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**From the Selected Works of David M. Smolin**

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October, 2014

**Brian H. Stuy (with foreward by David Smolin),  
Open Secret: Cash and Coercion in China's  
International Adoption Program**

Brian H. Stuy



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## ARTICLES

### OPEN SECRET: CASH AND COERCION IN CHINA'S INTERNATIONAL ADOPTION PROGRAM

BRIAN H. STUY<sup>1</sup>

FORWARD  
DAVID M. SMOLIN<sup>2</sup>

Brian Stuy's article, *Open Secret*, is a devastating documentation and analysis of seriously abusive practices in China's intercountry adoption program. The article describes three major kinds of abuses: baby-buying programs at Chinese orphanages, "confiscations" of children by population control officials, and "education" programs in which orphanages falsify the ages and family situation of teenagers in order to make them paper-eligible for intercountry adoption. All three kinds of abusive adoption practices involve extensive falsification of documents. *Open Secret* also presents a revisionist history of the well-known 2005 Hunan adoption scandal<sup>3</sup> which underscores the pervasiveness of abusive practices in the Chinese adoption system.

The legal significance of the article comes from its questioning of the effectiveness of the Hague legal regimen<sup>4</sup> for intercountry adoption,

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<sup>2</sup> Harwell G. Davis Professor of Constitutional Law and Director, Center for Children, Law, and Ethics, Cumberland School of Law, Samford University.

<sup>3</sup> See, e.g., Patricia J. Meier & Xiaole Zhang, *Sold into Adoption: The Hunan Baby Trafficking Scandal Exposes Vulnerabilities in Chinese Adoptions to the United States*, 39 Cumb. L. Rev. 87 (2008-2009).

<sup>4</sup> The Hague legal regimen for intercountry adoption is based on a combination of two treaties. See Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134 (entered into force May 1,

particularly in the context of intercountry adoption from China. Stuy points out the lack of effective investigation and redress of abusive practices. He describes the manner in which the Chinese government is able to use the Hague Adoption Convention<sup>5</sup> to avoid scrutiny of abusive adoption practices. Under the Convention, the child's country of origin is primarily responsible for determining whether the child is adoptable, whether intercountry adoption is compatible with the subsidiarity principle mandating a preference for domestic solutions, insuring the validity and integrity of necessary consents, and determining whether intercountry adoption is in the best interests of the child.<sup>6</sup> As described by Stuy, China appears to use this structure of the Convention to demand deference from receiving nations as to the legality and integrity of China's intercountry adoption processes, even in instances where there is overwhelming evidence of seriously abusive practices.

China is perhaps uniquely positioned to demand this deference from other nations. First, China's intercountry adoption system is, bureaucratically speaking, well organized, particularly as compared with other nations of origin, giving its determinations greater apparent credibility. Second, China's intercountry adoption system and system of orphanages (or social welfare institutions) are generally state-run, meaning that governments and private agencies in other nations generally conduct adoptions exclusively through their contacts with the Chinese government, which of course gives the Chinese government greater control. Third, China's prominent economic and geopolitical position in the contemporary world presumably make other nations reluctant to challenge China unless truly necessary. Given the need to either obtain Chinese cooperation, or challenge China, on matters of the highest economic and geopolitical importance, other nations may be reluctant to challenge China on issues as murky and seemingly insignificant (in economic and geopolitical terms) as intercountry adoption.

Given China's propensity toward face-saving approaches, and the central government's relative failure in combatting corruption in contemporary China, it may often be the case that the central government lacks both the will and the capacity to insure the integrity of their intercountry adoption system. This is particularly true given the changes in China's orphanage population. China's intercountry adoption system was built on the premise of a virtually unlimited orphanage population of healthy baby girls, which was understood to be the product of China's cultural gender preferences combined with China's population control policies. It has now been more than a decade, however, since large-scale

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1995)[hereinafter Hague Adoption Convention]; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1456 [hereinafter CRC].

<sup>5</sup> See Hague Adoption Convention, *supra* note 4.

<sup>6</sup> See *id.* art. 4.

sex selective abortion replaced large-scale sex selective abandonment, sharply reducing the numbers of healthy infants and toddlers in China's orphanages. It now appears that there is no need for the international placement of healthy infants or toddlers from China, given that the relatively small number of such available children could easily be placed domestically in China. Yet, financial incentives remain for Chinese orphanages to place children internationally, creating conditions ripe for abusive practices. Chinese orphanages now have a financial incentive to obtain children for intercountry adoption, and to violate the subsidiarity principle under which domestic adoption should be preferred over intercountry adoption.<sup>7</sup>

Although Stuy's theses and documentation regarding China's intercountry adoption system are significant, it is still important to place them in some broader contexts. First, it is possible to over-blame the Hague Adoption Convention for the lack of accountability Stuy laments. China would have been able to demand deference from receiving nations, and to avoid outside investigation and accountability for their adoption system, even if China had not ratified the Hague Adoption Convention in 2005.<sup>8</sup> It is not really the Hague Convention, but rather the combination of China's state-dominated welfare and adoption systems, and especially the geopolitical and economic power of China, that have made it difficult for other nations to investigate and challenge Chinese reassurances about the integrity of their adoption system. Second, despite the allocation of important duties to nations of origin in the Hague Adoption Convention, under the Convention receiving nations remain free—and indeed duty-bound—to make their own assessments regarding the integrity of the adoption and child welfare systems of nations of origin. Each sovereign nation retains the capacity and the duty to ensure the overall integrity of their intercountry adoptions. Receiving nations are free to, and commonly do, refuse to accept intercountry adoptions from nations of origin they deem to have unreliable adoption systems—including nations that have ratified the Hague Adoption Convention. If receiving nations defer to China on intercountry adoption, it is primarily because of the power of China, rather than any Treaty obligation to do so—since there is in fact no Treaty obligation for such deference. The Hague Adoption Convention's allocation of certain tasks to nations of origin is based on the common sense reality that those tasks necessarily will be performed in

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<sup>7</sup> On sex selective abortion and its impact on China's intercountry adoption system, see generally David M. Smolin, *The Missing Girls of China: Population, Policy, Culture, Gender, Abortion, Abandonment, and Adoption in East-Asian Perspective*, 41 CUMB. L. REV. 1 (2010-2011), available at [http://works.bepress.com/david\\_smolin/9/](http://works.bepress.com/david_smolin/9/).

<sup>8</sup> See *Status Table: 33: Convention of 29 May 1993 on Protection of Children and Cooperation in Respect to Intercountry Adoption*, HAGUE CONFERENCE ON INTERNATIONAL LAW, (June 1, 2014), [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69](http://www.hcch.net/index_en.php?act=conventions.status&cid=69).

the country of origin; while this initial allocation of tasks is significant, it is *not* the same as a mandate of deference or protection against any kind of scrutiny.

A more likely danger of the Hague Adoption Convention is that it can create a misleading stamp of approval, a presumption of reliability that may deceive other nations and actors in assuming the reliability of the underlying system. In point of fact, no nation should be so naïve. The Hague Adoption Convention is no more than a set of principles and procedures, which are only as good as their implementation. The Convention's principles and procedures at most create the opportunity to create an ethical and orderly system. As with most international agreements, ratification does not guarantee performance.

A point of comparison to the Convention on the Rights of the Child (CRC)<sup>9</sup> is helpful. Every nation in the world, except the United States and Somalia (which has lacked a government capable of ratification), has ratified the CRC.<sup>10</sup> China ratified the CRC in 1992,<sup>11</sup> before the 1993 Hague Adoption Convention was even finalized. The abusive adoption practices described by Stuy's essays also violate the CRC in many and serious ways. Yet few would blame the CRC for causing or even exacerbating these difficulties. In a world in which children's rights are constantly violated in the most serious ways, and yet virtually every nation has ratified the CRC and hence undertaken to protect children's rights, it is understood that usually the flaw is not with the CRC as a treaty, but with the lack of will and capacity of governments to implement the CRC effectively.

Indeed, the CRC and Hague Adoption Convention are designed to be interpreted and implemented together, with the CRC and the Hague Adoption Convention supplying the relevant principles, while the Hague Adoption Convention supplies more specific procedures and standards that implement those shared principles. Ultimately, the abusive practices that Stuy documents are not caused primarily by flaws in the CRC and Hague Adoption Convention, but rather by flaws in the implementation of these Conventions. China and the receiving nations partnering with China have failed in their responsibilities under both the CRC and the Hague Adoption Convention, both to prevent, and also to adequately respond to, the abusive practices that Stuy documents.

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<sup>9</sup> See CRC, *supra* note 4.

<sup>10</sup> *Status Table: Chapter IV: Human Rights—11: Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION (July 14, 2014), [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en) [hereinafter CRC, status table]; see also *Convention on the Rights of the Child: Frequently Asked Questions*, UNICEF (Nov. 30, 2005), [http://www.unicef.org/crc/index\\_30229.html](http://www.unicef.org/crc/index_30229.html).

<sup>11</sup> CRC, status table, *supra* note 10.

These failures have been facilitated, ironically, by the adoption community. Normally when governments fail, the population so harmed will advocate for redress and reform. Adoption, however, is different. Most original family members and vulnerable/adopted children are too powerless to stem the tide of abusive adoption practices, and are not positioned to effectively protest after the fact. Most adoptive parents have identified their interests with those of their national adoption agencies; the combined voices of most adoptive parents and adoption agencies seem to have been focused on keeping intercountry adoption open and maximizing the numbers of adoptions, in part through downplaying the extent of abusive practices. The constituency for reform, thus, is lacking, at least as to those who are in a position to make their voices heard.

These problems will likely be reflected by the response, or lack thereof, to Stuy's article. Governments, such as China, and that of the United States and other receiving nations, even if they were to become aware of the article, are very unlikely to conduct thorough and effective investigations. Indeed, based on the article itself, one would expect a combination of silence, face-saving gestures, denials, and minimizations, from governments. Many adoptive parents also may downplay and deny the abuses which Stuy describes: after all, it is painful and unsettling to consider the possibility that one's adoption was marred by profoundly unethical practices. Most adoptees from China are quite young and are unlikely to be exposed to this article; when they get older, they also will face the choice of how much credence to give to the extensive record of unethical practices found in this article and in many other sources.

Those who take Stuy and the record of unethical practices seriously—including adoptive parents—may feel helpless to know how to respond. Stuy, after all, can only write in generalities; even identifying particular orphanages as problematic may not mean that all or even most of the adoptions from those locales were tainted by abusive practices. Stuy's article offers an unsettling set of possibilities, but does not provide a ready means for confirming or disconfirming its individual applications, let alone remedying those individual cases.

Moreover, in recent years, as the number of intercountry adoptions from China has decreased dramatically, and the proportion of significant special needs adoptions has increased significantly, some degree of reality has begun to assert itself. Most in the adoption community have come to understand that the days of adopting healthy babies or toddlers from China are largely over. Chinese adoptions increasingly are about the adoption of children with very serious, and sometimes life-long, disabilities, as well as children in need of extensive medical intervention. The idealism of those who adopt such children with full knowledge is apparent, and they may feel that these adoptions are not subject to what Stuy describes. Given Stuy's unsettling analysis of misconduct in very recent adoptions of much older children from China, one cannot guarantee any

category of adoptions from China. Nonetheless, the eyes-open adoption of children with serious special needs from China may indeed be a very different category than those in which Stuy has documented abuses.

The era of large-scale adoption of healthy young children from China is over, at least for the present. Stuy's article is an unsettling postmortem of the dead dream of China as an ethical source of unlimited numbers of adoptions of healthy young (and older) children. Even if no one believes Stuy, the facts are there to see, in the numbers, and in the narratives. Stuy has done his work; the rest is up to us.

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## I. INTRODUCTION

### A. *The China Myth*

The Chinese international adoption program officially began in 1992 with the passage of China's first adoption law.<sup>12</sup> The program's first year led to 206 children adopted into the United States<sup>13</sup> and twenty-six children adopted into the Netherlands.<sup>14</sup> In 2005, the program's peak year, 14,493 children were adopted into seventeen participating countries<sup>15</sup> around the world.<sup>16</sup>

China's international adoption program has historically attracted adoptive parents for several reasons—outlined succinctly by Chinese Children Adoption International (CCAI), one of the largest China-only adoption agencies in the United States. CCAI emphasizes the attractiveness of the Chinese program's consistency and predictability (no surprise

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<sup>12</sup> KAY ANN JOHNSON, WANTING A DAUGHTER, NEEDING A SON: ABANDONMENT, ADOPTION, AND ORPHANAGE CARE IN CHINA 33 (Yeong & Yeong 2004) (indicating that informal international adoptions performed by individual orphanages came under coordination of the central government in Beijing with passage of China's 1991 adoption laws); see 中华人民共和国收养法 [P.R.C. Adoption Laws] (adopted at the 23rd meeting of the Standing Comm. of Nat'l People's Cong., Dec. 29, 1991, promulgated by Order No. 54 of the President, Dec. 29, 1991, effective April 1, 1992; amended by the Ninth Nat'l People's Cong., Nov. 4, 1998, effective April 1, 1999), NOVEXCN, [http://www.novexcncn.com/adoption\\_law\\_91.html](http://www.novexcncn.com/adoption_law_91.html) (last visited Jan. 28, 2014) (China).

<sup>13</sup> *Significant Source Countries of Immigrant Orphans*, BUREAU OF CONSULAR AFFAIRS, <http://travel.state.gov/content/dam/visas/Statistics/FY2001%20table%20XIII.pdf> (last visited Feb. 24, 2014).

<sup>14</sup> René Hoksbergen, *Vijftig Jaar Adoptie in Nederland [Fifty Years of Adoption in the Netherlands]* 10, VIJFEEUWENMIGRATIE, <http://www.vijfveeuwenmigratie.nl/sites/default/files/bronnen/VIJFTIG%20JAAR%20ADOPTIE.pdf> (last visited Feb. 24, 2014).

<sup>15</sup> *Adoption Agencies Abroad*, CHINA CENTER FOR ADOPTIONS ABROAD, [http://www.china-ccaa.org/gwsyzz/gwsyzz\\_index\\_en.jsp](http://www.china-ccaa.org/gwsyzz/gwsyzz_index_en.jsp) (last visited Feb. 25, 2014).

<sup>16</sup> See Peter Selman, *The Rise and Fall of Intercountry Adoption in the 21<sup>st</sup> Century*, 52 INT'L SOC. WORK 575, 580 (2009).

fees or delays), the overall health of the children referred, and the fact that children in China are largely abandoned and, thus, have no birth-parent records:

Because child abandonment is illegal in China, birth parents leave no trace of their identity. . . . During [their] trip to China, [adoptive families] receive a certificate of abandonment that proves the biological parents have relinquished their parental rights through abandonment. There is no legal avenue for the birth parents to reclaim custody.<sup>17</sup>

Coupled with the practical advantages outlined above, Western adoptive families believed, as a result of mainstream popular press articles and adoption agency literature, that China had a humanitarian need.

One adoption agency stated in 2008, "There are over 15 million orphans in China. Most are healthy young girls, abandoned due to China's one child per family law."<sup>18</sup> News articles and scholarly papers echoed these statistics, stating "tens of thousands of girl babies are abandoned"<sup>19</sup> each year, "upwards of 200,000 children are abandoned each year[.]"<sup>20</sup> and "150,000 female infants are abandoned at train stations, along roadsides, or left in dustbins."<sup>21</sup> With assertions such as those described above, most families adopting from China have seen little reason to question the reality of their child's orphanage story or the integrity of the program itself. The conventional wisdom of the past 20 years has been that, without the international adoption program, tens of thousands of abandoned children would remain in China's orphanages and would have no chance of finding or experiencing the love of family.

### 1. Hague Convention Safeguards

The Hague Convention on Intercountry Adoption of 1993 requires that:

An adoption within the scope of the Convention shall take place *only if* the competent authorities of the State of origin . . . have determined, after possibilities for placement of the child within the State

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<sup>17</sup> *Adoption from China*, CHINESE CHILDREN ADOPTION INT'L, <http://www.ccaifamily.org/China-Adoption/Default.aspx> (select "Finality of Adoption" hyperlink) (last visited Feb. 25, 2014).

<sup>18</sup> *China, A CHILD'S DESIRE ADOPTION AGENCY*, <http://thirdworldorphans.org/gpage11.html> (last visited Feb. 25, 2014).

<sup>19</sup> Adam Brookes, *China's Unwanted Girls*, BBC NEWS (Aug. 23, 2001, 21:18 GMT), <http://news.bbc.co.uk/2/hi/asia-pacific/1506469.stm>.

<sup>20</sup> Kate Beem, *Chinese Orphans Capture Family's Heart*, KANSAS CITY STAR, Aug. 24, 2005, available at <http://www.hopesheart.com/AboutHopesHeart/newspaper.lsp> (last visited Feb. 25, 2014).

<sup>21</sup> Robert S. Gordon, *The New Chinese Export: Orphaned Children-An Overview of Adopting Children from China*, 10 TRANSNAT'L LAW. 121, 131 (1997).

of origin have been given due consideration, that an intercountry adoption is in the child's best interests[.]<sup>22</sup>

The Convention focuses significant attention on unethical and illegal activities designed to procure children for adoption, defining an "illegal adoption" as any adoption resulting from "abuses, such as abduction, the sale of, traffic in, and other illegal or illicit activities against children,"<sup>23</sup> and classifies among unethical and illegal practices "falsification of documents" and "soliciting children."<sup>24</sup> A primary goal of the Hague agreement is "[t]o establish a system of *co-operation amongst Contracting States* to ensure that those safeguards are respected and thereby prevent the *abduction, the sale of, or traffic in children.*"<sup>25</sup> The Convention focuses further attention on those issues that have plagued most intercountry adoption programs.

The Hague prohibits several activities, both explicitly and implicitly. First, the Convention disallows falsely portraying the results of the adoption in order to obtain parental consent for the adoption.<sup>26</sup> The Hague requires that adoption professionals ensure that "the consents were given freely, and not induced or improperly obtained by financial or other reward."<sup>27</sup> Second, the Hague prohibits inducing—in the form of money or other compensation—a birth family to relinquish a child for international adoption: "Of major concern is the reported practice of agents or intermediaries employed by adoption service providers, attorneys, or orphanages . . . who actively seek out families to relinquish a child for adoption in return for payment."<sup>28</sup> This includes promises of future financial benefits resulting from the adoption of a child. In sum:

[T]he fundamental objects of the Convention are the establishment of certain safeguards to protect the child in case of intercountry adoption, and of a system of *co-operation among the Contracting States to guarantee the observation of those safeguards*. Therefore, the Convention does not prevent directly, but only indirectly, "the abduction, the sale of, or traffic in children," [Article 1 (b)], *because it is*

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<sup>22</sup> Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, May 29, 1993, art. 4(b) (emphasis added) [hereinafter Hague Convention], available at <http://www.hcch.net/upload/conventions/txt33en.pdf> (last visited Feb. 25, 2014).

<sup>23</sup> HAGUE CONFERENCE ON PRIVATE INT'L LAW, THE IMPLEMENTATION AND OPERATION OF THE 1993 HAGUE INTERCOUNTRY ADOPTION CONVENTION: GUIDE TO GOOD PRACTICE, GUIDE NO. 1, at 16 (2008), available at [http://www.hcch.net/upload/adoguide\\_e.pdf](http://www.hcch.net/upload/adoguide_e.pdf) (last visited Feb. 25, 2014).

<sup>24</sup> *Id.* at 134.

<sup>25</sup> *Id.* at 32 (emphasis added).

<sup>26</sup> *See id.* at 31–32, 34.

<sup>27</sup> *Id.* at 34.

<sup>28</sup> *Id.* at 35.

*expected that the observance of the Convention's rules will bring about the avoidance of such abuses.*<sup>29</sup>

According to the agreement's "subsidiarity principle," compliance of signatories "is central to the success of the Convention."<sup>30</sup>

### B. *The Reality in China*

Orphanages participating in China's international adoption program saw demand for healthy children increase substantially after 2000, both domestically, due to the changes in adoption qualifications for couples inside China,<sup>31</sup> and internationally, as positive press and favorable program qualities drew an increasing number of foreign families to apply for adoption through the Chinese program. In turn, the large cash donation of \$3,000 U.S. dollars (increased to \$5,000 in 2009) received from international families made the program attractive to orphanage directors; the more children an orphanage adopts internationally, the more revenue the orphanage receives.<sup>32</sup>

For many orphanages, the \$100,000 to \$500,000 in annual donations represents a huge resource with which to build new facilities, improve salaries, provide other benefits for orphanage employees and officers,<sup>33</sup> and otherwise improve the lives of orphanage children. While adoption donations are designated for social welfare projects, orphanages do not always use the money for such purposes—stories of orphanage directors using funds for personal gain are numerous. In addition to the recently publicized episode of the Hefei, Anhui orphanage director buying a luxury automobile with donated funds,<sup>34</sup> other examples include the story of the Wuhan City, Hubei, orphanage director embezzling 130,000

<sup>29</sup> HAGUE CONFERENCE ON PRIVATE INT'L LAW, *supra* note 23, at 33 (emphasis added).

<sup>30</sup> *Id.* at 29.

<sup>31</sup> Kay Johnson et al., *Infant Abandonment and Adoption in China*, 24 POPULATION AND DEV. REV. 469, 504–05 (1998), updated and reprinted in JOHNSON, *supra* note 12, at 119, 130. The author notes that a Nov. 4, 1998, adoption law amendment lowering the age of prospective adoptive parents from 35 to 30 and allowing families with a single child to adopt, whereas previously a couple needed to be childless, were incremental changes that nevertheless substantially increased the number of potential adoptive families. *Id.*

<sup>32</sup> *New Briefs: March/February 2009*, ADOPTION TODAY, at 7, available at <http://www.bluetoad.com/publication/index.php?i=11958&p=6> (last visited Feb. 25, 2014).

<sup>33</sup> Joshua Zhong, *Foster Care in China*, CHINESE CHILDREN, [http://www.chinesechildren.org/Newsletter%5CWindow%20to%20China/WTC\\_03\\_2004.pdf](http://www.chinesechildren.org/Newsletter%5CWindow%20to%20China/WTC_03_2004.pdf) (last visited May 17, 2013). With the average salary for orphanage directors of around 1,800 yuan (\$260) per month, and the average foster family payment for tending a single child at 400 yuan (\$60) per month, the 750,000 to 3.8 million yuan annual donation is clearly significant to most orphanages that receive it.

<sup>34</sup> Ling Yuhuan, *Benz Purchase Puts Orphanage in Hot Seat*, GLOBAL TIMES (Sept. 6, 2012, 00:50), <http://www.globaltimes.cn/content/731400.shtml>.

yuan through illegal kickbacks in 2000,<sup>35</sup> as well as the 2004 case of the Chengdu, Sichuan, director embezzling donations to purchase luxury real estate.<sup>36</sup> Similar stories also can be found about the Nanping City, Jiangsu, and Beijing City orphanages.<sup>37</sup>

Additionally, participation in the international adoption program has many post-adoption benefits, such as ongoing donations from adoptive families to the orphanage, adoptive family reunions that allow orphanage directors the opportunity to travel to the United States and other countries, and official recognition in China. Combined, these advantages create a strong incentive for orphanages to send children to Western families, disadvantaging families from China.

But where did the thousands of children adopted from China come from? Were they all simply left by their birth family in “train stations, along roadsides, or . . . in dustbins,”<sup>38</sup> as has commonly been assumed? Scandals, media investigations, and orphanage data show that random abandonment is not often the provider of adopted children, despite this being the primary assumption among adoptive families. Some orphanage directors have sought opportunities to increase their adoption revenue by various means—including baby buying, family-planning activities (some involving confiscation of children), and deceptive promises made to birth families—in order to coerce them into relinquishing a child. Each of these extra-legal methods presents a biographical signature that differs from what one would expect from random abandonments.

Section II of this article discusses biographical characteristics of age, gender, and finding circumstances of children, and how these circumstances often betray the methods employed by orphanages to acquire adoptees. Section III tracks efforts by the Chinese and Dutch governments to address the media fallout of the adoption abuses detailed in Section II. Section IV concludes by finding that the current state of affairs in China’s international adoption program leaves little room for opti-

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<sup>35</sup> *Former Director of Hubei City Social Welfare Institute Involved in Bribery* (武汉市社会福利院原院长涉嫌受贿被起诉), SINA.COM (Dec. 26, 2000, 06:44), <http://news.sina.com.cn/s/162319.html>.

<sup>36</sup> *Children Orphanage Director Embezzles Orphan Funds* (儿童福利院院长竟贪污孤儿的钱), SINA.COM (Aug. 22, 2003, 16:35 PM), <http://news.sina.com.cn/c/2003-08-22/1635616549s.shtml>.

<sup>37</sup> *Embezzlement, Bribery, and Misappropriation of Funds of Former Yanping Orphanage Director Results in 18-Year Prison Sentence* (贪污受贿挪公款 原延平福利院院长被判18年), XINHUANET (Mar 25, 2004, 10:31 AM), [http://www.fj.xinhuanet.com/fzpd/2004-03/25/content\\_1844610.htm](http://www.fj.xinhuanet.com/fzpd/2004-03/25/content_1844610.htm); Wei Liu (刘威), *Former Director of Beijing City Orphanage Sentenced* (北京市儿童福利院前院长贪污公款被判刑两年), XINHUANET (June 12, 2005, 16:10), [http://news.xinhuanet.com/legal/2005-06/12/content\\_3074812.htm](http://news.xinhuanet.com/legal/2005-06/12/content_3074812.htm).

<sup>38</sup> Gordon, *supra* note 21, at 131.

mism that its ethical and legal problems will soon be resolved to the satisfaction of parents and families on either end of China's adoption debacle.

## II. MEANS TESTING ORPHANAGE ACQUISITION OF ADOPTEEES

### A. *True Abandonments*

There is little doubt that China's one-child policy impacts child abandonment, particularly of female children, in China. Johnson et al.'s 1993 study, conducted during China's international adoption program's infancy, indicated that almost 90% of abandoned children in their survey were female.<sup>39</sup> Johnson et al.'s gender ratio is supported by biographical data obtained from China's orphanage "finding ads," which are legal announcements placed in provincial newspapers to transfer legal custody of adoptable children to the State.<sup>40</sup> An analysis of submissions from Guangdong Province, the largest adopting province in China before 2006, reveals that Guangdong orphanages submitted 15,051 children for international adoption between July 1999 and December 2005, of which only 495 (3.3%) were male.<sup>41</sup> Hunan Province, the second largest adopting province prior to 2006, submitted 14,052 children for adoption between 1999 and 2005, of which 237 (1.7%) were male.<sup>42</sup> Other Provinces had lower gender ratios, but Johnson et al.'s survey results fall com-

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<sup>39</sup> Johnson et al., *supra* note 31, at 475, *updated and reprinted in* JOHNSON, *supra* note 12, at 84.

<sup>40</sup> 中华人民共和国收养法 [P.R.C. Adoption Laws] ch. II, art. 15 (adopted at the 23rd meeting of the Standing Comm. of Nat'l People's Cong., Dec. 29, 1991, promulgated by Order No. 54 of the President, Dec. 29, 1991, effective April 1, 1992; amended by the Ninth Nat'l People's Cong., Nov. 4, 1998, effective April 1, 1999), NOVEXCN, [http://www.novexc.cn/adoption\\_law\\_91.html](http://www.novexc.cn/adoption_law_91.html) (last visited Jan. 28, 2014) (China) ("The department of Civil Affairs in charge of registration shall, prior to the registration, make an announcement in the adoption of abandoned infants and children whose biological parents can not be ascertained or found."). China's orphanages began publishing finding ads in July 1999. *Chinese Finding Ad*, THE JOURNEY ALONG THE INVISIBLE READ THREAD (Apr. 29, 2012), <http://theredthreadjourney.blogspot.com/2012/04/chinese-finding-ad.html>. Every child submitted for international adoption has a finding ad published by Provincial Civil Affairs prior to sending the child's adoption file to Beijing. *The Hague Agreement and China's International Adoption Program*, RESEARCH-CHINA (June 08, 2006), <http://research-china.blogspot.com/2006/06/hague-agreement-and-chinas.html>. The finding ads usually contain the gender, health, and finding age of the child, as well as a description of where the child was found. *Id.* This article will draw heavily from the data contained in these orphanage finding notices.

<sup>41</sup> Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Guangdong Province from Sept. 16, 1999 through Dec. 21, 2012 (on file with author) [hereinafter Stuy, Guangdong spreadsheet].

<sup>42</sup> Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Hunan Province from July 7, 1999 through Dec. 25, 2012 (on file with author) [hereinafter Stuy, Hunan spreadsheet].

fortably within these orphanage ratios.<sup>43</sup> This article's analysis focuses primarily on the eight largest adopting Provinces in China's international adoption program—Anhui, Chongqing, Guangdong, Guangxi, Hubei, Hunan, Jiangsu, and Jiangxi Provinces—collectively representing the vast majority of all adoptions from China.<sup>44</sup>

Based on their interviews with the birth parents in their survey, Johnson et al. stated,

[I]n the sample we gathered, many children were abandoned in areas not far from the birthparents' home. On rare occasions birthparents specified that they abandoned the child in their own village, but more often they went to another area in the same township or county or one nearby. Children are left on frequently trodden paths leading to fields, on roads connecting villages, on bridges, at the entrance to government or hospital buildings, and not infrequently at people's doorsteps. About 20 percent of abandoning parents said they placed their child at someone's doorstep. These abandoning parents stated that the targeted families were chosen because they seemed likely candidates for adoptive parents.<sup>45</sup>

This is just what one would intuit about finding-location patterns in any given area—birth families choose a wide variety of finding locations based largely on the perceptions and knowledge of the individual birth families. An interview of 1,000 birth families would likely reveal choices of hundreds of different places to abandon a child. One may see a few locations chosen by more than one family (orphanages, hospitals, etc.), but, in general, finding locations in true abandonment situations should appear widely scattered around the city.

As for the age at which the parents abandon the child, Johnson et al. provides additional guidance. "The vast majority of children were abandoned within the first six months after birth, one-third (79) within the first two months. A few were abandoned between six and twelve months after birth. Only two children in our sample were significantly older at the time of abandonment."<sup>46</sup> This is again what one would expect: while some families might have decided their course of action before the abandoned child was born, others would wait to investigate family-planning penalties, explore relinquishment options, or struggle with the situation, resulting in children over a wide range of ages being abandoned. While most children in Johnson et al.'s study were abandoned before reaching

<sup>43</sup> See JOHNSON, *supra* note 12, at 84.

<sup>44</sup> Peter Selman, *International Adoptions from the People's Republic of China 1992-2011*, NEWCASTLE UNIVERSITY, 2 (Nov. 14, 2012), [https://blogs.ncl.ac.uk/peterselman/files/2012/11/00.CHINA\\_.1992-2011.REVISED.Nov-2012.pdf](https://blogs.ncl.ac.uk/peterselman/files/2012/11/00.CHINA_.1992-2011.REVISED.Nov-2012.pdf) (explaining that, from 2000 to 2005, adoptions from China to the United States and other Western countries totaled 64,623 children, and that the eight Provinces listed above submitted more than 60,000 children for international adoption during this period).

<sup>45</sup> JOHNSON, *supra* note 12, at 90.

<sup>46</sup> Johnson et al., *supra* note 31, at 477.

six months of age, most were not abandoned as newborns (under a week old).<sup>47</sup> Based both on intuition and on data such as those collected by Johnson et al., one would expect that most abandoned children would be female (about 90%), relatively few children would be newborns, and most children (66%) would be abandoned after reaching two months of age.<sup>48</sup> Most children would be healthy (86%),<sup>49</sup> but there would be some findings of children with special needs since this is a significant cause for abandonment.<sup>50</sup>

Only one study area, Jiangsu Province, reports founding demographics that parallel Johnson et al.'s birth family survey, and even in this province large differences can be seen, although not as large as in other study areas. Some of the province's orphanages do exhibit non-random abandonment patterns, which will be discussed below, but overall, Jiangsu is the only one of the large adopting provinces to display finding patterns that approximate random distributions. Between 2003 and 2010, orphanages in Jiangsu Province submitted more than 4,200 children for international adoption.<sup>51</sup> Of that total, 1,516 were boys (36%), 51% were found as newborns under a week old, and 26% were found more than two months old.<sup>52</sup> A quarter (25.1%) of the children were listed as having some special need.<sup>53</sup>

The finding locations of the children will also be of interest in this study. Collectively, the most frequent finding location was the orphanage gate, which saw 562 findings, representing 13.4% of all findings.<sup>54</sup> The remaining children were found at area hospitals, railway stations, parks, government offices, schools, and other locations.<sup>55</sup> These locations often make intuitive sense as to why they were chosen. Schools may be chosen because they are viewed as safe and nurturing places for children. Bookstores may be chosen because a family might feel that patrons of bookstores are generally wealthier and more literate than average. The same may apply to banks. Some of the locations included bathrooms, presumably because they are busy (for quick finding), yet secluded (for protection against detection) areas.<sup>56</sup> Private residences are also frequently seen in Jiangsu's data, and such locations may be child-

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 475, 477.

<sup>49</sup> *Id.* at 475.

<sup>50</sup> *See id.* at 474 ("Many orphanages . . . report receiving a high percentage of disabled children.").

<sup>51</sup> Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Jiangsu Province from Jan. 2, 2003 through Dec. 20, 2010 (on file with author) [hereinafter Stuy, Jiangsu spreadsheet].

<sup>52</sup> *Id.*

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

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

less families in the village who would be seen as likely candidates to take good care of a child who appeared on a doorstep.<sup>57</sup>

Parents are less likely to abandon children at government facilities because most Chinese instinctively dislike and distrust government officials. This is especially true of employees associated with family planning. One sees this avoidance manifested in Jiangsu's finding locations, of which only 2.4% (104) occur at a police station, Civil Affairs Bureau, or family-planning office.<sup>58</sup> Government facilities are unlikely choices for abandoning a child for one primary reason—they represent the government, and thus potential arrest and prosecution for abandonment, or at least fines associated with an over-quota child. Thus, culturally, there are many reasons why most Chinese families avoid choosing a government facility to abandon a child.

So, in an orphanage area experiencing random abandonments, what would one expect to see for finding characteristics? It might look like Yixing orphanage in Jiangsu Province. Yixing's abandonments have been mostly stagnant since 2003, with no sharp increases or decreases in findings.<sup>59</sup> Since 2002, Yixing has submitted 104 children, more than a third of whom were boys.<sup>60</sup> Nearly a fifth of the children submitted had special needs.<sup>61</sup> The children were found scattered all over Yixing, with only 28% of children found at locations with more than one finding, meaning nearly 75% of children from Yixing were found at unique finding locations.<sup>62</sup> The orphanage itself was the most frequent finding location, but it saw only ten findings (9.6%).<sup>63</sup> The age of the children also varied. While a significant number of children found were less than a week old (39%), several were between a week and a month old (22%), with others between a month and a year old (25%).<sup>64</sup> The remaining 10% varied from one year to eight years old.<sup>65</sup>

Thus, based on Johnson et al.'s birth parent survey and Jiangsu Province's finding data, analysis of one thousand actual abandonments suggests the following parameters: First, a significant number of the children found are male—between 10%<sup>66</sup> and 36%.<sup>67</sup> Not every child is abandoned due to gender; in some cases, birth mothers are single women unable to parent a child regardless of gender. Thus, some randomly

<sup>57</sup> Stuy, Jiangsu spreadsheet, *supra* note 51.

<sup>58</sup> *Id.*

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

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Stuy, Jiangsu spreadsheet, *supra* note 51.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> See Johnson et al., *supra* note 31, at 475, updated and reprinted in JOHNSON, *supra* note 12, at 84.

<sup>67</sup> Stuy, Jiangsu spreadsheet, *supra* note 51.

abandoned children are male. Second, children are found at a wide spectrum of ages, with two months old or older representing 26%<sup>68</sup> to 66%<sup>69</sup> of all findings. While some birth families decide to abandon prior to the birth of the child, others investigate alternative options, including paying the family-planning fine, locating a family member who can raise the child, or deciding on other courses of action. Thus, while some children are found as newborns, a substantial portion are found at weeks, months, or even years of age. Finally, children are found at a wide variety of locations scattered around the area, with few locations seeing more than one or two findings.<sup>70</sup> When the decision is made to abandon a child, parents consider the specific place to leave the child: Is there a childless family in the area that might be receptive? Should a school, bookstore, hospital, or orphanage be chosen? While some locations might appear to be natural abandonment locations, such as orphanages, abandonments may be scattered all over an area, with limited clustering around individual locations. Given the natural fear of the government among Chinese citizens, government offices are infrequently chosen due to the risk of detection and prosecution.<sup>71</sup>

For more than a decade, observers and participants in China's international adoption program assumed that children entered the orphanages due to random abandonments. China's program was widely viewed as the "model program," free of the corruption seen in other international adoption programs.<sup>72</sup> "China has a model adoption program which has been specifically praised by the U.S. Congress. In addition to having a large source of healthy infants, adoptions from China are often less expensive than from other countries, and the process is much more predictable and stable."<sup>73</sup> Prior to 2005, there was little evidence or reason to believe that Chinese children adopted by Western families were not entering orphanages through legal and ethical channels. Adoptive families assumed that the information being provided by Chinese orphanages was transparent and accurate. In November 2005, that assumption was questioned with the arrest of the Duan family.

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

<sup>69</sup> Johnson et al., *supra* note 31, at 477.

<sup>70</sup> Stuy, Jiangsu spreadsheet, *supra* note 51.

<sup>71</sup> See Johnson et al., *supra* note 31, at 479–80.

<sup>72</sup> Voice for International Development and Adoptions, *VIDA-China*, VIDA, <http://vidaadoptions.org/China.html> (last visited Feb. 27, 2014) ("The China foreign adoption program is well coordinated. It is a model foreign service program for the United States and many other countries.").

<sup>73</sup> Shepherd's Field Children's Village, *Adopt a Chinese Orphan*, CHINA ADOPTIONS, <http://www.chinaorphans.org/adopt.htm> (last visited May 18, 2013).

### B. *Baby Buying Programs*

On Friday, November 18, 2005, at approximately three o'clock in the afternoon, Qidong County police surrounded two women at the Hengyang County railway station, confiscating three female infants.<sup>74</sup> Police arrested Duan Mei Lin and Duan Zi Lin, two sisters from Yiyang Town in neighboring Changning City, for baby trafficking.<sup>75</sup> The story of the Duan family trafficking ring became known in adoption circles and in the Western press as the "Hunan baby trafficking scandal."<sup>76</sup>

Initial press reports indicated that "[o]rphanages in central China's Hunan Province" had bought "at least 100 babies over the past few years" and had resold the children to "other orphanages or childless couples for 8,000 yuan to 30,000 yuan."<sup>77</sup> While the earliest reports did not connect these purchases by the orphanages to international adoption, later press coverage established the connection. In an update published the following week, *Xinhua News* stated that officials involved indicated that "[s]ome of [the children] were even sold to foreign adopters."<sup>78</sup>

Western media outlets quickly picked up the trafficking scandal. Reuters reported on November 24, 2005, that "Hunan Province [police] arrested 27 people, including the head of an orphanage, in another child-trafficking crackdown, the official *People's Daily* said on its Web site."<sup>79</sup> Chinese officials—realizing that much of the Western media simply republished articles originating inside China—responded to the increased attention to this story by shutting down media coverage two weeks later, preventing any additional information from being published in China.<sup>80</sup>

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<sup>74</sup> Deng Fei (来源), *The Hengyang Infant Dealing Case: Benevolence or Vice?* (湖南衡阳审理福利院买卖婴儿案), PHOENIX WEEKLY (Apr. 11, 2006, 16:37), <http://phtv.ifeng.com/phoenixtv/83932384042418176/2000411/776299.shtml>, translated in *Hunan—One Year After—Part One: The Hengyang Infant Dealing Case: Benevolence or Vice?*, RESEARCH-CHINA.ORG (Oct. 9, 2006), <http://research-china.blogspot.com/2006/10/hunan-one-year-after-part-one.html> [hereinafter Deng, *Benevolence or Vice?*].

<sup>75</sup> *Id.*

<sup>76</sup> See Patricia J. Meier & Xiaole Zhang, *Sold Into Adoption: The Hunan Baby Trafficking Scandal Exposes Vulnerabilities in Chinese Adoptions to the United States*, 39 CUMB. L. REV. 87, 87 (2008–2009).

<sup>77</sup> *Orphanages Accused in Baby-Trading Scandal*, CHINA DAILY (Nov. 25, 2005), [http://www.chinadaily.com.cn/english/doc/2005-11/25/content\\_497880.htm](http://www.chinadaily.com.cn/english/doc/2005-11/25/content_497880.htm).

<sup>78</sup> *Hunan Welfare Organs Involved in Infant Trafficking*, XINHUANET (Dec. 2, 2005), [http://news.xinhuanet.com/english/2005-12/02/content\\_3869464.htm](http://news.xinhuanet.com/english/2005-12/02/content_3869464.htm).

<sup>79</sup> *China Cracks Two Child Trafficking Rings*, UNICEF (Nov. 24, 2005), [http://www.childtrafficking.org/cgi-bin/ct/main.sql?ID=2183&file=view\\_document.sql&TITLE=-1&AUTHOR=-1&THESAURO=-1&ORGANIZATION=-1&TYPE\\_DOC=-1&TOPIC=-1&GEOG=-1&YEAR=-1&LISTA=No&COUNTRY=-1&FULL\\_DETAIL=Yes](http://www.childtrafficking.org/cgi-bin/ct/main.sql?ID=2183&file=view_document.sql&TITLE=-1&AUTHOR=-1&THESAURO=-1&ORGANIZATION=-1&TYPE_DOC=-1&TOPIC=-1&GEOG=-1&YEAR=-1&LISTA=No&COUNTRY=-1&FULL_DETAIL=Yes).

<sup>80</sup> See Geoffrey York, *China Shuts Down Reports About Baby Trafficking*, TORONTO GLOBE AND MAIL (Dec. 15, 2005, 10:00 PM), <http://www.seattlepi.com/national/article/China-shuts-down-reports-about-baby-trafficking-1190096.php>.

The Chinese press accounts and, consequently, derivative accounts published by Western media outlets, presented the story as diligent Chinese police investigators discovering and shutting down orphanage trafficking of infants.<sup>81</sup> “This August, the public security bureau of Qidong County was informed that some infants were being abducted from Zhanjiang and Wuchuan in Guangdong Province to neighboring Qidong and Hengyang counties in Hunan Province,” reported Xiao Hai Bo, deputy director with the Hengyang City Police Bureau.<sup>82</sup> “Qidong County police in Hunan Province, China, uncovered a situation of babies being sold. This discovery led to the exposure of a scandal involving some people in the Hunan social welfare institutes, who were buying and reselling babies.”<sup>83</sup> Police revealed that “at least 100 babies, between several months and 4 years old, have been traded between the orphanages or sold to others.”<sup>84</sup> The Western world was meant to believe through these accounts that Qidong police had investigated and broken up a trafficking ring that involved about 100 children being bought and sold by a handful of orphanages and that “the government was investigating the allegations and would punish anyone found guilty of breaking the law.”<sup>85</sup>

Behind the scenes, court documents detail a different story. The trial records show that, rather than the Qidong police discovering trafficking through anonymous tips or police investigations, the scandal occurred as the result of a small-town power struggle over money involving the area orphanages, the traffickers, and the Qidong Police Bureau.<sup>86</sup> The Hunan scandal was revealed because of a calculated attempt by the Qidong police to get a bigger piece of adoption revenues.<sup>87</sup>

By 2005, the Duan family in Hunan had established a professional and personal relationship with Liang Gui Hong, an elderly woman in Guangdong’s Wuchuan City.<sup>88</sup> The professional relationship formed as a result of personal relationships between members of the two families.<sup>89</sup> The Duan family had a long history of providing children to the Heng-

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<sup>81</sup> *Hunan Welfare Organs*, *supra* note 78.

<sup>82</sup> *Id.*

<sup>83</sup> *Welfare Institutions Caught Trafficking Babies*, EPOCH TIMES (Nov. 28, 2005), <http://www.theepochtimes.com/news/5-11-28/35104.html>.

<sup>84</sup> *Orphanages Accused*, *supra* note 77.

<sup>85</sup> *Id.*

<sup>86</sup> See Letter from Xia Jing (夏京), Lawyer for the Duan defense, to the Hunan Provincial Civil Affairs Bureau (on file with author).

<sup>87</sup> *Id.*

<sup>88</sup> Deng, *Benevolence or Vice?*, *supra* note 74.

<sup>89</sup> Deng Fei (来源), *Infant Trafficking: One Family’s History* (一个家族的贩婴史), IFENG.COM (May 8, 2008, 9:42 AM), <http://blog.ifeng.com/article/1438444.html>, translated in *Infant Trafficking: One Family’s Story*, RESEARCH-CHINA.ORG (Oct. 12, 2006, 6:54 AM), <http://research-china.blogspot.com/2006/10/infant-trafficking-one-family-story.html> [hereinafter Deng, *One Family’s History*].

yang City orphanages.<sup>90</sup> In 1995 Chen Zhi Jin, the matriarch of the Duan family, first brought a child—a two-year-old girl she had found as an infant—to the Qidong orphanage.<sup>91</sup> The orphanage paid her 700 yuan.<sup>92</sup> Chen was told that if she could find more children, the area orphanages—specifically the Changning orphanage—would gladly receive them.<sup>93</sup> Since the Changning orphanage itself was not yet performing international adoptions, the orphanage made arrangements for these children to be internationally adopted by orphanages in Chongqing Municipality, Guangdong Province, and other areas of Hunan Province.<sup>94</sup>

The orphanages began offering incentives to their employees to find and recruit children to bring into the orphanage as early as 1996.<sup>95</sup> According to insiders interviewed by reporters following the scandal of 2005, orphanages initially paid 200 yuan for each baby, but that amount quickly escalated:

Towards these ends, the Hengyang County Welfare center once clarified the mission for lower levels: one employee that was responsible for the adoption of three children within that year could be said to have completed their work duties for the year and was able to receive an extension of their salary and also a bonus at the year's end.<sup>96</sup>

By the time the scandal broke in 2005, orphanages were routinely paying more than 3,500 yuan for each child procured by orphanage employees, the Duan family, and others.<sup>97</sup> “Some welfare center employees even went so far as to urge the human traders to secure infants with complete disregard for any sense of morality or legality.”<sup>98</sup>

The operation was not without risk. In 1998 or 1999, and again in 2002 and 2003, railway police arrested members of the Duan family after suspicious passengers reported the two women feeding six or more children kept in boxes under the train seats.<sup>99</sup> Each time, the women were released after the orphanage directors vouched for them.<sup>100</sup> Chen recounted:

I was just honest with the policemen. I told them that I was bringing all the babies to the Changning orphanage. I told them that I was just

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<sup>90</sup> Telephone Interview with Chen Zhi Jin, Mother of Duan Family Defendants (June 28, 2010) (on file with author).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

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

<sup>95</sup> *See id.*; see Deng, *Benevolence or Vice?*, *supra* note 74.

<sup>96</sup> Deng, *Benevolence or Vice?*, *supra* note 74.

<sup>97</sup> Deng, *One Family's History*, *supra* note 89.

<sup>98</sup> Deng, *Benevolence or Vice?*, *supra* note 74.

<sup>99</sup> Deng, *One Family's History*, *supra* note 89; Telephone Interview with Chen Zhi Jin, *supra* note 90.

<sup>100</sup> Interview by Lan Stuy with Chen Zhi Jin, Mother of the Duan Family Defendants (Apr. 24, 2012) (on file with author).

making a little money for a living, and that I got paid 10 yuan per day per baby by the orphanage to take care of those babies. My job is to take care of babies for the orphanage. Then the policeman called the Changning orphanage director and asked if my story was true. They also went to Ms. Liang's house to investigate also, to make sure that part of my story was true. After they investigated, and they learned that I didn't kidnap those babies, they let us go.<sup>101</sup>

Continuing, Ms. Chen explained:

The director of the Changning orphanage told the police that the babies we were bringing were for the orphanage. The director told the police man that the orphanage needed those babies because there were so many babies in Liang's house, so he sent us to get the babies. As soon as the police learned the true story, they let us go.<sup>102</sup>

After the Duans' third arrest in 2003, they were ready to quit the trafficking, but the orphanage directors, by this time accustomed to the huge profits flowing into their orphanages as a result of the adoption of the Duan foundlings, aggressively worked to keep the Duans in the game.<sup>103</sup> "See, that wasn't much trouble," the Changning director reassured the Duans after one of their arrests.<sup>104</sup> The director told the Duans, "As soon as the police found out the truth, there was no more trouble. You are fine now."<sup>105</sup> Chen recounted:

The director told me if I saved a person's life it is worth thousands of yuan, and you know that there are people who want those babies. If you were to let those babies die, it would be a pity. Then, after the director talked to us, we decided to keep sending babies to them.<sup>106</sup>

By 2005, the Hunan orphanages grew tired of paying the Duans for the children, and began working to make arrangements directly with the Duan's Wuchuan contact, Liang, in order to remove the need to pay the Duans for what, in the eyes of the orphanages, amounted to simple transportation needs.<sup>107</sup> In November 2005, the assistant director of the Hengyang County made a trip to Wuchuan to form a partnership with Liang, but Liang refused to cooperate with the orphanages. "You are an old customer of mine," Liang reassured the Duans, "So, I will give the babies to you, so I won't give the babies to them."<sup>108</sup>

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *See id.*

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

<sup>105</sup> *Id.*

<sup>106</sup> Interview with Chen Zhi Jin, *supra* note 100.

<sup>107</sup> *See* Deng, *One Family's History*, *supra* note 89; Telephone Interview with Chen Zhi Jin, *supra* note 90.

<sup>108</sup> Interview with Chen Zhi Jin, *supra* note 100.

When the assistant director returned to Hengyang empty-handed, Zhang Jian Hua, the orphanage director, was livid.<sup>109</sup> So, according to Chen:

[T]hey called the police. The assistant director had a family member working for the government office, and they had a relationship with the Qidong Police Bureau. So, the Qidong police . . . set up a sting, waiting for us to come back to pick up babies again. When we went back to Guangdong, we picked up three babies, and the police followed us. The babies were supposed to go to the Hengyang [County] orphanage.<sup>110</sup>

On November 18, 2005, Duan Mei Lin and Duan Zi Lin were arrested as they returned from Guangdong with the three children.<sup>111</sup>

Although the Hengyang City orphanages intended the Duans simply to be removed from the trafficking pipeline to Wuchuan, the Qidong Police had other ideas. After the arrest of the Duans, the police demanded that each orphanage pay 600,000 yuan in order to conduct business as usual.<sup>112</sup> According to attorney Xia Jing:

At a closed meeting [of the Hunan Provincial Civil Affairs Bureau, the] Qidong County Police Bureau request [was discussed, in which they demanded] that the six orphanages in Hengyang City pay the police a fee of 600,000 yuan each, for a total 4.8 million [sic]. First, they arrested several trafficking people [the Duans] who were helping the orphanages collect abandoned babies. Next, they hired a reporter [Li Ling] that was unfamiliar with the actual story to write an article reporting that the orphanages were buying babies.<sup>113</sup>

Li's article was published on November 24, 2005 in Hunan's *SanXiang Metropolis News*.<sup>114</sup> No one from the Qidong Police Bureau expected that the small article would be picked up by other newspapers in China, including the *China Daily*,<sup>115</sup> and then by media outlets outside China.<sup>116</sup> But in the age of the Internet, the article was instantly picked up, and its publication grew exponentially with every passing day.<sup>117</sup> As the planted story was being picked up by various newspapers and websites across

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<sup>109</sup> *Id.*

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

<sup>111</sup> Deng, *One Family's History*, *supra* note 89.

<sup>112</sup> Letter from Xia Jing, *supra* note 86.

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

<sup>114</sup> Li Ling (李凌), *Hengyang County Orphanages Buying Babies for at Least 800 Yuan* (衡阳县福利院竟倒卖婴儿最低800买入), SOHU.COM (Nov. 24, 2005, 11:58), <http://news.sohu.com/20051124/n227585273.shtml>.

<sup>115</sup> *Orphanages Accused*, *supra* note 77.

<sup>116</sup> See, e.g., *China Arrests 16 in Smuggling of Babies*, WASH. POST, Dec. 4, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/12/03/AR2005120301026.html>.

<sup>117</sup> See, e.g., *Welfare Institutions Caught*, *supra* note 83.

China, Qidong police again asked “each of the orphanages to pay the 600,000 yuan as a fee.”<sup>118</sup>

As the story rapidly became an international scandal, Hengyang City Municipal Party Secretary Xu Ming Hua,

[W]as afraid this news would explode and arouse strong reactions. The Party Secretary told them if each of the orphanage employees paid 30,000 yuan bail, they could be released after 30 days. Assistant deputy director general Lei Dong Sheng of the Qidong County Police Bureau was reluctant to accept this offer, since he felt he was about to get much more from the orphanages.<sup>119</sup>

When the directors refused to pay the demands of the Qidong Police, the police arranged for another article to be published on December 2, 2005.<sup>120</sup> While the first story did not mention that the trafficked children had been adopted internationally, this article made it specific: “Some of them were even sold to foreign adopters, said the official, adding that they are now looking into the hometowns and whereabouts of the trafficked infants.”<sup>121</sup>

The articles were designed to increase the pressure on the orphanage directors, and they succeeded. Of the six orphanages implicated, only one director was sentenced to any jail time—Chen Ming, the director of the Hengdong County orphanage, who served only three months.<sup>122</sup> Chen Zhi Jin, the mother of the Duan children (and no relation to Chen Ming), offered her belief regarding this seeming discrepancy:

Let me tell you why they only charged Chen Ming. Chen Ming was sent to jail, along with my family, but the other orphanage directors, they also bought the babies and sent them for adoption. All of those orphanages belonged to the government. Those people all worked for the government, they all are supposed to follow the formalities of the government. Some of the directors said to us all those babies will be sent for outside adoption. They will have foreign parents. But those families will all have legal adoption documents, so what [the orphanages] are doing doesn't break the law. Why Chen Ming was the only one to go to jail is because Chen Ming didn't cooperate with the other orphanage directors, the money he paid was not enough. That is very clear. [Our] family, we are just common people—we had no power and no money, and no one to back us up. Actually, with the police, when they caught us, it was about money too. If the police catch you, it is about money. [Our]family didn't have money

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<sup>118</sup> Letter from Xia Jing, *supra* note 86.

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

<sup>120</sup> *Id.*; *Human Welfare Organs*, *supra* note 78.

<sup>121</sup> *Human Welfare Organs*, *supra* note 78.

<sup>122</sup> See Telephone Interview with Yuan Bai Shun, Attorney for Hengdong County Orphanage Director Chen Ming (Dec. 3, 2012) (on file with author).

to pay the police, but some of the orphanages paid lots of money to them.<sup>123</sup>

The Hengyang City Civil Affairs officers intentionally limited the scope of the Hunan scandal to prevent the Beijing government from getting involved and to prevent further scrutiny of China's international adoption program. Thus, while initial press reports<sup>124</sup> implicated other orphanages in Hunan, Guangdong and Guanxi Provinces that had been purchasing babies from the six Hengyang City orphanages, because they had no direct dealing with the Duan family when the story broke, they were not prosecuted. The narrow focus of the trials prevented Zhuzhou City orphanage, for example, from being pulled into the scandal. Zhuzhou had had direct dealings with the Duan family in 2002,<sup>125</sup> but the orphanage director, Zhang Hong Xia, tried, in an act that would be replayed in 2005, to impose a financial kickback system on the Duans, which they rejected.<sup>126</sup> The director then called her husband, an employee of the Zhuzhou Police Bureau, to arrest the Duans as they made their way to the railway station.<sup>127</sup> Chen Zhi Jin explained that episode:

[Zhang] paid us the money [for the three children], but it seems that since we didn't pay her a "commission", she is a bad person, also her husband worked for the police station, so for him it was important to solve a case to show he was a successful officer. So, the husband tracked us down, took the orphanage money from us, and put us in jail for a month. After that happened, I would never do business with her anymore, no matter if she died or rotted away.<sup>128</sup>

Despite this extralegal behavior, Zhuzhou's director was recognized in 2009 as one of the "Hundred Excellent Orphanage Directors" of China.<sup>129</sup>

In the end, the Hunan trial was an exercise in damage control by Hengyang City official Xu Ming Hua. After the scandal broke due to ill-advised publicity brought on by the newspaper articles placed by the Qidong Police, Xu simply wanted to present a show of getting something done. Xia Jing, a defense attorney involved in the Hunan trials, wrote:

The Beijing officials were not familiar with what really was happening, so they sent a document telling the Hengyang City Municipal Party Secretary to not obstruct the Qidong Police Bureau from investigating the case. The Hengyang City Municipal Party Secretary Xu

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<sup>123</sup> Telephone Interview with Chen Zhi Jin, *supra* note 90.

<sup>124</sup> *E.g.*, *Orphanages Accused*, *supra* note 77.

<sup>125</sup> *One Family's History*, *supra* note 89.

<sup>126</sup> Interview with Chen Zhi Jin, *supra* note 100.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Ling Qing (凌晴), *Everything We Do Is for Orphans' Happiness* (一切为了孤残儿童的幸福快乐), ZHUZHOU DAILY (Mar. 31, 2012), [http://zzrb.zhuzhouwang.com/html/2012-05/31/content\\_67789.htm?div=-1](http://zzrb.zhuzhouwang.com/html/2012-05/31/content_67789.htm?div=-1).

Ming Hua wanted to close the case quickly, so he arranged for the traffickers to be convicted and sentenced to jail for fifteen years.<sup>130</sup>

Yuan Bai Shun, defense attorney for Chen Ming, explained, “The Hunan scandal was not about the orphanage buying babies. It was more about how Chinese government officials can turn the law upside down.”<sup>131</sup>

The trial concluded in February 2006 and, with the Duan family sentenced to fifteen years in prison, all that was left for the Chinese government to do was quell fears of the international adoption community as to the integrity of China’s adoption program.<sup>132</sup> A March 2006 *Washington Post* article entitled “Stealing Babies for Adoption” exacerbated this need.<sup>133</sup> The article attempted to tie the recently concluded Hunan scandal with China’s epidemic in trafficking—including kidnapping—of children for adoption.<sup>134</sup> “[S]ources familiar with the investigation said many children were abducted. The court ruled that the director of the Hengdong County orphanage ‘was cognizant of the fact that he had purchased babies that had been abducted,’ according to the verdict, which was read to the *Washington Post*.”<sup>135</sup> The article created panic in the Chinese adoption community for two reasons: (1) the article increased the number of children involved in the Hunan scandal to “as many as 1,000 babies,” and (2) the article led adoptive families to wonder if their children had been kidnapped in order to be adopted.<sup>136</sup>

The Chinese government responded to the *Washington Post* article by issuing a tightly worded pronouncement to each government involved in their international adoption program: “The CCAA [China Center for Adoption Affairs]<sup>137</sup> informed [the United States] that it had concluded its investigation into all of the children from Hengyang adopted by Americans and found that all of these children were legitimately or-

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<sup>130</sup> Letter from Xia Jing, *supra* note 86.

<sup>131</sup> Email from Yuan Bai Shun, Def. Att’y for Chen Ming, (Dec. 4, 2012, 6:56 PM) (on file with author).

<sup>132</sup> See generally Peter S. Goodman, *Stealing Babies for Adoption*, WASH. POST, March 12, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/11/AR2006031100942.html> (discussing the adoption scandal and the ensuing international scrutiny).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> China Center for Adoption Affairs (CCAA) became China Center for Children’s Welfare and Adoption (CCCWA) in Mar. 2011. See Notice: *China Single Female Adoption Notice*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP’T OF STATE (Apr. 12, 2011), [http://adoption.state.gov/country\\_information/country\\_specific\\_alerts\\_notices.php?alert\\_notice\\_type=notices&alert\\_notice\\_file=china\\_1](http://adoption.state.gov/country_information/country_specific_alerts_notices.php?alert_notice_type=notices&alert_notice_file=china_1). Most, but not all, references to the organization in this article retain the former name.

phaned or abandoned and that there are no biological parents searching for them . . . .<sup>138</sup>

As indicated by an unnamed U.S. State Department official, “The Chinese government has told Washington that an investigation found no children involved in a recent baby-trafficking case were adopted by American families . . . .”<sup>139</sup> Maura Harty, Assistant Secretary of State for Consular Affairs, echoed that finding in a letter to the *Washington Post*:

The State Department has sought to determine whether any Chinese child adopted by U.S. parents had been bought or sold. We have not confirmed any such case to date. Meanwhile, the CCAA says it has concluded its investigation into the origins of children from Hengyang adopted by Americans and found that all were legitimately orphaned or abandoned and that no biological parents were searching for them.<sup>140</sup>

Chinese government officials led Harty, and adoptive parents generally, to understand that no children trafficked by the Duan family had been internationally adopted.<sup>141</sup> However, court documents presented in the Hunan trials show such a conclusion was unwarranted.<sup>142</sup> Chen Ming, Hengdong orphanage director, indicated that:

There were 85 babies involved in our case. Our orphanage [Hengdong] had bought eighteen of those babies. There were five other orphanages that bought the other sixty-seven babies. Hengnan County orphanage bought 22 babies; Hengyang County orphanage bought 11 babies; Changning orphanage bought 7 babies; Qidong county orphanage bought 15 babies; and Hengshan County orphanage bought 12 babies.<sup>143</sup>

Court-submitted orphanage records, however, provide a much more detailed accounting of the number of children brought to the six orphanages and undermine the conventional understanding of the Chinese government’s above statement. Court documents show that the Changning orphanage, for example, purchased 274 children from the Duan family between December 2001 and November 2005.<sup>144</sup> Nearly all of those children were adopted internationally and represented 90% of all interna-

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<sup>138</sup> *No Babies in Trafficking Case Sent to US: China*, CHINA DAILY (Mar. 17, 2006, 09:01), [http://www.chinadaily.com.cn/english/doc/2006-03/17/content\\_542254.htm](http://www.chinadaily.com.cn/english/doc/2006-03/17/content_542254.htm) (quoting U.S. official regarding report from the Chinese government).

<sup>139</sup> *Id.*

<sup>140</sup> Maura Harty, Letter to the Editor, *Vigilance for China’s Orphaned and Abandoned*, WASH. POST (Mar. 27, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/26/AR2006032600902.html>.

<sup>141</sup> *Id.*

<sup>142</sup> See Response of Chen Ming to His Conviction, Qidong Police Records, (May 16, 2006) (on file with author).

<sup>143</sup> *Id.*

<sup>144</sup> Court Records from Duan Family Trial (on file with author).

tional adoptions from the orphanage in those years.<sup>145</sup> Chen Ming's orphanage, Hengdong County, purchased 356 children from the Duans between May 2002 and November 2005, and almost all of those children were internationally adopted.<sup>146</sup> These children represented 92% of all of Hengdong County's adoptions in that period.<sup>147</sup>

Detailed logs from two other orphanages show a similar scene. Hengshan County, officially prosecuted for purchasing twelve children, had in fact purchased 132 children between January and November 2005 alone, representing 85% of all children submitted for international adoption by the orphanage in that period.<sup>148</sup> The Qidong County orphanage, officially charged with purchasing fifteen children from the Duans, in reality purchased 122 children in the period between August and November 2005. These children represented more than 90% of all adoptions from the Qidong orphanage in that period.<sup>149</sup>

The Changning orphanage trafficking logs from 2002 through 2004 also detail into which country each child was adopted. Between January 2002 and October 2004, 191 children were brought into the Changning orphanage by the Duans.<sup>150</sup> Orphanage logs show that these trafficked children were adopted to the following countries: Canada (32), Ireland (6), Netherlands (9), Norway (4), Spain (25), Sweden (4), and United States (111).<sup>151</sup> Whether the Chinese government intentionally sought to mislead the United States and other national governments about the origin of the children sent abroad by the six Hunan orphanages is unknown. Taken at face value, the statement by Chinese officials simply indicates that none of the children were kidnapped (in contrast to an as-

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Court records submitted by Changning, Hengdong, Hengshan, and Qidong orphanages (on file with author) (concerning Duan children). Orphanage records contain the Chinese name assigned to each child after they arrived in the orphanage. The names can be used to match them to the finding ads published by the orphanages when the child is submitted for international adoption. While the court records always contain the Chinese name for each child, they often contain other information, such as country of destination (Changning) and amount paid (Hengdong, Hengshan, Qidong). No records detailing children sold by the Duans to the Hengnan and Hengyang County orphanages are available, nor are records for the Hengshan orphanage prior to January 2005. Records from Qidong prior to August 2005 are also unavailable. Records are also blind to children sold by the six orphanages to others in the area and in other Provinces, including, but not limited to, Changsha #1, Chenzhou, Loudi, Zhuzhou in Hunan Province, and Qujiang and Fogang orphanages in Guangdong Province. It can be assumed there were other orphanages involved, but at this time records or witnesses are lacking to establish those connections.

<sup>150</sup> Changning Trafficking Logs, Hunan trial exhibits (on file with author).

<sup>151</sup> *Id.*

sersion reported in Goodman's *Washington Post* article).<sup>152</sup> The statement did *not* say that none of the children had been trafficked.

As the CCAA, the administrative office of the Beijing government that oversees international adoptions from China, sought to placate foreign governments about the integrity of the Chinese adoption program, the agency also needed to address the concerns of orphanage directors regarding the prosecution of other orphanage directors for engaging in activities many were doing themselves. In a general meeting of orphanage directors held February 16–17, 2006, in Tianjin, the CCAA spent time spelling out what the “official lines” were as far as baby buying was concerned.<sup>153</sup> According to one orphanage director present at the meeting, the “CCAA gave us an exact figure we can pay: 500–1,000 yuan. They said if we crossed that line and got caught, we must deal with it ourselves. The CCAA gave us a document saying we are allowed to pay 500–1,000 yuan for babies.”<sup>154</sup> However, the CCAA emphasized that they needed as many children as possible and not to get caught paying more than 1,000 yuan or the directors would be on their own.<sup>155</sup>

The orphanages involved in the Hunan scandal differ substantially in their gender ratios, finding location patterns, and finding ages compared to orphanages seen in Jiangsu Province. Whereas birth family data from Johnson et al. and submission data from Jiangsu Province show that, in a random abandonment situation, between 10% and 36% of the foundlings would be boys, nearly all of the children submitted for adoption in the Hunan scandal orphanages were girls.<sup>156</sup> Taken collectively, the six Hunan scandal orphanages saw gender ratios between 98.2% and 100% females between 2000 and 2005.<sup>157</sup>

One sees additional variations in the finding patterns of the Hunan scandal orphanages when comparing them to the random patterns seen in Jiangsu and Johnson et al.'s birth family survey. Johnson et al.'s interviews with birth families showed that 20% had selected a private resi-

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<sup>152</sup> Goodman, *supra* note 132 (“They were purchasing infants from traffickers, then selling them to other orphanages for foreign adoption, according to the prosecution source. Traffickers based in Guangdong were abducting and buying infants, then carrying them to Hengyang by bus and train, the lawyer said. They were targeting the children of migrant workers, figuring that such families were less likely to be taken seriously by the police.”).

<sup>153</sup> Telephone Interview with Orphanage Director of a Large Internationally Adopting Orphanage in Jiangxi Province (speaking on condition of anonymity), (May 12, 2009).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> Stuy, Jiangsu spreadsheet, *supra* note 51.

<sup>157</sup> *Id.* The gender of each child submitted for international adoption by an orphanage is published in the child's finding ad. Changning submitted 409 children between 2000 and 2005, five of whom were males; thus, Changning's gender ratio was 99.8% female (404/409), Hengdong's 99.7% (378/379), Hengnan's 98.2% (107/109), Hengshan's 99.2% (501/505), Hengyang County's 100% (90/90), and Qidong's 100% (275/275). *Id.*

dence for their abandonment location (a quality seen in Jiangsu Province generally).<sup>158</sup> Additionally, in Jiangsu Province, only about 2% of random findings were reported at government locations, and collectively, less than 14% were found at the orphanage gate itself, the most common finding location in other studies.<sup>159</sup> When looking at this same information in the Hunan scandal orphanages, one sees a sharp difference in patterns. In Changning orphanage, for example, 29% of the children submitted were reportedly found at the orphanage and the Civil Affairs Bureau, and the rest of the findings took place at a limited number of locations around the city.<sup>160</sup> Hengshan saw a similar pattern, with 34% of findings taking place at the orphanage or the Civil Affairs Bureau.<sup>161</sup> All six of the Hunan scandal orphanages saw such finding-location clustering.<sup>162</sup> During a November 21, 2005, interrogation, Qidong police asked Luo Guan Zhong, accountant of the Hengdong County orphanage, what actions the orphanage took to create the adoption paperwork for the children brought from outside Changning to the orphanage. Luo explained that:

After we brought the babies into the orphanage, the first thing we did was go to the local police station and show them the finding certificate that we got from the government office. We went to a local police station and asked them to make a fake finding certificate for us. Then we would bring this finding certificate to have the children registered (*hukou*). Before we got the *hukou* for those babies, we still needed to go to the *Hengyang* and *Hunan Daily*, those two newspapers, to publish the children's finding ad, explaining on what date and where the babies were abandoned. But all that information was fake; we made it up.<sup>163</sup>

The laundering process Luo referred to is evident in the finding ads of the children adopted from the six orphanages named in the Hunan scandal. For example, the finding information of the eighteen children identified in the prosecution of the Hengdong County orphanage who had been delivered by the Duan family in October and November 2005 had been altered in the finding ads to make the children eligible for adoption. The pickup dates and locations listed in the orphanage registration form (see Table 1, columns 1 and 3) were altered in the official adoption paperwork in order to disguise the fact that the children arrived in batches from outside the area. Additionally, because the children were not actually found abandoned, finding locations had to be fabricated in order

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<sup>158</sup> JOHNSON, *supra* note 12, at 90; Stuy, Jiangsu spreadsheet, *supra* note 51.

<sup>159</sup> Stuy, Jiangsu spreadsheet, *supra* note 51.

<sup>160</sup> Stuy, Hunan spreadsheet, *supra* note 42.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> Interview by Qidong Police with Luo Guan Zhong, Accountant, Hengdong Cnty. Orphanage (Nov. 21, 2005) (on file with author).

for the CCAA to accept their files for international adoption. The sixteen fabricated finding locations, shown in column 6 of Table 1, were also utilized for an additional one hundred fifty-five children adopted from Hengdong County, meaning that 44% of all children adopted from that orphanage were found at the same sixteen locations.<sup>164</sup> The remaining 56% of children were found at similarly clustered finding locations.<sup>165</sup>

**Table 1**<sup>166</sup>

Comparison of Hengdong County Orphanage Records and Official Finding Ads

Pickup Date	Amount Paid	Pickup Location <sup>a</sup>	Payee	Official Finding Date	Official Finding Location
10/2/05	¥4,200	HTSPL	Duan Mei Lin	10/2/05	State Land Bureau
10/2/05	¥4,200	HTSPL	Duan Mei Lin	10/4/05	Audit Bureau
10/4/05	¥4,200	HTSPL	Duan Mei Lin	10/5/05	Civil Affairs Bureau
10/4/05	¥4,200	HTSPL	Duan Mei Lin	10/7/05	South Street Region
10/7/05	¥4,200	HTSPL	Duan Mei Lin	10/8/05	Health Association
10/7/05	¥4,200	HTSPL	Duan Mei Lin	10/9/05	Orphanage Gate
10/7/05	¥4,200	HTSPL	Duan Mei Lin	10/11/05	Xinhua Book Store
10/30/05	¥4,300	HBS	Duan Mei Lin	10/30/05	Teacher Study's School
10/30/05	¥4,300	HBS	Duan Mei Lin	11/1/05	Family Planning Bureau
10/30/05	¥4,300	HBS	Duan Mei Lin	11/2/05	Culture Bureau
10/30/05	¥4,300	HBS	Duan Mei Lin	11/4/05	Personnel Bureau
10/30/05	¥4,300	HBS	Duan Mei Lin	11/4/05	People's Hospital
11/7/05	¥4,300	HTSPL	Duan Mei Lin	11/6/05	Traffic Bureau
11/7/05	¥4,300	HTSPL	Duan Mei Lin	11/8/05	Env. Protection Bureau
11/7/05	¥4,300	HTSPL	Duan Mei Lin	11/9/05	Credit Bureau
11/7/05	¥4,300	HTSPL	Duan Mei Lin	11/9/05	Planning Bureau
11/16/05	¥4,300	HTSPH	Wu Dai Chao	11/17/05	Culture Bureau
11/16/05	¥4,300	HTSPH	Wu Dai Chao	11/18/05	Xinhua Book Store

<sup>164</sup> See Stuy, Hunan spreadsheet, *supra* note 42.

<sup>165</sup> *Id.*

<sup>166</sup> This table was compiled by the author from various sources. The data in columns 1–4 was compiled from Hengdong Cnty. Orphanage Baby Buying Information Registration Form, Qidong Police Records at 1–2 (on file with author). The data in columns 5 and 6 (shaded in grey) were compiled from Stuy, Hunan spreadsheet, *supra* note 42.

<sup>a</sup>HTSPL – Hengyang Train Station Parking Lot; HBS – Hengyang Bus Station; HTSPH – Hengyang Train Station Post Hotel.

A look at the finding ages of the children reveals a difference between the random ages of the Johnson et al. and Jiangsu Province surveys and the six Hunan scandal orphanages. Johnson et al.'s interviews with their birth parent sample shows that nearly two-thirds of the families waited more than two months before abandoning, and more than a quarter of the Jiangsu Province foundlings were more than two months old when found.<sup>167</sup> Contrast those percentages with the six Hunan orphanages, where only 11% of the children were listed as being more than two months old when found.<sup>168</sup> Thus, the six Hengyang City orphanages brought in substantially younger female children found at comparatively few finding locations.

The orphanage baby-buying programs were not limited to the Hengyang City orphanages, nor did they end with the trial. In 2008, *ABC World News* interviewed representatives from two orphanages, Changde City in Hunan Province, and Fuzhou City in neighboring Jiangxi Province, the largest international-adopting orphanage in China.<sup>169</sup> Both orphanages openly admitted that they still paid money for adoptable children.<sup>170</sup>

The Poyang orphanage in Jiangxi Province provides another example. Before the orphanage opened in 2007, children found in Poyang County were sent to the Jianxin orphanage for adoption.<sup>171</sup> Between 2002 and 2005, an average of 40 girls were found and adopted from the Poyang area each year.<sup>172</sup> No boys were submitted.<sup>173</sup> In 2007, when the newly opened Poyang orphanage began participating in the international adoption program, 120 children were submitted, and on average more

<sup>167</sup> See Johnson et al., *supra* note 31, at 477.

<sup>168</sup> Stuy, Hunan spreadsheet, *supra* note 42. The percentage of foundlings older than 60 days during this period are Changning 7% (27/382), Hengdong 7.1% (27/379), Hengnan 2.7% (3/109), Hengyang County 0% (0/100), and Qidong 18.8% (53/281). *Id.*

<sup>169</sup> Rao Jian Ming (饶剑明) *Social Administration Memo* (社会事务管理), THE PEOPLE'S GOV. OF FUZHOU (Apr. 8, 2009), [http://xxgk.jxfz.gov.cn/lc/bmgkxx/mzj/gzdt/gggs/200908/t20090820\\_642121.htm](http://xxgk.jxfz.gov.cn/lc/bmgkxx/mzj/gzdt/gggs/200908/t20090820_642121.htm) ("Recently, many of the orphanages in Jiangxi Province, when they receive socially abandoned babies, most of them pay about 1,000-2,000 yuan, with some paying almost 4,000 yuan. The price they pay is way above the price that the Provincial Civil Affairs rules allow. When they pay people who turn in a baby such a high price, that makes it easy for people to break the law, causing a bad social reaction to a certain extent."); Beth Loyd, *China's Lost Children*, ABC WORLD NEWS (May 12, 2008), <http://abcnews.go.com/International/story?id=4774224&page=1#.UMH642fp7lc>.

<sup>170</sup> Loyd, *supra* note 169.

<sup>171</sup> Stuy, Jiangsu spreadsheet, *supra* note 51.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

than 100 children were adopted annually from that facility over the next five years.<sup>174</sup>

The submission rate was not the only change that occurred when Poyang joined the international adoption program. The average finding age of the 162 Poyang children submitted through Jianxin was only 48% newborns (less than a week old at finding).<sup>175</sup> However, when Poyang submitted their children directly beginning in 2007, the average finding age plummeted, and nearly 90% of all foundlings from Poyang were newborns.<sup>176</sup> This makes Poyang children some of the youngest at finding of any orphanage in Jiangxi Province.

Peng Shi Hua, director of the Aixin Old Folk's Home, spoke candidly about how he and his wife came to be the finders of so many children adopted through the Poyang orphanage. He stated that he receives calls from area doctors "[he has] a relationship with" to come to the hospital to pick up a newborn baby.<sup>177</sup> The director and his wife then feed and care for the child until the infant is referred to a foreign family for adoption.<sup>178</sup> The couple indicated that once the adoption is complete, the orphanage reimburses them more than 10,000 yuan for their expenses, including payments to the originating doctor of about 3,500 yuan.<sup>179</sup> In this way, the Poyang orphanage is able to act as a facilitator for the children, receiving a 25,000-yuan profit for simply submitting the child for international adoption. When asked if the birth families realized their children were going to be adopted overseas, the couple admitted that the birth parents are lied to, being told that a local family will adopt their child.<sup>180</sup> The couple indicated that birth families would never turn over their children if they knew the children would be adopted overseas.<sup>181</sup>

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<sup>174</sup> *Id.*

<sup>175</sup> RESEARCH-CHINA.ORG, FINDING AD DATA FOR POYANG COUNTY ORPHANAGE, JIANGXI PROVINCE: CHILDREN SUBMITTED FOR INT'L ADOPTION 2002-2011 1-22 (Brian H. Stuy ed., 2013); Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Jiangxi Province from July, 16, 1999 through Dec. 31, 2012 (on file with author) [hereinafter Jiangxi spreadsheet].

<sup>176</sup> RESEARCH-CHINA.ORG, *supra* note 175; Stuy, Jiangxi spreadsheet, *supra* note 175.

<sup>177</sup> Interview with Peng Shiu Hua, in Poyang County, Jiangxi Province (Apr. 18, 2011) (on file with author).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* (corroborating my research, in which nearly every birth family, finder, or other participant in baby-buying programs confirmed that few birth families realized their relinquished children would be adopted internationally, suggesting recruiting techniques almost always involve telling birth families that their child is being adopted by a rich local family); see also Chris Luo, *Doctor Sold My Baby to Smuggling Ring, Says Shaanxi Mother*, SOUTH CHINA MORNING POST, (Aug. 6, 2003, 10:30 a.m.), <http://www.scmp.com/news/china-insider/article/1293880/maternity-doctor-suspected-baby-smuggling-investigation> (describing mother giving up child for adoption when doctor intentionally misinformed the mother that the child was born with sicknesses).

Foster families in Huanggang City, Hubei Province, report a similar situation in that orphanage. In that area, the orphanage requires foster families to locate adoptable children, and then the orphanage pays the families to care for the children until adoption.<sup>182</sup> At that point, the orphanage pays, in a lump sum, approximately 7,000 yuan to the foster family.<sup>183</sup> If the foster family is unable to locate adoptable children, the family receives no employment from the orphanage.<sup>184</sup>

The finding characteristics of the Poyang and Huanggang orphanages are consistent with those of the known trafficking orphanages in the Hunan scandal. In Poyang, 84% of the children are found under a week old, 98.6% of the foundlings are female, and 52% are found at the Orphanage Gate or the Aixin Old Folk's Home.<sup>185</sup> In Huanggang, 98% of the foundlings are female, and 52% of children are found in the area surrounding the orphanage gate.<sup>186</sup>

The criteria for predicting a baby-buying program, characteristics seen in known trafficking orphanages, include an orphanage having more than 70% of children found as newborns (less than a week old), more than 93% female, and more than 25% reportedly found at just two finding locations. All of the orphanages that Chinese officials have investigated with those criteria have been found to offer significant sums of money as rewards for turning in a child to the orphanage.<sup>187</sup> The payment of finder's fees and the required laundering of the resultant children appears from the submission data to be the dominant means by which children enter China's orphanages.<sup>188</sup>

My research in China's orphanages, coupled with the finding-ad data obtained on each orphanage, shows that baby-buying programs are extremely common. In addition to the Hunan scandal orphanages, baby-buying programs have been confirmed in Chongqing Municipality,

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Such a system is, of course, vulnerable to corruption. One such example of potential abuse was seen in Shaanxi Province, where a hospital doctor, Zhang Su Xia, convinced birth parents that their child had either died or was terminally ill in order to get them to relinquish their parental rights. Luo, *supra*. Then, without notifying the birth families, Zhang sold the infants to area traffickers. *Id.* Although this story does not explicitly mention orphanages as the intended destination, the offering of large finder fees opens the door to such abuses.

<sup>182</sup> Interviews with Huanggang Foster Families, in Huanggang City, Hubei Province (Apr. 16, 2012) (on file with author).

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> Stuy, Jiangxi spreadsheet, *supra* note 175; RESEARCH-CHINA.ORG, *supra* note 175.

<sup>186</sup> RESEARCH-CHINA.ORG, *supra* note 175; Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Huanggang City, Hubei Province from May 26, 2000 through Nov. 8, 2009 (on file with author) [hereinafter Stuy, Huanggang spreadsheet].

<sup>187</sup> See, e.g., Goodman, *supra* note 132.

<sup>188</sup> These criteria establish a very conservative judging tool, and there are, no doubt, many orphanages involved in baby buying that more creatively mask their demographics to escape detection.

Guangdong, Hunan, and Jiangxi Provinces.<sup>189</sup> Collectively, orphanages that either have confirmed baby-buying programs as of 2012, or currently display characteristics that make baby buying nearly certain, provide 63% of all the children from Chongqing,<sup>190</sup> 90% of those from Jiangxi,<sup>191</sup> 80% of those from Hunan,<sup>192</sup> 63% from Guangxi,<sup>193</sup> and 57% from Guangdong.<sup>194</sup> These five Provinces have historically provided the bulk of the children adopted from China.<sup>195</sup> As one Jiangxi Province orphanage director flatly stated, “If you don’t pay any money, how would you find any babies?”<sup>196</sup>

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<sup>189</sup> See JOHNSON, *supra* note 12, at 90; Rao, *supra* note 169; *Guixi Orphanage Implicated in Re-Selling of Babies*, SHENZHEN CONSUMER (Jan. 25, 2013), <http://www.szxf.net/Article/wangyou/201301/139262.html>, translated in C. Custer, *Translation: Guixi Orphanage Implicated in Re-Selling of Babies*, CHINAGEEKS (Feb. 13, 2013), <http://chinageeks.org/2013/02/translation-guixi-orphanage-implicated-in-re-selling-of-babies/>.

<sup>190</sup> Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Chongqing Province from Jan. 28, 2002 through May 4, 2012 (on file with author) [hereinafter Stuy, Chongqing spreadsheet]. The Dianjiang, Fuling, Jiangjin, Qianjiang, Xiushan, and Youyang orphanages supplied 60.4% of the over 6,600 children adopted internationally from Chongqing Municipality between 2002 and 2011. *Id.* Each of these six orphanages display finding characteristics of gender, finding age, and finding location clustering consistent with known baby-buying orphanages. *Id.*

<sup>191</sup> Stuy, Jiangxi spreadsheet, *supra* note 175. The Chongren, Duchang, Fengcheng, Fengxin, Fenyi, Fuzhou, Ganzhou, Gao'An, Guangchang, Guixi, Hengfeng, Jianxin, Jingdezhen, Jiujiang, Nancheng, Nanfeng, Ningdu, Poyang, Ruijin, Shanggao, Shangrao, Shicheng, Suichuan, Taihe, Tonggu, Wanzai, Xiajiang, Xinfeng, Xinyu, Xiushui, Yichun, Yifeng, Yihuang, Yingtan, Yiyang, Yongfeng, Yongxiu, Yugan, Yujiang, and Zhangshu orphanages supplied 90.7% of the approximately 20,600 children adopted internationally from Jiangxi Province between 2002 and 2011. *Id.*

<sup>192</sup> Stuy, Hunan spreadsheet, *supra* note 42. The Changde, Changning, Changsha #1, Chenzhou, Hengdong, Hengnan, Hengshan, Hengyang, Huaihua, Loudi, Pingjiang, Qidong, Xiangtan, Xiangyin, Xinhua, Yiyang, Yuanjiang, Yuanling, Yueyang County, Zhijiang, and Zhuzhou orphanages supplied 79.3% of the approximately 13,600 children adopted internationally from Hunan Province between 2002 and 2011. *Id.*

<sup>193</sup> Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Guangxi Province from Dec. 2, 1998 through March 23, 2012 (on file with author) [hereinafter Stuy, Guangxi spreadsheet]. The Beihai, Beiliu, Guigang, Guilin, Guiping, Hepu, Laibin, Pingnan, Qinzhou, Wuzhou, Xingye, and Yulin orphanages supplied 63.3% of the approximately 9,200 children adopted internationally from Guangxi Province between 2002 and 2011. *Id.*

<sup>194</sup> Stuy, Guangdong spreadsheet, *supra* note 41. The Gaozhou, Huazhou, Jiangcheng, LeChang, Leizhou, Lianjiang, Maonan, Qujiang, Shaoguan, Suixi, Wuchuan, Yangchun, Yangdong, Yangjiang, Yangxi, and Zhanjiang orphanages supplied 57% of the approximately 19,300 children adopted internationally from Guangdong Province between 2002 and 2011. *Id.*

<sup>195</sup> *2007 Orphanage Submissions*, RESEARCH-CHINA.ORG (Feb. 01, 2008), <http://research-china.blogspot.com/2008/02/2007-orphanage-submissions.html>.

<sup>196</sup> Interview with Orphanage Director, *supra* note 153.

### C. Family-Confiscations

“I’m going to sell the baby for foreign adoption. I can get a lot of money for her,” [the family-planning official] told the sobbing mother as he drove her with the baby to an orphanage in Zhenyuan, a nearby city in the southern province of Guizhou. In return, he promised that the family wouldn’t have to pay fines for violating China’s one-child policy.<sup>197</sup>

Johnson et al. contend that child abandonment in China is largely a result of family-planning restrictions and that abandonments increase when the government seeks “to implement birth-planning policies more strictly.”<sup>198</sup> Most adoptive parents of Chinese children understand that the overwhelming number of healthy young girls coming into China’s orphanages are a result of China’s one-child policy, but most adoptive parents believe the children are given up willingly, not by brute force.<sup>199</sup> Few understand the aggressive tactics often employed by local family-planning officials to forcibly take children from their birth families simply to send them to the area orphanage for international adoption, often receiving financial kickbacks from the orphanages for doing so.<sup>200</sup>

The knock came to Wei Mu Xiang’s home at three in the morning, rousing her from sleep. At her door were Tang Gui Zhen and seven other members of the Guangchang, Jiangxi, Family Planning Bureau. After demanding to see the family’s paperwork, the officials seized the five-week-old baby girl being cared for by Ms. Wei for her son, and took her to the nearby Guangchang orphanage.<sup>201</sup>

Family-planning confiscations offer orphanages another avenue for obtaining children—a means that satisfies the demands put on local family-planning officials to limit local births and raise revenue for the area orphanage. Sometimes such confiscations involve hidden over-quota children, but just as often they involve children who were simply not formally registered with the Residence Committee offices in the family’s town or village.<sup>202</sup> In the case of the Guangchang confiscation described above, it appears that the girl was a fully registered child.<sup>203</sup>

<sup>197</sup> Barbara Demick, *Some Chinese Parents Say Their Babies Were Stolen for Adoption*, L.A. TIMES (Sept. 20, 2009), <http://articles.latimes.com/2009/sep/20/world/fg-china-adopt20>.

<sup>198</sup> Johnson et al., *supra* note 31, at 469, updated and reprinted in JOHNSON, *supra* note 12, at 76.

<sup>199</sup> Shangguan Jiaoming, *In Hunan, Family Planning Turns to Plunder*, CAIXIN ONLINE (May 10, 2011), <http://english.caixin.com/2011-05-10/100257756.html>.

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

<sup>201</sup> Wu Zhao Lei (吴兆雷), *Guangchang Couple Lose Their Daughter for No Reason* (广昌一对夫妻莫名痛失女儿), NEW LEGAL R. (Nov. 13, 2006, 01:42), <http://jxfzb.jxnews.com.cn/system/2006/11/13/002372282.shtml>.

<sup>202</sup> See Demick, *supra* note 197.

<sup>203</sup> Wu, *supra* note 201.

September 7, 2006, in the morning, Xiushui [Jiangxi] family-planning people walked into someone's house and took a fifty-day-old baby away from the guardian without saying anything. When the guardians found that the baby was missing, they began looking hard for her. Eighteen hours later they found out that the baby had been turned into the [Xiushui County] orphanage.<sup>204</sup>

In neighboring Hunan Province, a Dutch documentary produced by *Netwerk TV* showed the actions of the Gaoping family-planning officials confiscating thirteen village children and turning them into the Shaoyang orphanage for international adoption.<sup>205</sup> The experience of Yang Li Bing, the father of one of the confiscated children, deserves deeper attention. Yang Ling was the only daughter of Yang Li Bing and his common-law wife, Cao Zhi Mei.<sup>206</sup> On April 29, 2005, officials from the village family-planning office took Yang's child from his parents while he and his wife were out of town working.<sup>207</sup> Yang appealed to family-planning officials for the return of his daughter.<sup>208</sup> He was told that he could have his daughter back if he paid 8,000 yuan, more than two years average income in that area.<sup>209</sup> A few days later, that ransom was increased to 20,000 yuan.<sup>210</sup> Unable to raise that amount of money so quickly, Yang lamented, "We are poor people and my relatives were not able to collect so much money in several days."<sup>211</sup> When he was unable to come up with the required money, a family-planning official notified Yang that his daughter had been brought to the Shaoyang orphanage and that "even if [he] could offer 1 million yuan," he could not get his daughter back.<sup>212</sup> He was simply told to "give up hope."<sup>213</sup> In desperation, Yang and others in the area whose children had been confiscated filed a petition against the family-planning officials involved, seeking retribution for their children who "were violently taken" from their families.<sup>214</sup>

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<sup>204</sup> *How Could They Enforce the Law Like That?* ( 怎能如此执法), XIUSHUI Gov. FEEDBACK WEB SITE (Sept. 8, 2006) (archived 10/15/09, 2:45 PM), <http://www.xiushui.gov.cn/sys/Article/ArticleShow.asp?ArticleID=348> (last visited Sept. 15, 2009).

<sup>205</sup> *Adopties uit China* (Netwerk television broadcast Mar. 11, 2008). This documentary instigates parliamentary hearings in the Dutch government the following year. The hearings will be discussed more fully below.

<sup>206</sup> *Chinese Government Stealing Children, Demanding Ransom for Return*, ASIANEWS.IT (Mar. 21, 2006), <http://www.asianews.it/news-en/Chinese-government-stealing-children,-demanding-ransom-for-return-5696.html>.

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

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

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

<sup>212</sup> *Chinese Government Stealing Children*, *supra* note 206.

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

The timeline of Yang Ling's confiscation and the attempts by Yang Li Bing and his wife to retrieve their daughter show that, while orphanage officials were negotiating with Yang for the return of his daughter, they were simultaneously preparing paperwork for her international adoption. While the file was in its preparatory stages, family-planning officials indicated it was possible for Yang Li Bing to retrieve his daughter if he simply paid the required fee, but on June 11, 2005, the child's finding ad was published in the *Hunan Daily* along with those of twelve other children in the Shaoyang orphanage.<sup>215</sup> "In sixty days after publication of this ad," the text below Yang Ling's photo stated, "if no one comes to the Civil Affairs office or the orphanage to pick up these babies, we will consider them abandoned babies and legal to do whatever they want with the babies."<sup>216</sup> With the publication of that simple ad, negotiations ended, and Yang Li Bing was told his daughter was gone and could not be retrieved even if he "could offer one million yuan."<sup>217</sup>

Family-planning confiscations have been documented in widely scattered provinces, including the cases in Hunan, Guizhou, and Jiangxi profiled above, as well as Fujian<sup>218</sup> and Jiangsu<sup>219</sup> Provinces. While not as common as baby-buying programs,<sup>220</sup> the confiscations nevertheless result in a not-inconsequential number of children entering China's international adoption program. Like the baby-buying programs outlined above, the demographic fingerprint of family-planning confiscations can also be detected in the orphanage finding ads.

All of the stories that have been publicized of family-planning officials forcibly taking children from their birth families point to one common characteristic these children share: they usually arrive in the orphanage not as newborns, but as infants a few months of age or as toddlers several years old. Thus, the pool of family-planning takings for which I have documentation is by and large much older than the average child entering the orphanage through an incentive program. One can see

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<sup>215</sup> Finding Ad for Yang Ling, HUNAN DAILY (湖南日报), June 11, 2005, at A-2.

<sup>216</sup> *Id.*

<sup>217</sup> *Chinese Government Stealing Children*, *supra* note 206.

<sup>218</sup> Jia Ming (贾明), *Jinjiang 18 Baby Boys Were Forcibly Taken By the Government* (晋江18名男婴被政府强行"调剂"), SOHU.COM (Feb. 9, 2001, 13:22), <http://news.sohu.com/86/45/news144124586.shtml>.

<sup>219</sup> *Looking for Girl Born in Dec. 1994, Turned into Orphanage in Aug. 1995 from Dongqing Town, Changzhou* (寻找1994年12月出生1995年8月从常州东青镇送养到福利院的女孩), BAOBEIHUIJIA.COM (Aug. 26, 2011, 13:46:44), <http://bbs.baobeihuijia.com/forum.php?mod=viewthread&tid=75782>; see *Chinese Parents Speak out about Their Lost Daughter*, RADIO FREE ASIA (June 19, 2013), <http://www.rfa.org/english/news/china/daughter-06192013144727.html>.

<sup>220</sup> The Chinese government is diligent in removing blogs and forum postings describing family-planning activity in order to maintain social order. Thus, family-planning confiscation accounts on the Internet are extremely hard to find and usually short-lived even when found.

this in the Shaoyang orphanage confiscations, where the twelve documented children taken from Gaoping Town were all between two months and a year old,<sup>221</sup> while the average foundling in the Shaoyang orphanage, where the children were brought, averaged less than 15 days old.<sup>222</sup> After the Shaoyang family-planning story was publicized in the Chinese press, the orphanage released the confiscation dates of the children involved.<sup>223</sup> By comparing this information with the Shaoyang orphanage finding ads, the twelve children could be identified. For example, it is now known that Yang Li Bing's daughter was adopted by an American couple.

Another reliable indicator of family-planning activity is seen in the finding location of the children coming into the orphanage. While random abandonments result in a geographical scattering of finding areas, family-planning activity often results in a sudden rush of findings occurring in a small geographical area, such as a town or village. One such example can be found in Huazhou City in China's southern Guangdong Province. As seen in Table 2, findings from October 2008 to April 2009 were largely for infants less than a week old at scattered finding locations around Huazhou—aside from a few episodes of family-planning activity such as the one profiled above, Huazhou's overall finding characteristics are consistent with an orphanage engaged in baby buying. This pattern continued until June 2009, when the composition and characteristics of the children suddenly changed as seen in Table 3.

**Table 2**<sup>224</sup>

*Huazhou City Orphanage Finding Ad Data, Oct. 2008 – Apr. 2009*

Orphanage	Child's Name	Finding Date	Finding Age <sup>a</sup>	Finding Location
Huazhou	Ji Ao Miao	10/9/08	1	Wenxian Road #60, Hexi [District]
Huazhou	Ji Ao Mi	10/20/08	1	Zhangshan Road #52
Huazhou	Ji Ao Hong	10/29/08	5	Jiaoyu Road #31

<sup>221</sup> *Shaoyang, Hunan Birth Parents Seek Contact with Adoptive Families*, RESEARCH-CHINA.ORG (May 9, 2011), <http://research-china.blogspot.com/2011/05/shaoyang-hunan-birth-parents-seek.html>.

<sup>222</sup> Stuy, Hunan spreadsheet, *supra* note 42.

<sup>223</sup> *Shaoyang, Hunan Birth Parents*, *supra* note 221.

<sup>224</sup> This table was compiled by the author from information contained in RESEARCH-CHINA.ORG, FINDING AD DATA FOR HUAZHOU CITY ORPHANAGE, GUANGDONG PROVINCE: CHILDREN SUBMITTED FOR INT'L ADOPTION 1999-2011, at 43-44 (Brian H. Stuy ed., 2012) [hereinafter DATA FOR HUAZHOU CITY ORPHANAGE].

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Huazhou	Ji Ao Jing	11/1/08	1	Hexi Xinfeima, Down Hill
Huazhou	Ji Ao Ma	11/7/08	60	Xinhua Bookstore, Minzhu Road
Huazhou	Ji Ao Ying	11/13/08	1	Minzhu Road #57, Hexi [District]
Huazhou	Ji Ao Jiang	12/22/08	7	Jiaoyu Road #31
Huazhou	Ji Ao Mai	12/24/08	1	Sisters Bookstore, Minzhu Road, Hexi [District]
Huazhou	Ji Huan Xi	1/15/09	2	Jiefang Road #66, Hexi [District]
Huazhou	Ji Huan Ying	1/17/09	2	Jiaoyu Road #32, Hexi [District]
Huazhou	Ji Huan Qing	2/12/09	15	Jiaoyu Road #30, Hexi [District]
Huazhou	Ji Huan Xin	3/4/09	1	First Primary School
Huazhou	Ji Huan Man	3/18/09	2	Jiaoyu Road #31, Hexi [District]
Huazhou	Ji Huan Le	4/3/09	1	Army Affairs, Zhongshan Road, Hexi [District]
Huazhou	Ji Huan Yu	4/5/09	4	Traffic Bureau, Hexi [District]
Huazhou	Ji Huan Yang	4/7/09	1	Baoshan Park, Hexi [District]
Huazhou	Ji Huan Teng	4/8/09	90	Nanda Store, Minzhu Road, Hexi [District]
Huazhou	Ji Huan Yan	4/9/09	1	Jiefang Road #277, Hexi [District]
Huazhou	Ji Huan Ting	4/13/09	1	Jiaoyu Road #31, Hexi [District]
Huazhou	Ji Huan Qin	4/13/09	1	Huinan Road #55, Hexi [District]
Huazhou	Ji Huan Chang	4/19/09	1	Fuxilai Store, Hexi Wall Street

<sup>a</sup>In days.

**Table 3**<sup>225</sup>

*Huazhou City Orphanage Finding Ad Data, June 2009 – Oct. 2009*

Orphanage	Child's Name	Finding Date	Finding Age <sup>a</sup>	Finding Location
Huazhou	Ji Huan Yue	6/6/09	1	Jiaoyu Road #31, Courtyard, Outside
Huazhou	Ji Huan Rong	6/7/09	2	Baoxu Health Center Clinic
Huazhou	Ji Ao An	6/19/09	240	Baoxu [Town], Yangdipo Village
Huazhou	Ji Huan Hua	6/19/09	2	Jiaoyu Road #153
Huazhou	Ji Ao You	6/21/09	90	Baoxu [Town], Longwo Village
Huazhou	Ji Ao Min	6/21/09	90	Baoxu [Town], Cangban Primary School

<sup>225</sup> This table was compiled by the author from information contained in DATA FOR HUAZHOU CITY ORPHANAGE, *supra* note 224.

Huazhou	Ji Ao Qu	6/23/09	90	Baoxu [Town], Chendong Village Cmte.
Huazhou	Ji Ao Guo	6/24/09	90	Baoxu [Town], Xiangkou Village
Huazhou	Ji Ao Tai	6/27/09	90	Baoxu Town Credit Agency
Huazhou	Ji Ao Jin	6/28/09	240	Baoxu Village Committee
Huazhou	Ji Ao Jie	6/29/09	90	Baoxu Town Market, Entrance
Huazhou	Ji Ao Tuan	6/30/09	90	Baoxu Town Government
Huazhou	Ji Huan Ping	7/25/09	3	Jiaoyu Road #31
Huazhou	Ji Huan Yue	9/7/09	1	Huazhou Hotel
Huazhou	Ji Huan Yan	10/1/09	0	Xinhua Bookstore, Minzhu Road, Hexi [District]
Huazhou	Ji Huan Qiu	10/3/09	4	First Middle School
Huazhou	Ji Huan Na	10/8/09	1	Jiefang Road #88
Huazhou	Ji Huan Yu	10/22/09	1	Mountain State Park, Down Hill
Huazhou	Ji Huan Lu	10/28/09	2	Hexi Health Center
Huazhou	Ji Huan Xing	10/29/09	1	Culture Palace, Minzhu Road, Hexi [District]

<sup>a</sup>In days.

Between June 7 and 30, 2009, ten children entered the orphanage from Baoxu Town, a small town of twenty-four thousand residents located sixty kilometers north of Huazhou.<sup>226</sup> Only one of these children was reported to have been younger than three months old.<sup>227</sup> All of the children were female.<sup>228</sup> Looking at findings from Baoxu Town generally, between 1999 and 2011, twenty children were reported by the Huazhou City orphanage as having been found in that area.<sup>229</sup> Ten of those children were found in June 2009,<sup>230</sup> and nine children, all females, were found between January 5 and March 31, 2005.<sup>231</sup> Only one girl was found in Baoxu Town outside of these two periods.<sup>232</sup>

A similar pattern is seen in other areas of Huazhou. Another example is Wenlou Town, located fifty-five kilometers northwest of Huazhou. The town has a population of 72,000 residents. Between 2000 and 2011, thirty-seven children were found in Wenlou Town, all but two in a single year, 2004 (the other two were found within three days of each other in

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> See Stuy, Hunan spreadsheet, *supra* note 42.

<sup>232</sup> *Id.*

January 2000).<sup>233</sup> Between January 21 and November 29, 2004, thirty-five females were found at various locations around the town, ranging in ages from newborn to forty-five days old.<sup>234</sup> It is probably not coincidental that the following June, Wenlou family-planning officials were presented with an accommodation for implementing successful enforcement and monitoring strategies the previous year.<sup>235</sup>

Detecting family-planning confiscations is extremely difficult due to several factors. First, most accounts of family-planning seizures go unreported by birth families and other residents in the area. Those that do make their way to a blog or other public forum are almost always quickly taken down by the Chinese government in order to preserve social harmony. Second, orphanages are often easily able to blend a confiscated child into the general population of foundlings coming into the orphanage, making identification of a confiscated child difficult. Thus, unless a confiscated child comes into the orphanage in a group of older children, like we see in Zhenyuan, it can be hard to discern a confiscated child from one abandoned at an older age. It is also very easy for an orphanage to obfuscate a confiscation campaign by altering the reported finding locations to such innocuous places as “gate of the orphanage,” “police station,” or “family-planning office.”<sup>236</sup> For that reason, family-planning confiscations are very much like “the mouse in the kitchen”—when you see one, you can be confident there are a hundred others.

#### D. Education Programs

In late November 2008, World Association for Children and Parents (WACAP), one of the largest China-adoption agencies in the United States, began to e-mail adoption Internet groups pleading for a new group of older orphans who needed families.<sup>237</sup> “We are advocating for three girls from China age 13 and one boy age 13 from China that must have completed adoptions SOON! They are all healthy. They are in danger of turning 14 and ‘ageing [sic] out,’” the e-mail proclaimed.<sup>238</sup> “This means they may have no support or resources and have to live on their own in China—if they are not adopted before they turn 14.”<sup>239</sup> Including the four children described in the e-mail, a group of thirty-four children would become the basis for WACAP’s “Journey of Hope” pro-

<sup>233</sup> Stuy, Guangdong spreadsheet, *supra* note 41.

<sup>234</sup> *Id.*

<sup>235</sup> *Wenlou Town Accommodated for Excellent Family Planning* (文楼镇打好计生翻身仗), *XINHAUNET.COM* (June 25, 2005, 15:32), [http://www.gd.xinhuanet.com/dishi/2005-06/25/content\\_4511857.htm](http://www.gd.xinhuanet.com/dishi/2005-06/25/content_4511857.htm).

<sup>236</sup> *See, e.g.*, Stuy, Hunan spreadsheet, *supra* note 42.

<sup>237</sup> Email from Lynne Mason, Recruitment Specialist, WACAP (Nov. 20, 2008, 8:52:43 PM) (on file with author).

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

gram.<sup>240</sup> E-mails went out, and word spread through the Yahoo groups discussing WACAP's new program, which included the adoptive families' group for the Luoyang orphanage in China's northern Henan Province, where adoptive families began advocating for children "soon to be aging out" of that orphanage. All of the children on WACAP's list were older than ten years old.

Observers of China's international adoption program have noticed substantial changes in the program since the Hunan scandal of 2005. While total adoptions declined sharply after 2005, the composition of those foundlings also changed.<sup>241</sup> Prior to the Hunan scandal, more than 95% of adoptions were for extremely young, healthy females; following the scandal, the percentage of male, older, and special needs children began to climb.<sup>242</sup> In recent years, about a third of Chinese adoptions into the United States were for boys,<sup>243</sup> and more than half have special needs.<sup>244</sup>

To take an illustrative example, between 2000 and 2011, Guangdong Province submitted 2,343 boys for adoption out of a total of 23,032 children, roughly 10%.<sup>245</sup> However, that average masks a substantial shift that occurred after the Hunan scandal of 2005.<sup>246</sup> In the six years between 2000 and 2005, Guangdong Province orphanages submitted 14,266 children for adoption, of which 488 were boys (3.4%).<sup>247</sup> In the six years between 2006 and 2011, Guangdong orphanages submitted 8,766 files for adoption, of which 1,855 were for boys (21%).<sup>248</sup> The situation is similar when it comes to special-needs submissions: Between 2000 and 2005, 218 special-needs children were submitted by the Guangdong orphanages, representing 1.5% of all adoptions from that Province.<sup>249</sup> That number increased to 822 between 2006 and 2011, raising the average to 9.4%.<sup>250</sup> While some of the special-needs children

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<sup>240</sup> *Id.*

<sup>241</sup> THE PERMANENT BUREAU OF THE HAGUE CONFERENCE ON PRIVATE INT'L LAW, *Annual Adoption Statistics Forms*, HAGUE CONFERENCE ON PRIVATE INT'L LAW 4-5, 17 (2010), [http://www.hcch.net/upload/wop/adop2010pd05\\_cn.pdf](http://www.hcch.net/upload/wop/adop2010pd05_cn.pdf).

<sup>242</sup> *Id.* Adoption statistics provided by the Chinese government to the Hague Conference through 2010 show that in 2005, 665 male children were adopted, as compared to 13,556 females, for a female gender ratio of 95.4%. *Id.* By 2009, the total number of boys had increased to 1,393 worldwide, representing 27% of all adoptions in that year. *Id.*

<sup>243</sup> *Statistics*, BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, [http://adoption.state.gov/about\\_us/statistics.php](http://adoption.state.gov/about_us/statistics.php) (last visited March 3, 2014).

<sup>244</sup> David Crary, *Adopting China's Special-Needs Kids*, NBCNEWS.COM (Mar. 28, 2010, 11:44 AM), [http://www.nbcnews.com/id/36037857/ns/health-childrens\\_health/t/adopting-chinas-special-needs-kids/#.UdW686xCnCY](http://www.nbcnews.com/id/36037857/ns/health-childrens_health/t/adopting-chinas-special-needs-kids/#.UdW686xCnCY).

<sup>245</sup> Stuy, Guangdong spreadsheet, *supra* note 41.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

submitted after 2005 had been found in prior years, a majority (78%) of these children were found after the Hunan scandal.<sup>251</sup> Similar demographic shifts occurred in other Provinces as well.<sup>252</sup>

There was an overwhelming response from the adoption community to WACAP's publicity of their Journey of Hope children, and the majority of the thirty-four children were soon matched to adoptive families, but not all.<sup>253</sup> More than a year passed, and some children still waited.<sup>254</sup> The children left behind communicated with those who had already found families, questioning when they too might have a family.<sup>255</sup> The pleas of one particular child, Jun Feng, pulled on the heartstrings of Patti Smith in Washington, as he continued to wait.<sup>256</sup> Jun Feng told his friends already in America that if he did not have a family soon, the orphanage would kick him out.<sup>257</sup> "Someone help me get adopted," he pleaded to his friends.<sup>258</sup> Word spread, and Smith wondered what would happen to him, so she called WACAP and inquired if she could bring him home.<sup>259</sup>

In 2010, Smith and her family traveled to Luoyang and formally adopted Jun Feng.<sup>260</sup> The next few months went well, and although there were language barriers and other communication issues, Smith felt that things were progressing as well as expected.<sup>261</sup> But one thing bothered her: her thirteen year-old son had a developed physique and was sprouting a mustache.<sup>262</sup>

Smith began to ask her son if he was really thirteen, and he assured her that he was.<sup>263</sup> "Are you sure you are thirteen?" she pushed.<sup>264</sup> As he had an upcoming birthday, she wanted to make sure that the celebration was purposeful, but Jun Feng exhibited no excitement about the celebration and in fact acted like the whole episode embarrassed him.<sup>265</sup> Smith

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<sup>251</sup> Stuy, Guangdong spreadsheet, *supra* note 41.

<sup>252</sup> Guangxi Province, as another example, submitted 8,110 children for adoption between 2000 and 2005, of which 240 (3%) were boys. Stuy, Guangxi spreadsheet, *supra* note 193. Between 2006 and 2011, the Province submitted 3,281 children, of which 606 (18%) were boys. A similar pattern can be seen across China. *Id.*

<sup>253</sup> Telephone Interviews with Patti Smith (Jan. 30 and Feb. 21, 2012) (on file with author).

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

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

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

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

<sup>259</sup> Telephone Interviews with Patti Smith, *supra* note 253.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> Telephone Interviews with Patti Smith, *supra* note 253.

found this puzzling.<sup>266</sup> “Perhaps he has never had a birthday celebration,” she wondered, “the poor boy.”<sup>267</sup> Again she asked him about his age.<sup>268</sup> “Can you at least give me what Chinese sign you were born under?” she pleaded.<sup>269</sup> One afternoon, after pushing him yet again to give her some clue as to when he was actually born, he responded, “China told me never to tell. China said I could never tell my real birthday.”<sup>270</sup>

Smith was stunned. “You are our child now. They can’t do anything to you.”<sup>271</sup> Her son understood but was still terrified to say anything.<sup>272</sup> “No, I can’t tell. I can’t tell. China said to never tell,” and no matter how hard she pushed, Jun Feng would not relent.<sup>273</sup>

A few weeks later, Jun Feng initiated the conversation.<sup>274</sup> “Can China get me in trouble?” he asked.<sup>275</sup> “No,” was Smith’s answer.<sup>276</sup> “You are safe from China.”<sup>277</sup> “OK,” Jun Feng replied, “then I am seventeen, not fourteen.”<sup>278</sup>

Smith did not know what to think. She had gone to China to adopt a boy who was ostensibly a young teen, and now she realized that she had adopted a near-adult. Who had known this? Her agency? The orphanage? Jun Feng continued: “You know, I am not alone. There are lots and lots of my friends who have the same story.”<sup>279</sup> Indeed, witnesses in the Luoyang orphanage remember Director Pei, after receiving word in 2008 that WACAP was coming to start up the Journey of Hope program, going out with the orphanage van and coming back a short time later with two teenage kids to put in the program.<sup>280</sup>

Smith retrieved Jun Feng’s adoption papers.<sup>281</sup> “The paperwork says your birth mother is dead,” Smith noted.<sup>282</sup> “No, she is alive,” Jun Feng responded.<sup>283</sup> “It says your grandfather was old and ailing,” she continued.<sup>284</sup> “No, he is not. He is alive and well,” Jun Feng an-

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

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

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> Telephone interviews with Patti Smith, *supra* note 253.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> Telephone interviews with Patti Smith, *supra* note 253.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *See id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> Telephone interviews with Patti Smith, *supra* note 253.

<sup>284</sup> *Id.*

swered.<sup>285</sup> Smith then recalled a conversation at the school conference a few months earlier: Jun Feng's teacher had mentioned how neat it was that he could still talk to his brother in China.<sup>286</sup> Smith had assumed the teacher was confused, as she had had no knowledge of a relationship with family members, especially a brother—surely the teacher had misunderstood.<sup>287</sup> Smith was wrong.

It was in that moment that Jun Feng decided to open up and tell his story.<sup>288</sup> “My birth family visited me while I was in the orphanage. I have a photo we took as a family a week before you came to adopt me.”<sup>289</sup> Jun Feng retrieved the secret photo and showed it to his adoptive mother.<sup>290</sup> She observed how fit and happy the family looked, not at all like the “old and ailing” grandparents she had read about in Jun Feng's pre-adoption descriptions.<sup>291</sup> Jun Feng explained that his grandparents, his primary caregivers, were against his going to the United States out of fear they would never see him again.<sup>292</sup> Jun Feng, however, was excited — this was his chance to become rich and famous.<sup>293</sup>

But if Jun Feng's birth family was against his adoption, how did he end up in the orphanage? This question was posed to Jun Feng's birth grandfather, the individual who had relinquished Jun Feng to the orphanage.<sup>294</sup> When asked why he had turned his grandson into the orphanage, he recounted how, one day, he and his wife were approached by Luoning County Civil Affairs officials.<sup>295</sup> The officials started the conversation by commenting that, if he and his wife were having any trouble raising their grandson, the officials could help arrange for him to be taken to the orphanage, and the government would help raise him.<sup>296</sup> “If your grandson goes into the orphanage,” they were promised, “he will get a good education and a good job.”<sup>297</sup> Jun Feng would later say that it wasn't until 2009, just before he was adopted to the United States, that his grandparents learned that he would be leaving Luoyang.<sup>298</sup> At no point during the “pitch” did the Civil Affairs officials notify him or his grandparents that he would be leaving China, and when his birth family

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<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> Telephone interviews with Patti Smith, *supra* note 253.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> Telephone Interviews with Zhao Yong Zhi (Feb. 16 and 21, 2012) (on file with author).

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

<sup>298</sup> Telephone Interview with Jun Feng Smith (Mar. 3, 2012) (on file with author).

learned of that fact two years later, they were extremely worried and upset.<sup>299</sup> When asked if he believed that Jun Feng would really come back one day and take care of him, the spry and energetic sixty-five-year-old grandfather said, “Yes.”<sup>300</sup>

Jun Feng recounted that, in March 2007, the orphanage sent the van to pick him and the other children up who had been recruited by the Luoning County Civil Affairs Bureau.<sup>301</sup> On the day of the pickup, all of the families were notified to bring their kids to the county Civil Affairs Bureau, where the orphanage van waited.<sup>302</sup> On the morning Jun Feng was picked up, he was accompanied by ten or eleven other children ranging in ages from a few months to more than seventeen years old, mostly boys.<sup>303</sup> All were allowed to say goodbye to their birth families before being loaded into the orphanage van and taken away to what most, if not all, felt was an orphanage education school.<sup>304</sup>

Jun Feng’s story is consistent with others from the Luoyang, Beijing, Guangzhou, and other orphanages. In each case, the pattern is similar: birth families are approached by government officials with the offer to educate their child in a city orphanage. Once the child enters the orphanage, the paperwork is submitted for adoption. Once a Western family agrees to an adoption, the officials return to the birth family and tell them that their child has an opportunity to go to school in the West. Extreme pressure is placed on the birth family to sign relinquishment papers allowing the adoption to be completed. In at least one case, the birth family was not even notified that their child had been adopted to a family living outside China: as far as the birth family was concerned, their daughter simply vanished.<sup>305</sup>

Luoyang’s recruitment program was witnessed firsthand by Michael Melsi, a twenty-something American who started volunteering in the Luoyang orphanage in 2006 as an English language instructor.<sup>306</sup> Melsi spent most of his time in the Luoyang orphanage on the fourth and six floors, among the teenagers in Luoyang’s “Special Focus” program.<sup>307</sup> There, he befriended most of the children waiting to be adopted from the waiting child lists of WACAP, CCAI, and other adoption agencies.<sup>308</sup>

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<sup>299</sup> *Id.*

<sup>300</sup> Telephone Interviews with Zhao Yong Zhi, *supra* note 294.

<sup>301</sup> Telephone Interview with Jun Feng Smith, *supra* note 298.

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> Telephone Interviews with Zhao Yong Zhi, *supra* note 294.

<sup>305</sup> *The Dark Side of China’s “Aging Out Orphan” Program*, RESEARCH-CHINA.ORG (Apr. 2, 2012, 5:01 AM), <http://research-china.blogspot.com/2012/04/dark-side-of-chinas-aging-out-orphan.html>.

<sup>306</sup> Telephone interview with Michael Melsi, American Volunteer in Luoyang Orphanage (Mar. 18, 2012) (on file with author).

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

At the beginning of his time in Luoyang, Melsi observed:

[I]t was pretty apparent that the kids had some kind of distant relatives that were involved in their lives to some degree. Never in a million years at that time would I have thought that they actually had parents or close relatives. But it was clear that although they were in an orphanage, they were kind of from a community where they still had ties.<sup>309</sup>

When WACAP formed the Journey of Hope program in 2008, Melsi noticed that some of the older kids were sent out of the orphanage and disappearing.<sup>310</sup> When he asked the orphanage staff and other children about this, he was told that those kids had “selfish relatives” who were refusing to allow the adoption of their kids whom they were unwilling to care for.<sup>311</sup> Thus, the kids were being forced to leave the orphanage. Melsi researched where some of these kids had ended up, and he found that they had returned to their birth families.<sup>312</sup> It soon became apparent in several cases that women who were initially said to be aunts were actually the children’s birth mothers.<sup>313</sup> When Melsi asked the birth families why their kids had ended up in the Luoyang orphanage, they reluctantly told him that they had understood that the orphanage would provide for the expenses of raising their children.<sup>314</sup> Furthermore, the birth parents felt it would offer their children the opportunity to get a better education and live in the city, which they believed would provide the children with a better life in the future.<sup>315</sup> When the orphanage began to pressure them to sign documents relinquishing parental rights to their own children, they had refused.<sup>316</sup>

Melsi became increasingly concerned with what he was seeing in the Luoyang orphanage, and he contacted several adoptive families to inform them of the situation.<sup>317</sup> He also decided to contact WACAP directly and outlined many of his findings and concerns.<sup>318</sup> Within twenty-four hours of speaking with the WACAP representative, Melsi was contacted by the orphanage and informed that he would not be permitted

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<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*

<sup>312</sup> Telephone Interview with Michael Melsi, *supra* note 306.

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> Compare *id.* with Interview with Ma Yu Wei in Hebi City, Henan Province (Oct. 9, 2009) (citing similar reasons for relinquishing his three-year-old daughter to the orphanage) (on file with author), available at *Promises, Promises!!*, RESEARCH-CHINA.ORG (Feb. 16, 2010, 8:06 AM), <http://research-china.blogspot.com/2010/02/promises-promises.html>.

<sup>316</sup> Telephone Interview with Michael Melsi, *supra* note 306.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

to return there, with officials citing concerns that he was a carrier of swine flu.<sup>319</sup>

In January 2011, the CCAA commended the Luoyang orphanage, describing it as a “Model Welfare Institute for International Adoption in 2010,” the same year that Jun Feng and his friends were adopted abroad.<sup>320</sup> The Luoyang orphanage director responded:

There is no trifling with international adoptions. The leaders of the Civil Affairs Bureau and the officers of our orphanage have attached great importance to the working of international adoption, from the preparation of the finding ads to the adoption paper work, to when the kids are sent into the arms of adoptive families, including the adoptive families returning back to visit the orphanage. All of these works were overseen by the director, with very careful attention, and well done by following the rules step by step. This ensures that there was no mistake of any of those kids sent for international adoption. It also brought a new world for the growth of those kids.<sup>321</sup>

In July 2012, the CCAA announced that it was broadening its international adoption program. “Legal guardians of parentless children, child welfare institutions and birth parents who are experiencing difficulty are entitled to place a child for adoption,” Zhang Shifeng, head of the CCAA announced.<sup>322</sup> “Some parentless children live with their grandparents or other relatives, but this does not guarantee that they are being properly taken care of.”<sup>323</sup> Zhang explained that some Provinces had already been performing these adoptions of “children in plight” for several years and cited the children being adopted from Luoning County in Henan Province.<sup>324</sup> Du Liming, deputy director of the Luoning Civil Affairs Bureau, stated that “the foreign family adoption procedure for children not living in State care was stricter than for those who were.”<sup>325</sup> Du is the head of the Civil Affairs Bureau that deceptively collected Jun Feng and his friends from Luoning County for adoption through the Luoyang orphanage.<sup>326</sup>

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<sup>319</sup> *Id.*

<sup>320</sup> Telephone Interviews with Zhao Yong Zhi, *supra* note 294.

<sup>321</sup> *Luoyang City Children Orphanage Honored by CCAA as Excellent Orphanage for International Adoptions in 2010* (洛阳市儿童福利院被中国收养中心评为2010年度涉外送养工作先进福利机构), Baidu.com (Jan. 12, 2011), <http://wenku.baidu.com/view/5bd543fb0242a8956bece4fe.html>.

<sup>322</sup> He Dan, *Adoption Law May Broaden Category*, CHINA DAILY (July 6, 2012, 02:29), [http://www.chinadaily.com.cn/china/2012-07/06/content\\_15552922.htm](http://www.chinadaily.com.cn/china/2012-07/06/content_15552922.htm).

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> *See Promises, Promises!!*, *supra* note 315. Although the CCAA’s announcement makes it seem that Luoyang’s education program had been in place only since 2007, I have located birth families that were brought into Luoyang’s program as early as 2003.

Like the baby buying programs and family planning confiscation incidents, Luoyang's education program can also be detected in its adoption characteristics, although not as clearly. While most orphanages adopt predominantly girls, 64% of Luoyang's submissions since 2000 have been for boys.<sup>327</sup> While finding location clustering is not particularly unusual, its average finding age is.<sup>328</sup> Of the more than six hundred children the Luoyang orphanage submitted for international adoption between 2000 and 2010, only thirty-one were found as newborns, less than 5% of the total (4.8%).<sup>329</sup>

### III. RESOLVING ETHICAL AND LEGAL ISSUES

#### A. *Inside China*

Prior to the Hunan scandal of 2005, there was little understanding of the abuses and irregularities taking place in China's orphanages. Inside China, episodes of trafficking and family planning confiscations were revealed, but, by and large, the Chinese government squelched public scrutiny of the orphanages and their entrepreneurial programs. Exceptions existed, but none were widely publicized inside China or detected by foreign media. In July 2003, for example, four traffickers were caught transporting infants from Chongqing Municipality's Qianjiang District to the Changde orphanage in Hunan Province.<sup>330</sup> At their trial, the defendants' attorneys based their defense on the human rights and legal consciousness of "People come first, and life takes priority," proposing that the defendants' actions caused no serious effects that would harm society; on the contrary, they had done good deeds for maintaining little lives' interests, on the aspect of preserving the continuance of the abandoned baby girls' lives and preventing the risk of their death by a lack of care.<sup>331</sup>

Although the defense admitted that the traffickers' actions could objectively be seen as making use of finding abandoned babies for their own benefit, in the end this wrong was seen as a right given the children they saved.<sup>332</sup> "After hearing these two cases, the court completely ac-

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<sup>327</sup> Brian H. Stuy, Excel Spreadsheet Compiled from Finding Ads from Henan Province from July 20, 1999 through Jan. 14, 2013 (on file with author) [hereinafter Stuy, Henan spreadsheet].

<sup>328</sup> See *Promises, Promises!!*, *supra* note 315.

<sup>329</sup> Stuy, Henan spreadsheet, *supra* note 327.

<sup>330</sup> *Reasons and Countermeasures for Behavior of People Who Abandon Baby Girls*, QIANJIANG DISTRICT JUSTICE GOVERNMENT (May 1, 2010, 17:51), <http://www.qjsfxz.gov.cn/fzxx/llyj/2010-05-01/80.html> (reviewing countermeasures to prevent abandonment and eschewing the legality of baby buying).

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

cepted the lawyers' defenses.<sup>333</sup> The four defendants were acquitted and received compensation from the state after getting out of jail."<sup>334</sup>

Another trafficking story from 2003 involved the Dianjiang County orphanage, also in Chongqing Province. Xu Shiyun, a teahouse owner, left his home to go to the nearby market.<sup>335</sup> Unknown to him, his two-year-old daughter, Xu Ting Ting, followed after him.<sup>336</sup> Ten minutes later, he returned home to learn that his daughter was missing.<sup>337</sup> After a frantic search involving scores of friends and family, Xu Shiyun contacted the police and reported his daughter missing.<sup>338</sup>

The next day, with still no word about his daughter, Xu Shiyun appeared on local television and pleaded for information about his missing daughter.<sup>339</sup> He gave a description of his daughter, her clothes and physical features.<sup>340</sup> Over the next few weeks, the father posted more than 200 fliers around Dianjiang, hoping that someone had found his daughter.<sup>341</sup> One flier was posted at the gate of the Dianjiang County orphanage.<sup>342</sup>

A week later, on July 31, 2003, Xu Shiyun had an inspiration: perhaps his daughter had been found and brought to the Dianjiang County orphanage, located less than two kilometers from his home.<sup>343</sup> As he approached the orphanage gate, however, his entrance was blocked by a gatekeeper.<sup>344</sup> "We don't adopt two-year-old children," Lao Daye told him.<sup>345</sup> "We only adopt disabled or young children under six months. You should go to the Public Security Bureau to find your daughter."<sup>346</sup>

Feeling rejected and unsure that he was being told the truth, Xu Shiyun returned the next week and asked if he could look in the baby rooms for his daughter.<sup>347</sup> He was rebuffed. "We can't allow anyone to visit any children's room!"<sup>348</sup>

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<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> Liu Bang Yun (刘邦云), *Traffickers Sold My Daughter into Orphanage* (人贩子把我女儿卖进福利院), *BAOBEIHUIJIA.COM* (Sept. 24, 2008, 2:50), <http://bbs.baobeihuijia.com/thread-10763-1-1.html>.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> Liu, *supra* note 335.

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> Liu, *supra* note 335.

<sup>348</sup> *Id.*

Two weeks later, Xu Shiyun sent his wife, who was unknown to the orphanage.<sup>349</sup> She claimed that she was interested in having the orphanage foster her young son and wanted to see the conditions in the orphanage.<sup>350</sup> She was taken to the various baby rooms and anxiously looked into the face of each child, hoping to see her daughter.<sup>351</sup>

On the fifth floor, she was approached by a caregiver and told to leave; “Get out of here!” the caregiver yelled.<sup>352</sup> “I am here to see how the conditions are like since I might want to send our child here for fostering,” she rejoined.<sup>353</sup> In the midst of the altercation, two-year-old Xu Ting Ting entered from the adjoining room calling “Mama.”<sup>354</sup>

Xu Shiyun called the police, and after presenting identification and proof that they were the parents of Xu Ting Ting, he was able to take the girl home.<sup>355</sup> Her legs had been scarred from more than 10 cigarette burns.<sup>356</sup>

The finding ad for Xu Ting Ting, whose orphanage name was Jiang Xi Shan, had been placed for international adoption on August 15, 2003,<sup>357</sup> after Xu Shiyun had approached the orphanage and a week before his wife had located their daughter within its confines.<sup>358</sup> The police investigation showed that Xu Ting Ting had been kidnapped by a woman intent on bringing her to Chongqing City.<sup>359</sup> Before leaving Dianjiang, the kidnapper sold the girl to Tan Shu Lan for 500 yuan, who brought her to the Dianjiang County orphanage, where she was offered 1,000 yuan for the child.<sup>360</sup>

In neither of these two episodes was any action taken against the orphanage. Both stories read as if neither orphanage were involved.<sup>361</sup> Thus, Chen Ming’s defense after the Hunan trial finds resonance: “The problem of ‘buying and selling trafficked babies’ doesn’t exist. So this fact is not proven. There is no provision about this in the law either.”<sup>362</sup> Conventional wisdom from prior episodes of trafficking into orphanages

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<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> Liu, *supra* note 335.

<sup>354</sup> *Id.*

<sup>355</sup> *Id.*

<sup>356</sup> *Id.*

<sup>357</sup> Finding ad for Xu Ting Ting, CHONGQING LEGAL NEWS (重庆法制报), Aug. 15, 2003, at 6 (on file with author).

<sup>358</sup> Liu, *supra* note 335.

<sup>359</sup> *Id.* The sad reality of offering substantial financial rewards for children has resulted in unscrupulous kidnapping of unprotected children in order to receive the finder fees.

<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> Chen Ming’s Rebuttal of Trafficking Charges, Hunan Scandal Court Records (May 16, 2006) (on file with author).

certainly supports Director Ming's position. In all previous cases of orphanage trafficking, no prosecutions of orphanage personnel occurred. In the Qianjiang case, the traffickers were released after it was determined that the children had been abandoned, and the traffickers were paid compensation for the time they had spent in jail.<sup>363</sup>

Through this lens, the Hunan scandal can be seen for what it was—an exercise in public relations by the Qidong Police and the Chinese government. Absent the international attention brought on by the ill-advised newspaper article, there is little doubt the orphanages would have made an arrangement with the Qidong police to continue their enterprise. The Duans would have been released, as they had been in previous episodes, and the orphanages would have continued purchasing babies from the Duans and others in order to maintain their large and profitable adoption programs. All of the participants in the Hunan scandal, from the officials down to the Duan family themselves, maintained in the trial that there was nothing wrong with what they were doing.<sup>364</sup> They were simply honoring the “people come first, and life takes priority” principle of Chinese culture.<sup>365</sup>

A similar belief can be seen in the reaction of Chinese government officials to the family-planning confiscation stories in Zhenyuan and Gaoping. Echoing the defense in the Hunan scandal, Wu Benhua, director of Zhenyuan's Civil Affairs Bureau, noted simply that the confiscated children are “better off with their adoptive parents than their birth parents.”<sup>366</sup>

The money that flows through international adoption, allowing players to financially benefit and support Chinese cultural priorities—the proverbial win-win scenario, encourages this cultural viewpoint. The substantial financial rewards, both in the form of adoption fees and post-adoption orphanage support, serve to create strong incentives for orphanages to internationally adopt as many children as possible, even if those children enter the orphanage through extra-legal channels:

Throughout the 1980s and 1990s, when families were too poor to pay, the officials would punish them by ransacking their homes or confiscating cows and pigs, residents say. Then, in 2003, things changed. The year after the Social Welfare Institute in Zhenyuan was approved to participate in the burgeoning foreign adoption program, family-planning officials stopped confiscating farm animals. They started taking babies instead.<sup>367</sup>

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<sup>363</sup> *Reasons and Countermeasures*, *supra* note 330.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> Demick, *supra* note 197, at 3.

<sup>367</sup> *Id.* at 2.

### B. *Outside China*

The cultural dissimilarity regarding the ethics of confiscation or baby buying makes it difficult for countries involved in China's international adoption program to investigate, let alone enforce, breaches of internationally recognized legal and ethical standards simply because the Chinese view these issues so vastly different than Western cultures do. In 2006, following the Hunan scandal revelations, Ina Hut, director of Wereldkinderen, the largest adoption agency in the Netherlands, sought clarity on the severity of the trafficking problem in China's orphanages by traveling to China herself to investigate.<sup>368</sup> According to Hut, when the subject of the Hunan scandal was raised at the two CCAA meetings held in March 2006, "[t]he CCAA informed us that the matter has been taken seriously, and that the guilty are punished. The CCAA has also indicated that the children who were affected were socially abandoned, and that the adoption procedures had been in accordance with the regula-

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<sup>368</sup> Letter from Ina Hut, Dir., Wereldkinderen, to N.P. Levenkamp, Dir., Ministry of Justice (Apr. 21, 2006) [hereinafter Letter from Ina Hut to N.P. Levenkamp 2006]. Hut's trips to China and media exposure of ethical lapses in China's adoption program prompted the Dutch Parliament to hold hearings into allegations of trafficking and confiscations of children for adoption. *Dutch Report on Trafficking in China*, RESEARCH-CHINA.ORG (Sept. 11, 2008), <http://research-china.blogspot.com/2008/09/dutch-report-on-trafficking-in-china.html>.

The Netherlands is the only country to have held official hearings on China's program. *Id.* The United States finds itself on the other end of the scale, refusing to acknowledge that the buying and selling of children for adoption can even be called trafficking. E.J. Graff, *Call It Trafficking*, THE AMERICAN PROSPECT (Jan. 3, 2013), <http://prospect.org/article/call-it-trafficking>. E.J. Graff, in an article for *The American Prospect*, quotes a leaked State Department cable stating that trafficking only takes place when there is "exploitation through force, fraud, or coercion." *Id.* To quote the cable further: "The U.S. government appears to be unique among Hague contracting states and most of the international adoption community in rejecting the use of the term 'trafficking' to refer to illicit adoptions." *Id.* Experts in the field understand the distinction, but media and foreign counterparts may not fully understand our nuanced stance.

This can be especially confusing when reading the text of the [Hague Adoption Convention]. . . . Although the text explicitly refers to the prevention of child trafficking as one of its primary objects (Article 1b) . . . the U.S. government rejects the idea that child-buying for adoption is trafficking.

This position is not shared by many of our foreign counterparts. For example, in many [A]frican countries . . . fraudulent intercountry adoptions are officially referred to as trafficking. In December 2010, Ethiopian officials accused a Minnesota-based [adoption agency] of child trafficking for placing children without a birth parent's consent.

*Id.*; see Cable from U.S. Sec. of State Hillary Rodham Clinton to all Diplomatic and Consular Posts, *Fraudulent Intercountry Adoption Does Not Constitute Trafficking in Persons*, #4500/01 (June 11, 2012), available at [http://www.brandeis.edu/investigate/adoption/docs/DOS-cable-Fraudulent-ICA-Does-Not-Constitute-Trafficking\\_Jun11.pdf](http://www.brandeis.edu/investigate/adoption/docs/DOS-cable-Fraudulent-ICA-Does-Not-Constitute-Trafficking_Jun11.pdf) (last visited March 8, 2014).

tions.”<sup>369</sup> Inquiring about the possible involvement of some of the children for which Wereldkinderen had received inquiries from Dutch adoptive parents, Hut found that the CCAA does not give further communications to Wereldkinderen as to the identity of the children involved because Wereldkinderen was not a formal counterpart of [the CCAA], but the Dutch Central Authority was.<sup>370</sup> Although the CCAA was officially unwilling to disclose if children involved in the Hunan scandal had been adopted internationally, “informally . . . employees of the CCAA [told the director of Wereldkinderen that there were] children [involved in the Hunan] scandal [who were sent] abroad [for adoption].”<sup>371</sup>

Unconvinced of the propriety of China’s adoption program, Hut pressed the Dutch Ministry of Justice (MVJ) to investigate further.<sup>372</sup> In May 2006, the Dutch Central Authority traveled with Ina Hut to China.<sup>373</sup> According to Hut, “given the sensitivity of the subject the irregularities were discussed only in the later course of conversation.”<sup>374</sup> The MVJ came back with the answer that the CCAA “had the scandal well under control,” and “found that none of the children [involved in the Hunan scandal] went to the Netherlands’ and that in all cases where children have gone for adoption abroad, the embassies of the countries concerned were informed.”<sup>375</sup>

It seems that all receiving countries got this information [that no children involved in the scandal had been adopted to each inquiring country], while according to our information [informally from the CCAA to Wereldkinderen] some children were proposed for inter-country adoption. Where did these children go? Also, in the Hunan scandal, it would concern a much bigger group of children than the 65 children who are mentioned by the CCAA. Therefore, we ask you hereby once more to investigate what has happened in Hunan and not to be satisfied with a nonresponse from China. We want to be able to guarantee the adoptees and their parents that no irregularities took place in the adoption procedures of the children who were mediated through our organization.<sup>376</sup>

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<sup>369</sup> Letter from Ina Hut to N.P. Levenkamp 2006, *supra* note 368.

<sup>370</sup> *Id.*

<sup>371</sup> Travel Report of Ina Hut, Dir., Wereldkinderen, to Dutch Parliament (Oct. 6, 2009), at 2 (on file with author).

<sup>372</sup> *Id.* at 1.

<sup>373</sup> *Id.* at 2.

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> Letter from Ina Hut, Dir., Wereldkinderen, to N.P. Levenkamp, Dir., Ministry of Justice (Feb. 22, 2008) (on file with author) [hereinafter Letter from Ina Hut to N.P. Levenkamp 2008]. While the Hunan trial focused on 85 children, in communication with the Dutch, the CCAA admitted to only 65 children being involved in the scandal. *Id.*; see Response of Chen Ming to His Conviction, Qidong Police Records, *supra* note 142.

Hut was frustrated that the CCAA was unwilling to respond to her questions and referred her instead to the Dutch Central Authority.<sup>377</sup> The CCAA, however, was also unresponsive to two formal inquiries made by the MVJ at Hut's insistence in July and November 2007.<sup>378</sup>

Finally, a response came in February 2008 from CCAA Director-General Lu Ying:

In reference to the incident in Hunan, I would like to reaffirm that all the children involved for inter-country adoption are all abandoned children, who were placed for adoption in accordance with the principle of "children's interests as the priority" and the whole procedure was legal and in light of the spirits [sic] of [the] Hague Convention. The adoptions are protected by law and will not cause any problems for the adoptive families. It is known that these children are well cared for in the adoptive families and are doing fine. *It is better not to pursue, expand or elaborate on this issue further and to keep secret for related families in order not to interrupt the bond established between the adoptive parents and the children and impose any unnecessary pressure on them.*<sup>379</sup>

Lu's clarification failed to ease Hut's concerns. While the Dutch had hoped to discover if any trafficked children from Hunan had been adopted by Dutch families, the CCAA was instead telling Dutch Central Authority to look forward, not backward. All you need to know, the CCAA Director Lu seemed to say, is that all of the children had been abandoned, the matter had been settled, and you can stop pursuing it.

The Dutch, and Wereldkinderen in particular, understood that the Chinese were stonewalling. Not only were all the government officials involved in the Hunan trafficking scandal still employed, the number of children involved in these scandals vastly exceeded the 65 children the CCAA admitted had been trafficked.<sup>380</sup> The Chinese response was, of

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<sup>377</sup> Letter from Ina Hut 2008, *supra* note 376.

<sup>378</sup> Ina Hut, Dir., Wereldkinderen, Testimony to Dutch Parliament (Oct. 1, 2009) (on file with author), *translated in Adoption from China Is a 'Politically Sensitive Issue'*, RESEARCH-CHINA.ORG (Nov. 4, 2009, 12:26 PM), <http://research-china.blogspot.com/2009/11/adoption-from-china-is-politically.html> ("The MVJ then sent a letter on November 15, 2007 (Exhibit 6) to the CCAA in which the Minister of Justice expressed concern over the recurring reports of child trafficking in China. He asked for a response from the CCAA. This letter also referred to the letter of July 23, 2007 of the MVJ to the CCAA, which at that time had not been answered by the CCAA.")

<sup>379</sup> Letter from Lu Ying, Dir.-Gen., China Ctr. of Adoption Affairs (CCAA), to N.P. Levenkamp, Dir., Ministry of Justice (Feb. 20, 2008) (emphasis added) (on file with author).

<sup>380</sup> Travel Report of Ina Hut, *supra* note 371, at 3. Trafficking records submitted in the Hunan trial indicate that 884 children were purchased by the Changning, Hengdong, Hengshan, and Qidong orphanages, but even these listings are incomplete. *See Deng, Benevolence or Vice?*, *supra* note 74. Additionally, records are not available for the other two orphanages involved in the scandal, the Hengnan and Hengyang County or-

course, intentionally misleading. Records from the Hunan trial show that at a minimum nearly a thousand children were trafficked into the six Hunan orphanages by the Duan family, not counting the many children sold to the Zhuzhou, Changsha, and Chenzhou orphanages by the six scandal orphanages themselves.<sup>381</sup> Orphanage records also show that these children were adopted to the United States, Canada, Spain Norway, the Netherlands, and other countries.<sup>382</sup> The only participants punished as a result of the Hunan scandal were members of the Duan family; the directors of the six Hunan orphanages at the time of the scandal remained in their places or were moved laterally to other official positions in the Civil Affairs Bureau.<sup>383</sup>

Hut continued to press for a more thorough investigation into China's adoption program. Since the Dutch Ministry of Justice appeared reluctant to push the Chinese for clarity on the issues, Hut wrote the Hague Permanent Bureau on February 25, 2008, to inquire if that body could conduct inquiries or an investigation.<sup>384</sup> On March 4, 2008, William Duncan, Deputy Secretary General for the Hague Conference on Private International Law, responded by stating that:

With respect to your request that we gather as much information as possible from our position, I have to stress that we have not been asked by either of the Contracting States concerned (i.e. China and the Netherlands) to provide any assistance in relation to the matters mentioned in your letter. . . . Indeed, it would be highly unusual for us to be asked to investigate particular alleged abuses in a Contracting State—we are simply not equipped, nor do we have powers, to undertake investigations of this sort.<sup>385</sup>

Families impacted by fraud in their adoptions from China have also attempted to find resolution by appealing to the CCAA. In October

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phanages. Thus, it is extremely likely that the number of children trafficked by the Duan family alone into the six orphanages exceeded 1,000 children, and may very well have approached 2,000 or more.

<sup>381</sup>The trial records listed only those children submitted for international adoption by the orphanages themselves, not those sold to other area orphanages such as Changsha, Zhuzhou, Chenzhou, Loudi, Fogang, etc. See Court Records from Duan Family Trial, *supra* note 144.

<sup>382</sup>*Orphanages Accused*, *supra* note 77.

<sup>383</sup>See generally, Goodman, *supra* note 132. Guan Yu Yang, director of the Qidong orphanage, is currently employed as director of the Qidong County Civil Affairs Bureau; Chen Ming, the only director sentenced to any jail time, is now director of the County Welfare Lottery office; Wang Hua Chen remains director of the Changning orphanage; Zhang Jian Hua remains director of the Hengyang County orphanage; and He Hong Jun, director of the Hengnan County orphanage, remains in the Hengnan County Civil Affairs Bureau.

<sup>384</sup>Letter from William Duncan, Deputy Secretary General for the Hague Conference on Private International Law, to Ina Hut, Dir., Wereldkinderen (Mar. 4, 2008) (emphasis added) (on file with author).

<sup>385</sup>*Id.*

2012, a delegation from the CCAA toured the United States, making a stop at the U.S. State Department in Washington D.C. and visiting prominent adoption agencies around the country, including WACAP in Seattle, Washington.<sup>386</sup> On October 25, 2012, Patti Smith and another adoptive parent with a child from Luoyang traveled to meet the delegation in Seattle in order to deliver signed letters from adoptive families of Luoyang “aging-out” children that detailed the evidence of fraud and coercion found through their adoptions.<sup>387</sup>

The CCAA responded with a letter to each family on March 20, 2013.<sup>388</sup> After reviewing the official circumstances behind each family’s adoption, the CCAA made the following statement:

After the child was admitted into the CWI, to find an adoptive family for the children, the orphanage prepared and submitted their files as orphans for international adoption. Per the adoption laws and regulations of China, the provincial Civil Affairs Office was in charge of reviewing the child’s file and forwarded it to the China Center of Children’s Welfare and Adoption (CCCWA.) Following regulations and protocols the CCCWA matched the children with families. *It’s not CCCWA’s responsibility to check the truthfulness of a child’s file and CCCWA has no means to decide if the information is accurate or not. Foreign adoption agencies are not authorized to check the truthfulness of information in a child’s file in China.*<sup>389</sup>

Rather than having oversight of the orphanages that participate in China’s international adoption program, the CCCWA asserts that they are only responsible for matching submitted children with prospective adoptive families.<sup>390</sup> They claim no ability to audit, investigate, or otherwise insure that the orphanages themselves are acting in compliance with Hague principles, and expressly prohibit adoption agencies from conducting such research.<sup>391</sup>

The experience of Wereldkenderen, the Dutch Central Authority, and the Luoyang “aging-out” families illustrates the problems inherent in investigating a Hague Signatory country that denies access to orphanages to investigate the prevalence of corruption and fraud. In fact, the Hague Agreement has the effect of *reducing* the ability of a receiving country to investigate since it establishes a bureaucratic firewall that disallows a

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<sup>386</sup> Lydia Macci, *CCCWA Delegates Visiting in October*, GLADNEY CHINA ADOPTION (Oct. 8, 2012, 6:55 AM), <http://gladneychinaadoption.blogspot.com/2012/10/cywa-delegates-visiting-in-october.html>.

<sup>387</sup> Telephone Interviews with Patti Smith, *supra* note 253.

<sup>388</sup> *E.g.*, Letter from Admin. Dept., CCCWA, to Carlo and Kerry Nuss (Mar. 20, 2013) (emphasis added) (on file with author).

<sup>389</sup> *Id.* A similar letter was sent to each of the families that had petitioned CCCWA.

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

country such as the Netherlands from doing independent verification.<sup>392</sup> “Is it not crazy?,” lamented Green Left (GL) Parliamentary member Naima Azough during the Dutch hearings on China’s adoption program, “that in non-treaty countries, including Ethiopia, there are better opportunities to do a thorough, profound and comprehensive study tha[n] we have in treaty countries such as China? There we have to operate in very limited frameworks, taking account of ‘diplomatic sensitivities.’”<sup>393</sup> Fred Teeven, representing the People’s Party for Freedom and Democracy (VVD) in the Dutch Parliament, agreed: “If you have signed that treaty, like China and the Netherlands have done, you have to deal with the principle of trust. And then he knows as well as I that the possibilities to investigate things for yourself in those countries are extremely small, if not nil[.]”<sup>394</sup>

But what should occur when a sending country such as China is not trustworthy? What can a receiving country do when problems are publicized, but the receiving country is prevented by “diplomatic sensitivities” from conducting an investigation?

When Hut had attempted to conduct such an investigation, the Chinese government prevented her and others from doing anything outside official channels.<sup>395</sup> As a result of the stonewalling by the Chinese and the subsequent obstruction and lack of political support from her own government, Hut resigned as director of Wereldkinderen.<sup>396</sup> “We have all heard of the new scandals about child trafficking in China that have recently come out. The obstruction by the Ministry of Justice for further investigation into these stories by former director of World Children

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<sup>392</sup> VERSLAG VAN EEN ALGEMEEN OVERLEG [REPORT OF GENERAL CONSULTATION, PART ONE] (Nov. 9, 2009), <http://www.netwerk.tv/data/files/verslag%20AO%20adoptie.pdf>; *translated in Report of General Consultation, Part One*, RESEARCH-CHINA.ORG (Nov. 11, 2009, 12:51 PM), <http://research-china.blogspot.com/2009/11/report-of-general-consultation-part-one.html>.

<sup>393</sup> *Id.*

<sup>394</sup> VERSLAG VAN EEN ALGEMEEN OVERLEG [REPORT OF GENERAL CONSULTATION, PART TWO] (Nov. 9, 2009), <http://www.netwerk.tv/data/files/verslag%20AO%20adoptie.pdf>; *translated in Report of General Consultation, Part Two*, RESEARCH-CHINA.ORG (Nov. 30, 2009, 5:59 PM), <http://research-china.blogspot.com/2009/11/report-of-general-consultation-part-two.html>.

<sup>395</sup> Travel Report of Ina Hut, *supra* note 371, at 6.

<sup>396</sup> Hut Testimony, *supra* note 378 (“During this interview Wereldkinderen has been urged by Mr. Levenkamp and Mrs. Van’t Wout not to conduct any research, no matter what kind of investigation. Not any type of research was negotiable. When we kept insisting, we were then told that if ‘Wereldkinderen’ would execute its own research, their adoption license would be revoked. ‘Lack of cooperation’ would be the reason that the MVJ would give to justify the revocation. The reason for this measure, it was said, was that other interests were at play and that due to the research damage to the China-Netherlands relationship could arise.”).

Foundation Ina Hut, was the main reason she resigned and left.<sup>397</sup> In fact, Hut was intimidated by the MVJ, which told her that doing independent research would threaten the treaty relationship that the Netherlands had with China, and if she persisted, her adoption license would be revoked by the Dutch Central Authority.<sup>398</sup>

The experience of the Dutch in investigating China's adoption program shows a very familiar pattern that has been affirmed in every scandal story since:

(1) Adoptive parents raise the alarm to their agencies and State Departments. In the case of the Dutch, adoptive families with children from the Hengdong County orphanage met with Hut, their adoption agency director, inquiring of her about the recent news regarding the Hunan scandal and asking her to investigate the backgrounds of their adoptive children.<sup>399</sup> In the case of the fraudulent adoptions performed by the Luoyang orphanage, adoptive families brought their stories to the CCAA itself.<sup>400</sup>

(2) The Dutch MVJ travels to Beijing in May 2006 to inquire of the CCAA if any of the children adopted to the Netherlands were involved in the scandal.<sup>401</sup>

The travel report of the [MVJ] indicates that "given the sensitivity of the subject the irregularities were discussed only in the later course of conversation." The travel report indicated that it was "found that none of the children went to the Netherlands' and that in all cases where children have gone for adoption abroad, the embassies of the countries concerned were informed."<sup>402</sup>

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<sup>397</sup> *Report of General Consultation, Part One, supra* note 392.

<sup>398</sup> Letter from Ina Hut, Dir., Wereldkinderen, to Bart Jan ter Heerdt, Adoption Agency Liaison, Ministry of Justice (June 8, 2009) (on file with author). The letter stated:

The reason given [for the prohibition to investigate] indicated that there were many interests between the Netherlands and China at stake, and that all of these interests are considered, and that adoption is only a small part. Any examination [of China's adoption program] by Wereldkinderen could potentially harm those interests.

*Id.*

<sup>399</sup> Letter from Ina Hut to N.P. Levenkamp 2006, *supra* note 368. In the letter, Hut stated:

On April 10, [2006], we had a meeting with a dozen adoptive parents who have adopted a child from the Hengdong Social Welfare Institute in Hunan Province in China. These couples . . . arrived in the Netherlands with their adoptive children on March 31, 2005. [Their] home[s] [have] recently become discredited [due to]was involve[ment] in child trafficking.

*Id.*

<sup>400</sup> Telephone Interviews with Patti Smith, *supra* note 253.

<sup>401</sup> Hut Testimony, *supra* note 378.

<sup>402</sup> *Id.*

Wereldkinderen later discovers that every country was told the same thing—that although children from the Hunan scandal had been adopted abroad, none had been adopted into countries that inquired about the scandal.<sup>403</sup>

With the CCAA's assurance that "[c]oncerned departments took effective measures to strengthen management in order to avoid similar cases in the future," it is still difficult to discern what measures were actually taken.<sup>404</sup> In a meeting held in Tianjin, orphanage directors were not prohibited from paying large sums of money for children; rather, they were simply warned that if they were caught paying large sums for children, they were on their own.<sup>405</sup> When Hut traveled informally to China in July 2008, she noted:

[M]ore and more indications that Chinese orphanages were [] paying on a large scale for children who are placed in orphanages, and that the CCAA [has been informed of] this practice. Also, insiders told [Wereldkinderen] about large-scale baby buying programs in China. The people who told us this received their information directly from directors and staff of orphanages. One person told me that [many] orphanages are involved in [p]aying for children[;] more than 20 have a [purposeful baby-buying] plan, [and] staff [and] local [officials are involved]. The directors have contact with local midwives and they (the directors) heard from them when pregnant women were found. They [contacted these women (I don't know if this contact was made by the directors or via midwives) and offered money (200 – 300 USD)] to the [birth] mothers if they decided not to keep the baby, but would give the baby to the orphanage after they gave birth, [i.e.,] when the [birth] mother [found out] that the baby would be a girl (before they gave birth or at the moment she gave birth). There are now also known amounts of up to 600 USD. Thus, orphanages would "book" children[] by offering pregnant women money in exchange for their child when born. Also, there were many examples of children who come from a particular province and were transferred to [orphanages] in other provinces, although [this is] formally [forbidden]. After finding children[,] orphanages have to advertise in media in the province to find the parents. . . . By transferring [children] to another province[,] the chance that the biological parents will find their children becomes very small. Papers were then falsified, finding locations made up, etc.<sup>406</sup>

Additionally, the children sold by the Duans to the six Hunan orphanages in late 2005, still in the orphanages when the scandal broke and adoptions stopped as the CCAA investigated, were all subsequently submitted for international adoption when the orphanages re-opened in September

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<sup>403</sup> *Id.*

<sup>404</sup> Letter from Lu Ying, *supra* note 379.

<sup>405</sup> Telephone Interview with Chen Zhi Jin, *supra* note 90.

<sup>406</sup> Hut Testimony, *supra* note 378.

2006; all were adopted to the United States and other countries in late 2006 and 2007.<sup>407</sup> Subsequent press reports about Fuzhou, Changde, and other orphanages have resulted in no action by the CCAA to end those practices in those orphanages. In short, I am unable to find any evidence that any changes were made in China's processing or procurement of children for adoption following the Hunan scandal of 2005.

(3) Wereldkinderen then submitted a request to the Hague Permanent Bureau in February 2008, following the Zhenyuan family-planning confiscation revelations.<sup>408</sup> The response to their request to investigate was that the Hague Permanent Bureau had not been asked by the Dutch Central Authority to investigate, and even if they had, they had no authority, resources, responsibilities, or capabilities to do so; "It was also stated by the Hague Permanent Bureau that licensees and private organizations under the Convention have big responsibilities, but limited opportunities to make that true."<sup>409</sup> Thus, after being refused by the Chinese to investigate ethical breaches, Wereldkinderen petitioned the Hague Permanent Bureau to conduct an investigation since both the Netherlands and China were signatories to the Hague Agreement.<sup>410</sup> The response was that the Hague Permanent Bureau itself had neither the authority nor the resources to investigate, and that it was the responsibility of the agencies to conduct such investigations.<sup>411</sup>

It is easy to understand why Hut resigned from her position in Wereldkinderen after trying to get answers and reassurances that the problems in China's program had been resolved. After appealing to the CCAA, her own government, the Dutch Central Authority, and the Hague governing body itself, all to no avail, she was left with no further options and gave up.<sup>412</sup> After all, in the words of the Dutch embassy, adoption from China is a "politically sensitive issue."<sup>413</sup>

#### IV. CONCLUSION

China's adoption program remains vulnerable to abuse and corruption. Resolving these problems is hampered by the inability of the Chi-

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<sup>407</sup> Hunan Orphanage Logs, Qidong Police Files (on file with author). Six children sold by the Duans in November 2005 were submitted for adoption in June 2006 by the Hengdong County orphanage; eight children sold to the Changning orphanage between August and November 2005 were submitted for international adoption in December 2006. *Id.* All of the Duan children in the six orphanages who had been submitted to the CCAA for adoption in late 2005, prior to the scandal breaking, were also adopted in late 2006 and 2007. *Id.*

<sup>408</sup> Hut Testimony, *supra* note 378.

<sup>409</sup> *Id.*

<sup>410</sup> *Id.*

<sup>411</sup> *Id.*

<sup>412</sup> *Id.*

<sup>413</sup> *Id.*

nese press to publicize cases of corruption. For example, Li Ling, the reporter who published the planted news story that broke the Hunan scandal, was apparently punished by the Chinese government following publication of his story.<sup>414</sup> Li Ling “didn’t know the law,” observed Yuan Bai Shun, “The article he wrote caused the government to lose face. So he was punished.”<sup>415</sup>

Government pressure was put on Shangguan Jiao Ming and the *Caixin News*, which published the exposé on the Gaoping family-planning confiscations.<sup>416</sup> Substantial pressure was also put on the *Nanfangdushibao*, the newspaper that broke the Zhenyuan story.<sup>417</sup>

On June 13, 2009, the paper was ready to [publish] the story and was told by the [Beijing] Government they were prohibited from printing any story that deals with orphanages, family planning offices, or baby-buying. After two weeks of deliberation, they modified the story slightly and published it despite this prohibition.<sup>418</sup>

Also of concern to Wereldkinderen in light of the Hague Agreement was whether Chinese families were being given access to the children in the orphanages participating in the international adoption program, a foundational principle of the Hague Agreement.<sup>419</sup> Director Hut made inquiries while on her trips to China, and “a prominent high official in China had stated ‘off the record’ that ‘an examination by the CCAA in China showed that there were enough domestic parents available to adopt the healthy children, and that they are queuing up.’”<sup>420</sup> In 1991, before China’s international adoption program even officially started, Sheryl WuDunn of the *N.Y. Times* quoted the director of the Hunan Civil Affairs Bureau in Changsha as stating, “The number of couples who want kids exceeds the number of kids we have to give[.]”<sup>421</sup> Both of these statements conform to the research conducted for this article, which showed that nearly 90% of orphanages participating in international adoption

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<sup>414</sup> E-mail from Yuan Bai Shun, *supra* note 131.

<sup>415</sup> *Id.*

<sup>416</sup> *The Beating of a Butterfly’s Wings*, RESEARCH-CHINA.ORG (July 1, 2009, 8:30 PM), <http://research-china.blogspot.com/2009/07/beating-of-butterfly-wings.html>.

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

<sup>418</sup> *Id.*

<sup>419</sup> Hague Convention, *supra* note 22, at Preamble, art. 4-b. The subsidiarity principle of the Hague Agreement stipulates that Contracting States recognise that a child should be raised by his or her birth family or extended family whenever possible. *Id.* If that is not possible or practicable, other forms of permanent care in the country of origin should be considered. *Id.* Only after due consideration has been given to national solutions should intercountry adoption be considered, and then only if it is in the child’s best interests. *Id.*

<sup>420</sup> Hut Testimony, *supra* note 378.

<sup>421</sup> Sheryl WuDunn, *Changsha Journal: China’s Castaway Babies: Cruel Practice Lives On*, N.Y. TIMES (Feb. 26, 1991), <http://www.nytimes.com/1991/02/26/world/changsha-journal-china-s-castaway-babies-cruel-practice-lives-on.html> (internal quotation marks omitted).

refused to give domestic families access to children in their care.<sup>422</sup> Nearly every orphanage had waiting lists several years long of domestic families wishing to adopt children, while simultaneously sending adoptable children internationally.<sup>423</sup>

Taken in combination, the lack of a free press inside China, the inability of national governments to circumnavigate the CCAA to conduct their own investigations into corruption allegations, and the ability of orphanages to easily fabricate adoption paperwork, combined with the substantial demand and financial resources from Western families, has led to the perfect recipe for perpetual corruption. Director Hut's experience shows that agencies and national governments are prevented from conducting investigations into Hague violations by the Hague agreement itself, which contains no parameters for investigating such problems by receiving countries. The CCAA asserted to the Luoyang families that the Beijing government has no responsibility to verify the legality of the adoptions that they perform, confessing that the agency itself must rely on the local Civil Affairs and orphanage officials to self-govern. Thus, the integrity of China's program rests with those who benefit directly from its continuance and are financially rewarded by the children they adopt.

China's problems with baby buying, deceptive education programs, and the other issues discussed above are not in any way unique, having been seen in nearly every international adoption program around the world.<sup>424</sup> What is unique to China is the ability of the Chinese govern-

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<sup>422</sup> *The Hague Agreement and China's International Adoption Program*, RESEARCH-CHINA.ORG (June 8, 2006, 5:28 AM), <http://research-china.blogspot.com/2006/06/hague-agreement-and-chinas.html>.

<sup>423</sup> *Id.*

<sup>424</sup> See, e.g., *Summary of Irregularities in Adoptions in Vietnam*, U.S. EMBASSY HANOI (Apr. 25, 2008), [http://vietnam.usembassy.gov/irreg\\_adoptions042508.html](http://vietnam.usembassy.gov/irreg_adoptions042508.html).

Among the stated concerns of the U.S. Embassy in Hanoi, Vietnam, were that official adoption documents were easily fabricated or issued based on incorrect data, and that orphanage directors had financial incentives to adopt as many children as possible to foreign families. *Id.* Orphanage directors also confirmed that domestic families were being denied access to adoptable children due to the large donations flowing in from international adoption. *Id.* Embassy personnel received multiple reports "that facilitators are deliberately staging fraudulent desertions to conceal the identity of the birth parents." *Id.* Other concerns were reports of birth families being paid money to relinquish their children. "Many of these parents also report that orphanage officials told them that the child will visit home frequently, will return home after they reach a certain age (often 11 or 12), or will send remittance payments from the United States." *Id.* "In these cases, the majority of birth parents have said they do not consent to the adoption if any of these conditions are not kept." *Id.* "[T]he orphanage [] hired contract employees to find children between zero and six years of age whose families were in a particularly difficult situation and encourage the families to put their children in the orphanage." *Summary of Irregularities in Adoptions in Vietnam, supra.* All of these issues are also present in the China adoption program. See generally David M. Smolin, *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Traf-*

ment to control the flow of information and prevent national governments from assessing the quality and truthfulness of that information.

In the end, it is doubtful that any changes can be made that will bring China's international adoption program into compliance with the explicit and implicit demands of the Hague Agreement. The disparity between the economic status of receiving adoptive families and sending birth families, the differences in cultural attitudes toward baby buying<sup>425</sup> and family-planning confiscations, and the disparate goals and objectives of the participating governments to the program itself means that ways will be found to circumvent any protections that are installed. "As long as foreigners want to spend a large amount of U.S. dollars on adopting babies," Duan Yu Lin observed, "and some people can benefit from this, why would they stop this if they can earn a fortune? So this kind of thing will always exist."<sup>426</sup>

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*ficking, Kidnapping, and Stealing Children*, 52 WAYNE L. REV. 113 (2006); E.J. Graff, *The Lie We Love*, FOREIGN POLICY, (Nov. 1, 2008), [http://www.foreignpolicy.com/articles/2008/10/15/the\\_lie\\_we\\_love?page=0,0](http://www.foreignpolicy.com/articles/2008/10/15/the_lie_we_love?page=0,0).

<sup>425</sup> *But see* P.R.C. Adoption Laws, *supra* note 40, at ch. II, art. 20 ("It is strictly forbidden to buy or sell a child or to do so under the cloak of adoption.").

<sup>426</sup> Interview by Radio Free Asia with Duan Yu Lin (Sept. 4, 2011) (on file with author).