIL OF THE WORLD’S ORGAN BROKERS, BONE THIEVES, BLOOD FARMERS, AND CHILD TRAFFICKERS* (Harper Collins Publishers ed. 2011) (estimating that author is worth \$250,000 in body parts). Investigative journalist, Scott Carney, notes that his blood, ligaments, hair, skeleton, heart, liver, kidneys, semen, cornea, and teeth all equate to around \$250,000 in net profit. *See* CARNEY, *supra*; Campion-Vincent, *supra* note 7, at 42 (reporting 1996 public poll showed widespread fear that medical care compromised so their organs can be harvested).

⁹ *See* Samper, *supra* note 1, at 12-13 (mentioning overlap of child trafficking and adoption). *See also infra* Section III.D, III.E.

demand for children through international adoption and the highly profitable margins make trafficking children irresistible.¹⁰ This note suggests that there are many reasons to fix the organ transplants system, or lack thereof, and the trafficking of children for money; the adoption baby rumor and its substantial impacts offer additional compelling reasons to address these two areas.¹¹ Dispelling the social issues contributing to the rumor, will dispel the rumor and its impacts.¹²

Like many rumors, the adoption organ rumor, has continually circulated throughout the global community, and has caused considerable damage.¹³ Most notably, the adoption organ rumor has had legal ramifications as the European Parliament and the United Nations ("UN") both created international policy based on unsubstantiated facts.¹⁴ Countries believing the rumor as truth used the news spotlight and new policy as a chance to review and change their own international adoption policies as per the Hague

¹⁰ See generally Kristina Wilken, *Controlling Improper Financial Gain in International Adoptions*, 2 DUKE J. GENDER L. & POL'Y 85 (1995). "High demand for adoptable children encourages these intermediaries to trade children for large amounts of money." *Id.* at 85.

¹¹ See Anthony Gregory, *Why Legalizing Organ Sales Would Help to Save Lives, End Violence*, THE ATLANTIC (Nov. 9, 2011), <https://www.theatlantic.com/health/archive/2011/11/why-legalizing-organ-sales-would-help-to-save-lives-end-violence/248114/> (giving reasons to fix the organ black market). Some reasons to legalize the sale of organs include the following: access to organs, lower death rates, shorter waiting lists, and make current subversive practices safe. *Id.*; William Bell & General Charles C. Krulak, *Modern Slavery: Why We Have to Stop Human Trafficking*, AL.COM, (Apr. 10, 2016, 7:30 A.M.), http://www.al.com/opinion/index.ssf/2016/04/modern_slavery_why_we_have_to.html (offering reasons to fight human trafficking). Preventing human trafficking would preclude people from engaging in work they do not want to do, undergoing dangerous conditions, and living a life of servitude. See Bell & Krulak, *supra*.

¹² See *supra* note 6 and accompanying text (explaining how rumors are dispelled).

¹³ See *supra* note 5 and accompanying text (explaining how rumors are spread and gain traction). See also Scheper Traffic, *supra* note 7, at 203. "Indeed, urban legends and rumors, like metaphors, do sometimes harden into ethnographic facts." *Id.*

¹⁴ PETECHUK, *supra* note 2 (referencing UN newsletter and EU Parliament documents that cited the adoption organ rumor as truth). See ERIC SOTTAS, WORLD ORGANISATION AGAINST TORTURE, ADDRESS AT EUROSOCIETIES MEDIA WORKSHOP ON TRADE IN ORGANS AND TORTURE (Mar. 7, 2004) (analogizing organ trafficking to the Holocaust). See also VITIT MUNTARBHORN, SPECIAL RAPPORTEUR REPORT ON THE RIGHTS OF CHILDREN IN BRAZIL (Jan. 1992) (describing observations and recommendations to protect the rights of children).

Convention on the Protection of Children and Co-operation in Respect to Inter-country Adoption guidelines.¹⁵ Most countries reviewed their policies then decided to limit or terminate their international adoption programs all together.¹⁶

The adoption organ rumor has also impacted international aid efforts.¹⁷ Countries facing tragedy, war, or natural disaster, have resisted help and distrusted countries willing to receive orphans and quicker adoptions.¹⁸ The rumor has also prompted caution when travelling to other countries, most notably in Guatemala, where locals have attacked Western tourists blaming them for stealing children.¹⁹ The adoption

¹⁵ THE IMPLEMENTATION AND OPERATION OF THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION, GUIDE TO GOOD PRACTICE, GUIDE NO.1, 164 (Family Law, Jordan Publishing Limited, 1st ed, 2008) (explaining possible solutions to stop child organ trafficking).

¹⁶ Samper, *supra* note 1, at 23 (supporting rumor caused review of adoption policy and subsequent decline in international adoption). *See also* TODD LEVENTHAL, THE CHILD ORGAN TRAFFICKING RUMOR: A MODERN 'URBAN LEGEND,' A REPORT SUBMITTED TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY BY THE UNITED STATES INFORMATION AGENCY 28 (United States Information Agency, 1994) (analyzing the impact of the rumor on international adoptions).

¹⁷ Tom Evans, *Traffickers Targeting Haiti's Children Human Organs, PM Says*, CNN (Jan. 27, 2010), <http://www.cnn.com/2010/WORLD/americas/01/27/haiti.earthquake.orphans/index.html> (describing the fear of illegally trafficking children for their organs after earthquake).

¹⁸ *See id.*

¹⁹ Samper, *supra* note 1, at 1. *See* World, *Foreigners Attacked in Guatemala*, N. Y. TIMES (Apr. 5, 1994), <http://www.nytimes.com/1994/04/05/world/foreigners-attacked-in-guatemala.html> (describing local attacks on American tourists). *See also* Elizabeth Gleick, *Rumor and Rage*, PEOPLE WEEKLY (Apr. 25, 1994, 12:00 PM), <http://people.com/archive/rumor-and-rage-vol-41-no-15/>. *E.g.* *Malawi Cracks Down on 'Vampire' Lynch Mobs*, BBC NEWS (Oct. 20, 2017), <http://www.bbc.com/news/world-africa-41692944> (reporting on killings by Malawi 'Vampires'). In October of 2017, in the state of Malawi, one of the poorest countries in the world, mobs killed eight people by stoning or by setting them on fire after they suspected them as vampires. *Id.* Villagers believe that "blood sucking is a ritual practise [sic] by some to become rich." *Id.* Chioza Bandawe, a clinical psychologist at the University of Malawai says that "people will tend to attribute their difficulty on what they call blood suckers." *Id.* Two people were arrest for threatening to suck people's blood, but there are no reports of any actual bloodsucking. *Id.* *See* Sport Hot Trends, *Malawi President to Crack Down on Vampire, Witchcraft After Lynchings*, YOUTUBE (Oct. 13, 2017), <https://www.youtube.com/watch?v=0KSt6KAaF98>. *See also* U.N Moves Staff After Mobs Kill Five in Malawi Vampire Scare, THE GUARDIAN (Oct. 2017), <https://www.theguardian.com/world/2017/oct/09/un-moves-malawi-staff-vampire-scare> (pointing to Malawai's belief in witchcraft as root of belief in vampire mob violence). The UN had to move its staff out of some areas for safety concerns. *Id.*

organ rumor is a shining example of a rumor reported, accepted, and responsible for shaping adoption for children worldwide.²⁰

I. THE RUMOR ON ADOPTING CHILDREN FOR THEIR ORGANS

A. Origination in Folklore

The adoption organ rumor can be traced back to global folklore and fear of children being abducted for their body parts.²¹ The European roots of the rumor are connected with the urban legend of “blood libel,” the misguided fear that Jewish people steal children for the consumption of their blood.²² The Latin American roots of the rumor connect with sixteenth-century Mayan people.²³ Mayan women are told to have thought invading pale light-skinned Spanish conquistadors were anemic thus requiring the blood of “brown-skinned infants” as medicine.²⁴ These various folklore stories offered familiarity with kidnapping children and stealing organs upon which the adoption organ rumor grew.²⁵ The rumor then blossomed into the most recent and substantial fears in

²⁰ See DIFONZO & BORDIA, *supra* note 5 (giving many examples of rumors like adoption organ rumor believed to be true).

²¹ See Samper, *supra* note 1, at 2 (explaining historical background for organ kidnapping across the globe). See also Victor Perera, *Behind the Kidnapping of Children for Their Organs*, LOS ANGELES TIMES (May 1, 1994), http://articles.latimes.com/1994-05-01/opinion/op-52449_1_organ-transplants (describing the Latin American roots of fear of organ harvesting of children).

²² Samper, *supra* note 1, at n.2 (exemplifying fear children captured for their blood by Jews in historical paintings and literature). See *Blood Libel*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/blood-libel> (last visited Apr. 15, 2018) (defining blood libel). Blood libel is “the superstitious accusation that Jews ritual sacrifice Christian children at Passover to obtain blood for unleavened bread.” *Id.* It was commonly used to explain mysterious circumstances surrounding children’s deaths in twelfth-century Europe resulting in severe backlash against local Jewish people. *Id.*

²³ Perera, *supra* note 21.

²⁴ *Id.*

²⁵ See *supra* note 5 and accompanying text (explaining that rumors gain more traction when they connect to ideas or stories already known).

Latin America that gained legitimization from their repeated reporting and use in official government documents.²⁶

B. The Source of the Adoption Organ Rumor

The context in which rumors are generated can add to their believability and transmission.²⁷ The adoption organ rumor began with the political and social turmoil and aftermath of falling dictatorships in Latin American countries during the 1970s and 1980s.²⁸ In previous decades of dictatorship, the governments of five different Latin American countries were thought to have conducted thousands of abductions in the form of disappearances; speculations of torture and murder were common place.²⁹ After the fall of these dictatorships, the new democratic governments strove for transparent communication.³⁰ Transparent communication meant people knew the truth as to the severity of the violence conducted by the government on its people.³¹ The validation of

²⁶ Samper, *supra* note 1, at 11-12; see DiFONZO & BORDIA, *supra* note 5 (explaining how to dispel rumor). “If a rumor supports or accords with what the actor already holds to be true, it is plausible that the actor would assign greater credence to it.” DiFONZO & BORDIA, *supra* note 5, at 92. See Samper, *supra* note 1, at 6-8 (explaining sources that “legitimized” rumors later admitted to lying or not having a verifiable source). See also Petechuk *supra* note 2, at 175. Petechuk concludes that the rumor “totally unfounded” but “perceived as fact and accepted as conventional wisdom in large parts of the world.” *Id.*; Scheper Rumor, *supra* note 2, at 203.

²⁷ See *supra* note 5 and accompanying text (describing the factors contributing to the creation and transmission of a rumor).

²⁸ See Scheper Rumor, *supra* note 2, at 4 (finding rumor where government abuse of power and prevalence of organ selling, human trafficking, and murder). See also Sao Paulo, *The Challenge of the Past*, THE ECONOMIST (Oct. 22, 1998), <http://www.economist.com/node/173220> (detailing Latin American dictatorships and their aftermath). “Five . . . South American countries shook off dictatorships, of varying duration and ferocity, between 1982 and 1989: Argentina, Bolivia, Brazil, Paraguay and Uruguay.” *Id.*

²⁹ Scheper Rumor, *supra* note 2, at 8. The content of these rumors is important in Central and South America, ie. during “Dirty War” abductions and children used, torture, disappearances. *Id.* at 8.

³⁰ *Id.* at 9.

³¹ Paulo, *supra* note 28. New governments ordered judicial investigations (“truth commissions”). *Id.* These commission found in Uruguay 250 people were killed along with widespread torture, in Argentina around 30,000 were kidnapped, tortured, and killed in the “Dirty War” against those thought to be the political left. *Id.* In Brazil, more than 200 dead but hundreds fled into exile, in Paraguay several hundred dead with thousands imprisoned, in Bolivia 200 killed, and deaths in

the rumors of violence made all rumors, including the adoption organ rumor, seem possible.³²

The adoption organ rumor is thought to have originated from Leonard Villeda Bermudez, the General Secretary of the Honduran Committee for Social Welfare in 1987.³³ He told a local paper that “foreigners were adopting handicapped children apparently for humanitarian reasons, but that they were in fact dismembering these unfortunates and selling the organs in North America for perhaps \$10,000 [United States Dollars (“USD”)] each.”³⁴ Although Bermudez and officials later denied these claims, the media in South America published this story and did not include that he had retracted his comments.³⁵ The same year, in Guatemala, a police officer reported to the press that fourteen children found in secret foster homes were going to have their organs sold for \$20,000 USD each.³⁶ The police officer’s superiors immediately denied the story.³⁷ Despite the blatant lying and immediate rebuttal, both stories grabbed international attention.³⁸ Foreign countries like Holland and Yugoslavia reported the story as real only

Chile under dictatorship unknown because amnesty impeded investigations. *Id.* See also *Chile Recognizes 9,800 More Victims of Pinochet’s Rule*, BBC NEWS (Aug. 18, 2011), <http://www.bbc.com/news/world-latin-america-14584095> (detailing discoveries of human rights abuses during Chilean dictatorship). The total recognized victims of human rights abuses under former military leader General Augusto Pinochet is 40,018; 3,065 of those are deaths or forcibly disappearances. *Id.*

³² *Scheper Rumor*, *supra* note 2, at 8-9. In Argentina, Brazil, and Guatemala “soon after democratization process began and in the wake of truth commission reports” giving truth to other rumor against the poor by the state. *Id.*

³³ *Id.* (detailing first instance of adoption organ rumor).

³⁴ See Samper, *supra* note 1, at 7-8 (explaining the origin for the organ adoption rumor). *E.g.*, Perera, *supra* note 21, at 1 (tracing the fear of organ adoption rumor way back to the Spanish Conquistador era).

³⁵ See Samper, *supra* note 1, at 8 (finding that the organ adoption rumors always resurfaced in Central and South America). The general secretary said he was only repeating stories he heard from social workers. *Id.* The general also commented that authorities had recently discovered houses full of thirteen children awaiting illegal adoption. *Id.*

³⁶ *Id.* at 8 (detailing other adoption organ rumors started by officials in governments).

³⁷ *Id.* (denying statements of houses with children for organ adoption was false)

³⁸ *Id.* (gaining international exposure for false stories of organ adoption in Guatemala).

days later.³⁹ The next month, the Russian newspaper *Pravda* published an article stating “thousands of Hondurian [sic] children are sent to the U.S. where they were used as organ donors for the children of rich families.”⁴⁰ An over exaggeration of the original untrue rumor, this headline then gained traction in communist periodicals worldwide.⁴¹ Most notably the rumor spread through France’s periodical, *L’Humanite*, (“The Humanity”) as an article titled “*Les depeceurs d’enfants*” (“Dismemberer of Children”).⁴² The adoption organ rumor stayed alive in both South and Central America with subsequently rescinded stories about illegal adoption operations.⁴³

C. Legitimization of the Rumors by Official Sources

Previously isolated to Latin America and Europe, the rescinded rumors then gained a spotlight in many official international arenas that perpetuated the rumors as being legitimate.⁴⁴ In September of 1993, the European Parliament (“Parliament”) passed a “Resolution Condemning ‘Trafficking in Fetuses, Children and Incapable Adults Who

³⁹ See Samper, *supra* note 1, at 8 (describing reported world-wide stories that adoption for organ in Guatemala is true).

⁴⁰ See *id.* (recounting spread of adoption organ rumor from Latin America to Russia). See also Veronique Campion-Vincent, *The Baby-Parts Story: A New Latin American Legend*, 49 WESTERN STATES FOLKLORE SOCIETY 9 (1990) (discussing the worldwide spread of Honduran story on adopted children used for their organs).

⁴¹ See Samper, *supra* note 1, at 8 (finding that organ adoption rumors quickly spread worldwide, especially amongst communist countries).

⁴² See *id.* (citing Campion-Vincent, *supra* note 7, at 11); Todd Leventhal, *The Child Organ Trafficking Rumor: A Modern ‘Urban Legend’*, WASHINGTON, D.C.: U. S. INFO. AGENCY (1994), available at <http://pascalfroissart.online.fr/3-cache/1994-leventhal.pdf>.

⁴³ Samper, *supra* note 1, at 8-9 (detailing Guatemalan assertion of rumor as truth and Paraguayan juvenile judge surmises). In 1988, Guatemalan police supposedly uncovered illegal adoption network by Israeli men. *Id.* Additionally, a juvenile judge embellished to the media on a police raid finding pregnant women and infants who were being sent to the US to have their organs removed. *Id.* Both stories were rescinded but circulated without their revision. *Id.*

⁴⁴ See Samper, *supra* note 1, at 9 (growing concerns over human organ trafficking raised over false statements gained global popularity). *E.g.*, Scheper Traffic, *supra* note 7 (tracing the global trade of human organs in low income countries).

Are Used as Organ Providers, based on a report given by Leon Schwartzberg.”⁴⁵ Schwartzberg later revealed he based his report on evidence from *Le Monde Diplomatique* (“The Diplomatic World”) written by Maite Pinero one of the former correspondents for the newspaper *L’Humanite* — the Communist publication that ran the original rumors and subsequent articles even after the stories were repudiated or discredited.⁴⁶ From 1991 to 1994, the United Nations (“UN”) publication, *Special Rapporteur on the Sale of Children*, gave credence to the rumor multiple times, to which a UN employee later admitted there were no real allegations.⁴⁷ The Director of the World Organization Against Torture, Eric Sottas wrote a fifteen-page paper (“Sottas Paper”) that repeated discredited rumors, stated incorrect statistics, and implied it was legal to sell organs in the United States.⁴⁸ The Sottas Paper enjoyed publication and widespread publicity.⁴⁹

⁴⁵ PETECHUCK, *supra* note 2, at 173 (discussing governmental actions concerning trafficking for organs that used the rumor). The European

⁴⁶ See *id.* (explaining how Schwartzberg caused the Parliament to perpetuate the rumor). Schwartzberg used the work of French journalist Maite Pinero who used to write for the newspaper *L’Humanite*. *Id.* “The claims in *Le Monde Diplomatique*, which Mr. Schwartzberg repeated, were groundless.” *Id.*; Samper, *supra* note 1, at 10 (naming 1993 and 1994 media and government coverage strengthened the rumor); *Scheper Rumor*, *supra* note 2 (“The [adoption organ rumor] stories have been investigated by human rights organizations, and the alleged practice was condemned in a controversial resolution approved by the European Parliament.”). *Le Monde Diplomatique* by Maite Pinero lists “some of the noteworthy new stories between 1987-1992” on the rumor. *Scheper Rumor*, *supra* note 2, at 4.

⁴⁷ See PETECHUCK, *supra* note 2, at 173 (detailing how the Special Rapporteur depended on press accounts). In 1995, Myriam Tebourbi, a UN employee told Newsweek that the Special Rapporteur articles were based on allegations and press accounts, but the author had “nothing concrete” and that they did not even have enough evidence to “mount our own investigation.” *Id.* See also Q. MARTIN, ET AL., *supra* note 7, at 21 (discussing actual events that fueled the rumors).

⁴⁸ See PETECHUCK, *supra* note 2, at 173 (noting the Sottas Report as a source of rumors being spread); Perera, *supra* note 21, at 1 (noting information included in the report). The Sottas Report, listed 17 clinics in Tijuana and Juarez, on Mexico’s U.S. border, that perform sophisticated transplants of kidneys and corneal tissues from kidnaped children to wealthy Europeans and North Americans. Perera, *supra* note 21, at 1. The report asserted that Brazil, Argentina, Peru, Honduras, Colombia and Mexico were countries with confirmed cases of child organ traffickers. *Id.* It also named North American, Switzerland, Germany and, above all, Italy as countries with buyers. *Id.*

⁴⁹ See PETECHUCK, *supra* note 21, at 173-74 (explaining the falsehoods in the “Sottas Paper”). See also Q. MARTIN, ET AL., *supra* note 7, at 22-23 (noting the different countries such as Canada that gave coverage to the Sottas Paper).

The rumor was then perpetuated in several more permanent formats that won awards.⁵⁰ The television documentary series *Eye Snatchers* received the “Albert-Londres Prize” for audio-visual by a panel of journalists, a major award, in May of 1995.⁵¹ A six-year-long research book, titled *Ninos de Repuesto* (“Spare Children”) then repeated allegations from the documentaries.⁵² Later in 1996, Brazilian newspaper *Correio Braziliense* (“Brazilian Mail”) published an article by Ana Beatriz Magno repeating the adoption organ claims that were widely discredited.⁵³ Her work was awarded the “King of Spain” prize for journalism, but in an interview for a Spanish newspaper, Magno said she “only had reproduced what the international press has written” and that she did not even seek to verify her article’s claims.⁵⁴ Despite the falsehood of these reports, the reputation of these sources added to the legitimacy of the adoption organ rumor’s truth.⁵⁵

⁵⁰ See PETECHUCK, *supra* note 2, at 174 (noting the different sources that discussed the rumors, which won awards).

⁵¹ *Id.* The award was for an edited version of an original documentary on the adoption organ rumor called *Organ Snatchers*. *Id.* Stemming from allegations in the documentary that a Colombia boy had been kidnapped and his eyes removed, the Colombian government flew the boy from the story to Paris, France to have him medically examined. *Id.* at 174-75. The examination showed that the boy had received skilled eye removal surgery based on a diagnosed disease, not removal for transplant. *Id.* This led to the temporary suspension of the Albert-Londres Prize, which was reinstated March 1996 despite great criticism. *Id.*

⁵² See Samper, *supra* note 1, at 10 (describing television programs and newspaper articles from various countries perpetuating the rumor as truth). The BBC and CBC had a program called *The Baby Parts Business* that portrayed “evidence” of child murder and organ theft, stories already dismissed in Honduran courts by the time it aired. *Id.* France created a television program called *Voleurs D’organes* (“*Organ Snatchers*”) about a boy who had his eyes stolen, though Colombia had already proven his eyes were lost to disease. *Id.*

⁵³ See PETECHUCK, *supra* note 2, at 174 (discussing the information in the article that was discredited).

⁵⁴ See *id.* (discussing Magno’s article and her source of information).

⁵⁵ See DIFONZO & BORDIA, *supra* note 5. “In a similar way, it is likely that rumors heard from more credible, authoritative, or well-positioned sources (e.g., layoff rumors heard from a manager) would tend to be more strongly believed than would rumors heard from less credible, authoritative, or well-positioned sources.” *Id.* at 100. Similarly, the likelihood that people will believe a rumor is associated with the number of times the rumor is heard repeated. *Id.* at 101.

Notwithstanding many reproductions, abundant research, and numerous allegations, no alleged cases of children adopted for their organs has withstood scrutiny.⁵⁶ The United States, usually portrayed as the villain in the rumor, has actively worked to debunk the rumor with each circulation.⁵⁷ Every variation of the rumor has lacked credible evidence produced by a legitimate agency to verify that children were being adopted for use of their organs.⁵⁸ At the Countering Misinformation and Disinformation Agency in the United States, Senior Policy Officer Todd Leventhal specifies that “no government, international body, non-government organization or investigative journalist has ever produced any credible evidence to verify the . . . rumor.”⁵⁹ In spite of Leventhal’s work, the rumors have been kept alive.⁶⁰

II. THE ORGAN BLACK MARKET

“[A]lthough not every towns person actually knows someone who has been tempted to sell a vital part of the self [sic] the idea of the ‘commodified kidney has permeated the social imaginary.’”
- Nancy Scheper-Hughes⁶¹

A. Misconceptions of the Organ Black Market

Like the adoption organ rumor, the organ black market is also rooted in folklore, though these stories are about men, women, and children having their organs stolen from

⁵⁶ PETECHUCK, *supra* note 2, at 172-74; Samper, *supra* note 1, at 10 (naming United States Information Agency—now State Department—as having job of delegitimizing rumors); *Scheper Rumor*, *supra* note 2.

⁵⁷ Samper, *supra* note 1, at 10 (describing US active role in quelling and debunking adoption organ rumor despite little evidence).

⁵⁸ *Id.* at 11

⁵⁹ *Id.*

⁶⁰ *Id.* at 11 (describing how allegations are quickly retracted, but rebuttal has little effect on the rumor spreading).

⁶¹ *Scheper Rumor*, *supra* note 2, at 194.

them.⁶² Stealing organs is simply not the reality of the organ black market.⁶³ The majority of organs procured for the organ black market are from impoverished people selling their organs of their own volition.⁶⁴ The “organ stealing rumor” is implicit in the traction and birth of the adoption organ rumor, but its examination is for another paper focused solely on the organ black market.⁶⁵

B. The History of the Organ Transplant

Starting in the 1980s, organ transplantation—taking an organ from one body and putting it into the another’s body—was regarded as a safe and normal procedure.⁶⁶ The

⁶² See Campion-Vincent, *supra* note 7, at 34. Rumors about stealing organs come from folktales of people gaining animal characteristics from transplanting animal organs into them, before transplants were even possible. *Id.* at 33. Rumors also originate in popularized “mad scientist” stereotypes and the ties between folklore of black magic and modern-day science.” *Id.* Organ stealing rumors also come from the theory “surplus of bodies” thought to be utilized by medical professionals. *Id.* at 36. “Mad scientist” stereotypes include Dr. Frankenstein, Dr. Jekyll and Mr. Hyde, Dr. Moreau, and Dracula where science “allows the lengthening of life at the cost of its quality. *Id.* Additionally, popularized portrayals like Monty Python’s *The Meaning of Life* where someone getting their organ donor card is then immediately strapped down having their organs forcibly removed while still alive. *Id.* See *Scheper Rumor supra* note 2, at 204 (quoting Xhosa woman on outskirts of Cape Town on organ transplant as magic). “If what you are saying is true, that the white doctors can take the beating heart from one person who is dead, but not truly dead, and put it inside another person to give him strength and life, then these doctors are witches just like our own.” *Id.* Narratives of organ stealing rumors are cyclical and repeated and divide into sub-cycles. *Id.* Common sub-cycles noticed among folklorists and anthropologists centered on rumors about abduction and baby parts, rumors about kidnaps and mutilations, and then rumors about kidnap and mutilation of foreigner’s kidneys while travelling abroad. See also Campion-Vincent, *supra* note 7, at 34 (naming three sub-cycles to the narratives on organ stealing for transplant). The rumor sub-cycle, “Diverted Adoption: The Baby Parts Abduction” is about children adopted by foreign parents are actually sold to traffickers and end up being butchered for their parts and sold for transplants (the “adoption organ rumor”). *Id.* at 34. The “Diverted Adoption: The Baby Parts Abduction” sub-cycle rumor depicts child in nearby village are found without organs and without eyes, and money and a note in the child’s stomach saying, “thanks for helping us”. *Id.* at 34. Lastly the “Kidnapping and Mutilation: The Kidney Heist” sub-cycle rumor details tourists being lured somewhere private by a beautiful woman, only to wake up the next day missing organs. *Id.* at 35.

⁶³ *Scheper Rumor, supra* note 2, at 208. Most organ trade is domestic and follows usual social and economic rules. *Id.*

⁶⁴ *Id.*

⁶⁵ Campion-Vincent, *supra* note 7, at 34.

⁶⁶ See ASSESSMENT TOOLKIT: TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL, UNITED NATIONS 1, 7 (2015), *available at*

majority of the first organ transplants began with kidney donations.⁶⁷ Organ transplants became highly successful with other organ besides kidneys after the creation of anti-rejection drugs during the 1980s.⁶⁸ Over time, the variety of organs and body parts that could be transplanted expanded.⁶⁹ Originally, a patient's donor pool only consisted of genetically-related adults, but this pool expanded to include socially-related people, such

https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf [hereinafter UNODC Assessment] (providing basic background on organ transplantation). The first ever successful transplant was in the 1950s, but was “[r]egarded as risky and experimental . . .” until the 1980s. *Id.* See also *Frequently Asked Questions*, UNITED NETWORK FOR ORGAN SHARING, <https://unos.org/transplantation/faqs/> (last visited Apr. 15, 2018) [hereinafter UNOS] (defining organ transplant). A transplant is a surgical operation to give a functioning human organ to someone whose organ has stopped working or is close to failing. *Id.*

⁶⁷ Yosuke, Shimazono, *The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information*, BULLETIN OF THE WHO (Dec. 2007), <http://www.who.int/bulletin/volumes/85/12/06-039370/en/> (reporting 2012 statistics on organ donations). Based on reported organ transplants through the Global Observatory and Database on Donation and Transplantation, there were 118,127 transplants of kidney, liver, heart, lung, pancreas, and small bowel in 2012. *Id.* The majority of the transplants were kidney (79,000) and liver (25,000). *Id.*

⁶⁸ Campion-Vincent, *supra* note 7, at 33. See *Scheper Traffic*, *supra* note 7, at 193 (“[W]hat were once experimental procedures performed in a few advanced medical centers (most of them connected to academic institutions) have become common place surgeries throughout the world.”). See also CARNEY, *supra* note 8, at 76 (referencing Nancy Scheper-Hughes’s argument). Though successfully transplanted, new tissue only extends lives for a handful of years on an existence full of anti-rejection drugs that lower the immune system and increase risk to infection. *Id.* at 76. “The truth is more likely that patients will regain only a shadow of their lost health with the transplant . . . [i]nstead, doctors and patients should think more realistically about mortality.” *Id.* at 77. *C.f.* Press release, *New CDC report: More than 100 Million Americans Have Diabetes or Prediabetes*, CDC (July 19, 2017), <https://www.cdc.gov/media/releases/2017/p0718-diabetes-report.html> (describing effects of diabetes). In the U.S., diabetes affects 100 million adults; 30.3 million have diabetes and 84.1 million have prediabetes. *Id.* Diabetes leads to other serious health affects like premature death, vision loss, heart disease, stroke, kidney failure, and amputation of toes, feet, or legs. *Id.* By conducting regular physical activity, dieting, and use of medicine, diabetes can be managed and even cured. *Id.*

⁶⁹ U.S. Gov’t Info. on Organ Donation and Transplantation, *What Can Be Donated*, HEALTH RESOURCES AND SERV. ADMIN., <https://organdonor.gov/about/what.html> (last visited Apr. 15, 2018) (listing what can be donated from the human body to another). Organs that can be donated include: kidneys, liver, lungs, pancreas, and intestines, hands (added in 2014) and face (added in 2014). *Id.* Other body parts include corneas, heart valves, skin, bone, tendons, blood, platelets, blood stems cells, cord blood, and bone marrow. *Id.*

as spouses and friends.⁷⁰ Now, any donor that matches the blood type of the person needing a donation can give an organ, resulting in an even greater open market.⁷¹

Legal organ transplants come from two sources: deceased donations and living donations.⁷² Deceased donations come from cadavers and those with “brain-stem death.”⁷³ Living donations come from consenting individuals.⁷⁴ The desperate scarcity of the deceased donations across the globe has led to an increased use of living donors.⁷⁵

⁷⁰ UNODC Assessment, *supra* note 66, at 8 (reviewing history of living organ donation pool). In 2012, genetically unrelated donors accounted for 50% of live kidney donations in the US and 47% in the Eurotransplant. *Id.*

⁷¹ *See id.* (stating present standard of matches required for organ transplant).

⁷² *See* UNODC Assessment, *supra* note 66, at 7 (explaining the sources of organ donations).

⁷³ *See id.* at 7 (explaining the sources of deceased donors). Deceased donation can take place from donors after brain death and after circulatory death. *Id.*; *see Scheper Traffic supra* note 7, at 200 (defining brain-stem death). “Brain stem death implies there are non-homoeostatic functions remaining; the patient cannot breathe spontaneously, and support of cardiovascular function is usually necessary.” *Scheper Traffic supra* note 7, at 200. The definition for brain dead varies greatly across jurisdictions and between countries. *Id.* For example, Cuba only requires irreversible damage to the brain stem to constitute brain dead, but the concept of being brain dead is not widely accepted (twenty-five percent) in Japanese culture. *Id.*; *see also* Campion-Vincent, *supra* note 7, at 39 (finding non-disclosure of identity makes for transaction devoid of relationships adding to the commodification of the body) (citing study reporting fifty-three percent of families approached by hospital refused organ removal of brain-dead). *Contra Scheper Traffic, supra* note 7, at 200 (discussing brain-stem death among medical professionals). “There are only two organic states: living and dead. ‘Dead’ is when the heart stops beating and the organs decompose. ‘Brain-dead’ is not dead. It is still alive.” *Id.*

⁷⁴ *See* Rudge et al., *International Practices of Organ Donation*, 108 BRITISH J. OF ANAESTHESIA i48, i48 (detailing a comprehensive review of organ transplant needs); *see also* UNODC Assessment, *supra* note 66, at 15 (explaining role of consent in organ donations). Consent is a main requirement of organ donation. UNODC Assessment, *supra* note 66, at 15. Consent must be informed and voluntary. *Id.* The WHO “Guiding Principles on Human Cell, Tissue, and Organ Transplantation require informed consent to include “live donors should be informed of the probable risks, benefits, and consequences of donation in a complete and understandable fashion; they should be legally competent and capable of weighing the information.” *Id.* Voluntary consent requires the donor act “willingly, free of any undue influence, or coercion.” *Id.* Trafficked persons cannot give consent because they are obtained through “abuse of a position of vulnerability.” *Id.* at 16.

⁷⁵ Rudge et al., *supra* note 74, at i50 (citing lack of deceased donations as causing increase in living donations); UNODC Assessment, *supra* note 66, at 8 (pointing to fewer deceased donors resulting in living donors of kidneys to fulfil increasing need). *See* Rudge et al., *supra* note 74, at i50 (enumerating on scarcity of deceased donors). Donations from the deceased fail to meet the need being “almost non-existent in many countries” due to legal constraints, number of donors, medical facilities to do the operations, management of patients and donors, and “legal and ethical acceptability.” *Id.* at i48, i50. Deceased donors in the United States are ninety percent of individuals who have been declared brain-dead (DBD) and ten percent who declared dead based after “permeant cessation of cardiopulmonary function.” *Id.* at i51. Therefore, the United States

should focus efforts to increase deceased organ donation. *Id.* The identification of potential deceased includes automatic consideration for patients in categories of medical conditions. *Id.* at 52. The United States also depends on the hospitals contacting local Organ Procurement Organizations (OPOs) to get organ donation processes started. *Id.* One effort to increase the deceased donations globally is Spain's use of trained Transplant Donor Coordinators in their presumed consent legal framework. Rudge et al., *supra* note 74, at i52. In Spain, ninety-five percent of their organ donations from deceased donors are from DBD individuals. *Id.* at i52. Spain found wide success in using three tiers of Transplant Donor Coordinators (TDCs), who are usually physicians, supported by nurse coordinators. *Id.* As lack of identification and referral of organ donation was a main cause of loss of donation, TDCs approach grieving families in efforts to have their family member donate their organs. *Id.* The success of the TDCs is often attributed to the presumed consent network, but the TDCs keep families from opting-out. *Id.* See also Alejandra Zúñiga-Fajuri, *Increasing Organ Donation By Presumed Consent and Allocation Priority: Chile*, WHO (Dec. 16, 2014), <http://www.who.int/bulletin/volumes/93/3/14-139535/en/> (reviewing Chile's program to increase organ donations). In 2013, Chile amended its Organ Donor Act to include allocation priority and presumed consent to help promote organ donation. *Id.* Presumed consent and allocation priority help to increase the supply of organs by, "decreasing the ease of opting out and giving registered donors priority among the pool of individuals in need of an organ transplant." *Id.* Opt-in systems helped countries like Austria, Belgium, the Czech Republic, Finland, France, Greece, Hungary, Israel, Italy, Luxembourg, Norway, Poland, Slovenia, Spain, Sweden, Turkey, Singapore and Israel to have organ donation rates [twenty-five to thirty percent] higher than those in countries requiring explicit consent." *Id.* Evidence supported the causal link and also attributed other factors to an increase in donation. *Id.* The "potential donor availability, transplantation infrastructure, health care spending and public attitudes, familial consent and donor registries all increased donation as well." *Id.* In the United States, UNOS is an opt-in system "requiring an individual to express their consent to become a potential donor." Zúñiga-Fajuri, *supra*. "Whereas explicit opt-out systems presume consent unless an individual expresses their refusal to become a potential donor." *Id.* See also 2017 Annual Updates, DONATE LIFE AMERICA, available at https://www.donatelife.net/wp-content/uploads/2016/06/2017_AnnualUpdate_singlepages_small.pdf (last visited Apr. 15, 2018) (reporting 2017 data on organ donation in the U.S.). Around 138 million people are registered to donate their organs upon their death, accounting for fifty-five percent of the adult American population. *Id.* at 4. See also *Donate Life Statistics*, DONATE LIFE AMERICA, available at <https://www.donatelife.net/statistics/> (last visited Apr. 15, 2018) (reporting organ donation and transplant statistics). Every day in America, twenty-two people die waiting on the organ donation list for an organ. *Id.* The waitlist for an organ includes 115,000 individuals in need of organs and the list grows by one person every ten minutes. *Id.* See also Casey Leins, *Should the Government Decide If You're an Organ Donor?*, US NEWS (Feb. 12, 2016), <https://www.usnews.com/news/articles/2016-02-12/presumed-consent-and-americas-organ-donor-shortage> (giving reasons why Americans against opt-out, presumed consent). Americans don't like anything presumed about their consent. *Id.* Legislators who introduced bills in their states faced opposition to the involuntariness and manageability of the system if people donated for compensatory reasons. *Id.* See also P. Bruzzone, *Religious Aspects of Organ Transplantation*, 40 TRANSPLANT PROCEEDINGS 1064-067 (May 2008) (listing religions and reasons why against organ donation). No religion expressly forbids donations of organs, but donations are discouraged by Native Americans, Roma Gypsies, Confucians, Shintoists, some Orthodox rabbis, and South Asian Muslims. *Id.* at 1067. Donation by brain-stem death donors and active euthanasia are not supported by the Catholic Church. *Id.* Donations are expressly encouraged by Jesus Christians (fifteen of twenty-eight Jesus Christians have donated). *Id.* at 1065. See also UNODC Assessment, *supra* note 66, at i50 (comparing whether deceased or living donations are better). Living donations are more advantageous as procedures can be scheduled according to patient need and organ donated from the living have better outcomes than organs from the

The number of legal organ donations, by deceased or living donors, only meets approximately ten percent of the global need for organs.⁷⁶ In the United States, legal transplant procedures usually cost around \$30,000 USD for a cornea, \$347,000 USD for a pancreas, \$415,000 USD for kidney, \$813,000 USD for a liver, \$862,000 USD for a lung, \$893,000 USD for allogenic bone marrow, \$1.1 Million USD for intestines, and \$1.4 Million USD for a heart.⁷⁷ The other ninety percent of people in need of transplantable organs must then turn to the black market.⁷⁸ The organ trade is “extensive, lucrative, explicitly illegal in most countries, and unethical according to every governing body of medical professional life. . . . selling and buying organs is therefore covert.”⁷⁹

deceased. *Id.* at i50. See also CARNEY, *supra* note 8, at 67. “Living-donor transplants are by and large more successful than cadaver donations. *Id.* Patients who get kidneys from paid donors live longer than those who receive their organs from brain-dead patients.” *Id.* Cf. David L. Kaserman, *On the Feasibility of Resolving the Organ Shortage*, 43 INQUIRY 160-66 (2006) (calculating magnitude of organ shortage to resolve organ shortage). Kaserman identifies the use of waiting lists as a measure of the organ shortage by inability to define what constitute a shortage and the number of deaths that occur per year under circumstances that would allow transplantation of the organs of the deceased. *Id.*

⁷⁶ UNODC Assessment, *supra* note 66, at 10 (reporting only ten percent of need for organs met with legal donations); see Nicolas Rapp, *Here's What Every Organ in the Body Would Cost to Transplant*, FORTUNE (Sep. 14, 2017), <http://fortune.com/2017/09/14/organ-transplant-cost/> (citing consulting firm Milliman's estimates on annual number of transplants in the U.S. for various organs). Only 50,099 people get corneal transplants, 16,804 people get kidneys, 12,160 people get autologous bone marrow transplants, 9,284 people get allogenic bone marrow, 6,158 people get liver transplants, 2,725 people get heart transplants, 1,397 people get double lung transplants, 673 people get single lung transplants, forty-nine people get intestine transplants, and 136 people get pancreas transplants. Nicolas Rapp, *Here's What Every Organ in the Body Would Cost to Transplant*, Fortune (Sep. 14, 2017), <http://fortune.com/2017/09/14/organ-transplant-cost/>.

⁷⁷ Rapp, *supra* note 76 (reporting average costs billed to patient for various organs transplanted using consulting group projections); Scheper Rumor, *supra* note 2, at 4. UNOS allows legal transactions dictated by a waiting list. *Id.* But see, CARNEY, *supra* note 8, at 76 (referencing Nancy Scheper-Hughes's argument on why high demand when tissue so easily found). “[T]he real scarcity is not of organs, but transplant patients of sufficient means to pay for them. While it is very difficult to directly pay a person to sell a kidney in the United States, the transplant list creates a pressing sense of scarcity.” CARNEY, *supra* note 8, at 76. The cost of legal transplant procedures include procurement, pre-operative care, post-operative care, immunosuppressants, and hospital administration. *Id.* at 78. These costs don't consider insurance coverage. *Id.*

⁷⁸ *Id.* See Nancy Scheper-Hughes, *Parts Unknown: Undercover Ethnography of the Organs-trafficking Underworld*, 5 ETHNOGRAPHY 30, 68 (2004) (stating no international statistics on buying and selling of organs available).

⁷⁹ See Scheper Traffic, *supra* note 7, at 192. See also Shimazono, *supra* note 67 (discussing the involvement of doctors in the organ black market). “The international movement of potential

C. Laws Regulating the Sale of Organs

The legal landscape of black market organ transplants is divided into organs donated and organs sold.⁸⁰ Laws on voluntary donations for transplants vary greatly by country.⁸¹ In the United States, donations are the only legal option, as the National Organ Transplant Act of 1984 forbids the sale of organs.⁸² International standards on the deceased and living donation of organs for transplant are guided by the 2010 World Health Organization's ("WHO") "Guiding Principles on Human Cell, Tissue and Organ Transplantation".⁸³ The key international standards outline that countries should address consent, conflicts of interest, goals for deceased donor programs, donor selection, minors, purchasing organs, advertising, healthcare facilities, and privacy.⁸⁴

As for countries where organs are legally sold, Iran is the only country in the world that has a regulated sale-of-kidney program.⁸⁵ Though for other countries, for

recipients is often arranged or facilitated by intermediaries and health care providers who arrange the travel and recruit donors." *Id.* See also *Scheper Traffic*, *supra* note 7, at 202 (finding rumor shows global backlash against transplant doctors). Where transplant doctors originally had esteemed roles in the position to save lives in a new way, the prevalence of the rumors has led to mistrust and degradation of the title organ transplant doctor. *Id.*

⁸⁰ Richard Knox, *Should We Legalize the Market for Human Organs*, NPR (May 21, 2008), <https://www.npr.org/2008/05/21/90632108/should-we-legalize-the-market-for-human-organs> (debating on organs comes down to donation versus selling).

⁸¹ Campion-Vincent, *supra* note 7, at 41 (reporting organ trade as largely "voluntary" by the poor in Asia and the Middle East). In many of these instances, the poor are disproportionately woman selling their kidneys. *Id.* Kidneys are sold for cash up front to pay for another's medical care, to pay for dowry for their daughters, and for other emergency situations. *Id.*

⁸² U.S. Gov. Info. on Organ Donation and Transplantation, *Organ Donation Legislation and Policy*, U.S. DEPT. OF HEALTH AND HUMAN SERVICES, <https://organdonor.gov/about-dot/laws.html> (last visited Apr. 15, 2018). In 1984, the U.S. Congress passed the National Organ Transplant Act establishing the Organ Procurement and Transplantation Network ("OPTN"), which created a national registry for matching organ donors with organ donees. *Id.* See also Rudge et al., *supra* note 74, at i51 (describing the need of organ transplants and increased efforts to find donors).

⁸³ See UNODC Assessment, *supra* note 66, at 9 (outlining the international standards of "Guiding Principles on Human Cell, Tissue and Organ Transplantation").

⁸⁴ *Id.* at 10.

⁸⁵ *The International Organ Trafficking Market*, NPR (July 30, 2009), <https://www.npr.org/templates/story/story.php?storyId=111379908> [hereinafter Talk] (mentioning Iran as a viable option for those wanting to buy kidneys). In Iran, patients' rights organizations monitor the selling of kidney market, but its system is not without its faults. *Id.* See

example in the Philippines, organ sales were more or less legal.⁸⁶ Although there were not laws on the books making the sale of organs legal, it was common practice and rarely enforced.⁸⁷ For countries, where organ selling is not legalized, laws dictating and prohibiting organ markets and the trafficking of persons for living donations of organs for profit are dictated by the individual countries.⁸⁸ International guidelines include the 2004 World Health Assembly resolution that urged its member states to “take measures to protect the poorest and vulnerable groups from ‘transplant tourism’ and the sale of tissues and organs.”⁸⁹ The 2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”) also criminalizes human trafficking for organ removal.⁹⁰ Otherwise, the July 2014 “Council of Europe

also CARNEY, *supra* note 8, at 81 (describing Iran kidney program was success, Iran now has an abundance of organs). There is no waitlist for a kidney in Iran. *Id.* But according to Scheper-Hughes, Iran’s system legalized the system already in place. *Id.* “[T]he so called brokers and kidney hunters were rebranded ‘transplant coordinators’ . . . but they were still just thugs who troll the streets and homeless shelters for people to donate on the cheap.” *Id.* at 82.

⁸⁶ CARNEY, *supra* note 8, at 79.

⁸⁷ See VEERENDRA MISHRA, *COMBATING HUMAN TRAFFICKING* 93 (Sage Publishing 2015) (detailing the organ trafficking situation in the Philippines). The Philippines is now calling for a total ban on the kidney trade, and “the revocation of the new national policy on kidney transplants from living –non-related organ donors”. *Id.* Despite their best intentions, transplant tourists are still getting around this dynamic by marrying poor girls and then having them donate to them, then leaving them in disgrace as divorced women. *Id.* at 93-94.

⁸⁸ Shimazono, *supra* note 67 (outlining laws in various countries where transplant tourism and illegal transplants thought to occurred) (reporting on various laws on sale of organs by country). See also MARK J. CHERRY, *KIDNEY FOR SALE BY OWNER: HUMAN ORGANS, TRANSPLANTATION, AND THE MARKET* (Washington: Georgetown University Press 2005) (describing the need to create a regulated organ transplant market).

⁸⁹ WORLD HEALTH ORGANIZATION [WHO], World Health Assembly Res. 57.18, *Human Organ and Tissue Transplantation*, at 2, (2004), available at http://www.who.int/transplantation/en/A57_R18-en.pdf (outlining international call for awareness, support, regulation, and research on transplant tourism). See *infra* note 94 (describing transplant tourism).

⁹⁰ See UNODC Assessment, *supra* note 66, at 14-15 (discussing elements of Trafficking Protocol). Trafficked children are dually unable to give consent to organ donation given their status as a minor and as a trafficked person. *Id.* Children cannot give informed consent because they cannot legally understand the consequences of organ donation and what is happening to their body. *Id.* Trafficked people cannot give consent to organ donation because they are in a position of subjugation, so their consent would be seen as given under duress or having been coerced, therefore they would not have truly consented. *Id.* See UNODC Assessment, *supra* text accompanying note 74 (discussing trafficked minors and consent).

Convention against Trafficking in Human Organs” wrote the only treaty to specifically deal with trafficking in human organs at both national and international levels.⁹¹

D. What Does the Organ Black Market Look Like?

The first accounts of black market organ sales occurred in the late 1980s, not long after the normalization of organ transplants.⁹² The true scale of the organ black market is not known because research only includes cases reported to official sources.⁹³ From the reported cases, it is known that most black market organ trade is sourced by living organ donation conducted domestically, where a person donates in their country to someone else within their country.⁹⁴ Internationally sourced organs primarily involve transplant tourism, where people travel to get organs otherwise unavailable at home and for a fraction of the cost.⁹⁵ These deals are usually brokered by intermediaries or medical

⁹¹ See UNODC Assessment, *supra* note 66, at 18 (recommending legislative measures for criminalizing human organ trafficking).

⁹² *Id.* at 11 (providing overview of black market organ trade).

⁹³ *Id.* at 12 (describing global lack of reliable information). The UNODC’s global online Human Trafficking Case Law Database has 1,200 cases from ninety countries, but only twelve contain reference to organ removal. *Id.* at 24; see Shimazono, *supra* note 67 (citing lack of research in identifying and tackling organ black market). In spite of rising global awareness, the true extent of the “international organ trade is not well understood due to a paucity of data and also a lack of effort to integrate the available information.” Shimazono, *supra* note 67.

⁹⁴ Scheper Traffic, *supra* note 7, at 208 (stating that most organ transplants occur domestically); see Shimazono, *supra* note 67 (finding no confirmed reports of transplant organs being trafficked after their removal); see also United Nations Office on Drugs & Crime, *Global Report on Trafficking of People*, UNITED NATIONS (2016), available at https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf [hereinafter “UNODC Report”] (reporting on trafficking for organ removal statistics). From 2012 to 2014, three percent of people trafficked from North Africa and Middle East were trafficked for organ removal. *Id.* at 8.

⁹⁵ Scheper Traffic, *supra* note 7, at 208 (citing “transplant tourism” being used in resolution WHA 57.18 and in international health policy discussion). Transplant tourism is defined as “overseas transplantation when a patient obtains an organ through the organ trade or other means that contravene the regulatory frameworks of their countries of origin.” Shimazono, *supra* note 67. Sometimes the receiver and donor from different countries will go to a third country for the procedure. *Id.* See MISHRA, *supra* note 87, at 94 (reporting there are two main ways that transplant tourism takes place). Transplant tourism usually involves the tourist going to the foreign country of the donor, or meeting a known donor in a third country where laws and lack of enforcement mean easy transplantation. *Id.* at 94; cf. UNODC Assessment, *supra* note 66, at

professionals who verify that the donor and receiver are blood type matches, arrange for travel, bribe officials, and make the medical arrangements.⁹⁶ These organs tend to move from southern geographic areas to northern areas.⁹⁷ Organs from people in “supply” countries in Asia, North Africa, and Latin America are transplanted into people from “demand” countries in North America, Europe, and the Near East.⁹⁸ Organs domestically and internationally sourced and transplanted tend to move from women to men, from the poor to the rich, and from dark-skinned to the light-skinned people.⁹⁹ This note

35 (insurance agencies contributing to lure of transplant tourism and use of unconsenting donors). Insurance agencies are choosing to cover transplant surgeries abroad because they are cheaper. UNODC Assessment, *supra* note 66, at 35. This makes transplant tourism an alluring choice for people in need of an organ. *Id.* “So ultimately health insurances might promote and support – or be susceptible to promoting and supporting – the purchases of organs from vulnerable donors who may not have provided valid consent.” *Id.*

⁹⁶ Shimazono, *supra* note 67 (describing use of brokers in transplant tourism). “Several web sites offer all-inclusive ‘transplant packages’ – the price of a renal transplant package ranges from US\$ 70,000 to 160,000.” *Id.*

⁹⁷ See *Scheper Traffic*, *supra* note 7 (discussing organs flowing along economic routes), at 193. “In general, the flow of organs follows the modern routes of capital: from South to North, from Third to First World, from poor to rich, from black and brown to white, and from female to male.” *Id.*

⁹⁸ Talk, *supra* note 85.

People are more likely to go there than to India, which was the site at the beginning of all this . . . they came home with mismatched organs. They came home very sick with HIV and Hep-C and other problems. So India kind of dropped out, Pakistan moved up, but the Israeli network is the most extensive, as I said, in terms of its organizational power, is quite incredible. And I've worked with investigators in Brazil, in Turkey and in South Africa, and they were broken up there. The United States was resistant.

Id. See Shimazono, *supra* note 67 (listing supply and demand countries). Countries known to have organs sold include India, Pakistan, China, Bolivia, Brazil, Iraq, Israel, the Republic of Moldova, Peru Turkey, and Colombia. *Id.* A report by Organs Watch listed major demand countries to include Australia, Canada, Israel, Japan, Oman, Saudi Arabia and the USA. *Id.*

⁹⁹ See Shimazono, *supra* note 67.

The trade in transplant-related health services across borders, however, may result in the inequitable allocation of deceased donor organs and has also raised ethical concerns . . . in a country where the regulatory frameworks to protect live organ donors from coercion, exploitation and physical harm are not well developed or implemented.

Id. See also UNODC Assessment, *supra* 66, at 11-12 (discussing organ trafficking networks); *Scheper Traffic*, *supra* note 7, at 193 (describing various ways organ transplants flow). In a family

acknowledges the ethical and social issues surrounding the organ black market and transplant tourism, but leaves in depth analysis of this issue for another paper.

E. Where Do Black Market Organs Come From?

Anthropologists and investigative journalists have chronicled stories across the globe of impoverished people selling their organs for a meager profit.¹⁰⁰ These accounts act as “significant complementary resources” as the scientific research is limited.¹⁰¹

i. *Organs Advertised in Brazilian Newspapers*

In Brazil, renowned anthropologist Nancy Scheper-Hughes studied organ transplants in Latin American countries in the 1980s.¹⁰² She connected with San Paulo, a local journalist, who tracked down an advertisement placed by Migeul Correia de Oliveria in the local newspaper.¹⁰³ The advertisement said, “I am willing to sell any organ of my body that is not vital to my survival and that could help save another person’s life in exchange for an amount of money that will allow me to feed my family.”¹⁰⁴ When interviewed, Miguel said he placed the advertisement to make money as he was out of

there is the most pressure on a poor, lower-status female relative to donate her organs, for example a single aunt or the youngest sister. *Scheper Traffic*, *supra* note 7, at 209. In addition, organs flow from black and brown to white people. *Id.* at 193. A survey of renal transplants in Europe and North America showed women and non-white patients are only two-thirds the chance of men and white patients to receive transplants. *Id.* at 209. Organ transplants also flow based on regional or religious bans on organ transplants being placed or lifted. *Id.* at 193. For example, after the Catholic church allowed doctors to define what constitutes death, brain-stem death could be included in the deceased donor pool. *Id.* at 194. *See also* CAREY, *supra* note 8, at 72 (“Flesh in India moves up the social hierarchy, not down.”).

¹⁰⁰ *See* UNODC Assessment, *supra* note 66, at 11 (providing background information regarding organ sales).

¹⁰¹ *See supra* note 67 (noting media reports of organ selling are “significant complementary resources” because lack of scientific research).

¹⁰² *See Scheper Traffic*, *supra* note 7, at 194.

¹⁰³ *See id.* (discussing development of organ market in Northeast Brazil).

¹⁰⁴ *See id.* (providing information on content of advertisements regarding organ sales).

work, and could not find a job.¹⁰⁵ Miguel was so poor, though, that he did not have enough money to buy the newspaper every day to see if anyone had responded.¹⁰⁶

ii. Organs from Falun Gong Prisoners in China

Since the early 1990's, China has been under scrutiny about its alleged participation in the organ black market by selling kidneys, corneas, liver tissue, and heart valves mined from executed prisoners.¹⁰⁷ Beginning in 1984, all Chinese executions became strictly private, so information has only been gathered from statistics, former political prisoners, transplant hospital administrators, Chinese doctors, and prison guard informants.¹⁰⁸ Between 2000 and 2005, China officially recorded 60,000 kidney transplants, but only 18,500 kidneys came from identifiable individuals, the remaining 41,500 kidneys are thought to have come from prisoners, specifically political prisoners arrested for practicing the religion Falun Gong.¹⁰⁹ According to the Bellagio Task Force

¹⁰⁵ See *id.* (describing reasoning and circumstances leading to Oliveria placing this advertisement).

¹⁰⁶ See *id.* (illustrating level of financial hardship which led to Oliveria opting to sell organs).

¹⁰⁷ CAREY, *supra* note 8, at 84 (highlighting the value of human organs); *Scheper Traffic*, *supra* note 7, at 196 (discussing the alleged role of orphanages in the organ trade).

¹⁰⁸ See *Scheper Traffic*, *supra* note 7, at 196 (discussing the difficulty in gathering data and information on organ trade). See also CAREY, *supra* note 8, at 82.

¹⁰⁹ CAREY, *supra* note 8, at 82 (speculating from widely known book on China's organ harvesting) (citing David Matas and David Kilgour, *Bloody Harvest: A Revised Report into Allegations of Organ Harvesting of Falun Gong Practitioners in China* (2007), available at <http://organharvestinvestigation.net/report0701/report20070131-eng.pdf>). Falun Gong practitioners are political dissidents by the Chinese government starting in the 1990s. *Id.* An interview with Falun Gong political dissenter, Hua Chen, details how only the Falun Gong prisoners had their blood taken and were given routine check-ups, suspecting officials logged her blood for potential harvesting. *Id.* at 87. See also Elisabeth Rosenthal, *Crackdown on Sect Yields 111 Arrests, Beijing Announces*, N. Y. TIMES (Nov. 9, 1999), <http://www.nytimes.com/1999/11/09/world/crackdown-on-sect-yields-111-arrests-beijing-announces.html> (reporting first arrests following China's initial campaign against Falun Gong). Falun Gong is a belief system using traditional exercises with Buddhism and Taoism. *Id.* The Chinese government, including China's President, referred to the group as an "evil cult" in 1999. *Id.* These allegations stemmed from China's report that over 1,400 people died because the movement is anti-scientific and prevents its members from seeking medical treatment, thus requiring government intervention. *Id.* China denied "beatings or inhumane treatment," but followers are being "educated" and China admits that three individuals subject to re-education have died by suicide or heart attack. *Id.* Report, *People's Republic of China: Reports of Torture and Ill-Treatment of Followers of Falun Gong*, AMNESTY INTERNATIONAL (Oct. 21, 1999),

Report on Transplantation, Bodily Integrity, and the International Traffic of Organs, organs were taken from about 2,000 executed prisoners every year and that the number of executions in China is on the rise.¹¹⁰ These accusations have been corroborated with personal accounts.¹¹¹ At a 1996 Berkeley conference, an interview with a doctor detailed

<https://www.amnesty.org/en/documents/asa17/054/1999/en/> (reporting on individual reports of human rights abuses against Falun Gong practitioners). According to Amnesty International, the Falun Gong is a “movement” combining meditation and exercises to improve health and moral standards. *Id.* Many of those practicing Falun Gong are majority female, middle-aged, or elderly people. *Id.* The initial report by Amnesty International expressing their concern states:

Thousands of Falun Gong followers who attempted to protest peacefully against the ban or who continued to practice exercises were arbitrarily detained across China in the days and weeks which followed the ban. Many were reportedly beaten by police in the process. At least hundreds are believed to remain in detention. Some are now being brought to trial on politically motivated charges. They are likely to be sentenced to long prison terms after unfair trials.

Id. at 1. Central Intelligence Agency, *East & Southeast Asia: China*, WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/ch/html> (last visited Apr. 15, 2018) (reporting statistics and information on China). The division of the many religions practiced within China’s borders is fifty-two point two percent unaffiliated, eighteen point two percent Buddhist, five point one percent Christian, one point eight percent Muslim, twenty-one point nine percent Folk religion, less than point one percent Hindu, less than point one percent Jewish, point seven percent Daoist, Taoist, and other. *Id.* But the official religion of China, established in 2010, is Atheism. *Id.*

¹¹⁰ D. J. Rothman et al., *The Bellagio Task Force Report on Transplantation, Bodily Integrity, and the International Traffic in Organs*, 29 TRANSPLANTATION PROC. 2739-45 (1997) (detailing the creation, implementation, and findings of organ donation Bellagio Task Force). The Task Force is made up of transplant surgeons, organ procurement specialists, human rights activists, and social scientists. *Id.* The purpose of the Task Force is to “define ethical standards for the international practice of organ donation, especially in light of abuses that undermine both the bodily integrity of socially disadvantaged members of society and the trust that must be integral to donation.” *Id.* See Scheper Traffic, *supra* note 7, at 196 (stating the number of executions in China is on the rise). But see CAREY, *supra* note 8, at 88.

With the international pressure on China, the number of foreign kidney-transplant patients seeking organs from prisoners has declined. However, it is unlikely that the domestic market has changed at all The number of executions across China appears to be shrinking, somewhat, the number of Falun Gong victims would thus appear to be growing.

Id.

¹¹¹ Rothman et al., *supra* note 110, at 2739-45.

a late night extraction of both kidneys on a live anesthetized prisoner.¹¹² The prisoner was later executed by a bullet to the head.¹¹³ In 2001, Dr. Guoqi Wang testified before the United States House of Representatives that from 1990 to 1995 he had conducted hundreds of operations to harvest skin from prisoners while another transplant team harvested their organs.¹¹⁴ Sometimes the patients were alive for the procedures and only after the operations were completed, were they executed.¹¹⁵ The harvested organs are thought to service sickly Chinese political elite, as well as the highest bidders in other Asian countries.¹¹⁶ As recently as 2006, the China International Transplantation Network Assistance website advertised to wealthy Americans that there was only a two week wait to buy a kidney for \$62,000 USD, a liver for \$98,000-\$130,000 USD, a lung for \$150,000-\$170,000 USD, a heart for \$130,000-\$160,000 USD or a cornea \$30,000 USD.¹¹⁷ Though not a consistent headline, international human rights organizations say China is organ harvesting from Falun Gong prisoners on an ongoing basis.¹¹⁸ As recently as 2015, execution statistics still showed discrepancies as 7,785 organ transplants had occurred, but only 2,766 people had been named to have volunteered to donate their organs.¹¹⁹

¹¹² *Scheper Traffic*, *supra* note 7, at 196 (detailing interview conducted by Harry Wu, Director of Laogai Foundation at a 1996 Berkeley conference).

¹¹³ *Id.*

¹¹⁴ CARNEY, *supra* note 8, at 83-84.

¹¹⁵ *Id.* at 84.

¹¹⁶ *Scheper Traffic*, *supra* note 7, at 196. Organs are sold to transplant patients from Hong Kong, Taiwan, Singapore, paying \$30,000 or more. *Id.* The National Taiwan University Medical Center's chief transplant surgeon, Dr. Chun Jean Lee, says allegations are likely true because the practice of using executed prisoners as a source for organs is widespread in Asia. *Id.*

¹¹⁷ CARNEY, *supra* note 8, at 84.

¹¹⁸ James Griffiths, *Report: China Still Harvesting Organs From Prisoners at a Massive Scale*, CNN (June 24, 2016), <http://www.cnn.com/2016/06/23/asia/china-organ-harvesting/index.html> (reporting continued problems with China's practices in organ harvesting).

¹¹⁹ *See id.* *See also* Xinhua, *Chinese Organ Donation on the Rise*, XINHUANET.COM, http://news.xinhuanet.com/english/2016-04/01/c_135243312.html (last visited Apr. 15, 2018) (reporting statistics from the NHFPC). The number of organ donations exceeded 2013 and 2014 combined. *Id.*

iii. Women Selling Their Kidneys in “Kidneyville,” India

During 2006 and 2007, anthropologist and investigative journalist, Scott Carney, visited a tsunami refugee camp of displaced people in Chennai, India.¹²⁰ The village is nicknamed *Kidneyvakkam*, or “Kidneyville,” as almost all the women in the village have sold a kidney.¹²¹ Most were given less than \$1000 USD up front and were deceived after being promised thousands of dollars more after the surgery.¹²² Local kidney brokers who arranged deals, and coached the women on the right phrases to say in front of the hospital’s authorization committees.¹²³ Additional bribes by the brokers usually allowed the transaction to appear legal, despite the intent of authorization committees.¹²⁴ Carney interviewed a mother, Rani, who sold her kidney to obtain money for medical attention for her daughter.¹²⁵ Rani received the equivalent of \$900 USD up front and was promised an additional \$2600 USD following the surgery, but then the broker disappeared with the rest.¹²⁶ Rani was left with residual pain from the surgery which prevented her from working.¹²⁷ Another woman, Mallika, sold her kidney to a wealthy Sri Lankan transplant tourist, as a chance to move beyond her means as a laundry woman.¹²⁸ Following her

¹²⁰ CARNEY, *supra* note 8, at 61.

¹²¹ *Id.*

¹²² *See id.* at 66 (describing multiple stories of women being paid a cut up front of a significant total). After the surgery, the money promised was not given. *Id.*

¹²³ *See id.* The organ black market functions with a network of brokers who match the clients and procure the “donors.” *Id.*

¹²⁴ *See* CARNEY, *supra* note 8, at 69-70 (describing the authorization committee check to catch organ sales instead of familial donations). Though the government was well intentioned in setting up the authorization committee, the scrutiny and pliability of the committee was wanting. *Id.* A bribe sufficed to allow the seller of the organ to speak a sentence, sign, and have their organ removed. *Id.*

¹²⁵ *See* CARNEY, *supra* note 8, at 68 (detailing Rani’s reason for donation her kidney). Rani’s daughter was recently married. *Id.* The husband and mother were horrible and abusive to the daughter, leading to her daughter trying to take her own life by poisoning herself. *Id.* Rani got her daughter immediate medical attention, but Rani needed quick money to pay the bills. *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* at 68.

¹²⁸ *See* CARNEY, *supra* note 8, at 71.

surgery, Mallika had complications that forced her to remain in the hospital, and resulted in medical bills.¹²⁹ Once released, she could not pay the bills and she decided to file suit against the broker.¹³⁰ Instead, she was arrested for trafficking organs.¹³¹ In a cruel twist of fate, Carney's interview with Mallika revealed that her son had recently been diagnosed with Hepatitis B and would eventually require a kidney transplant.¹³² Rani and Mallika are only two stories in a village full of women who had sold their kidney out of necessity.¹³³

iv. Transplant Tourism in Brooklyn, New York

In 2009 the United States faced its first case of international black market organ selling.¹³⁴ Rabbi Izhak Rosenbaum of Brooklyn, New York, is the first person to be charged and convicted with profiting from the illegal sale of human kidneys.¹³⁵ He was also one of forty-four individuals charged with money laundering and bribery as part of a multi-country organization of brokers trafficking organs, operating out of Israel.¹³⁶ Rosenbaum was a kidney broker, meaning he connected American clients who needed a

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 72.

¹³² *Id.* at 70. See Tak Mao Chan, *Hepatitis B and Renal Disease*, 9 CURRENT HEPATITIS REP. 99, 99-105 (2010) (finding Hepatitis B causes many problems in the kidneys). C.f. Veeraiish Chauhan MD, *Hepatitis B: Can It Cause Kidney Disease?*, VERYWELL HEALTH (Dec. 15, 2017), <https://www.verywell.com/can-hepatitis-b-cause-kidney-disease-4107525>. Hepatitis B virus is found to induce kidney disease in many different ways depending on how the infected person's kidneys react to the disease. *Id.* Hepatitis B virus can cause polyarteritis nodosa and membranoproliferative glomerulonephritis through Hepatitis B virus causing severe inflammation of the blood vessels, the kidneys being very rich with blood vessels. *Id.* Hepatitis B virus can also cause membranous nephropathy, that affects the kidney's filtering ability, and hepatorenal syndrome, "an extreme form of kidney disease because of preexisting liver disease." *Id.*

¹³³ See CARNEY, *supra* note 8, at 68. (reporting that almost all of the women had been taken advantage of by the brokers). "Over the years so many people had sold their kidneys in Tsunami Nager that wry locals began calling the camp 'Kidneyvakkam' or 'Kidneyville.'" *Id.*

¹³⁴ Talk, *supra* note 85 (reporting on first U.S. charge with organ transplant crime).

¹³⁵ *Id.* (reporting the charge comes as no surprise with 80,000 Americans waiting for a kidney).

¹³⁶ *Id.* "Last week, FBI agents arrested 44 people in Northern New Jersey – including mayors, legislators, and rabbis – on corruption charges." *Id.*

kidney with a matching “donor” by bringing a foreign national from his extensive network to the United States.¹³⁷ He created a believable story about why the foreign national was donating and how they knew the client, and then coached both parties into tricking the local transplant hospital for the operation.¹³⁸ Rosenbaum, who viewed himself as a “Robin Hood of Kidneys” was sentence to two and half years in federal prison in July of 2012.¹³⁹

III. THE TRAFFICKING OF CHILDREN FOR ADOPTION

A. Overview of Children’s Rights

Historically, children were viewed as the economic property of their parents.¹⁴⁰ Only since the 1990’s has the international community recognized the independent rights of children and defined what constitutes the human trafficking of children, in an attempt to combat the exploitation of children.¹⁴¹ In 2016, 40.3 Million humans were victims of

¹³⁷ *Id.* Rosenbaum charged the client \$150,000, only \$10,000 of which went to the foreign national who gave their organ. *Id.* “He says he needs to shmeer a lot of people, pay them for their services.” Talk, *supra* note 85.

¹³⁸ *Id.* Part of Rosenbaum’s job was to coach the “ostensible donor” in order to create a believable story. *Id.*

¹³⁹ Samantha Henry, *Brooklyn Man Sentenced 2 ½ Years in Fed Organ Trafficking Case*, NBC N.Y. (July 11, 2012), <https://www.nbcnewyork.com/news/local/Kidney-Organ-Trafficking-Levy-Izhak-Rosenbaum-Brooklyn-Federal-Conviction-Sentencing-162046565.html> (reporting on the sentencing of Rosenbaum and his reaction to the charges).

¹⁴⁰ *Children’s Rights: International Laws*, LIBRARY OF CONGRESS, <https://www.loc.gov/law/help/child-rights/international-law.php> (last updated July 2, 2015) [hereinafter “Library”] (describing children’s previous status as having no independent rights, only subject to parents and adults).

¹⁴¹ *Id.* (overviewing the creation of laws to protect children). Building upon earlier general rights of children in 1929, the 1959 UN Declaration of Rights of the Child outlined standards for special protection for children including laws against “neglect, cruelty, exploitation, trafficking, underage labor, and discrimination.” *Id.* The 1989 U.N. Convention on the Rights of the Child then codified special protections of children as the most comprehensive document on children’s rights. *Id.* at 2. The Convention was unprecedented in created international law that reflected the “Four P” principles upon which adoption is based. *Id.* (P)articipation by children in decisions affecting them; (p)rotection of children against discrimination and all forms of neglect and exploitation; (p)revention of harm to them; and (p)rovision of assistance to children for their basic needs. *Id.* Children are defined as below the age of eighteen years unless the law applicable

trafficking, more than a quarter of those victims were children.¹⁴² This is illustrated by an upward trend from twenty percent in 2009, twenty-seven percent in 2012, and twenty-eight percent in 2016 of trafficked children.¹⁴³ Child abduction is a highly organized and profitable crime because children are wanted for sex exploitation, labor, marriage, and adoption.¹⁴⁴ Unlike other forms of child trafficking, adoption is not included in the

holds majority is attained earlier. See Library, *supra* note 140; United Nations Human Rights, FACT SHEET NO. 36 – HUMAN RIGHTS AND HUMAN TRAFFICKING 2 (2014) (defining human trafficking). According to the international, 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, trafficking in persons shall mean:

[T]he recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.

Id. See also Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. §7102 (2000) (defining “severe forms of trafficking in persons” as sex trafficking and labor trafficking); U.S. *Laws on Trafficking in Persons*, U.S. DEP’T OF STATE, <https://www.state.gov/j/tip/laws/> (last visited Apr. 15, 2018) (outlining that TVPA coordinates international and domestic monitoring of trafficking in persons).

¹⁴² *Forced Labour, Modern Slavery and Human Trafficking*, INT’L LABOUR ORG. (2008), <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> (reporting statistics on how many people in modern day slavery). Of the 40.3 million in slavery, 24.9 are in forced labour, and 15.4 million in forced marriage. *Id.* Within forced labor, 4.8 million are forced sexual exploitation, and 16 million in the private sector, and 4 million in forced labor imposed by state authorities. *Id.* United Nations Office on Drugs and Crime, *UNODC Report on Human Trafficking Exposes Modern Form of Slavery*, UNODC (2017), available at <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> [hereinafter UNODC Modern] (reporting statistics on child trafficking). Twenty percent of trafficked people are girls and eight percent are boys. See *Forced Labour, Modern Slavery and Human Trafficking*, *supra*.

¹⁴³ *Forced Labour, Modern Slavery and Human Trafficking*, *supra* note 142.

¹⁴⁴ See Library, *supra* note 140, at 2-6 (listing regional conventions, covenants, charters, and declarations of children’s right). Many regional and content specific legal tools have been implemented worldwide on child rights in relation to sex trafficking and armed conflict, custody, and labor. *Id.* See also UN Human Rights, *Fact Sheet No. 36 – Human Rights and Human Trafficking* (2014) [hereinafter UN] (defining what age constitutes being a child, and common forms of trafficking). The definition of human trafficking of children holds the age of majority from birth to less than 18 years of age, unless the jurisdiction allows for a younger age. *Id.*

¹⁴⁴ See UN, *supra* note 143, at 97 (specifying that Palermo Protocol does not include adoption in human trafficking definition). Palermo Protocol adds to problem. *Id.*

international legal and regulatory toolkit definitions of human trafficking, leading to frequent human trafficking through inter-country adoption.¹⁴⁵

B. Origins of International Adoption

Adoption seeks to connect children in need of families with individuals who desire to have children.¹⁴⁶ International adoption began in America because of the United States' involvement in World War II from 1939-1945.¹⁴⁷ United States soldiers returning home from abroad told stories of countless orphaned children in need of saving, which inspired Americans to adopt as a form of a humanitarian aid.¹⁴⁸ International adoption

¹⁴⁵ *Id.* at 97 (specifying that Palermo Protocol does not include adoption in human trafficking definition). *See also*

2017 *Trafficking in Persons Report*, U.S. DEP'T OF STATE, www.state.gov/j/tip (last visited Apr. 15, 2018). Severe forms of trafficking in persons is scribed as:

sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained [eighteen] years of age; or 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.

Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1465 (2000). This definition does not include trafficking for the purpose of adoption. *Id.*

¹⁴⁶ MISHRA, *supra* note 87, at 98.

¹⁴⁷ *See* Katherine Herrmann, *Reestablishing the Humanitarian Approach to Adoption: The Legal and Social Change Necessary to End the Commodification of Children*, 44 FAM. L. Q. 409-28 (2010) (suggesting WWII veterans' stories about orphans increased adoption). *See also* World War II, HISTORY.COM (2009), <http://www.history.com/topics/world-war-ii/world-war-ii-history> (listing year in which World War II ended).

¹⁴⁸ *See* Herrmann, *supra* note 147, at 421. *See also* Barbara Yngvesson, *Placing the "Gift Child" in Transnational Adoption*, 36 L. & SOC'Y REV. (SPECIAL ISSUE), 227, 233 (2002) (explaining that adoption originally operated as a form of aid). At first, adoption was regarded as a "responsibility for socially conscious citizens." *Id.*; Richard W. Whitecross, *Article 3 and Adoption in and from India and Nepal*, in IMPLEMENTING ARTICLE 3 OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, 213, 214 (Elaine E. Sutherland and Lesley-Anne Barnes Macfarlane eds., 2016). Adoption was originally most popular from sending countries where adoptees were primarily white; *but see* Elizabeth Bartholet, *International Adoption: Propriety, Prospects, and Pragmatics*, 13 J. AM. ACAD. MATRIMONIAL L. 181, 182 (1996). International adoption has received scathing critiques as exploitative to the adoptees because they are separated from their country's culture and society. *Id.* However, for many children in orphanages, international adoption is the only way out of the orphanage. *Id.* at 182, 187. Both

reached widespread acceptance in the United States in 1953 after the Korean War.¹⁴⁹ Soldiers who had fathered Korean children brought these children to the U.S., further inspiring Americans to adopt Korean children.¹⁵⁰ Following each war there was a high number of children in need of homes and Americans wanted to adopt them.¹⁵¹

C. Reasons Why Trafficking of Children Intersects with International Adoption

Throughout the 1970s and 1980s, the demand for international adoptees steadily increased in countries that receive adoptees (“receiving countries”) and had a decrease of adults having biological children.¹⁵² The simultaneous increase in adoptions and the

those in favor and against international adoption support their arguments as being “in the best interests of the child.” *Id.* at 184.

¹⁴⁹ *Armistice Ends the Korean War*, HISTORY.COM (2009), <http://www.history.com/this-day-in-history/armistice-ends-the-korean-war> (listing year in which Korean War ended).

¹⁵⁰ See Yngvesson, *supra* note 148, at 233 (listing Korea as an early country to “give” children to adopt); Bridget M. Hubing, Student Article, *International Child Adoptions: Who Should Decide What Is in the Best Interests of the Family?*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 655, 662 (2001) (reporting around 38,000 Korean children adopted to the U.S. from 1953 to 1981).

¹⁵¹ Herrmann, *supra* note 147, at 421.

¹⁵² Yngvesson, *supra* note 148 at 233 (detailing the scarcity of healthy, white infants in Western nations as subsequent function of adoption); Herrmann, *supra* note 147, at 409 (defining “receiving countries” of adoptees); Peter Selman, *Trends in Intercountry Adoption: Analysis of Data From 20 Receiving Countries, 1999-2004*, 23 J. OF POPULATION RES. 183, 185 (2006) (listing top twenty receiving countries for 1999-2004) Countries that had submitted statistics included: US, France Italy, Canada, Spain, Sweden, Germany, Netherlands, Norway, Denmark, Belgium, Switzerland, Australia, Finland, Ireland, UK, Cyprus, Iceland, Luxembourg, New Zealand. *Id.* Countries that did not submit statistics included Austria, Greece, and Israel. *Id.*; Herrmann, *supra* note 147, at 409 (explaining factors contributing to shortage of children conceived by white Westerners and increased international adoption preference). The “acute shortage of white children” by white people in Western countries is referred to in literature as the “White Baby Famine.” Herrmann, *supra* note 147, at 409. This shortage is attributed to a number of evolving social norms. *Id.* at 409. Changing attitudes around contraception and abortion have resulted in less children being conceived or born. *Id.* The stigma around being a single parent has changed so potential single-parents are added to the pool of childless people looking to adopt. *Id.* The significant partiality to international adoptions versus domestic adoptions also contributes to the demand for foreign adoptees. *Id.* at 412. It is commonly misconceived that endless amounts of children abroad are in need of homes. *Id.* International adoption has less legal hurdles in the legal process and is more final than domestic adoption. Herrmann, *supra* note 147, at 414. International adoption allows for more personalization by getting to choose age, sex, and ethnicity, while in comparison, sixty percent of children in the American domestic foster care system are over the age of six and forty-two percent are black. *Id.* In the US, the Intercountry

subsequent global awareness of children's rights and adoption rights in the 1990s alerted countries that primarily sent adoptees ("sending countries") to the potential of child trafficking occurring in their international adoption processes.¹⁵³ In these countries, the demand for adoptable children was higher than the number of children in need of a home.¹⁵⁴ The original altruistic, humanitarian reason for adopting children evolved into adoption to fulfill the childless people's personal desires.¹⁵⁵ Prospective parents paid large

Adoption Act of 2000 and the Immigration and Nationality Act are examples of legal procedural steps in accordance with Hague convention guidelines. *Id.* at 425. For countries not participating in the Hague Convention, the Immigration and Nationality Act (INA) serves as the federal law governing adoptions between the U.S. and those countries. *Id.*

¹⁵³ See MISHRA, *supra* note 87, at 97 (stating child trafficking problem not initially easily identified because definition of child trafficking not clear); Yngvesson, *supra* note 148, at 233 (identifying factors contributing to international recognition of child trafficking problem); Library, *supra* note 140, at 5 (listing foundational children's rights and adoption laws that contribute to adoption and children trafficking laws). Rights in relation to international adoption, specifically the role child trafficking can play in adoption, includes the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions, 1965 (1965 Convention). Library, *supra* note 140, at 5. The first Hague Convention on adoption established requirements for countries to inquire about the circumstances surrounding a child's adoption. *Id.* It further established that the national law of the child was to govern any legal issues of consent and consultation. *Id.* The European Convention on the Adoption of Children, 1967, created minimum adoption standards to which European countries signed on. *Id.* These included requirements that adoptions be granted by a judicial or administrative authority. *Id.* at 6. The Hague Convention on the Protection of Children in Intercountry Adoption, 1993, established safeguards to ensure adoptions were in the best interest of the child, and that they avoid abuses, such as trafficking in children. *Id.* at 6. See also Herrmann, *supra* note 147, at 409 (defining "sending countries" of adoptees); Selman, *supra* note 152, at 190 (listing top sending countries of adoptees). The top countries depended on the year, but countries included: Greece, Italy, Germany, and Japan right after the World War II, and then Korea after the Korean War. Selman, *supra* note 152, at 190. After Korea, top countries included Ecuador, Colombia, Philippines, India, Romania, China, and Russia. *Id.*

¹⁵⁴ MISHRA, *supra* note 87, at 98 (pinpointing demand for babies by Westerners as contributing to child trafficking). Problem of child trafficking is not helped by the fact that in the United States a fraudulent adoption is considered its own crime, instead of human trafficking. *Id.* at 101. See Yngvesson, *supra* note 148, at 231.

¹⁵⁵ See MISHRA, *supra* note 87, at n.132 (quoting P. Vlaardingerbroek, *Alternatieven Voor (Interlandelijke) Adoptie*, JUSTITIELE VERKENNINGEN 54, 58 (Nov. 2008), available at https://www.wodc.nl/binaries/jv0807-volledige-tekst_tcm28-77028.pdf). It is estimated that about ninety-five percent of the prospective adoptive parents opt for inter-country adoption because of their desire to have a family. *Id.* The remaining five percent are driven by the idea that a child in need can be rescued through adoption. *Id.* See Herrmann, *supra* note 147, at 412 (explaining the change in reasons for intercountry adoption). The ideal of adopting to save a child from the condition they are in "stands in stark contrast to the intentions of the prospective adoptive parents today, who increasingly turn to adoption out of frustration with the domestic adoption process, rather than compassion for children facing deplorable conditions abroad." *Id.*

amounts of money for a child, making procurement of any child, orphaned or not, a lucrative business.¹⁵⁶

Adoption and human trafficking are inherently parallel as there is a fine line between buying adoption services that lead to a child and buying a child.¹⁵⁷ The legal adoption market depends on the prices set by the illegal market for children, as adopted children are not an outright “gift.”¹⁵⁸ The legal and illegal exchange of children intersect, thus requiring careful regulation of adoption.¹⁵⁹ Despite the regulation of fees between adoption agencies and orphanages, the private adoption agencies can charge potential parents more.¹⁶⁰ For instance in India, only \$5,000 USD of adoption agency fees from potential parents can go to the orphanages, but adoption agencies charge \$20,000 USD

¹⁵⁶ See Herrmann, *supra* note 147, at 410 (noting large amount of money adoptive parents are willing to pay creates market for children). The continued “high demand for infant children continues to provide economic incentive for criminal actions.” *Id.* at 413. The large fees that prospective parents are willing to pay increase the likelihood that “consent to the adoption will not be given freely and therefore, that the adoption will not be conducted according to the requirements of the Hague Convention.” *Id.* at 426. Kristina Wilken, *Controlling Improper Financial Gain in International Adoptions*, 2 DUKE J. GENDER L. & POL’Y 85, 85 (1995). The “high demand for adoptable children encourages these intermediaries to trade children for large amounts of money.” *Id.* See Gabriela Marquez, *Transnational Adoption: The Creation and Ill Effects of an International Black Market Baby Trade*, 21 J. JUV. L. 25 (2000). The profit margins to be had in the adoption market are “spurring corrupt practices of child-trafficking, deceit, and kidnapping in the children’s countries of origin.” *Id.*

¹⁵⁷ See Yngvesson, *supra* note 148, at 232, 235 (explaining the interconnectedness of adoption and trafficking of children). The illegal price of a child on the black market helps to determine the “price” for adoption. *Id.*

¹⁵⁸ See Yngvesson, *supra* note 148, at 235 (explaining children as gifts keep the altruistic value, otherwise are not freely given). “Baby-selling and baby-giving are part of the same system in which licit markets depend on illicit ones to establish the value of ‘priceless’ objects [babies].” *Id.* at 232.

¹⁵⁹ See *id.* Regulation includes international guidelines that countries can prescribe to like the Adoption Hague which sixty-six countries have signed on to. *Id.* at 234. See also Herrmann, *supra* note 147, at 423. Regulation can also include additional steps to be sure children are not trafficked. *Id.* A Notice of Intent to Deny (“NOID”) is issued when an investigation by the Department of Homeland Security finds a child not adoptable or they should not be allowed to leave the country they are coming from. *Id.* A NOID is a request for more information which require families to rebut the allegations the child is not adoptable or shouldn’t leave the country. *Id.* Failure to rebut can lead to denial of the petition and lengthy appeal processes. *Id.*

¹⁶⁰ See MISHRA, *supra* note 87, at 99 (describing how adoption costs are so high despite the regulation of pricing).

or more.¹⁶¹ Additionally, in many countries orphanages may pay people “finders fees” per child brought to them, thereby incentivizing the procurement of children for money and frustrating aiding children needing placement with families.¹⁶²

“Finders” are thought to procure children to sell to orphanages by many methods, like taking children in forgiveness of their parents’ debts.¹⁶³ Finders trick parents into relinquishing their children with promises that the child will be given food or an education, parents think they can get their child back at anytime.¹⁶⁴ Parents believe that if adopted, the child could petition for their citizenship in the receiving country once the child is an adult.¹⁶⁵ Finders are known for coercing or outright kidnapping children living on the streets, as well as taking children from their homes.¹⁶⁶ Other methods include nurses stealing new born babies from hospitals by telling the disenfranchised mothers that their child has died.¹⁶⁷ Real and fake social workers lie to parents to gain

¹⁶¹ See *id.*

¹⁶² See Herrmann, *supra* note 147, at 416 n.32; Patricia J. Meier, *Small Commodities: How Child Traffickers Exploit Children and Families in Intercountry Adoption and What the United States Must Do to Stop Them*, 12 J. GEND. RACE & JUSTICE 185, 194 (2009) (explaining the use of “finders” to supply orphanages).

¹⁶³ Meier, *supra* note 162, at 196 (listing ways children are procured for orphanages). See U.S. Immigration and Customs Enforcement, *Backrunder: Operation Broken Hearts*, Brandeis Univ. (Nov. 19, 2004), available at https://www.brandeis.edu/investigate/adoption/docs/galindo_backgr.pdf (citing results of ICE investigation into baby buying in Cambodia).

¹⁶⁴ See *id.* at 2.

¹⁶⁵ See *id.* Finders typically tell the parents that the child will be raised by a wealthy family in a wealth country like America. *Id.*

¹⁶⁶ *Scheper Rumor*, *supra* note 2, at 3. The finders were known to take children and shove them into the back of a van. *Id.* The children’s bodies would later be found without hearts, lungs, livers, kidneys or eyes, having been taken as donor organs. *Id.*

¹⁶⁷ See Council of Europe, Parliamentary Assemble, Social Health and Family Affairs Committee, *Disappearance of Newborn Babies for Illegal Adoption in Europe*, Doc. 11461, Dec. 7, 2007 (reporting instances of Ukrainian mothers’ newborn babies stolen, after being told the babies died). Moldova prosecuted sixty-one cases of child trafficking in 2006. *Id.* Newspapers even advertised for babies from unmarried mothers for 3,000 Euros. *Id.* See also Diana Jean Schemo, *THE BABY TRAIL; Adoption in Paraguay: Mothers Cry Theft*, N.Y. TIMES (Mar. 19, 1996), <http://www.nytimes.com/1996/03/19/world/the-baby-trail-a-special-report-adoptions-in-paraguay-mothers-cry-theft.html> (chronicling the various ways children are procured).

In many cases, experts say, a stranger, sometimes posing as an evangelist, will offer to pay a pregnant woman’s medical expenses and then claim the infant as

access to their child, then the social workers in turn sell the children to orphanages or adoption lawyers.¹⁶⁸ Child trafficking can arise in any country, but it is especially prevalent in sending countries affected by political instability, violence, natural disaster, or medical emergency.¹⁶⁹

D. An Indian Boy with Two Names

Detailed instances of child trafficking for adoption have been reported worldwide, including countries like India.¹⁷⁰ After child traffickers were arrested in 2005, many families discovered that their kidnapped children, were one of hundreds of children adopted out of one Chennai-based orphanage.¹⁷¹ The well-publicized account involved a

payment. In other cases, mothers, or women posing as mothers, may sell children, usually for up to \$400, or a lesser amount accompanied by radios, shirts, sweaters and other goods, said Ruben Riquelme, director of the Judicial Center for Investigations, which is attached to the prosecutor's office.

Id.

¹⁶⁸ Perera, *supra* note 21 (explaining that illegal adoptions can bring as much as \$10,000 per head). The baby-trafficking industry accounts for the disappearance of six children a day. *Id.* The “Sottas Report” that was established over three years listed seventeen clinics in Tijuana and Juarez that performed transplants of kidneys and corneal tissues from kidnapped children to wealthy Europeans and North Americans who pay high prices for the operations. *Id.*

¹⁶⁹ Herrmann, *supra* note 147, at 410 (identifying what countries are likely affected by child-trafficking through adoption).

¹⁷⁰ CARNEY, *supra* note 8, at 93 (detailing Chennai trafficking ring arrests lead to hundreds of false adoptions). In an interview with the current orphanage owner, Carney received another side of the story. The now son of the owner during the arrests, said the police used the investigation to extort money out of the organization. *Id.* He cited laws preventing them from questioning too deeply on where the child came from and that monetary handouts for children were merely for charity. *Id.* at 95. *E.g.* Shaikh Azizur Rahman, *Indian Children Stolen for Adoption*, THE NATIONAL, <https://www.thenational.ae/world/asia/indian-children-stolen-for-adoption-1.539489> (last updated June 29, 2010) (detailing parents in India whose children are stolen and sold into adoption in foreign countries).

¹⁷¹ Rahman, *supra* note 170 (referencing that in the Rohit adoption story, 350 children were stolen and adopted). *Contra* CARNEY, *supra* note 8, at 4 (detailing Chennai police report which mentioned 165 international adoptions to US, Australia, and Netherlands). *Contra* Monalisa Das, *Meet the Duo Who Have Been Fighting Illegal Adoption and Child Trafficking for Years*, THE NEWS MINUTE (Nov. 8, 2016, 8:00 PM), <https://www.thenewsminute.com/article/meet-duo-who-have-been-fighting-illegal-adoption-and-child-trafficking-years-52589> (reporting through Chennai police that 305 children were stolen and adopted to foreign nationals).

boy stolen from his family and adopted illegally to the Netherlands.¹⁷² The alleged same boy, originally named Sathish, was snatched from his bed at his family's home as a one-year-old in 1999.¹⁷³ A photo was brought to his mother, Nagarani, and father, Kathirvel, from the orphanages' records; if the child in the photo was Sathish, then their son was then-seven-year-old Rohit, living in the Netherlands.¹⁷⁴ Fast forward to 2010, Nagarani and Kathirvel asked to have a DNA test of thirteen-year-old Rohit's blood to see if Rohit was their stolen son Sathish, but the Dutch adoptive parents refused, worried their Rohit would be taken away.¹⁷⁵ After filing a suit to force a DNA test, Dutch courts did not require a DNA test, leaving Nagarani and Kathirvel at a dead end for now.¹⁷⁶

E. Suspicion of Trafficking in Chinese Adoptions

In November 2005, Chinese reporter, Li Ling, broke a story to Shanghai Daily, "Orphanages Accused in Baby-trading Scandal."¹⁷⁷ At least six orphanages in the Southern province of Hunan were implicated in allegations of buying, selling, and trading of over 100 trafficked babies over several years.¹⁷⁸ An orphanage worker reported to the

¹⁷² Rahman, *supra* note 170 (explaining how parents of an allegedly stolen child were denied a request to prove parentage). The Dutch parents refused to meet with the Indian parents after the child was stolen and sold into adoption. *See also*, CARNEY, *supra* note 8, at 94 (detailing another family whose child was found through the 2005 Chennai orphanage arrests). Sivagama left her young child, Subash, by the water playing to grab something from the house only to come back to find him missing. *Id.* at 92. Records from the orphanage show the orphanage's former gardener as the one who likely snatched Subash. *Id.* at 93.

¹⁷³ *See* CARNEY, *supra* note 8, at 93 (describing how months of searching for Sathish ended up being fruitless until 2005).

¹⁷⁴ Das, *supra* note 171 (explaining that Rohit had no memory of his biological parents).

¹⁷⁵ *Id.* (explaining that the Dutch family was afraid that he may be returned to India).

¹⁷⁶ *Id.* (ruling that a DNA test on the adopted son could risk inflicting severe emotional trauma). The court used the "best interest of the child" standard in determining what was to be done. *Id.* Nagarani and Kathirvel can contact Rohit once he is no longer a child. *Id.*

¹⁷⁷ *See Orphanages Accused in Baby-trading Scandal*, CHINA DAILY, http://www.chinadaily.com.cn/english/doc/2005-11/25/content_497880.htm (last updated Nov. 25, 2005) (reporting on Chinese journalist expose of Hunan orphanages in child trafficking rings).

¹⁷⁸ *Id.*

authorities that the orphanages bought babies from baby traders and then sold them to other orphanages, to Chinese childless couples, and to foreign couples using international adoption.¹⁷⁹ The Hunan orphanage trading report stands out from the numerous stories subsequent to Chinese government crackdowns on child kidnappers.¹⁸⁰ Primarily, previous news reports discussed domestic trafficking of children, which China acknowledges is an issue in the country.¹⁸¹ So, in this case the Chinese government quickly sealed the Hunan investigation and banned further reporting of stories that linked Chinese international adoption to child trafficking.¹⁸² Despite China's attempt to dampen the headline, Western media have raised questions about China's adoption practices.¹⁸³ In

¹⁷⁹ See *id.* (noting fraud scheme in orphanages selling or trading babies to other orphanages to qualify for more funding).

¹⁸⁰ See Andrew Jacobs, *China, 89 Abducted Children Rescued*, N.Y. TIMES (Dec. 24, 2012), <http://www.nytimes.com/2012/12/25/world/asia/china-89-abducted-children-rescued.html> [hereinafter *Jacobs 89*] (citing China's report of 10,000 children kidnapped per year, but mentioning contrary numbers at 70,000); Andrew Jacobs, *Chinese Hunger for Sons Fuels Boys' Abductions*, N.Y. TIMES (Apr. 4, 2009) [hereinafter *Jacobs Hunger*], <http://www.nytimes.com/2009/04/05/world/asia/05kidnap.html> (explaining why male children in demand in child trafficking). "The demand is especially strong in rural areas of south China, where a tradition of favoring boys over girls and the country's strict family planning policies have turned the sale of stolen children into a thriving business." *Jacobs 89*. See generally Ted Thornhill, *Child-snatchers Abducting As Many As 20,000 Boys and Girls and Openly Selling Them Online for Up to £10,000 in Kidnapping Epidemic Which is Destroying Families Across China*, DAILYMAIL.COM (Mar. 11, 2015, 5:03PM), <http://www.dailymail.co.uk/news/article-2989404/Child-snatchers-abducting-200-000-boys-girls-openly-selling-online-10-000-kidnapping-epidemic-destroying-families-China.html> (referencing US State Department's estimates as 200,000 children kidnapped in China per year).

¹⁸¹ *Jacobs Hunger*, *supra* at note 180 (reporting that China does not acknowledge one-child policy as reason for child trafficking in the country).

¹⁸² Geoffrey York, *China Shuts Down Reports About Baby Trafficking*, SEATTLE PI (Dec. 15, 2005), <https://www.seattlepi.com/national/article/China-shuts-down-reports-about-baby-trafficking-1190096.php> (reporting that "Chinese officials have imposed a wall of silence" on Hunan orphanage story).

¹⁸³ See generally, Charlie Custer, *Kidnapped and Sold: Inside the Dark World of Child Trafficking in China*, THE ATLANTIC (Jul. 25, 2013), <https://www.theatlantic.com/china/archive/2013/07/kidnapped-and-sold-inside-the-dark-world-of-child-trafficking-in-china/278107/> (interviewing mother of Chinese girl adopted from Hunan province). Rose Candis searched for her daughter's birth mother in 2005 after hearing about the Hunan province orphanage trafficking scandal. *Id.* Candis's travel to China and investigation led her to discover her daughter was trafficked. *Id.* Her daughter was not found but bought by the orphanage. *Id.* Cf. Sharon LaFraniere, *Chinese Officials Seized and Sold Babies, Parents Say*, N.Y. TIMES (Aug. 4, 2011),

response, various laws regulating child trafficking and adoption have attempted to address problematic adoption practices in China.¹⁸⁴

F. Law Regulating the Trafficking of Children into Adoption

Laws that have affected child trafficking through the international adoption of children include the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions (“1965 Hague Convention”), the UN Convention on the Rights of the Child of 1989 (“Rights of the Child”), the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption concluding in 1993 (“Adoption Hague Convention”), and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“Trafficking Protocol”) that supplemented the UN Convention Against Transnational Organized Crime (“Palermo Protocol”).¹⁸⁵

The adoption of the Rights of the Child by the UN General Assembly marked a substantial change for children worldwide.¹⁸⁶ The UN Convention granted full-fledged rights to all children in the world, in times of both peace and war.¹⁸⁷ Children were “no

http://www.nytimes.com/2011/08/05/world/asia/05kidnapping.html?_r=1&scp=1&sq=longhui&st=cse (reporting on 2011 story having similar effect on Chinese international adoption); John Leland, *For Adoptive Parents, Questions Without Answers*, N.Y. TIMES (Sep. 16, 2011), <http://www.nytimes.com/2011/09/18/nyregion/chinas-adoption-scandal-sends-chills-through-families-in-united-states.html> (interviewing adoptive parents prompted to investigate Chinese daughter’s adoption after 2011 story on adoption trafficking).

¹⁸⁴ Library, *supra* note 140.

¹⁸⁵ Library, *supra* note 140; *see supra* notes 141, 145 and accompanying text (defining and explaining TVPA in prevention of child trafficking).

¹⁸⁶ IMPLEMENTING ARTICLE 3 OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: BEST INTERESTS, WELFARE, AND WELL-BEING 1 (Elaine E. Sutherland & Lesley-Anne Barnes Macfarlane eds. 2016) [hereinafter “Sutherland”] (describing effect of Rights of the Child).

¹⁸⁷ *Id.*

longer objects of adult munificence and protection.”¹⁸⁸ The UN Convention also introduced, and defined, the substantive right of “the best interest” of a child as a fundamental interpretive legal principle and a rule of procedure.¹⁸⁹ A decision made in “the best interest” of a child deduces the most effective way to serve a child.¹⁹⁰ As a rule of procedure, decision-makers are required to demonstrate how they concluded that their recommendation is in the best interest of a child.¹⁹¹ One hundred twenty-nine countries have ratified the Rights of the Child; this is the most countries to ever ratify a treaty.¹⁹² The United States and Somalia are the only two countries to not have signed on to the Rights of the Child.¹⁹³

The 1965 Hague Convention was the first to discuss adoption.¹⁹⁴ It applied to all children whose nationality was foreign to the receiving country.¹⁹⁵ The 1965 Hague Convention emphasized that adoption depended on the best interest of the child and required an investigation into the family of the child.¹⁹⁶ The second convention, the

¹⁸⁸ See *id.* (focusing on how Article 3 of Rights of the Child is implemented); *supra* note 140 and accompanying text (discussing children as property of adults).

¹⁸⁹ See Sutherland, *supra* note 186, at 5 (explaining rule of procedure mandates evaluation of how decision impacts child).

¹⁹⁰ See *id.* at 2 (making decision based on unique needs and circumstances of each child).

¹⁹¹ See *id.* at 5 (overviewing the creation of the “best interest of the child” concept); Herrmann, *supra* note 147, at 411, 417 (concluding good policy does not mean more adoption). Attorney Herrmann suggests that adoption laws are not based on the best interests of child. Herrmann, *supra* note 147, at 417. The laws need to focus on the best interests of the child, rather than the needs of potential adoptive parents. *Id.*

¹⁹² *Convention on the Rights of the Child: Frequently Asked Questions*, UNICEF, https://www.unicef.org/crc/index_30229.html (last updated Nov. 30, 2005) (reporting number of countries that ratified Rights of the Child).

¹⁹³ See *id.* (giving reasons why U.S. has not ratified the Rights of the Child). “As in many other nations, the United States undertakes an extensive examination and scrutiny of treaties before proceeding to ratify.” *Id.* The examination takes many years and the U.S. tends to only evaluate one treaty at a time. *Id.* Since the U.S. is currently evaluating another treaty, the Rights of the Child is unlikely to be ratified anytime soon. *Id.* Somalia has not yet ratified the Rights of the Child because it has no government. *Id.*

¹⁹⁴ Library, *supra* note 140, at 12. No countries are currently signed on to the 1965 Hague Convention and it was no longer in force since October 23, 2008. *Id.* at 12 n.42.

¹⁹⁵ See *id.* (describing four provisions of 1965 Hague Convention).

¹⁹⁶ See *id.* (suggesting assistance from specially qualified social workers in conducting family investigational inquiry).

Adoption Hague Convention, aimed its focus at preventing the abduction, sale of, or trafficking of children.¹⁹⁷ Countries signing on, promised to adhere to strict standards of regulation and enforcement.¹⁹⁸ Building upon the Rights of the Child's best interest principles in a broader context, the Adoption Hague Convention implemented standards for adoption occurring within a country, such as accrediting adoption agencies, and issuing adoption and custody certificates.¹⁹⁹ Additionally, this second Hague convention emphasized the child's interest over the adopter's interests.²⁰⁰ Ninety-eight countries are currently signed onto the Adoption Hague Convention, with the regulations going into force for the United States in 2008.²⁰¹

¹⁹⁷ *Id.* at 14 (quoting Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption). This second Hague Convention, also called the "1993 Convention," requires authorities to consider the age and maturity of the child, informed consent of the adoption, consideration of the child's wishes, and any means of coercion or financial inducement for the adoption. *Id.*

¹⁹⁸ See *Understanding the Hague Convention*, TRAVEL.STATE.GOV., <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Adoption-Process/understanding-the-hague-convention.html> [hereinafter "Understanding Hague"] (last visited Apr. 15, 2018) (explaining what ratifying Adoption Hague Convention entails).

¹⁹⁹ *Id.* (detailing requirements for countries subscribing to the Adoption Hague Convention). See Herrmann, *supra* note 147, at 422, 424 (explaining who the Adoption Hague Convention applies to and its negative effects). The Adoption Hague Convention only is only applicable to the nations that choose to ratify it, but the laws changed in each country apply to anyone trying to adopt children from that country. *Id.* at 425. The Adoption Hague Convention, has no enforcement mechanism, it only rallies countries and provides standards. *Id.* at 424.

Unfortunately, trafficking of children still occurs through the use of unlicensed independent intermediaries to "locate" children, by forcing licensing. *Id.* Use of these intermediaries, releases agencies from liability of negligent or criminal acts in regard to the procurement of the children. *Id.* at 423. Additionally, adoption agencies use exculpatory clauses in their adoption contracts to limit liability if the adoption is found to be illegal. *Id.*

²⁰⁰ See Library, *supra* note 140 (noting the application of child's interest over adopter's interest principle has proved problematic).

²⁰¹ See *Understanding Hague*, *supra* note 189 (describing the procedures to adopt children from Hague Convention countries and listing Hague Adoption countries). The procedures for adopting children from countries that have not signed on to the Adoption Hague Convention are outlined under the Immigration and Nationality Act (INA). *Id.* The INA requires extensive paperwork and confirmation of a child's status as an "orphan." *Id.* Orphan is defined as: (1) The child must be under the age of 16 at the time the Form I-600 petition is filed on his or her behalf, or be under the age of 18 and a sibling of a child (under the age of 16) who has been or will be adopted (by the same adoptive parents); (2) The child must either have no parents because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both

Regarding the organ black market, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children also set standards for signatory countries to prevent child trafficking, prosecuting traffickers, and securing victims' rights in the receiving country.²⁰² The Trafficking Protocol recognized the connection between vulnerability and child trafficking, and encourages state actors to create or strengthen measures to alleviate poverty, underdevelopment, and lack of equal opportunity.²⁰³

IV. WHY DO WE CARE ABOUT THE ADOPTION ORGAN RUMOR?

In tune with its magnitude, the adoption organ rumor, is not just a rumor, it has resulted in significant long-lasting impacts.²⁰⁴ The rumor is implicit in "compelling a sustained local and international dialogue on inter-country adoption and changing adoption policy."²⁰⁵ Starting with Latin America in the 1980s, the rumor also affected tourism, though the threat of civilians attacking tourists has lessened.²⁰⁶ In recent years,

parents; or have a sole or surviving parent who is incapable of providing proper care for the child and has, in writing, irrevocably released the child for emigration and adoption;

(3) The adopting parents must have completed a final adoption in the child's country of origin or obtained legal custody of the child for purposes of emigration and adoption in the United States; and (4) The child has been or will be adopted by a married U.S. citizen and spouse jointly, or by an unmarried U.S. citizen at least 25 years of age, with the intent of forming a bona fide parent/child relationship.

Id.

²⁰² See Library, *supra* note 140.

²⁰³ *Id.*

²⁰⁴ See Samper, *supra* note 1, at 24 (discussing the beneficial effects of the baby rumors). Rumors were used to justify the passing of the UN resolution 1996/26 in an effort to "prevent illicit international trafficking in children and to establish penalties appropriate for such offenses." *Id.*

²⁰⁵ *Id.* at 24 (discussing how rumor reviewed policy and subsequently halted adoptions both temporary and permanent).

²⁰⁶ See discussion *infra* Section IV.C.

the rumor has sparked global distrust of foreign aid to displaced children from violence, natural disaster, and other emergencies.²⁰⁷

In addition to inciting fear and hysteria the rumor brought global awareness to international adoption.²⁰⁸ The organ rumor created global consciousness of the lack of international and country specific regulations needed to address the threat that occurred all over the world.²⁰⁹ This consciousness birthed the 1993 Adoption Hague Convention and the subsequent third Hague action in adoption, the Hague Convention's Intercountry Adoption Act of 2000.²¹⁰ From its inception, the 1993 Adoption Hague Convention, discussed *supra*, emphasized the need to exhaust domestic adoption first and emphasized adoption policy centered on the best interest of the child.²¹¹ As the rumor brought adoption policy into sharp focus, many countries scrutinized their international adoption programs.²¹² These international Hague standards gave many sending countries a framework to build more comprehensive adoption policies.²¹³ While reviewing these policies, many countries temporarily halted adoptions.²¹⁴ After completing an adoption

²⁰⁷ See discussion *infra* Section IV.C.

²⁰⁸ See discussion *infra* Section IV.C.

²⁰⁹ See discussion *infra* Section IV.C.

²¹⁰ See Samper, *supra* note 1, at 24 (referencing the baby rumor as influencing the Hague Convention on Adoption). It is to be noted that few countries have ratified the most recent resolution. *Id.*

²¹¹ See *supra* note 199 and accompanying text (describing the Adoption Hague Convention of 1993); Yngvesson, *supra* note 148, at 234-36 (explaining origin of domestic adoptions first in Hague Convention). In India, a 1985 Supreme Court Judgment, *Lakshmi Kant Padey v. Union of India* (1985) declared that children were a "supremely important national asset" and set a quota for at least fifty percent of adoptions to be placed domestically. *Id.* Although this emphasized the need for domestic adoptions, it also officiated children as a national commodity. *Id.* at 234. Additionally, the UN Declaration on Adoption and Foster Care (1986), and *Child's Right to Grow Up In a Family: Guidelines for Practicing in National and Inter-country Adoption and Foster Care* that both commodify a child as a state resource rendering it under the protection of the state. *Id.* See also *supra* note 191 and accompanying text (explaining UN best interest of the child).

²¹² See Samper, *supra* note 1, at 23.

²¹³ See *supra* note 198 and accompanying text.

²¹⁴ See Samper, *supra* note 1, at 23 (explaining that rumor caused hysteria temporarily suspending international adoptions in many countries).

reformation like implementing the exhaustion of domestic adoption options first, many countries then re-instated their international adoptions with stricter guidelines or fewer adoptees, while some terminated their adoption programs all together.²¹⁵ Although the rumor had global press, many sending countries had country-specific allegations that caused the nations to change their adoption laws.²¹⁶

A. Rumor's Effects on Adoption Policy Changes in Central and South America

Child kidnapping for adoption reached pandemic proportions in Latin American countries.²¹⁷ Statistics on juvenile abduction in Latin America specifically suggests trafficking children from kidnapping for slave labor shifted to kidnapping for prostitution, and then shifted to kidnapping for selling in the international adoption marketplace.²¹⁸

In Honduras, the President expressed fears of the adoption organ rumor after a news article reported 600 adoptees from Honduras were missing.²¹⁹ This news story caused the Honduran Congress to commission an investigation to review its country's adoption practices, though Honduras did not go so far as to join the Adoption Hague Convention until years later.²²⁰ In Brazil, the *Pernambuco*, the State Justice Department,

²¹⁵ See *Country Information: Turkey*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Turkey.html> (last visited Apr. 15, 2018) [hereinafter Turkey Info] (explaining that adoptions from Turkey are now extremely rare).

²¹⁶ See Samper, *supra* note 1, at 23.

²¹⁷ *Id.* at 13; *contra*, UNODC Report, *supra* note 94, at 6 (finding in 2014 eight percent of trafficked people defined under other besides sexual exploitation/forced labor).

²¹⁸ See Samper, *supra* note 1, at 13 (citing Phil Davidson, *U.S. Fury at Kidnap Story*, THE INDEPENDENT (Mar. 20, 1996)), <http://www.independent.co.uk/news/world/us-fury-at-kidnap-stories-1343015.html>. (acting as example of newspaper articles on trafficking of children).

²¹⁹ See Samper, *supra* note 1, at 24 (citing Press Association Newsfile, *Children Snatched by Organ Traffickers*, (Apr. 19, 1993)); *supra* note 40 and accompanying text (describing reports that Honduran children were being adopted for their organs).

²²⁰ See *supra* note 40 and accompanying text (explaining that The Hague Convention provided legislation that set the framework for Inter-country adoption). See also U.N. CRC, 21st Sess., 542d mtg. at 4, U.N. Doc. C/SR.542 (Jan. 4, 2000) (recording Convention on the Rights of the

considered temporarily halting adoptions based on allegations from European Parliament Deputy, Leon Schwartzberg.²²¹ He alleged that only a quarter of some 4,000 children adopted from Brazil between 1988 and 1992 reached their new home of Italy, the rest “instead fed into a lucrative international market for organs.”²²² Italian and Brazilian officials “expressed incredulity at the allegations,” and denied Schwartzberg’s charges.²²³ Brazil has since become a party to the Adoption Hague Convention, and subsequently has limited adoptions to Brazilian couples and limited adoptees to older children, siblings of adoptees, or children with special needs.²²⁴

In Guatemala, the majority of children leaving the country were trafficked for adoption.²²⁵ In 1997, there were fewer than 1,000 adoptions to America; a decade later

Child’s second periodic report of Honduras). In regard to the status of Honduran adoptions, “[A] process to harmonize legislation was under way in Honduras and that the Hague Convention . . . should be ratified by the end of the year.” *Id.* at 4. See also *Country Information: Honduras*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Honduras.html> (last visited Apr. 15, 2018) [hereinafter Honduras Info] (defining that standard of who can adopt in Honduras).

²²¹ See Samper, *supra* note 1, at 24 (reporting that Brazil reviewed and altered adoption policy based on rumor); *Organ Trafficking Accusations May Halt Pernambuco Adoptions*, AGENCE FRANCE PRESSE (Dec. 20, 1993) [hereinafter Pernambuco Adoption] (detailing Schwartzberg’s allegations and the ensuing investigation by Brazil and Italy). Leon Schwartzberg had only given a report to the European Parliament the previous week alleging organs from other Latin American countries were sold to people in rich countries. *Id.* See *supra* notes 45-46 and accompanying text (recounting Schwartzberg authored false report used for Parliament resolution that perpetuated rumor).

²²² Pernambuco Adoption, *supra* note 221.

²²³ See *id.*

²²⁴ See *Country Information: Brazil*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Brazil.html> (last visited Apr. 15, 2018) [hereinafter Brazil Info] (defining that standard of who can adopt in Brazil).

²²⁵ See MISHRA, *supra* note 87, at 100; *Home Alone: Fewer Families Are Adopting Children From Overseas*, THE ECONOMIST (Aug. 6, 2016), <https://www.economist.com/news/international/21703364-fewer-families-are-adopting-children-overseas-home-alone> [hereinafter Economist] (explaining that with time adoption in third world countries became more like a business). “By the 2000s the country’s adoption ‘supply chain’ had thousands of workers.” *Id.* “Snatchers” kidnapped or bought children; caretakers fed kids in “fattening houses” crammed with cribs; notaries and lawyers took chunky fees for the paperwork; and poor women were paid to get pregnant repeatedly. *Id.* See also William Booth, *Witch Hunt*, THE WASH. POST (May 17, 1994), <https://www.washingtonpost.com/archive/lifestyle/1994/05/17/witch-hunt/d2663dda-139e->

there were five times as many.²²⁶ Guatemala had an extensive network of “snatchers,” caretakers, and lawyers, and a complicit state government willing to ignore reports of baby theft.²²⁷ In 2007, Guatemala responded to international pressure from the UN and passed new adoption legislation after mothers who had their babies stolen went on a hunger strike.²²⁸ Finally, in 2008 Guatemala halted their international adoption to review their policies.²²⁹ The legislation incorporated the Adoption Hague Convention into their adoption system, but currently Guatemala is still conducting a review of its policies to be in compliance with the Adoption Hague Convention.²³⁰ In the meantime, Guatemala sustains its complete suspension of all international adoption.²³¹

In 1995, Paraguay temporarily suspended international adoptions after a story of a couple with false documents for two babies, were detained in Brussels.²³² The opening

4e3d-8e81-eb48b09f02be/?utm_term=.179d5acbef5a (targeting American tourists to be responsible for the disappearance of children). “The Guatemalan Public Ministry reported six children a day going missing.” *Id.*

²²⁶ See Samper, *supra* note 1, at 23 (finding an increase in adoption after 1997).

²²⁷ See Economist, *supra* note 225 (explaining that adoption in Guatemala had become a business). “Snatchers” are child traffickers who brought children to orphanages to collect rewards. *Id.* An official from Guatemala’s National Council of Adoptions said that most of the children being adopted were “manufactured for the specific purpose of adoption.” *Id.* The authorities ignored reports of baby-theft. *Id.* Laura Briggs, a historian at the University of Massachusetts, said, “[p]eople looked to the state for help but the state was complicit.” *Id.*

²²⁸ See *id.* (noting the use of protests and hunger strikes to bring about review of adoption policy).

²²⁹ See MISHRA, *supra* note 87, at 100 (responding to the hunger strikes the government decided to halt international adoption). See also Economist, *supra* note 225 (explaining the history of adoption and rumors of organ adoption in countries like Guatemala).

²³⁰ See *Country Information: Guatemala*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Guatemala.html> (last visited Apr. 15, 2018) [hereinafter Guatemala Info]. See also Economist, *supra* note 225 (detailing the incorporation of Hague into Guatemala’s adoption policies).

²³¹ See *Country Information: Guatemala*, *supra* note 230 (reporting on Guatemala’s current status on international adoptions).

²³² See *Children-Paraguay: Organ Trafficking and Child Theft Abounds*, Inter Press Service (Mar. 27, 1995), [hereinafter *Children-Paraguay*] (detailing pressure on Paraguay to address international adoption system trafficking). A couple was using fake documents to adopt two babies and take them from Paraguay to Brussels. *Id.* Allegedly this was to sell their organs, though “the adoption debate entered a new phase, presenting a horrific story of Paraguayan infants being used to supply the rich counties with human spare parts.” *Id.* The public international focus and pressure forced Paraguay’s Senate Human Rights Commission to temporarily suspend adoptions,

of Paraguay in 1989 after the thirty-five-year dictatorship of General Alfredo Stroessner, resulted in the number of international adoptions skyrocketing from no adoptions in 1986, to 410 adoptions in the first year.²³³ Yet Paraguay was still known for its corruption as the country had just freed itself from the dictatorship where “regulations were regularly overlooked” and the judicial system had “an elaborate assembly line of corrupt lawyers, nursery operators, doctors, psychologists, notaries and fake birth mothers, [who] all operat[ed] under the semblance of legality.”²³⁴ Paraguayan children’s judge, Judge Patricia Blasco called for public support of total suspension of international adoptions given the role she says Paraguay plays as one of the “main Latin American centers for the growing child trafficking market.”²³⁵ Eight years later after reviewing their regulations, Paraguay stopped its international adoption program; the country now requiring two years of residency in Paraguay before being considered for their adoption program.²³⁶

B. Rumor’s Effects on Adoption Policy Changes in Europe

In 1991, Turkey cancelled all international adoptions due to the adoption organ rumor.²³⁷ Turkey is now a party to the Adoption Hague Convention and allows international adoption, but gives preference to domestic placement first.²³⁸ Most children

though government officials called for a total suspension of international adoptions. *Id.* See also *Country Information: Paraguay*, TRAVEL.STATE.GOV, <https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/Paraguay.html> (last visited Apr. 15, 2018) [hereinafter Paraguay Info].

²³³ See Schemo, *supra* note 167 (discussing the changes in adoption numbers of Paraguayan children to the United States).

²³⁴ See *id.* (describing effects of dictatorship on adoption system).

²³⁵ Children-Paraguay, *supra* note 232.

²³⁶ See Samper, *supra* note 1, at 24 (connecting rumor, fear, and halting of adoption in Paraguay); Paraguay Info, *supra* note 232 (providing rules by Paraguay on international adoption).

²³⁷ See Todd Leventhal, *Traffic in Baby Parts Has No Factual Basis*, N.Y. TIMES, (Feb. 26, 1992), <https://www.nytimes.com/1992/02/26/opinion/1-traffic-in-baby-parts-has-no-factual-basis-228192.html> (citing rumor as cause for Turkey cancelling their international adoption program); Samper, *supra* note 1, at n.14 (describing Turkey’s reaction to adoption organ rumor).

²³⁸ See Turkey Info, *supra* note 215 (describing Turkey’s foreign adoption policy).

placed internationally are older or have special needs.²³⁹ Prospective adoptive parents must live in Turkey for one year to bond with the children before leaving the country.²⁴⁰

Russia has halted international adoptions to review their adoption policies multiple times because of the adoption organ rumor.²⁴¹ In 1996, already following magnification of the rumor, Russia was already limiting adoptees to children with disabilities, and foreign adoptions made up less than six percent of the adoptions in Russia.²⁴² Amid the numerous tabloid accounts of baby-selling and children adopted for use of their organs, Russia temporarily froze adoptions to review its policies and create ways to enforce new laws.²⁴³

The year 2017, marked five years of Russia's more recent temporary suspension that turned into a termination of their adoption program, thought to be purely politically motivated.²⁴⁴ The second halt of adoptions started following the collapse of the Soviet Union when Russia began its championship as a top sender country of adoptees until the

²³⁹ See *id.* (discussing Turkish intercountry adoptions).

²⁴⁰ See *id.*

²⁴¹ See Alessandra Stanley, *Adoption of Russian Children Tied Up in Red Tape*, N.Y. TIMES (Aug. 17, 1995), <http://www.nytimes.com/1995/08/17/world/adoption-of-russian-children-tied-up-in-red-tape.html> (reporting on Russia halting their international adoptions first in 1995).

²⁴² *Id.* (detailing the old and new adoption laws of 1996). The old law applied a small number of foreign adoptions (6% in 1994) all of which were required to be children with disabilities. *Id.*

²⁴³ *Id.* "There was disproportionate publicity about it – much of it lurid tabloid accounts of baby selling and even tales of children being whisked abroad so that their internal organs could be sold." *Id.* The adoptions stopped as neither the old nor the new law could be applied until the government agreed on "paperwork needed to enforce [the new law]." *Id.*

²⁴⁴ See David M. Herszenhorn, *Russia Vote Favors Ban on Adoptions by Americans*, N.Y. TIMES (Dec. 19, 2012), <http://www.nytimes.com/2012/12/20/world/europe/russia-votes-to-ban-all-adoptions-by-americans.html> (describing implementation of Russia's most recent ban, now five years long).

2012 ban.²⁴⁵ Since 1999, more than 46,113 children were adopted from Russia.²⁴⁶ In 2012, the Russian parliament passed a bill that stopped more than 1,000 adoptions mid-process and cut off forty-five American families in the final stages of the adoption process.²⁴⁷ This swift termination of international adoption is regarded as retaliation for the United States “sanctions,” called the Magnitsky Law against Russia, that former President Obama signed the week before the halt of adoptions.²⁴⁸ Though the government cited two tragic adoption incidents with Russian adoptees, Russian lawmakers also alleged that Russian children were in danger of being adopted for their organs.²⁴⁹ One survey found that fifty-six percent of Russian nationals supported the

²⁴⁵ Stanley, *supra* note 241 (“After the Soviet system collapsed, Russia, like other former Communist countries, became a mecca for Westerners looking for children to adopt.”). “Unlike the United States, where adoption can take years and parents are increasingly fearful that birth parents will reappear and reclaim the child, adoption in Russia proved relatively fast and final.” *Id.* See also *Adoption Statistics*, U.S. DEP’T OF STATE – BUREAU OF CONSULAR AFFAIRS (2017), https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-statistics.html [hereinafter *Adoption Stats*] (publishing adoption statistics by country).

²⁴⁶ See *Adoption Stats*, *supra* note 245 (publishing adoption statistics from 1999-2016 on Russia).

²⁴⁷ See Herszenhorn, *supra* note 244 (reporting on Russia and the United States’ historical relationship through adoption); Doug Stanglin, *Russian Lawmaker Says Moscow May Lift Adoption Ban*, USA TODAY (Jan. 18, 2017), <https://www.usatoday.com/story/news/2017/01/18/russian-lawmaker-says-moscow-may-lift-ban-us-adoptions/96710392/> (reporting Russia is considering reversing 5-year-long adoption ban).

²⁴⁸ See Herszenhorn, *supra* note 244 (discussing Russian views on adoption ban as retaliation to Magnitsky law). The Magnitsky law called for a list of citizens accused of abusing human rights including those implicit in the Russian lawyer, Sergei L. Magnitsky, who died in prison in 2009 after being arrested for exposing government tax fraud. *Id.* The Magnitsky law was “aimed at Russian citizens who violate the rights of other Russians” for Russia to reciprocate, “Russia would need a law aimed at Americans who violate other Americans’ rights” not an adoption ban aimed at American families. *Id.* See Interview of Matthew Rojansky, Russian Ban on U.S. Adoptions Becomes Embroiled in Trump Controversy, NPR (June 20, 2017), <http://www.npr.org/2017/07/20/538370632/russian-ban-on-u-s-adoptions-becomes-embroiled-in-trump-controversy> (interviewing director, Rojansky, of the Kennan Institute in Magnitsky and adoption talks). The Kennan Institute says it is “committed to improving American expertise and knowledge about Russia, Ukraine, and other states in the region.” *Id.* Rojansky said that the ban is commonly viewed as a retaliatory move following U.S. sanctions on Russians after their suspected of human rights abuses, specifically tied to Sergei L. Magnitsky. *Id.* “[W]hat the Kremlin cares about most here is not the issue of adoptions. It’s demonstrating to the United States that we are not allowed to judge who should be in power in Russia and who should be out . . . and this was just a convenient retaliatory step.” *Id.*

²⁴⁹ See Stanglin, *supra* note 241 (mentioning two new reports on Russia adoptees causing ban). In 2008, four months after Russian child Dima Yakovlev Law was adopted, his adoptive father left

adoption ban.²⁵⁰ Ten percent of those Russians who supported the ban thought U.S. families adopted Russian children for free labor or to sell their organs.²⁵¹ The baby rumor is implicit in Russian lawmakers thinking and embedded in Russian national support for the creation of international law, the banning of thousands of adoptions, that changes diplomatic relations between both the United States and Russia.²⁵² David Leventhal of the Countering Misinformation and Disinformation Agency goes so far as to say the government of the Soviet Union, now Russia, actively fueled the baby adoption rumor as political propaganda against the United States.²⁵³

The adoption organ rumor, through the general fear instilled in sending countries and the countries subsequent participation in the Adoption Hague Convention, has

him in a hot parked car for eight hours, resulting in his death. *Id.* Another incident included a seven-year old Russia adoptee sent back alone on a plane with a note in his pocket saying the adoptive “mother no longer wished to parent him because he was mentally unstable, violent and has severe psychopathic issues.” *Id.* See also *Putin: I Will Sign Bill That Bans Americans From Adopting Russian Children*, CBS DC (Dec. 27, 2012), <http://washington.cbslocal.com/2012/12/27/putin-i-will-sign-bill-that-bans-americans-from-adopting-russian-children/> [hereinafter CBS]. “In a measure of the virulent anti-U.S. sentiment that has gripped parts of Russian society, a few lawmakers went even further, claiming that some Russian children were adopted by Americans only to be used for organ transplants and become sex toys or cannon fodder for the U.S. Army.” *Id.* This is widely regard as cover for political retaliation for U.S. sanctions. *Id.*

²⁵⁰ Max Fisher, *The Real Reason Russia Wants to Ban Adoptions By ‘Dangerous’ American Families*, THE WASH. POST (Dec. 28, 2012), https://www.washingtonpost.com/news/worldviews/wp/2012/12/28/the-real-reason-russia-wants-to-ban-adoptions-by-dangerous-american-families/?utm_term=.0e7b7b4bc961 (reporting on survey of Russians on adoption ban and why they supported).

²⁵¹ *Id.* (explaining the reasoning behind Russian support of the ban).

²⁵² See CBS, *supra* note 249; see also Fisher, *supra* note 250.

²⁵³ *Supra* note 2, at 172-74 and accompanying text. See Samper, *supra* note 1, at 10. The European Parliament’s 1993 “Resolution Condemning ‘Trafficking in Fetuses, Children and Incapable Adults Who Are Used as Organ Providers’” was created, basing its information on facts and stories from *Le Monde Diplomatique*, written by one the former correspondents for newspaper *L’Humanite* (the Communist publication that ran the original rumors). *Id.*

caused an overall decrease in international adoptions.²⁵⁴ In 2016 there were only 5,370 adoptions worldwide, whereas in 1987 there were over 10,000.²⁵⁵

C. The Rumor's Effect on Foreign Travel Global Aid

The adoption organ rumor sparked a trend of foreign animosity and global distrust of aid by Western countries.²⁵⁶ Most notably were two incidents in 1993 and 1994 respectively, where foreigners were violently attacked.²⁵⁷ In a Guatemalan village, American environmentalist and tourist June D. Weinstock, greeted and photographed a group of children, unfortunately at the same time as a nearby mother momentarily lost track of her child.²⁵⁸ The mother accused Weinstock of kidnapping her son.²⁵⁹ A mob and riot formed and Weinstock took shelter in a police station but was dragged from the building and assaulted the mob.²⁶⁰ She suffered eight stab wounds, broken limbs, a fractured skull, and was assaulted vaginally with sticks and pronounced dead by police in

²⁵⁴ Samper, *supra* note 1, at 23. This effect is most notably seen in the Latin American countries that have seen a steady decline in international adoptions since 1993. *Id.*

²⁵⁵ See Adoption Stats, *supra* note 244 (reporting statistics on adoptions worldwide). See also Robert Johnston, *Historical International Adoption Statistics, United States and World*, JOHNSTON'S ARCHIVE, <http://www.johnstonsarchive.net/policy/adoptionstatsintl.html> (last updated Aug. 5, 2017) (reporting statistics on total numbers of intercountry adoptions). Note that the decline in intercountry adoptions for all areas but Latin America saw a rise to more than 22,000 adoptions worldwide in the early 2000's before seeing a steady decline to the just over 5,000 adoptions in 2016. *Id.* See Robert Johnston, *Historical International Adoption Statistics, United States and World*, JOHNSTON'S ARCHIVE, <http://www.johnstonarchive.net/policy/adoptionstatsintl.html> (last updated Aug. 5, 2017).

²⁵⁶ Samper, *supra* note 1, at 1.

²⁵⁷ See *id.* See also Booth, *supra* note 225 (reporting other stories less notable where foreigners were attacked).

Recent adoptive mother to a Guatemalan baby, Janice Vogel, was attacked on a bus in Guatemala City by an enraged crowd that accused her of stealing the child. *Id.* Vogel required U.S. Embassy security guards to protect her until she left the country. *Id.*

²⁵⁸ See Booth, *supra* note 225; see also World, *supra* note 19 (reporting attack on June Weinstock).

²⁵⁹ See World, *supra* note 19.

²⁶⁰ See *id.*; see also Abigail E. Adams, *Gringas, Ghouls, and Guatemala: The 1994 Attacks on North American Women Accused of Body Organ Trafficking*, 4 J. OF LATIN AM. ANTHROPOLOGY 112, 112-116 (1999) (noting that Weinstock's attack on same day as Guatemala signed three accords with guerrilla groups). Many people concluded the attacks were promoted by the Guatemalan government. *Id.*

order to get her back to safety.²⁶¹ Three weeks before Weinstock's attack, Melissa Larson, was arrested on suspicion of kidnapping babies and selling their organs.²⁶² A mob demanded Larson be hanged.²⁶³ Larson luckily escaped out the backdoor of the police station, but in response the mob burned the station to the ground and only stopped rioting upon the arrival of armored cars.²⁶⁴ Although these incidents occurred close in time to the inception of the adoption organ rumor, tourists travelling to other parts of the world are still reminded about danger of talking or taking photos of children while travelling.²⁶⁵

D. The Rumor's Effect on Global Aid

The adoption baby rumor has also fueled distrust of foreign aid through the adoption of displaced children.²⁶⁶ Following the devastating earthquake in Haiti, many children were orphaned.²⁶⁷ Foreign aid poured into the country, including offers from Americans to adopt Haitian orphans.²⁶⁸ Haiti stopped a group of children heading to the United States on the strong suspicion of being trafficked for the use of their organs.²⁶⁹ When questioned by Nation Public Radio, the Haitian Prime Minister, Jean-Max Bellerive

²⁶¹ Samper, *supra* note 1, at 1 (describing Weinstock's injuries); *see also* Adams, *supra* note 260, at 116 (detailing Weinstock's efforts escape by bus, being videotaped, and further description of injuries). The boy Weinstock was accused of kidnapping reappeared during the riot. *Id.*

²⁶² Gleick, *supra* note 19 (reporting on Larson's attack in Guatemala).

²⁶³ Samper, *supra* note 1, at n.1 (describing the attack on Larson by the mob).

²⁶⁴ *Id.* "Two weeks after this incident [with Larson], villagers attacked a group of volcanologists, injuring a Swiss scientist." *Id.*

²⁶⁵ Thorn Tree Forum, *Be Careful Talking to Children in Guatemala Because....*, LONELY PLANET (2011), <https://www.lonelyplanet.com/thorntree/forums/americas-central-america/guatemala/be-careful-talking-to-children-in-guatemala-because?page=1> (discussing warnings about talking to children for tourists that are going to Guatemala).

²⁶⁶ Evans, *supra* note 17 (pointing to rumor as reason for global distrust of U.S. aid globally).

²⁶⁷ *See id.* (detailing adoption changes after the 2010 Haiti earthquake). Multiple adoption agencies observed that there was a ninety-five percent increase in demand for inter-country adoption in 2010. *Id.*

²⁶⁸ *Id.* (explaining ninety percent of aid given by the U.S. went to non-profit organizations).

²⁶⁹ *Id.* (describing traffickers as fake non-profits bringing children to U.S, but instead trafficking children for organs).

said, "the reports I received say yes" the children were being trafficked.²⁷⁰ The United States "is moving cautiously on the issue of adoptions from Haiti."²⁷¹

The adoption organ rumor also came up in intercountry aid efforts to Darfur.²⁷² A French organization called Zoe's Ark Project advertised its self as an aid organization helping orphans flee from the violent Darfur conflict.²⁷³ In 2008, Zoe's Ark Project travelled to Chad and attempted to fly back to France with 103 orphan who were supposedly refugees that had fled from the Sudan to Chad.²⁷⁴ While trying to take off, Chad detained seventeen of Zoe's Ark Project staff, the plane's flight crew, and reporters on board the plane.²⁷⁵ An investigation found that the orphan children were not refugees of the Darfur genocide, but Chadian children who all had at least one known living parent.²⁷⁶ The Chadian President commented to the press that, "[c]learly, their goal is to

²⁷⁰ *Id.*

²⁷¹ See Evans, *supra* note 17.

²⁷² See Laura Conaway, *Chad Orphan Scandal a "Kafkaesque" Nightmare*, NPR (Nov. 2, 2007, 8:52 AM), https://www.npr.org/sections/bryantpark/2007/11/chad_orphan_scandal_a_kafkaesq.html (reporting Chad detained seventeen Europeans trying to take 103 orphans to Europe for adoption). See also Simon Allison, *French Charity's Plan to Rescue Darfur 'Orphans' May Be Worst Aid Idea Ever*, THE GUARDIAN (Dec. 5, 2012), <https://www.theguardian.com/world/2012/dec/05/zoes-ark-french-adoption-trial> (reporting on alleged child trafficking incident with Darfur refugee children).

²⁷³ Conaway, *supra* note 272. See also *Q & A: Crisis in Darfur*, HUMAN RIGHTS WATCH (Apr. 25, 2008), <https://www.hrw.org/news/2008/04/25/q-crisis-darfur> (explaining the conflict in Darfur and why the need for aid). In efforts to combat rebel groups, the Sudanese government conducted a systematic "ethnic cleansing" against members of the same ethnic groups as the rebels. *Id.* Tens of thousands of civilians died, millions of people displaced, and thousands of women and girls raped and assaulted. *Id.* In 2008, 2.5 million people lived in camps in Darfur and hundreds of thousands are refugees living in the neighboring country, Chad. *Id.*

²⁷⁴ See Allison, *supra*, note 272. See also Reuters Staff, *FACTBOX: What is Zoe's Ark?*, REUTERS (Oct. 30, 2007), <https://www.reuters.com/article/us-chad-france-zoe/factbox-what-is-zoes-ark-idUSL3067658320071030> (explaining bringing back children from Sudan was way group thought they could provide aid). Zoe's Ark Project thought they could find orphan children, buy them plane tickets and bring them back on a plane to France without undergoing adoption or immigration processes before coming back into the country. *Id.* Nine French nationals were charged with fraud and abduction. *Id.*

²⁷⁵ See Reuters Staff, *supra* note 274 (reporting Zoe's Ark Project Staff included a doctor, nurse, and firefighter).

²⁷⁶ Conaway, *supra* note 272 (finding children had at least one living parent). "In many cases, the families desperately want the kids back." *Id.* See also Allison, *supra*, note 272 (reporting that

kidnap and steal these kids from their parents, and sell them to pedophile organizations in Europe, or kill them and sell their organs.”²⁷⁷ The Zoe’s Ark Project story is another example of where the adoption organ rumor fueled distrust in foreign aid efforts.²⁷⁸

V. ANALYSIS

A. How the Adoption Organ Rumor, Organ Black Market, and Child Trafficking Are Related

The rumor that children are adopted to Western countries so their healthy organs can be transplanted into the new family’s sick biological child, is not so sensational.²⁷⁹ Rumors are strongly believed when they align or support with a receiver’s previous knowledge or beliefs.²⁸⁰ The adoption organ rumor was strongly believed because people hearing the rumor have sold or know of someone selling their organ on the black market.²⁸¹ Selling an organ is an all too common transaction to combat the hardship of poverty.²⁸² Though not every person has sold an organ, the commodification of the body through selling or through fear of it being sold, is pervasive.²⁸³ Similarly, those hearing the rumor know of children disappearing or believe children disappear, having been sold

children were Chadian kids taken off the street lured by promise of a trip and better education). The group walked around talking to children promising a trip abroad, education, and other incentives. *Id.*

²⁷⁷ Conaway, *supra* note 272 (quoting the statement by the Chadean President Idriss Deby). The President did ask for the release of the reporters and the Spanish flight crew. *Id.*

²⁷⁸ *Id.*

²⁷⁹ See *supra* note 1 and accompanying text (describing adoption organ rumor).

²⁸⁰ See DIFONZO & BORIDA, *supra* note 5, at 92 (describing rumor believed when connected to receiver’s beliefs or knowledge).

²⁸¹ See *id.* (describing major factor leading to widespread belief of adoption organ rumor).

²⁸² See *supra* text accompanying note 8, at 71 (describing the nonchalant nature and regularity with which kidneys are sold).

²⁸³ *Scheper Rumor*, *supra* note 2 (discussing the general understanding most people have of the buying and selling of organs).

to human traffickers.²⁸⁴ Trafficking children into adoption has been intermingled with intercountry adoption processes in sending countries.²⁸⁵ Children are a precious resource, as stealing from, coercing, or tricking parents and selling children to orphanages has been a lucrative market in many countries.²⁸⁶

The individuals selling their organs and individuals losing their children to trafficking are in fact the same population of people.²⁸⁷ The sending and demand countries for organs and sending and receiving countries of adoptions significantly overlap.²⁸⁸ Wealthy, predominantly white people from North America, Europe, and the Near East are those paying for organs and to adopt children.²⁸⁹ Predominantly poverty-stricken, dark-skinned, people from Asia, Latin America, and Africa are selling and having stolen, their organs and children.²⁹⁰ The adoption organ rumor was believed by groups in the same geographical areas, with the same profile characteristics affected by both the organ black market and child trafficking into adoption.²⁹¹

²⁸⁴ See CARNEY, *supra* note 8, at 68 (describing village of women who sold kidney); Talk, *supra* note 85 (describing first U.S. based kidney broker prosecuted); *supra* note 102 and accompanying text (describing case of newspaper ad); *supra* note 118 (describing buying Chinese prisoner organs); Rahman, *supra* note 170 (telling story of boy stolen from bed in India and adopted to Netherlands); Custer, *supra* note 183 (describing adoptive mother finding out her adopted daughter was trafficked). See also Scheper Traffic, *supra* note 7, at 202 (describing rumor as cross of children sold to orphanages and people selling body parts). "The rumor condensed the black markets for organs and babies into a single frightening story." *Id.*

²⁸⁵ Scheper Traffic, *supra* note 7 (relating trafficking of children and international adoption).

²⁸⁶ Meier, *supra* note 162; *supra* note 211 and accompanying text (establishing children as precious resource).

²⁸⁷ Scheper Traffic, *supra* note 7, at 202 (discussing background of those more susceptible to black market sales).

²⁸⁸ See *supra* note 98 and accompanying text (naming countries which supply and demand most organs). See also *supra* note 152 and accompanying text (naming receiving countries of adoptees); *supra* note 153 and accompanying text (naming sending countries of origin for adoptees).

²⁸⁹ See *supra* notes 97, 99 and accompanying text (naming attributes of individuals selling their organs and individuals buying organs).

²⁹⁰ See *supra* notes 148, 152 and accompanying text (naming attributes of having their children trafficked and those adopting children).

²⁹¹ See *supra* notes 98, 152, 153 and accompanying text (listing countries involved with the black organ market and child trafficking through adoption). See also *supra* notes 97, 99, 148, 152 and

In addition to the same population having belief or knowledge of real cases of organ selling and child trafficking, the rumor was strongly believed because other rumors of atrocities with similar power and economic dynamics were confirmed to be true.²⁹² Right before the creation of the adoption organ rumor, years of rumored subversive violence by wealthy government dictatorships on its poverty stricken people in many Latin American countries was confirmed to be true.²⁹³ The government had kidnapped, murdered, and taken organs from its own people and their children for wealth and power.²⁹⁴ The idea of the wealthy and the government taking advantage of the people in poverty with further atrocities like that in the adoption organ rumor was not shocking.²⁹⁵ Fiction was not far from the truth.²⁹⁶

B. How the Adoption Organ Rumor Is Believed Then Is Spread

A rumor is also more likely believed if heard from an authoritative source and heard repeatedly.²⁹⁷ Those believing the adoption organ rumor were hearing it from many media sources.²⁹⁸ Local newspapers first reported the story, followed by country-wide newspapers and magazines. As those media sources circulated, television programing, books, and awards for media reporting memorialized the rumor as well.²⁹⁹ Most notably

accompanying text (naming attributes individuals involved in organ black market and child trafficking through adoption).

²⁹² See *supra* note 31 and accompanying text (detailing confirmation of violence under many Latin American dictatorships).

²⁹³ *Id.*

²⁹⁴ See *id.* See also *Scheper Rumor*, *supra* note 2, at 5 (noting bureaucratic abuse of power in Latin America that enabled organ trafficking).

²⁹⁵ See *supra* note 31 and accompanying text (detailing confirmation of violence under many Latin American dictatorships).

²⁹⁶ See *id.*

²⁹⁷ See *supra* note 5 and accompanying text (explaining that rumors that are repeated and have credible, authoritative sources are difficult to contain).

²⁹⁸ See Samper, *supra* note 1, at 7-10 (detailing the circulation of the adoption organ rumor in the different forms of media).

²⁹⁹ See *id.*

the rumor was broadcasted by governments like the European Parliament and world organizations like the UN.³⁰⁰ As each source reported on the story, the believability of the rumor grew as those hearing it were hearing it repeatedly from increasingly authoritative sources.³⁰¹ By way of its believability the adoption organ rumor grew exponentially.³⁰²

The rise and the impacts of the adoption organ rumor are not unfathomable, as a rumor is more likely to be spread from one person to another if the person believes the rumor.³⁰³ As discussed *supra*, the rumor was strongly believed, as it was reported in the media.³⁰⁴ Strongly believing the adoption organ rumor, this population was likely to spread it to other people, including those who missed the media reports.³⁰⁵

C. Why the Adoption Organ Rumor Is Spread

A rumor is spread as a way for communities with secondary control of their lives and high anxiety, to gain primary control and knowledge and power as a collective.³⁰⁶ The poverty-stricken, dark-skinned, population that includes many women, who heard and believed the adoption organ rumor, are only in secondary control of their lives.³⁰⁷ This population is not using "action-focused coping responses" to manage or change the circumstances of their lives in the way they want.³⁰⁸ Other people, those with primary

³⁰⁰ See *id.* (noting that the EU Parliament and a UN official document reported rumor).

³⁰¹ See DIFONZO & BORDIA, *supra* note 5.

³⁰² See *supra* text accompanying note 4; DIFONZO & BORDIA, *supra* note 5, at 92 (finding rumor was believed when heard from authoritative source).

³⁰³ See DIFONZO & BORDIA, *supra* note 5 (finding rumor spread when believed).

³⁰⁴ See *id.* See also *supra* notes 33, 57 and accompanying text (recounting the instances of the media reporting the rumor).

³⁰⁵ See *supra* note 5 and accompanying text (finding rumor spread when believed).

³⁰⁶ See *supra* note 5 and accompanying text. See also DIFONZO & BORDIA, *supra* note 5. Rumor spreading offers more control, lessens anxiety, reduces uncertainty, and increases knowledge. *Id.* at 69-73.

³⁰⁷ See *supra* note 5 and accompanying text (defining primary and secondary control).

³⁰⁸ See *id.*

control are directing this populations' choices and their life's direction, which creates anxiety, uncertainty, and ambiguity in this population.³⁰⁹ Rumor spreading is one way collective indigent groups, like this population, combat a deficiency in confidence, certainty, and knowledge.³¹⁰ The rumor is a manifestation of the collective fear and anxiety that can fight against those who hold primary.³¹¹ The rumor is a form of resistance to the violence brought upon those having having to sell their organs or whose children are stolen, as the effects from the rumor are felt even if the adoption organ rumor is not true but believed by all.³¹²

The adoption organ rumor is a compelling reason to address the issues surrounding the organ black market and child trafficking into adoption because if something so egregious is believed globally then it logically follows that its foundations in reality are really concrete and concerning.³¹³ Unlike many other sensational rumors, the problems contributing to the adoption organ rumor make sense as to why it exploded and had widespread effects.³¹⁴

³⁰⁹ See *supra* note 306 and accompanying text.

³¹⁰ *Id.*

³¹¹ See Samper, *supra* note 5, at 5 (describing rumor as collective representation of fear and anxiety). "The individual's ability to [re]shape the rumor multiple times transforms it into a collective representation of fears and anxieties." *Id.*

³¹² See *id.* at 2, 4 (stating rumor is a form of resistance). "As counter-hegemonic discourse, rumors may lead to resistance." *Id.* See also DIFONZO & BORDIA, *supra* note 5, at 42 (finding effects of rumor felt even if not believed by transmitter).

³¹³ See Samper, *supra* note 1, at 5. "As a rumor travels it is altered in a fashion that brings it more closely into line with the hopes, fears, and worldview of those who hear it and tell it." *Id.*

³¹⁴ *Id.* (explaining the avenues of the expression of repressed feelings associated with the development of rumors).

D. Suggestions for Addressing the Organ Black Market

The organ black market would not be necessary if the demand for organs met the legal methods to procure them.³¹⁵ Presently, through the legal methods of procurement, donated organs only meet ten percent of the global need for transplant organs.³¹⁶ Therefore, the supply of organs must increase or the demand for transplants must decrease to combat the thriving organ black market.³¹⁷

To increase the supply of legal organs for transplant, countries could collaborate to legalize and regulate the global sale of organs.³¹⁸ A legal global market would allow for the flow of donated organs from high supply countries to high demand countries, and ideally provide equal access to organs.³¹⁹ It would also create logistical hurdles and moral quandaries: (1) how much will an organ cost? (2) will the cost be regulated? (3) how much of the cost will go to the organ donor? (4) will insurance cover these costs? (5) will this system regulate deceased and live donations? (6) how will time constraints factor into travelling by the donee to where the donor was deceased? (7) will people donating be given visas to travel to other countries? (8) who will enforce the regulations? (9) how many countries will sign on? (10) and how many countries need to sign on to make this work to dissolve the organ black market?³²⁰ Based on the outcomes from Iran legalizing kidney sales, there is the distinct possibility the global legalization of organ sales will just legalize

³¹⁵ See *supra* note 76 and accompanying text (describing demand versus supply of organ donation).

³¹⁶ *Id.* (describing the legal organ supply versus the global demand).

³¹⁷ *Id.* at 11 (“[D]esperate patients may seek strategies to obtain organs illegally, outside legal transplantation frameworks.”).

³¹⁸ See *supra* note 80 and accompanying text (explaining the proposition to legalize the sale of organs).

³¹⁹ *Id.* (“Development of a legal, regulated mechanism for activity, closing down the black market and improving safety for donors and recipients.”).

³²⁰ Rudge et al., *supra* note 74, at i48 (explaining how a global market for sale of organs has logistical and moral issues).

and institutionalize the organ black market already in place, including all of its problems.³²¹ Legalization will not fix socioeconomic, race, and gender dynamics that make selling of organs on the black market problematic.³²²

The U.S. changing from an opt-in system for deceased organ donation to an automatic registration and opt-out system could also increase the organ supply.³²³ The U.S. is central to the discussion on the organ black market as it is one of the largest countries that has not implemented an opt-out system.³²⁴ Countries like Spain, Chile, and Singapore eradicated organ shortages with opt-out systems and the implementation of priority rules.³²⁵ Countries making organ donation the default choice or prioritizing organ donation to those who are donors, have resulted in an increase to the supply.³²⁶ The U.S. has not changed to an opt-out system for fear of the public resistance.³²⁷ American ideals wrestle with ideas like the government having automatic control of an individual's organs upon death, even if it resulted in solving an organ shortage.³²⁸ Legislating allocation priority would give organ donations to those who were already donors, and as seen in other countries, incentivize individuals to opt-in (in an opt-in to donation system), or not

³²¹ See *supra* note 85 and accompanying text (recognizing that Iran kidney program created an abundance of organs, but had social issues).

³²² *Id.* By legalizing the kidney trade, the individuals who procured the organs were the same people, they still took advantage of the desperately situated and the financially poor. *Id.* at 82.

³²³ See *supra* note 75 and accompanying text (relating opt-out organ donation system to an increase in organ supply).

³²⁴ See *id.* and accompanying text (naming U.S. as large country without opt-out system, therefore having need to increase deceased donors); see also *id.* and accompanying text (describing U.S.'s opt-in system); *id.* and accompanying text (describing state of organ donations under U.S.'s opt-in system).

³²⁵ See *id.* and accompanying text (reviewing Chile's system of presumed consent and priority rules); Rudge et al., *supra* text accompanying note 75 (reviewing Spain's use of designated organ donation officials).

³²⁶ See *supra* text accompanying note 75 (relating opt-out organ donation system to an increase in organ supply).

³²⁷ See, *id.* and accompanying text (detailing problems with U.S. implementation of an opt-out system).

³²⁸ *Id.*

opt-out (in an opt-out of donation system).³²⁹ Both large-scale solutions to increase the supply of organs are difficult to implement and problematic.³³⁰

Some suggest decreasing the demand for organs directly aligns with changing attitudes around transplants and death.³³¹ Although organ transplants symbolize significant advancements in medicine, the benefits of organ transplants are procedurally overstated.³³² A successful new organ transplant costs extraordinary amounts of money and at most an organ transplant gives the receiver only a handful of years of additional life depending on the organ.³³³ These years are dominated by anti-rejection medication with the side-effects of a lowered immune system which causes the organ recipient to be more susceptible to other common and deadly ailments.³³⁴ Although organ transplants are a medical option, they are idealized.³³⁵ An even more radical solution to decrease

³²⁹ *Id.*

³³⁰ See *supra* note 74 and accompanying text (describing the problem with a legal global organ market); see also *supra* note 75 and accompanying text (describing the problem with U.S. implementation of an opt-out system); see also *id.* and accompanying text (describing the positive effect legislating an allocation priority rule would have on organ donation).

³³¹ See *Scheper Traffic*, *supra* note 7, at 193 (explaining evolving ideologies around transplants). In Japan, a heart transplant from a brain-dead person was considered taboo up until recently because the Japanese did not accept that to be within their culture's definition of death. *Id.* Patients from many Asian countries would go to Taiwan to purchase organs harvested from executed prisoners, which stopped when the practice became condemned by international medical communities. *Id.*

³³² See CARNEY, *supra* note 8 (revealing quality of life after transplant not highly publicized). See Talk, *supra* note 85 (interviewing the public and those involved in the organ market regarding drawbacks of organ transplants).

³³³ See CARNEY, *supra* note 8, at 76 (remarking transplanted tissues only extends expected life by a handful of years). See Talk, *supra* 85 (describing the costs associated with bribery and money-laundering, with regard to organ procurement).

³³⁴ See CARNEY, *supra* note 8, at 76 (noting that patients are trading a fatal disease for a chronic one). See Talk, *supra* note 85 (stating transplants are more feasible because of great improvements in anti-rejection drugs).

³³⁵ See CARNEY, *supra* note 8, at 76. "Medical mythology promises the 'unprecedented possibility of extending life indefinitely with the organs of others.'" *Id.* (quoting Professor Nancy Scheper-Hughes of University California at Berkeley). See Talk, *supra* note 85 (commenting that patients and their families think transplant is the only option).

demand would be to change social norms to confront and become more comfortable with death as people would elect not to do transplant surgery.³³⁶

E. Suggestions for Addressing the Trafficking of Children Into Adoption

As the country with the most international adoptees, the U.S. is presented with a unique opportunity to address the problem in the trafficking of children into adoption.³³⁷ In 2008, the U.S. adopted the Adoption Hague Convention, which governs international adoptions between the U.S. and other Adoption Hague countries.³³⁸ There are countries not a party to the Adoption Hague Convention who are regulated by the Immigration Nationality Act (“INA”).³³⁹

A major factor driving the trafficking of children is the high demand for children and the large amounts of money that prospective parents are willing to pay.³⁴⁰ Removing financial incentives in non-Hague countries’ adoption processes could prevent child trafficking.³⁴¹ Where Adoption Hague guidelines limit fees that orphanages can charge

³³⁶ See *Scheper Traffic*, *supra* note 7 (explaining the evolution through time, on schools of thought regarding organ transplant). But see CARNEY, *supra* note 8, at 76 (discussing that a transplant may be far preferable to dialysis).

³³⁷ See Herrmann, *supra* note 147, at 411 (explaining in 2010, U.S. had the largest number of transnationally adopted children). A variety of socioeconomic changes in the U.S. had increased demand for international adoption. *Id.* See also Wm. Robert Johnston, *Historical International Adoption Statistics, United States and World*, JOHNSTON’S ARCHIVE, <http://www.johnstonsarchive.net/policy/adoptionstatsintl.html> (last updated Aug. 5, 2017) (reporting U.S. as being the highest receiver of international adoptees, Sweden being the next highest).

³³⁸ *Supra* note 201 and accompanying text (explaining Hague Convention’s role in evaluating a country’s adoption system).

³³⁹ Herrmann, *supra* note 147, at 425 (explaining adoption process under INA for non-Hague countries); Immigration and Nationality Act, Pub. L. No. 414, 66 Stat. 163, 246 (1952) (prior to 1957 Amendment) (defining rules for international adoption of children by U.S. citizens).

³⁴⁰ *Supra* note 156 and accompanying text (describing families from around the world are constantly outbid by rich American families for adoptions).

³⁴¹ Herrmann, *supra* note 147 at 425-26 (defining how INA “reasonable expenses” could help combat corruption).

adoption agencies, under the INA for non-Hague countries the clarification on “reasonable expenses” allowed in the adoption process would reign in the expenses used to procure children through trafficking.³⁴² Adhering to the rules has created problems for additional bribes or offers of money that have yielded a child faster.³⁴³

Where the human trafficking of children and adoption intersect, human trafficking law has yet to address adoption as a major source for human rights violations.³⁴⁴ In the United States, the Trafficking Victims Protection Act of 2000 (“TVPA”) provides tools to combat trafficking in persons and allows the U.S. to prosecute people who traffic in persons, but the TVPA’s definition of what constitutes “severe forms of trafficking” does not include corrupt international adoption practices.³⁴⁵ Although the TVPA is not exclusive in its listed forms of trafficking violations, its identification of human trafficking through adoption speaks to the U.S.’s lack of awareness of the interconnectedness of human trafficking and adoption.³⁴⁶ One U.S. government official argued against adding adoption to the third element of the

³⁴² *Id.* at 425 (describing how financial incentives tend to fuel corrupt practices). *See also*, Kristina Wilken, *Controlling Improper Financial Gain in International Adoptions*, 2 DUKE J. GENDER L & POL’Y 85, 85 (1995) (“High demand for adoptable children encourages . . . intermediaries to trade children for large amounts of money.”).

³⁴³ Herrmann, *supra* note 147, at 426 (explaining that family member’s interests in Vietnam are denied by rich American families’ bidding power). Prospective parents complained that family members interest in becoming parental figures were denied the opportunity to adopt because “they were unable to offer the same amount of money that an American could for the orphan.” *Id.*

³⁴⁴ 2017 *Trafficking in Persons Report*, *supra* note 145, at 3 (defining human trafficking as harboring persons for labor for the purpose of involuntary servitude). *Contra* Herrmann, *supra* note 147, at 410 (including argument that further regulation of international adoption process can only be detrimental). More regulation means evaluation of the regulation and possible temporary or permanent halt of international adoptions. *Id.*

³⁴⁵ *See supra* note 141 and accompanying text (describing TVPA and defining “severe forms of trafficking” as only sex and labor trafficking); Herrmann, *supra* note 147, at 421 (making law and policy recommendations such as a cap on fees for adoption services).

³⁴⁶ *See supra* note 141 and accompanying text (defining severe forms of trafficking according to TVPA).

definition of trafficking under the TVPA.³⁴⁷ He said that the Adoption Hague Convention usually applies to adoptions, so the Convention's rules will apply instead of the TVPA.³⁴⁸ Similarly, under the INA, the adoption process has many safeguards in place to verify the child was not trafficked.³⁴⁹

Another way human trafficking is allowed to occur under current international law is through the use of intermediaries, or finders, that procure the children coming to the orphanages and adoption agencies.³⁵⁰ The use of the finders releases adoption agencies orphanages from liability of negligent or criminal acts in regard to the procurement of the children.³⁵¹ Forcing the licensure of the intermediaries, though difficult, can help to close loopholes in the detection of illegal activity.³⁵² Adoption agencies use exculpatory clauses in their adoption contracts to limit liability if the adoption is found to be illegal, which signals they are cognizant of the intermediary practices.³⁵³ Additionally, more countries signing on to the Hague Convention would help to evaluate best interest policies in terms of the child, and by removing policy to benefit potential adoptive parents.³⁵⁴ It has been suggested that the Hague Convention could also increase the requirement of documentation by all adoption agencies in support of the rebuttable

³⁴⁷ *Id.* (describing government official's answer as to why TVPA does not need adoption in definition).

³⁴⁸ *Id.*

³⁴⁹ *Supra* text accompanying note 201 (explaining INA checks to prevent children being trafficked into adoption).

³⁵⁰ Herrmann, *supra* note 147, at 423 (observing by researcher adoption practices use of intermediaries).

³⁵¹ *Id.*

³⁵² *Id.* at 422, 423 (suggesting policy changes by closing loopholes).

³⁵³ *Id.* at 423 (listing legal tactics by adoption agencies to avoid liability).

³⁵⁴ *Supra* note 147 and accompanying text (concluding good policy doesn't mean more adoption); Herrmann, *supra* note 147, at 417, 411. Not all adoption laws are based on best interest of child, but on the interests of the adoptive parents. *Id.*

Notice of Intent to Deny.³⁵⁵ More documentation would make it more clear whether a child was adoptable or able to leave the country.³⁵⁶

CONCLUSION

The adoption organ rumor that has circulated the globe has truth to it. The genuine and concerning instances of selling organs on the black market and selling children into adoption make the rumor plausible. In turn, the rumor acts as a compelling reason to address the issues arising out of the organ black market and international adoption scene. Despite an ability to address the impacts of the rumor and its underlying causes, the rumor's sheer speed and power suggests the continued and protective need for diligent fact-checking.

³⁵⁵ *Supra* note 159 and accompanying text (defining Notice of Intent to Deny).

³⁵⁶ *Id.*