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### Advancement of women

## Violence against women and girls, its causes and consequences

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, in accordance with Assembly resolution [79/152](#).

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\* [A/80/150](#).



## **Report of the Special Rapporteur on violence against women and girls, its causes and consequences**

### **The different manifestations of violence against women and girls in the context of surrogacy**

#### *Summary*

In the present report, the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, examines the different manifestations of violence against women and girls in the context of surrogacy.

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## I. Introduction

1. The Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, submits the present report pursuant to Human Rights Council resolution 50/7. In the report, the Special Rapporteur examines the different manifestations of violence against women and girls in the context of surrogacy, focusing on the drivers of the practice and on the human rights implications for the females involved.

2. In response to the call for input to the report, the Special Rapporteur received some 120 submissions from different stakeholders. She convened online consultations with 78 experts: commissioning parents, surrogacy agencies, medical experts and women with lived experiences of surrogacy. The Special Rapporteur also relied on reputable secondary sources, which were few, given their weaknesses.<sup>1</sup>

## II. Terminology

3. Surrogacy is defined as a practice in which a woman (the “surrogate mother”) becomes pregnant and carries a child for another individual or couple (the “commissioning parent(s)” or “intended parent(s)”)<sup>2</sup> Such arrangements may be made directly between the surrogate and the intending parent(s) or facilitated through a surrogacy clinic or agency. In international human rights law, a mother is defined as a woman, understood in its ordinary meaning to be a female of childbearing ability,<sup>3</sup> who gives birth to a child.<sup>4</sup> After birth, the terms “intended mother” and “legal mother” are often used to refer to a woman who undertakes parental responsibilities towards the child.<sup>5</sup> The present report uses the terms “surrogate mother(s)” and “surrogate(s)” instead of “gestational carrier(s)”, as the latter is sex- and gender-neutral, reducing women to their reproductive function and objectifying those involved.<sup>6</sup>

4. Surrogacy may be categorized as either traditional or gestational. In traditional surrogacy, the surrogate provides her own egg, which is subsequently fertilized with sperm from either the intending father or a donor, typically through artificial insemination. As a result, the surrogate is genetically related to the child that she carries. In gestational surrogacy, which has become an increasingly prevalent practice, an embryo created from the gametes of the commissioning parent(s) or donors is implanted in the surrogate, who therefore has no genetic connection to the child.<sup>7</sup>

5. In a commercial surrogacy, the surrogate receives financial compensation beyond the reimbursement of medical and related expenses. In what is known as altruistic surrogacy, the surrogate receives no formal compensation other than reimbursement for reasonable costs. These distinctions are often blurred, particularly in jurisdictions where commercial surrogacy is formally prohibited but where reimbursement is so high that it effectively constitutes commercial payment. Few

<sup>1</sup> Viveca Söderström-Anttila and others, ““Surrogacy: outcomes for surrogate mothers, children and the resulting families – a systematic review”, *Human Reproduction Update*, vol. 22, No. 2 (March/April 2016).

<sup>2</sup> Ana Rita Igreja and Miguel Ricou, “Surrogacy: challenges and ambiguities”, *The New Bioethics*, vol. 25, No. 1 (2019).

<sup>3</sup> A/HRC/59/47, para. 4.

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights, art. 10 (2).

<sup>5</sup> See David de Groot, “Surrogacy: the legal situation in the EU”, EPRS Briefing, No. PE 769.508, February 2025.

<sup>6</sup> Submission by Natalia Rueda.

<sup>7</sup> Igreja and Ricou, “Surrogacy: challenges and ambiguities”.

jurisdictions that regulate surrogacy maintain frameworks that are genuinely non-commercial,<sup>8</sup> hence surrogacy arrangements are “almost invariably commercial” in nature.<sup>9</sup>

### III. Phenomenon

#### A. Scale and trends

6. The practice of surrogacy is on the rise worldwide, with a significant and growing proportion of arrangements involving cross-border dynamics: intended parents, often from wealthier countries, engage surrogates in jurisdictions where the practice is legally permitted.<sup>10</sup> In 2023, the global surrogacy market was valued at \$14.95 billion and is projected to reach \$99.75 billion by 2033.<sup>11</sup> Frequently, surrogate mothers receive only a small fraction of the overall compensation, with the majority of the payment going to intermediaries.<sup>12</sup> Surrogates have reportedly received as little as 10–27.5 per cent of the total payment.<sup>13</sup> Notably, there are incentives for those who refer a woman to a surrogacy agency. In some countries such as in the United States of America, a referring person can receive a bonus of between \$1,000 and \$5,000 on average.<sup>14</sup> In India, it can be up to \$100.<sup>15</sup>

7. Except in the United States, surrogacy agencies are primarily involved in cross-border arrangements.<sup>16</sup> Rising costs, longer waiting periods in traditional surrogacy destinations and increased regulatory restrictions, alongside crises and wars, have relaunched interest in identifying new destinations for surrogacy in Latin America.<sup>17</sup> With the inconsistency in legal and policy approaches, “forum shopping” emerges, whereby commissioning parents seek the least restrictive and least expensive locations to recruit surrogate mothers.<sup>18</sup> This reality is challenging the assumption that regulation is sufficient to prevent abuse in surrogacy arrangements.

#### B. State policies

8. There are primarily three regulatory models governing surrogacy: (a) explicit prohibition; (b) regulation and recognition, either full or limited to altruistic arrangements; and (c) unregulated, often resulting in legal ambiguity. Prohibition, adopted predominantly in some Western European countries, entails criminal

<sup>8</sup> Claire Fenton-Glynn and Jens M. Scherpe, “Surrogacy in a globalized world: comparative analysis and thoughts on regulation”, in *Eastern and Western Perspectives on Surrogacy*, Jens M. Scherpe, Claire Fenton-Glynn and Terry Kaan, eds. (Intersentia, 2019).

<sup>9</sup> Law Commission of England and Wales and Scottish Law Commission, *Building Families through Surrogacy: A New Law – Volume II: Full Report* (2023).

<sup>10</sup> A/HRC/37/60, para. 13.

<sup>11</sup> See <https://www.sphericalinsights.com/reports/surrogacy-market>.

<sup>12</sup> Submission by Japan Coalition Against Surrogacy Practices.

<sup>13</sup> See <https://www.theguardian.com/world/2024/oct/22/surrogacy-ring-argentina>; see also <https://pmc.ncbi.nlm.nih.gov/articles/PMC9800153>.

<sup>14</sup> See e.g. <https://alceasurrogacy.com/surrogates/referral-program/>.

<sup>15</sup> Sharvari Karandikar and others, “Economic necessity or noble cause? A qualitative study exploring motivations for gestational surrogacy in Gujarat, India”, *Affilia: Journal of Women and Social Work*, vol. 29, No. 2 (May 2014).

<sup>16</sup> Sam G. Everingham and Andrea Whittaker, “Trends in engagement in surrogacy by nationality 2018–2020: a survey of surrogacy agencies”, *Global Reproductive Health*, vol. 8, No. 1 (Spring 2023).

<sup>17</sup> Submission by the Human Rights Commission of Mexico City.

<sup>18</sup> Submission by Coalition Against Trafficking in Women.

sanctions at least for organizing or advertising surrogacy arrangements, although their prohibitions and enforcement vary significantly. In practice, as observed in Germany, surrogacy and related services, including egg donation, are reportedly still promoted at public events without legal consequences.<sup>19</sup> By contrast, Italy passed legislation in 2024 designating surrogacy as a “universal crime” that exposes Italian citizens to prosecution for engaging in surrogacy abroad.<sup>20</sup> Typically, however, prohibition is combined with the recognition of the filiation of children to intended parents after birth, if found to be in the child’s best interests.

9. Some countries, like Australia and India, adopt regulatory frameworks that permit only altruistic surrogacy. Others, such as Georgia, Israel, the Russian Federation and Ukraine, permit commercial surrogacy, although the Russian Federation recently prohibited international surrogacy.<sup>21</sup> The majority of States do not regulate surrogacy or are silent on it. Surrogacy may therefore be tolerated in practice, even where legal recognition of parentage may be lacking.

10. Enforcement and oversight mechanisms for surrogacy arrangements and the role of intermediaries are frequently weak or non-existent.<sup>22</sup> Differing legal standards, as well as the lack of mutual recognition of parentage and contracts across jurisdictions, make the resolution of related disputes complex. Even when contracts designate parents, national authorities may refuse to register foreign birth certificates.

11. Courts have also adopted different positions on the legality of surrogacy. For instance, the Supreme Court of Spain has held that article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) does not establish a “right” to become a parent by surrogacy<sup>23</sup> and, in another decision, found that surrogacy contracts “violate the dignity and the free development” of both the surrogate and her child by treating them as “mere objects” – with the Court declining to recognize a surrogacy judgment. By contrast, in October 2024, the highest court of France reportedly upheld the recognition of a United States surrogacy order.<sup>24</sup>

## IV. Women and girls particularly affected by surrogacy

### A. Surrogate mothers

12. Surrogate mothers are generally women or girls who have previously given birth to at least one child. Their motivations are often multifaceted, combining financial, empathetic and social considerations. Many express a desire to help others to experience parenthood while also emphasizing the opportunity that surrogacy provides to support them or their own families financially.<sup>25</sup> This is particularly relevant for single mothers, who frequently cite financial needs as a central reason for entering into surrogacy arrangements.<sup>26</sup> When they are described as “service

<sup>19</sup> Submission by “Lasst Frauen Sprechen!”.

<sup>20</sup> See <https://www.senato.it/leggi-e-documenti/disegni-di-legge/scheda-ddl?did=57364>.

<sup>21</sup> See <https://www.theguardian.com/lifeandstyle/2020/jul/29/up-to-1000-babies-born-to-surrogate-mothers-stranded-in-russia>.

<sup>22</sup> Yingyi Luo, “Unravelling informality and precarity: new labour law strategies for the global reproduction network of cross-border surrogacy”, *Asian Bioethics Review*, vol. 16 (2024).

<sup>23</sup> European Association of Private International Law, “The Spanish supreme court on surrogacy contract and public policy”, 27 January 2025.

<sup>24</sup> See <https://eapil.org/2024/10/08/french-supreme-court-rules-foreign-surrogacy-requires-no-adaptation/>.

<sup>25</sup> Submission by Axana M. Soltan.

<sup>26</sup> Submission by Procuraduría de Trata y Explotación de Personas Fecha of Argentina.

providers” rather than mothers, it creates an impression that compromising their dignity and well-being could be justified by the existence of a contract.

13. Globally, most surrogate mothers come from lower-income backgrounds and have less social status compared with the commissioning parents.<sup>27</sup> Many lack access to effective legal remedies or advocacy mechanisms.<sup>28</sup> Reportedly, migrant women are either specifically targeted for surrogacy or transferred to other countries for the purpose of impregnation<sup>29</sup> and childbirth, often to circumvent legal frameworks.<sup>30</sup>

## B. Commissioning mothers

14. Commissioning mothers are generally from higher socioeconomic backgrounds than most surrogate mothers.<sup>31</sup> However, their experience is also frequently marked by uncertainty and emotional strain. Many commissioning mothers report anxiety regarding the outcome of the pregnancy, the nature of their relationship with the surrogate, societal stigma, legal complexities and the financial burdens involved.<sup>32</sup> Particularly in cross-border arrangements, they may fall victim to fraudulent practices by surrogacy agencies, resulting in substantial financial losses.<sup>33</sup> Some may feel exhausted by the prolonged attempts to have a child. In certain cultural contexts, infertile commissioning mothers experience additional external pressure and stigma related to expectations of fulfilling what are perceived as their primary social roles.<sup>34</sup>

## C. Women and girls who provide egg cells

15. Women and girls who donate their eggs for surrogacy often come from backgrounds marked by economic vulnerability. They are typically young adults who may view egg donation as a means to meet their financial needs.<sup>35</sup> Agencies tend to prefer women with specific characteristics, which they promise to commissioning parents.<sup>36</sup> The demand is frequently shaped by racist and postcolonial stereotypes, as young, white, Western women with higher education receive up to 100 times more for their egg cells than others.<sup>37</sup>

<sup>27</sup> Jutharat Attawet, Ethar Alsharaydeh, and Mark Brady, “Commercial surrogacy: landscapes of empowerment or oppression explored through integrative review”, *Health Care for Women International* (2024).

<sup>28</sup> Submission by Alliance Pro Rodinu.

<sup>29</sup> See e.g. Maria Varenikova, “Mothers, babies stranded in Ukraine surrogacy industry”, *The New York Times*, 15 August 2020.

<sup>30</sup> European Network of Migrant Women and A Coalition for the Abolition of Surrogate Motherhood, *Migrant Women and Reproductive Exploitation in the Surrogacy Industry: Joint Investigation* (2022).

<sup>31</sup> Christopher B. Kleinpeter, “Surrogacy: the parents’ story”, *Psychology Reports*, vol. 91, No. 1 (2002).

<sup>32</sup> Mitra Zandi and others, “Nine centuries waiting: the experiences of Iranians surrogacy commissioning mothers”, *Iranian Journal of Nursing and Midwifery Research*, vol. 19, No. 3 (May–June 2014).

<sup>33</sup> Submission by 4Métrica.

<sup>34</sup> Submission by Amman Centre for Human Rights Studies.

<sup>35</sup> Polina Vlasenko, “Worker-mothers between legitimization and discipline: ambiguities in egg donation and surrogacy in Ukraine”, *Medical Anthropology: Cross-Cultural Studies in Health and Illness*, vol. 43, No. 8 (2024).

<sup>36</sup> See <https://www.donorconciierge.com/our-service>.

<sup>37</sup> Carolin Schurr, “The baby business booms: economic geographies of assisted reproduction”, *Geography Compass*, vol. 12, No. 8 (August 2018).

16. Recruitment is commonly driven by online advertisement that frames egg donation as both altruistic and financially rewarding while omitting vital information about the discomfort of daily hormonal injections and harmful side effects and risks, such as anaesthesia complications,<sup>38</sup> ovarian hyperstimulation syndrome<sup>39</sup> or the emotional complexities of giving up one's genetic child.<sup>40</sup> Women report the absence of health services after the donation.<sup>41</sup> Many, particularly girls, are groomed to register as egg donors to test their tolerance for medical procedures before entering a surrogacy arrangement.<sup>42</sup> The digital nature of this reproductive market also enables the recruitment of surrogates and egg donors from countries where such practices are formally prohibited.<sup>43</sup>

#### **D. Infants, including girls, born through surrogacy**

17. Children born through surrogacy are often pursued and cherished by commissioning parents. However, from birth, they experience immediate separation from the woman who carried them and are transferred to the commissioning parents – a process that can be emotionally and developmentally significant.<sup>44</sup> Individuals with disrupted development of secure attachment are at higher risk of developing mental disorders.<sup>45</sup> In some cases, the transfer of a child is also delayed or complicated by legal uncertainties surrounding the recognition of parentage, nationality or identity, leaving the child in limbo.<sup>46</sup>

18. Studies indicate that children born through surrogacy have lower mean gestational age at delivery, higher rates of preterm birth and higher rates of low birth weight.<sup>47</sup> Assisted reproductive technology and multifetal pregnancy have reportedly been associated with an increased risk of birth defects.<sup>48</sup> Breastfeeding, which is prevented in surrogacy and even contractually prohibited,<sup>49</sup> is essential to an infant's healthy development.<sup>50</sup> While research on the long-term emotional well-being of

<sup>38</sup> Carmel Shalev and others, "Ethics and regulation of inter-country medically assisted reproduction: a call for action", *Israel Journal of Health Policy Research*, vol. 5, No. 59 (2016).

<sup>39</sup> Daniella Bandelli, *Sociological Debates on Gestational Surrogacy: Between Legitimation and International Abolition* (Springer, 2021).

<sup>40</sup> Eric Blyth and others, "Donor-conceived people's views and experiences of their genetic origins: a critical analysis of the research evidence", *Journal of Law and Medicine*, vol. 19, No. 4 (June 2012).

<sup>41</sup> W. Kramer, J. Schneider and N. Schultz, "US oocyte donors: a retrospective study of medical and psychosocial issues", *Human Reproduction*, vol. 24, No. 12 (December 2009).

<sup>42</sup> Patricia Fronek, "Current perspectives on the ethics of selling international surrogacy support services", *Medicolegal and Bioethics*, vol. 18 (2018).

<sup>43</sup> Submission by Jasmine R. de los Santos.

<sup>44</sup> Marcus Agnafors, "The harm argument against surrogacy revisited: two versions not to forget", *Medicine, Health Care and Philosophy*, vol. 17 (2014).

<sup>45</sup> Radovan Hrubý, Jozef Hašto and Peter Minárik, "Attachment in integrative neuroscientific perspective", *Neuroendocrinology Letters*, vol. 32, No. 2 (2011).

<sup>46</sup> Seema Mohapatra, "Stateless babies and adoption scams: a bioethical analysis of international commercial surrogacy", *Berkeley Journal of International Law*, vol. 30, No. 2 (2012).

<sup>47</sup> Irene Woo and others, "Perinatal outcomes after natural conception versus in vitro fertilization (IVF) in gestational surrogates: a model to evaluate IVF treatment versus maternal effects", *Fertility and Sterility*, vol. 108, No. 6 (December 2017).

<sup>48</sup> Ruohua Yan and others, "Assisted reproductive technology and the risk of birth defects mediated by multifetal pregnancy: evidence from the China birth cohort study", *American Journal of Obstetrics and Gynaecology*, vol. 232, No. 6 (June 2025).

<sup>49</sup> Hillary L. Berk, "The legalization of emotion: managing risk by managing feelings in contracts for surrogate labour", *Law and Society Review*, vol. 49, No. 1 (March 2015).

<sup>50</sup> Bandelli, *Sociological Debates*.



children born through surrogacy is limited,<sup>51</sup> it indicates that the lack of a gestational connection places them at increased psychological risk.<sup>52</sup>

## V. Causes and consequences

### A. Reinforcement of sexist stereotypes and commodification of female bodies

19. Unlike other forms of labour, surrogacy entails the direct and exploitative use of a woman's bodily and reproductive functions for the benefit of others,<sup>53</sup> often resulting in long-lasting harm and in exploitative circumstances. Furthermore, surrogacy does not distinguish between working time and personal life, as surrogate mothers cannot take leave from pregnancy.<sup>54</sup> Commercial surrogacy arrangements place monetary value on women's capacity to bear and give birth to healthy children,<sup>55</sup> reinforcing harmful power imbalances in which individuals and entities with greater financial means exert control over the ability of females to become pregnant and give birth.<sup>56</sup>

20. In contexts where women and girls face structural barriers to exercising basic rights and accessing essential services, surrogacy can further devalue them, reduce them to solely their reproductive roles<sup>57</sup> and perpetuate the idea that female biology and reproductive capacity are delegable and marketable.<sup>58</sup> Such a view is embedded in the language on surrogacy, referring to women in disembodied terms such as "womb",<sup>59</sup> "a guesthouse" and an "incubator developing their cells".<sup>60</sup> Surrogate mothers also report being infantilized as "good girls" when complying with surrogacy requirements.<sup>61</sup>

### B. Increased demand

21. The high rise in infertility partly accounts for the demand for surrogacy.<sup>62</sup> However, an increased number of individuals and couples who do not experience infertility in the clinical sense, such as same-sex couples, single men and prospective parents beyond reproductive age, are turning to surrogacy. Some women have resorted to surrogacy when they do not want to be pregnant themselves for personal

<sup>51</sup> While some studies indicate positive experience, the most widely cited study suffers from methodological limitations such as a relatively small original sample, which became smaller by the time of its conclusion. See Susan Golombok and others, "Families created through surrogacy arrangements: parent-child relationships in the 1st year of life", *Developmental Psychology*, vol. 40, No. 3 (May 2004); and Susan Golombok and others, "A longitudinal study of families formed through reproductive donation: parent-adolescent relationships and adolescent adjustment at age 14", *Developmental Psychology*, vol. 53, No. 10 (October 2017).

<sup>52</sup> Susan Golombok and others, "Children born through reproductive donation: a longitudinal study of psychological adjustment", *Journal of Child Psychology and Psychiatry*, vol. 54, No. 6 (June 2013).

<sup>53</sup> Submission by Nordic Model Now.

<sup>54</sup> Joint submission by E. Bilotti, V. Calderai, S. Niccolai, I. Pretelli, N. Rueda.

<sup>55</sup> Submission by Melissa Farley.

<sup>56</sup> Submission by Feminist Legal Clinic Inc.

<sup>57</sup> Submission by Slovenia.

<sup>58</sup> Submission by Feministas Radicales.

<sup>59</sup> Submission by Natalia Rueda.

<sup>60</sup> Elly Teman, "My bun, her oven", *Anthropology Now*, vol. 2, No. 2 (September 2010).

<sup>61</sup> Consultations with surrogate mothers.

<sup>62</sup> See <https://www.gminsights.com/industry-analysis/surrogacy-market>.

reasons.<sup>63</sup> Surrogacy also offers the opportunity to be involved from the earliest stages of life and – compared with adoption – the possibility of a genetic connection to the child.<sup>64</sup> Demand is also shaped by the largely positive coverage of surrogacy in the media<sup>65</sup> and its visibility among celebrities,<sup>66</sup> as well as broader social narratives framing the desire for a child as a legitimate dimension of the right to family life, including for men in same-sex relationships, for whom surrogacy and adoption remain the main pathway to parenthood.<sup>67</sup>

22. Globalization and advances in medical reproductive technology have further enabled surrogacy, facilitating access to surrogate mothers in other countries.<sup>68</sup> In international arrangements, surrogate mothers are typically nationals of low-income or developing countries, while commissioning parents tend to be wealthier individuals from Western States – a dynamic that risks reinforcing colonial and discriminatory patterns.<sup>69</sup> If current trends continue, surrogacy will continue to be further normalized. For example, in the United States, large companies reportedly offer financial contributions towards the surrogacy arrangements of their employees.<sup>70</sup> There are also ongoing debates on extending insurance schemes to cover surrogacy costs for commissioning parents with infertility issues.<sup>71</sup>

### C. Increased marginalization and vulnerability

23. Many surrogate mothers have experienced multiple and intersecting forms of discrimination and poverty long before entering surrogacy arrangements.<sup>72</sup> Surrogacy arrangements serve to capitalize on these stark inequalities, sharpened by globalization, whereby everything is for sale. Surrogate mothers are often trapped in unequal power dynamics with doctors and agency personnel<sup>73</sup> and have described feeling powerless and being treated “like a cow”.<sup>74</sup> Many lack access to independent legal advice and representation and may not receive information in a language that they understand<sup>75</sup> – making it difficult to challenge exploitative contracts or unethical practices.<sup>76</sup>

24. Poverty and conflict can further contribute to women’s decisions about becoming surrogates and amplify associated risks.<sup>77</sup> In Ukraine, the surrogacy agency

<sup>63</sup> See <https://www.theguardian.com/lifeandstyle/2019/may/25/having-a-child-doesnt-fit-womens-schedule-the-future-of-surrogacy>.

<sup>64</sup> Claire Fenton-Glynn, “International surrogacy arrangements: a survey”, Cambridge Family Law, April 2022.

<sup>65</sup> Consultations with surrogate mothers.

<sup>66</sup> Elizabeth Logan, “22 celebrities who’ve used surrogacy to welcome children – and want to talk about it”, *Glamour*, 1 February 2025.

<sup>67</sup> Submission by Rainbow Families Australia.

<sup>68</sup> Submission by Associazione Comunità Papa Giovanni XXIII.

<sup>69</sup> Submission by Swedish Women Lobby.

<sup>70</sup> Submission by AFRA Mujeres.

<sup>71</sup> Melissa Goodman, “California’s SB 729: expanding access to IVF and family building for all”, UCLA School of Law, October 2024.

<sup>72</sup> See United Nations Educational, Scientific and Cultural Organization-International Bioethics Committee, document SHS/IBC-26/19/2 REV, para. 155.

<sup>73</sup> Malene Tanderup and others, “Reproductive ethics in commercial surrogacy: decision-making in IVF clinics in New Delhi, India”, vol. 12 (2015).

<sup>74</sup> See <https://www.aljazeera.com/opinions/2023/9/8/surrogacy-human-right-or-just-wrong>.

<sup>75</sup> Submission by PFAC and CIAMS.

<sup>76</sup> Submission by the Centre for Bioethics and Culture.

<sup>77</sup> Submission by Maria Dmytrieva.

reportedly pressured surrogate mothers to leave, as the safe delivery of the child overrode the woman's desire to remain.<sup>78</sup>

## VI. Violence against women and girls in the context of surrogacy

### A. Economic violence

25. Surrogate mothers are particularly vulnerable to exploitation and violence throughout surrogacy if they are unable to make ends meet<sup>79</sup> or are in debt.<sup>80</sup> While there are some altruistic surrogates who are well educated and financially stable<sup>81</sup> and may have had positive experiences, those from more impoverished backgrounds, who constitute the majority, lack the same capacity to voice dissent or reveal the harms that they face.<sup>82</sup>

26. Numerous women were reportedly denied compensation and left without assistance when they miscarried or did not comply with all the requirements of their contract.<sup>83</sup> In some instances, women who did not become pregnant were required to pay for fertility medications themselves.<sup>84</sup> In jurisdictions where surrogacy is permitted, it is often treated as a private arrangement between individuals, with little or no obligation on the State to collect or maintain the data necessary for monitoring and oversight.<sup>85</sup>

27. In many contracts, surrogate mothers are required to waive, in advance, their right to make their own medical decisions, or to waive the confidentiality of information obtained by doctors during treatments.<sup>86</sup> Other examples of harmful practices reportedly justified using a contract include the implantation of the maximum number of embryos to increase the chances of successful birth, recourse to selective abortion, constant monitoring by the intended parents, including through uninterrupted camera surveillance,<sup>87</sup> and restrictions on freedom of movement,<sup>88</sup> thereby contravening the definition of "decent and productive work"<sup>89</sup> and the "reasonable limitation of working hours".<sup>90</sup> Surrogacy arrangements, therefore, situate this practice outside the realm of freedom of contract.<sup>91</sup>

<sup>78</sup> See <https://www.theatlantic.com/health/archive/2022/03/russia-invasion-ukraine-surrogate-family/623327/>.

<sup>79</sup> The [https://english.elpais.com/elpais/2017/01/02/inenglish/1483355190\\_156732.html](https://english.elpais.com/elpais/2017/01/02/inenglish/1483355190_156732.html).

<sup>80</sup> Submission by Japan Coalition against Surrogacy Practices.

<sup>81</sup> José Ángel Martínez-López and Pilar Munuera-Gómez, "Surrogacy in the United States: analysis of sociodemographic profiles and motivations of surrogates", *Reproductive BioMedicine Online*, vol. 49, No. 4 (October 2024).

<sup>82</sup> Submission by Luba Fein, Voices of Israeli Sex Trade Survivors.

<sup>83</sup> Submission by Women's Liberation Front.

<sup>84</sup> See <https://www.scielo.org.mx/pdf/conver/v31/2448-5799-conver-31-e20648-en.pdf>.

<sup>85</sup> Rosana Triviño-Caballero, "Caring for delivery: healthcare professionals' ethical conflicts in surrogate pregnancy", *Hypatia*, vol. 38, No. 3 (Summer 2023).

<sup>86</sup> Carlos Martínez de Aguirre, "International surrogacy arrangements: a global 'Handmaid's Tale'?", in *Fundamental Problems of Surrogate Motherhood: Global Perspective*, Piotr Mostowik, ed. (Warsaw, Instytut Wymiaru Sprawiedliwości, 2019).

<sup>87</sup> Berk, "The legalization of emotion".

<sup>88</sup> Joint submission by E. Bilotti, V. Calderai, S. Niccolai, I. Pretelli, N. Rueda.

<sup>89</sup> International Labour Office, *Report of the Director-General: Decent Work*, 87th session (Geneva, 1999).

<sup>90</sup> International Covenant on Economic, Social and Cultural Rights, art. 7 (d).

<sup>91</sup> Adeline A. Allen, "Surrogacy and limitations to freedom of contract: toward being more fully human", *Harvard Journal of Law and Public Policy*, vol. 41, No. 3 (2018).

28. There is a risk of falling into a cycle of dependency on payments from surrogacy, especially if women lose or leave their jobs during the process.<sup>92</sup> This problem is particularly relevant in developing countries.<sup>93</sup> Women also sell their eggs between pregnancies or after they are no longer suitable to be a surrogate.<sup>94</sup>

## B. Psychological violence

29. Women experience psychological pressure amounting to violence in order to serve as surrogates. They are often pressured into surrogacy by its presentation as an exercise in demonstrating the values of “love” and “solidarity” – particularly in relation to homosexual couples.<sup>95</sup> Such pressures discourage women from seeking help or voicing dissent, as they may already feel bound by the commitment to transfer a child to commissioning parents with whom they may have emotional ties.<sup>96</sup>

30. A study of 50 women from India demonstrated that surrogate mothers have higher levels of depression during pregnancy and post-birth. In another research study, surrogate mothers reported difficulties in relinquishing their newborns in 35 per cent of cases and having negative emotions over their decision to go into surrogacy in 39 per cent of cases. Some 33 per cent were at risk of post-traumatic stress disorder or anxiety. Substantial stress was observed in 65 per cent of cases in negative in vitro fertilization outcomes.<sup>97</sup> They experience post-birth trauma linked to the release of high quantities of oxytocin after birth for the production of milk and the establishment of the bond,<sup>98</sup> a process abruptly interrupted by removing the newborn.<sup>99</sup> Surrogate mothers also report concern about their sexual lives during pregnancy, marital disturbance and their own childbirth planning.<sup>100</sup> There was only one study of surrogate mothers indicating no change in their well-being 10 years after surrogacy; however, it elicited methodological concerns.<sup>101</sup>

31. No regulatory framework can fully prevent the serious psychological harm that may result from the separation process.<sup>102</sup> Some surrogacy agencies offer detachment therapies to compel expectant mothers to emotionally separate from children, but the result might be cognitive dissociation between their body and their feelings,<sup>103</sup> rising to the levels of post-traumatic stress disorder.<sup>104</sup>

<sup>92</sup> Expert consultations.

<sup>93</sup> Olga B.A. van den Akker, *Surrogate Motherhood Families* (Routledge, 2017).

<sup>94</sup> Fronek, “Current perspectives”.

<sup>95</sup> Submission by CQFD Lesbian Feminists.

<sup>96</sup> Submission by Not All Gays.

<sup>97</sup> Ansha Patel, Pratap Kumar and P.S.V.N. Sharma, “‘The Miracle Mothers and Marvelous Babies’: psychosocial aspects of surrogacy – a narrative review”, *Journal of Human Reproductive Science*, vol. 13, No. 2 (April–June 2020).

<sup>98</sup> See e.g. Eliah Abasi and others, “Evaluating the effect of prenatal interventions on maternal–foetal attachment: a systematic review and meta-analysis”, *Nursing Open*, vol. 8, No. 1 (January 2021).

<sup>99</sup> Bandelli, *Sociological Debates*.

<sup>100</sup> Marjan Goli and others, “A reproductive health-care programme for surrogate mothers: a mixed methods study”, *Journal of Education and Health Promotion*, vol. 11, No. 1 (2022).

<sup>101</sup> V. Jadvā, S. Imrie and S. Golombok, “Surrogate mothers 10 years on: a longitudinal study of psychological well-being and relationships with the parents and child”, *Human Reproduction*, vol. 30, No. 2 (February 2025).

<sup>102</sup> Submission by Olivia Maurel.

<sup>103</sup> Submission by Soroptimist International.

<sup>104</sup> Clara Watson, “Womb rentals and baby-selling: does surrogacy undermine the human dignity and rights of the surrogate mother and child?”, *The New Bioethics*, vol. 22, No. 3 (2016).

32. Surrogates are often denied time with the newborn after birth, including not being allowed to hold the baby,<sup>105</sup> and may be cut off from contact with the intended parents and the child after giving birth.<sup>106</sup> Some surrogate mothers report feeling like “an object of a scientific experiment”.<sup>107</sup>

### C. Physical violence

33. Although recruitment material portrays surrogacy as a medically safe process for eligible women, evidence suggests that surrogate mothers have their health jeopardized to a greater extent than other mothers.<sup>108</sup> Drugs such as Lupron, which surrogate mothers usually self-administer<sup>109</sup> to synchronize their cycle with that of the egg donor before embryo implantation, are classified as hazardous and recommended to be administered only by healthcare workers wearing protective gowns and gloves. Such practice results in a higher rate of maternal health complications for surrogate mothers compared with others.<sup>110</sup> Surrogate pregnancies are more likely to be ectopic<sup>111</sup> and to lead to caesarean section, maternal gestational diabetes, hypertension, pre-eclampsia and placenta previa.<sup>112</sup>

34. Surrogacy contracts also change the dynamic in healthcare settings, particularly in countries where litigation is prolific.<sup>113</sup> Reports from India,<sup>114</sup> Mexico<sup>115</sup> and Nepal<sup>116</sup> indicate that delivery by caesarean section is arranged for surrogates regardless of medical indications or preferences, with risks for post-partum complications, particularly for impoverished women who live in rural areas.

### D. Reproductive violence

35. Power imbalances between surrogate mothers and commissioning parents have severe consequences when the latter impose an abortion in cases of multiple pregnancies or fetal disability.<sup>117</sup> Surrogate mothers have reportedly been pressured to terminate healthy pregnancies, including beyond the 12 weeks, through coercive tactics such as financial incentives, threats of legal action or the withdrawal of support

<sup>105</sup> Ilya Gridneff, Emily Schultheis and Dmytro Drabyk, “Inside a Ukrainian baby factory”, *Politico*, 23 July 2023.

<sup>106</sup> Submission by The Jamaican Network of Seropositives.

<sup>107</sup> Consultations with surrogate mothers.

<sup>108</sup> Submission by Collectif pour le Respect de la Medecine.

<sup>109</sup> See <https://cbc-network.org/2020/04/lets-talk-about-lupron>.

<sup>110</sup> Maria P. Velez and others, “Severe maternal and neonatal morbidity among gestational carriers: a cohort study”, *Annals of Internal Medicine*, vol. 177, No. 11 (2024).

<sup>111</sup> Expert consultations.

<sup>112</sup> See e.g. Jennifer Lahl and others, “A comparison of American women’s experiences with both gestational surrogate pregnancies and spontaneous pregnancies”, *Dignity: A Journal of Analysis of Exploitation and Violence*, vol. 7, No. 3 (2022).

<sup>113</sup> Van den Akker, *Surrogate Motherhood Families*.

<sup>114</sup> Amrita Pande, *Wombs in Labour: Transnational Commercial Surrogacy in India* (2014).

<sup>115</sup> April Hovav, “Cutting out the surrogate: caesarean sections in the Mexican surrogacy industry”, *Social Science and Medicine*, vol. 256 (July 2020).

<sup>116</sup> Carmen Shalev, Hedva Eyal and Etti Samama, “Transnational surrogacy and the earthquake in Nepal: a case study from Israel”, in *Babies for Sale: Transnational Surrogacy, Human Rights and the Politics of Reproduction*, Miranda Davies, ed. (London, Zed Books, 2017).

<sup>117</sup> Submission by Vita Alliance.

to both the mother and the baby.<sup>118</sup> Demands are often justified by claims that the child belongs to the commissioning parents.<sup>119</sup>

36. Multiple pregnancies, which are a common outcome of in vitro fertilization procedures, pose heightened health risks for the surrogate mother.<sup>120</sup> In some cases where a multiple pregnancy progresses, commissioning parents also enforce a selective reduction.<sup>121</sup>

37. In societies with a strong cultural preference for male children, surrogacy may amplify existing sexist and gender biases through the incorporation of sex selection into in vitro fertilization service packages.<sup>122</sup>

38. Egregious abuses have been documented against egg donors, with hundreds reportedly exploited for months through the harvesting of their eggs.<sup>123</sup> Girls are also reportedly exploited for their eggs and their wombs.<sup>124</sup> Some reports, including from China, describe scenarios of egg retrieval and embryo transfers being conducted in unregulated, underground laboratories operated by biotechnology companies, where the women undergoing the procedures were identified by codes and categorized as “high-end” or “low-end” products, on the basis of their appearance and health status, with each egg priced accordingly.<sup>125</sup> Women with disabilities are not being spared such exploitation and abuse.<sup>126</sup>

## E. Slavery and trafficking

39. The profit-oriented behaviour underpinning surrogacy service provision increases the risk of human trafficking at every stage of the process, including to other countries for forced reproductive labour.<sup>127</sup> In Georgia, for example, at least 100 female victims were reportedly kept in confinement and forced to give up their eggs after being artificially stimulated to ovulate.<sup>128</sup> Even in countries where surrogacy is regulated, such as Greece, risks persist. Foreign women have reportedly been trafficked into the country to serve as surrogate mothers.<sup>129</sup>

40. Surrogacy arrangements can amount to or resemble slavery, as they place surrogate mothers in a position in which any or all of the attributes of the right of ownership are exercised over them. The commissioning parties exercise this right of

<sup>118</sup> See e.g. <https://edition.cnn.com/2013/03/04/health/surrogacy-kelley-legal-battle>; <https://www.dailymail.co.uk/news/article-12254637/Surrogate-claims-gay-dads-told-terminate-pregnancy-24-weeks-cancer-diagnosis.html>; and <https://www.liveaction.org/news/surrogate-mother-saved-abortion>.

<sup>119</sup> See <https://www.legalizesurrogacywhynot.com/melissa-cook-story>.

<sup>120</sup> Raywat Deonandan, Samantha Green and Amanda van Beinum, “Ethical concerns for maternal surrogacy and reproductive tourism”, *Journal of Medical Ethics*, vol. 38, No. 12 (2012).

<sup>121</sup> Arianna Vettorel, “Surrogacy contracts and international human rights law”, *Deportate, Esuli, Profughe*, No. 47 (2021).

<sup>122</sup> Submission by The Jamaican Network of Seropositives.

<sup>123</sup> See <https://civil.ge/archives/659924>.

<sup>124</sup> See <https://www.scmp.com/news/people-culture/trending-china/article/3303939/shock-teen-surrogate-gives-birth-twins-chinese-man-50-receives-us124000>.

<sup>125</sup> See <https://www.thinkchina.sg/society/chinas-underground-surrogacy-industry-operating-shadows>.

<sup>126</sup> See <https://www.scmp.com/news/people-culture/trending-china/article/3310495/china-village-centre-illegal-surrogacy-probe-some-proxy-mums-being-deaf-mute-disabled>.

<sup>127</sup> Ibid.

<sup>128</sup> See <https://www.reuters.com/world/georgia-thailand-probing-human-egg-trafficking-ring-2025-02-07/>.

<sup>129</sup> See Communication No. AL GRC 2/2024, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29143>.

usus over the woman's body by requiring her to follow a specific diet, refusing her medical treatment or obliging her to undergo "embryo reduction" or abortion.<sup>130</sup> In Argentina, poorer women were reportedly recruited on social media to become surrogates in conditions that prosecutors described as the "reduction to servitude".<sup>131</sup> In Ukraine, women were reportedly forced to live in small, overcrowded apartments, without access to hot water and with severe limitations on their freedom of movement.<sup>132</sup>

41. While it has been argued that regulations and oversight can decrease the risk of the trafficking of women and girls in surrogacy arrangements<sup>133</sup> and reduce harm,<sup>134</sup> existing evidence does not support such conclusions.<sup>135</sup>

42. Commercial surrogacy, which accounts for the overwhelming majority of surrogacy cases globally, constitutes the sale of children, which is a crime.<sup>136</sup> Without the transfer of the child, there would be no incentive for the surrogacy agreement.<sup>137</sup> Notably, in jurisdictions where commercial surrogacy is allowed, the main difference between the illegal sale of children and legal surrogacy is the point at which parental rights are transferred.<sup>138</sup>

43. It becomes very complex to determine what exploitation and abuse have been committed against the surrogate mother and child after the latter has been transferred to the intended parents. Challenges also arise in determining who should be treated as a perpetrator, a victim or a witness.<sup>139</sup> In some cases, impoverished families traffic daughters into surrogacy networks, including under the guise of employment or marriage.<sup>140</sup> Issues of double criminality arise when surrogacy does not qualify as a criminal offence in all relevant jurisdictions, and transnational law enforcement remains challenging.

## VII. Perpetrators of violence

44. Surrogacy agencies and brokers are frequently identified as primary perpetrators of violence when they target and exploit economically vulnerable women, use misleading information or coercive recruitment and impose restrictive contractual clauses.<sup>141</sup> Both agencies and fertility clinics are frequently incentivized to prioritize the interests of parents over those of the surrogate.<sup>142</sup> Medical professionals commit acts amounting to obstetric and reproductive violence, such as unnecessary or coercive invasive medical interventions.<sup>143</sup> Family members or friends emotionally blackmail women to help them have a child by becoming a surrogate.<sup>144</sup>

<sup>130</sup> Submission by Casablanca Declaration.

<sup>131</sup> See <https://www.theguardian.com/world/2024/oct/22/surrogacy-ring-argentina>.

<sup>132</sup> Madeline Roache, "Ukraine's 'Baby Factories': the human cost of surrogacy", *Al Jazeera*, 13 September 2018.

<sup>133</sup> Submission of La Strada International.

<sup>134</sup> Submission by Amnesty International et al.

<sup>135</sup> Submission by Voices of Israeli Sex Trade Survivors.

<sup>136</sup> Allen, "Surrogacy and limitations".

<sup>137</sup> Submission by ADF International.

<sup>138</sup> Submission by the Heritage Foundation.

<sup>139</sup> See <https://www.eurojust.europa.eu/sites/default/files/assets/files/surrogacy-leaflet-27-08-2024-v6.pdf>.

<sup>140</sup> Submission by Centre for Criminology, Criminal Justice and Victimology.

<sup>141</sup> See Hague Conference on Private International Law, *A Study of Legal Parentage and the Issues Arising from International Surrogacy Arrangements* (Hague, 2014).

<sup>142</sup> Expert consultations.

<sup>143</sup> Submission by CIAMS.

<sup>144</sup> Consultations with surrogate mothers.



Commissioning parents can reportedly exert extreme and abusive control over the lives of surrogate mothers,<sup>145</sup> demanding to be present at the obstetrical examination and childbirth against the surrogate's wishes.<sup>146</sup>

45. In some cases, the State itself is the direct perpetrator of physical violence. In Cambodia, reports have emerged of women being detained and forced to give birth in handcuffs.<sup>147</sup> In other countries, surrogate mothers who wish to maintain contact with their children are met with disbelief, accusations of abandonment, and hostile comments.<sup>148</sup>

## VIII. Other impacts on children, especially girls

46. Unlike in adoption, where parental assessment is recognized as an essential child protection measure, very few, if any, background checks are carried out on commissioning parents.<sup>149</sup> Instead, the primary requirement placed on intending parents is the financial capacity to pay a substantial sum for the surrogacy procedure. This poses particular risks for children born in this way, including the risk of sexual exploitation of girls, as there have been reports of sex offenders commissioning children for surrogacy;<sup>150</sup> the risk of becoming victims of human trafficking; and the risk of abandonment, especially when a child is born with disabilities.<sup>151</sup> Children born through surrogacy may also face long-term identity struggles, which are intensified if they are conceived through gamete donation.<sup>152</sup> Knowing one's origins is important for many individuals for psychological and emotional reasons, as well as for family medical history reasons.<sup>153</sup>

47. Although some propose that the parentage be determined on the basis of intent rather than biology and gestation,<sup>154</sup> it is not entirely clear how this intent would be proven – for example, whether a private contract would be deemed sufficient evidence – and how the law should respond if the intentions of either the surrogate mother or the intending parents change during the course of the pregnancy. Furthermore, relying on legal fictions of intent could result in a situation where women who become pregnant and give birth are never legally recognized as mothers.<sup>155</sup>

48. The determination of a child's parentage and nationality in international surrogacy arrangements can be difficult and result in a child lacking appropriate rights protections. Stateless children could be denied access to nursery care, education, healthcare or an international travel document.<sup>156</sup> These risks are exacerbated during times of emergency, such as the coronavirus disease (COVID-19) pandemic or the

<sup>145</sup> Berk, "The legalization of emotion.

<sup>146</sup> Consultations with surrogate mothers.

<sup>147</sup> See <https://www.abc.net.au/news/2019-05-12/cambodian-surrogates-forced-to-be-mothers-or-face-prison-time/11086640>.

<sup>148</sup> Consultations with surrogate mothers.

<sup>149</sup> Submission by Women's Declaration International Quebec.

<sup>150</sup> Submission by Surrogacy Concern (UK).

<sup>151</sup> See <https://www.spiegel.de/international/world/the-perils-of-wartime-adoption-we-promised-bridget-we-would-come-get-her-a-abf4ad88-9c62-48b6-8b9b-f57bc3afeeba>.

<sup>152</sup> Sonia Allan, *Donor Conception and the Search for Information. From Secrecy and Anonymity to Openness* (Routledge, 2016).

<sup>153</sup> Vardit Ravitsky, "The right to know one's genetic origins and cross-border medically assisted reproduction", *Israel Journal of Health Policy Research*, vol. 6, No. 1 (December 2017).

<sup>154</sup> Submission by Men Having Babies.

<sup>155</sup> A/HRC/37/60, para. 57.

<sup>156</sup> Michael Wells-Greco, "Nationality and immigration obstacles in cross-border surrogacy arrangements", in *Research Handbook on Surrogacy and the Law*, Katarina Trimmings, Sharon Shakargy and Claire Achmad, eds. (Elgar, 2024).



war in Ukraine, when intending parents may be unable to enter the country to collect the child and the surrogate mother may not be recognized as the child's legal parent under national law.<sup>157</sup>

49. These difficulties are compounded by the choice of law applicable in cross-border surrogacy arrangements. National approaches diverge significantly. For example, in New Zealand, a child born through surrogacy does not obtain citizenship, even if there is a genetic link between the child and the intending parents.<sup>158</sup> In Switzerland, despite the prohibition of surrogacy, the parent-child relationships between the intended parents and the children born through surrogacy are recognized by courts in most cases.<sup>159</sup>

50. An inherent concern in surrogacy lies in the contractual programming of separation between a woman and the child that she carries, which risks treating the child as a passive object of an agreement between adults or as a commodity. This differentiates surrogacy from adoption, as the latter is focused on the ways of safeguarding the best interests of an already existing child.<sup>160</sup> The intention to separate is particularly problematic given the importance of bonding between a mother and her child during pregnancy for the child's mental and emotional development.<sup>161</sup> The sudden removal of a newborn can undermine the child's early attachment development, negatively affecting their emotional regulation and growth.<sup>162</sup> Moreover, since many surrogacy agencies require a prospective surrogate to be the mother of at least one child already, such separation also creates confusion for existing children of a surrogate, who see their mother pregnant but cannot expect to have a sibling.<sup>163</sup>

51. Girls can also be victims of sex-selective abortion, as surrogacy contracts sometimes include clauses for "selective reduction" based on the sex of the child.<sup>164</sup> A similar situation exists for children with disabilities. There are even surrogacy agencies that promise that "if the imperfection manifests later in the pregnancy, interruption of the pregnancy is guaranteed by abortion".<sup>165</sup>

## IX. Applicable international human rights standards

### A. Legal framework

52. There are no provisions of international human rights treaties that would explicitly and comprehensively address the issue of surrogacy, as most of them were drafted before it became a widespread concern. The working group on the parentage/surrogacy project of the Hague Conference on Private International Law has been discussing a draft convention on legal parentage as well as matters related to legal parentage generally, including legal parentage resulting from an international surrogacy arrangement, but to date, the final text of the draft convention has not yet

<sup>157</sup> See <https://edition.cnn.com/2020/05/15/europe/ukraine-surrogacy-babies-lockdown-intl/index.html>.

<sup>158</sup> Submission by Women's Rights Party.

<sup>159</sup> Submission by Switzerland.

<sup>160</sup> Joint submission by E. Bilotti, V. Calderai, S. Niccolai, I. Pretelli, N. Rueda.

<sup>161</sup> See <https://www.thieme-connect.com/products/ejournals/abstract/10.1055/s-0037-1599052>.

<sup>162</sup> Submission by Not All Gays.

<sup>163</sup> Submission by Jusristes pour l'enfance.

<sup>164</sup> Submission by the GNLU Centre for Public and Private International Law.

<sup>165</sup> Justo Aznar and Miriam Martínez Peris, "Gestational surrogacy: current view", *The Linacre Quarterly*, vol. 86, No. 1 (2019).

been published.<sup>166</sup> Nonetheless, treaties and other international instruments address different aspects of human rights that are at stake in surrogacy arrangements. Collectively, they provide the necessary road map for adopting a rights-based approach.

53. The principle of human dignity was first enshrined in the Universal Declaration of Human Rights<sup>167</sup> and reaffirmed in subsequent treaties, including the International Covenant on Civil and Political Rights,<sup>168</sup> the International Covenant on Economic, Social and Cultural Rights<sup>169</sup> and the Convention on the Elimination of All Forms of Discrimination against Women.<sup>170</sup> In the context of surrogacy, it precludes the objectification and commodification of women and children, who have intrinsic and equal value. In its resolution on human rights, the European Parliament echoes this view, condemning surrogacy as a practice undermining “the human dignity of the woman” specifically because “her body and its reproductive functions are used as a commodity” and are instrumentalized “for financial or other gain”, which is particularly dangerous to “vulnerable women in developing countries”.<sup>171</sup> Reducing women to their reproductive function also contravenes article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women, under which States are obliged to modify social and cultural patterns of conduct based on stereotyped roles for men and women.

54. In article 10 (2) of the International Covenant on Economic, Social and Cultural Rights, it is stated that “special protection should be accorded to mothers during a reasonable period before and after childbirth”.<sup>172</sup> For the rights of surrogates to be safeguarded, they must be recognized in law as mothers, not merely carriers of the child. Such understanding is also in line with the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption<sup>173</sup> and the European Convention on the Adoption of Children, in both of which motherhood is attributed to a woman who has given birth by affirming a mother’s right to renounce, but only after a child is born.<sup>174</sup>

55. The International Covenant on Civil and Political Rights,<sup>175</sup> the European Convention on Human Rights<sup>176</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>177</sup> guarantee the right to be free from torture and cruel, inhuman or degrading treatment. Circumstances in which surrogate mothers are exploited, trafficked, kept in confinement, compelled to separate against their will from the children they have borne, forced to undergo abortions or subjected to invasive, unnecessary and harmful medical procedures may amount to such treatment.

56. Furthermore, under article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, States are required to take all appropriate measures to suppress all forms of trafficking in women. Under article 35 of the Convention on the Rights of the Child, as well as the Optional Protocol thereto on the sale of children,

<sup>166</sup> See <https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy>.

<sup>167</sup> See preamble, art. 1.

<sup>168</sup> See preamble, art. 10.

<sup>169</sup> See preamble, art. 13.

<sup>170</sup> See preamble.

<sup>171</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015IP0470&from=EN>.

<sup>172</sup> See art. 10 (2).

<sup>173</sup> Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, art. 4.

<sup>174</sup> See art. 5 (5).

<sup>175</sup> See art. 7.

<sup>176</sup> See art. 3.

<sup>177</sup> See art. 16.

child prostitution and child pornography, the sale of children is explicitly prohibited. In the Optional Protocol, such sale is defined as any act or transaction in which a child is transferred by any person or group to another for remuneration or any other consideration.<sup>178</sup> In the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol), there is no requirement of “exploitation” as a separate element.<sup>179</sup> Instead, the transfer of the child for payment constitutes “a serious harm and human rights violation in and of itself”.<sup>180</sup> By definition, at least commercial surrogacy involves payment, although in altruistic surrogacy, alleged reimbursement often amounts to actual payment compensation.<sup>181</sup> The main purpose of the arrangement is the transfer of the child to the intended parents.

57. Under the Charter of Fundamental Rights of the European Union<sup>182</sup> and the Convention on Human Rights and Biomedicine (Oviedo Convention) of the Council of Europe,<sup>183</sup> financial gain derived from the human body or its parts is prohibited.<sup>184</sup> Pursuant to article 9 (5) of the Trafficking in Persons Protocol, States are obliged to prevent trafficking in persons, including by discouraging the demand for exploitative practices. In the Model Law against Trafficking in Persons of the United Nations, it is suggested that the use of women as surrogate mothers may constitute a form of exploitation.<sup>185</sup> Under the revised Anti-Trafficking Directive of the European Union, the exploitation of surrogacy as a form of trafficking is explicitly recognized.<sup>186</sup>

58. In the Programme of Action of the International Conference on Population and Development, prenatal sex selection, included in some surrogacy contracts, is classified as a form of discrimination against women.<sup>187</sup> Sex selection is also prohibited by the Oviedo Convention<sup>188</sup> and has been condemned as an example of the subordination of women by the Human Rights Committee<sup>189</sup> and as “ruthless sexual discrimination” by the European Parliament.<sup>190</sup>

59. The Convention on the Rights of the Child serves to protect, as far as possible, the child’s right to know and be cared for by their parents, as well as the right to the preservation of identity.<sup>191</sup> The words “as far as possible” imply that this right must be respected as a general rule, except for situations where other solutions are prompted by the best interests of the child.<sup>192</sup> It cannot, however, be a priori denied. Notably, in this context, the Committee on the Rights of the Child has raised concerns

<sup>178</sup> See art. 2.

<sup>179</sup> See art. 3.

<sup>180</sup> [A/HRC/37/60](#), para. 35.

<sup>181</sup> Fenton-Glynn and Scherpe, “Surrogacy in a globalized world”.

<sup>182</sup> See art. 3.

<sup>183</sup> See art. 21.

<sup>184</sup> See Ilaria Anrò, “Surrogacy from the Luxembourg and Strasbourg perspectives: divergence, convergence and the chance for a future dialogue” Giappichelli, 2016 (on art. 3 of the EU Charter); and Portuguese Constitutional Court, Ruling No. 225/2018, Case No. 95/17, para. 10 (on art. 21 of Oviedo Convention).

<sup>185</sup> See [https://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf).

<sup>186</sup> See <https://www.eurojust.europa.eu/sites/default/files/assets/files/surrogacy-leaflet-27-08-2024-v6.pdf>.

<sup>187</sup> [A/CONF.171/13](#), annex, para. 4.16.

<sup>188</sup> See art. 14 (“except where serious hereditary sex-related disease is to be avoided.”).

<sup>189</sup> Human Rights Committee general comment No. 28 (2000), para. 5.

<sup>190</sup> European Union, resolution of 8 October 2013 on gendercide: the missing women? (2012/2273(INI)).

<sup>191</sup> See arts. 7 and 8.

<sup>192</sup> Submission by ADF International.

about determining parentage solely on the basis of contractual arrangements established before conception or birth.<sup>193</sup> There is also an important relationship between the right to know one's origins and the right to health with regard to access to family medical history necessary for the diagnosis or prediction of hereditary conditions.<sup>194</sup>

60. Reproductive rights, as understood in the Beijing Declaration and Platform for Action, are the rights of mothers to “decide freely and responsibly the number, spacing and timing of their children”, to “have the information and means to do so” and include “their right to make decisions concerning reproduction free of discrimination, coercion and violence”. In the Declaration, the importance of taking into account the needs of future and living children as well as responsibilities towards the community is further stressed.<sup>195</sup> This phrasing cannot be interpreted, therefore, as creating an unconditional right to have a child,<sup>196</sup> which is also absent from other international instruments.<sup>197</sup> Psychological assessments are required for having a child through adoption, and, as the European Court of Human Rights decided, embryos cannot be implanted in a mother against the father's wishes.<sup>198</sup> As emphasized in the Principles for the protection of the rights of the child born through surrogacy (Verona Principles), “international law and other relevant domestic law do not provide any person, including intending parent(s) in surrogacy arrangements, with a right to a child” who is, instead, an “independent rights holder”.<sup>199</sup>

## B. Consent

61. Consent alone does not render surrogacy ethical. It is widely recognized that consent alone cannot justify human rights violations, including those associated with human trafficking, the sale of organs, slavery or torture.<sup>200</sup> Under the Trafficking in Persons Protocol, the consent of the victim to the intended exploitation is irrelevant.<sup>201</sup> Furthermore, the consent of the person reduced to slavery is also irrelevant. Notably, the definition of slavery in the Convention to Suppress the Slave Trade and Slavery of 1926 does not include any requirement of coercion.

62. The irrelevance of consent in such circumstances served a protective purpose for persons at risk. For example, some impoverished surrogate mothers become repeatedly pregnant without having sufficient time to recover from a previous birth or miscarriage.<sup>202</sup> Many of them are unaware or not fully aware of the additional

<sup>193</sup> Concluding observations to States: [CRC/C/OPSC/USA/CO/2](#), para. 29; [CRC/C/IND/CO/3-4](#), para. 57 (d); [CRC/C/MEX/CO/4-5](#), para. 69 (b); [CRC/C/OPSC/USA/CO/3-4](#), para. 24; and [CRC/C/OPSC/ISR/CO/1](#), para. 28.

<sup>194</sup> UNESCO-International Bioethics Committee, document SHS/IBC-26/19/2 REV.

<sup>195</sup> *Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995* (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1, annex II, para. 95.

<sup>196</sup> See <https://eapil.org/2025/01/27/the-spanish-supreme-court-on-surrogacy-contract-and-public-policy> (“a person's desire to be a parent, however noble it may be, cannot be fulfilled at the expense of other people's rights”); see also Spanish Supreme Court decision STS 5879/2024 of 4 December 2024.

<sup>197</sup> See e.g. European Court of Human Rights, Grand Chamber, *Case of Paradiso and Campanelli v. Italy*, Application No. 25358/12, Judgment, 24 January 2017.

<sup>198</sup> European Court of Human Rights, Grand Chamber, *Case of Evans v. the United Kingdom*, Application No. 6339/05, Judgment, 10 April 2007.

<sup>199</sup> International Social Service, *Principles for the Protection of the Rights of the Child Born Through Surrogacy (Verona Principles)* (Geneva, 2021), principle 1.8.

<sup>200</sup> See [A/HRC/59/47/Add.4](#).

<sup>201</sup> See art. 3 (b).

<sup>202</sup> Submission by the Executive Committee for the Fight Against Trafficking and Exploitation of People and for the Protection and Assistance of Victims (Argentina).

risks.<sup>203</sup> Sometimes, the terms of a contract are too legalistic and written in a language that the surrogate mother cannot understand.<sup>204</sup>

63. When women and girls feel that surrogacy is their only option, or when they lack knowledge of the consequences, their consent is neither free nor informed. A similar stance was presented in the explanatory memorandum to the report of the Parliamentary Assembly of the Council of Europe on children's rights in the context of surrogacy, in which the Rapporteur noted that the promise of "a 'life-changing' amount of money" casts doubt on the validity of consent provided by the surrogate mother.<sup>205</sup> Emphasizing "choice" as a central element in surrogacy arrangements discourages surrogate mothers from acknowledging harm, including health-related harms, or seeking assistance.<sup>206</sup>

64. Particularly concerning are jurisdictions in which a surrogate mother legally forfeits all parental rights while still pregnant, such as in Ukraine.<sup>207</sup> Legal systems that serve to prioritize safeguarding the rights and parentage of commissioning parents often do so at the direct expense of the surrogate mother, effectively stripping her of any meaningful recourse should she change her mind and wish to keep the child.<sup>208</sup>

### C. Obligations of businesses

65. Under the Guiding Principles on Business and Human Rights of the United Nations, businesses, which in surrogacy arrangements include, for instance, fertility clinics, agencies, medical intermediaries, legal advisers and cross-border facilitators, have an independent responsibility to respect all internationally recognized human rights, even when domestic law is silent or permissive. This requires compliance with due diligence obligations and (a) assessing and continued monitoring of instances of coercion, exploitation or psychological harm and implementing adequate policies; (b) providing all parties, and in particular surrogate mothers, with accurate information about associated risks; and (c) establishing effective grievance channels to raise concerns and prompt investigation. Moreover, the general obligation of businesses is not to engage in illegal activity, and therefore, businesses must not assist clients in circumventing the bans.<sup>209</sup>

### D. Obligations of States

66. States have the obligation to respect, protect and fulfil human rights and to exercise due diligence in all their actions,<sup>210</sup> without discrimination.<sup>211</sup> The obligation to respect requires the State and its agents to abstain from any conduct that would cause or exacerbate harm related to surrogacy. This means, for example, that surrogate mothers who have experienced violence and abuse should not be criminalized and

<sup>203</sup> See <https://www.reuters.com/article/business/healthcare-pharmaceuticals/surrogate-mothers-in-india-unaware-of-risks-idUSKBN0LY1J6>.

<sup>204</sup> Pande, *Wombs in Labour*.

<sup>205</sup> See <https://pace.coe.int/en/files/23015/html>.

<sup>206</sup> Malcolm Smith, Jayne Hewitt and Patricia Fronek, "Surrogacy and bioethics", in *Research Handbook on Surrogacy and the Law*.

<sup>207</sup> Ukraine, Family Code, Part 2, art. 123.

<sup>208</sup> Andrea Mulligan, "Surrogacy and the significance of gestation: implications for law and policy", *Bioethics*, vol. 38, No. 8 (October 2024).

<sup>209</sup> See A/HRC/17/31, annex, principles 11 and 17.

<sup>210</sup> The framework first used and explained in E/CN.4/Sub.2/1987/23, paras. 67–69.

<sup>211</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010), para. 12.

that children born through surrogacy must not be mistreated or discriminated against. States must also prevent third parties from violating the rights of persons affected by surrogacy. They must adopt positive measures to ensure that women are not forced into situations where they feel that surrogacy is their only means of escaping poverty.

67. States must also provide access to justice, remedies and protection for women and children exploited in surrogacy arrangements,<sup>212</sup> including by guaranteeing their proper legal representation, as well as by preventing revictimization.

68. Irrespective of its position on surrogacy, a State continues to be obliged to prioritize the best interests of the child<sup>213</sup> for those born through surrogacy arrangements.<sup>214</sup> This includes ensuring that a child does not suffer from any kind of discrimination, is protected at all times and has his or her right to identity, nationality, healthcare or education upheld. The best interests of the child must be incorporated into the decision-making on whether to ban or regulate surrogacy, as well as into the design of legal solutions for safeguarding the child's rights.

## **X. Conclusion and recommendations**

69. **The practice of surrogacy is characterized by exploitation and violence against women and children, including girls. It reinforces patriarchal norms by commodifying and objectifying women's bodies and exposing surrogate mothers and children to serious human rights violations.**

70. **Considering the above, the Special Rapporteur recommends that Member States and other relevant stakeholders:**

(a) **At the international level, take steps towards eradicating surrogacy in all its forms. Pending its abolition, States must take action to prevent further harm and strengthen the protection of the rights of women and children involved in surrogacy arrangements;**

(b) **Work towards adopting an international legally binding instrument prohibiting all forms of surrogacy;**

(c) **Adopt a legal and policy framework for surrogacy that is modelled on the Nordic model for prostitution and includes pillars for penalizing buyers, clinics and agencies to end the demand for surrogacy; decriminalizing surrogate mothers; providing exit support strategies for surrogate mothers, surrogacy agencies and other intermediaries that facilitate surrogacy arrangements and profit from them; and conducting education campaigns on the harms inherent in the practice and the illegality of commissioning and facilitating relevant arrangements. Consequently, the advertising of surrogacy services and agencies must be prohibited;**

(d) **Strengthen international cooperation to identify, prevent and address associated human rights violations and abuses, including the trafficking of women and children;**

(e) **Ensure that relevant bodies and mechanisms within the human rights system, including human rights treaty bodies and special procedures, as well as**

<sup>212</sup> On access to justice and remedies for women, see e.g. the Beijing Declaration and Platform for Action.

<sup>213</sup> Committee on the Rights of the Child, general comment No. 14 (2013), paras. 1–7.

<sup>214</sup> See e.g. European Court of Human Rights, Second Section, *Case of K.K. and Others v. Denmark*, Application No. 25212/21, Judgment, 6 December 2022.

regional bodies and mechanisms, address related intersecting forms of abuse and exploitation involved in surrogacy;

(f) Adopt legislation recognizing the birth mother of a child born through surrogacy as the legal mother, allowing the transfer of parental rights only after birth and within a defined period to allow for reconsideration;

(g) Oppose the recognition of surrogacy arrangements, including those undertaken abroad, as conferring legal parentage upon any person genetically unrelated to the child while ensuring that decisions concerning the establishment of parental relationships are prioritized. In the interim, treat the children born through surrogacy that are left behind by their birth mother as unaccompanied minors to be placed in alternative care pending adoption, with priority given to family-based solutions. When deemed in the best interests of the child born through surrogacy, the partner of the biological father could be allowed to adopt the child, thereby avoiding the normalization of surrogacy and maintaining the original parentage;

(h) Use dignified, accurate sex-specific language in law and in practice when referring to females involved in surrogacy;

(i) Establish effective justice mechanisms, including redress and reparations for women and children subjected to harm through surrogacy arrangements, such as free or low-cost legal aid, psychosocial support and financial assistance, including for surrogate women who choose to keep the child after birth;

(j) Ensure that the best interests of the child are the primary consideration in all decisions relating to parentage and care;

(k) Require that any transfer of parental rights from the birth mother occur only through judicial adoption processes that include parental suitability screening, equivalent to normal adoption procedures;

(l) Prevent and prohibit all forms of discrimination against children born through surrogacy, ensuring their equal access to healthcare, education and social protections;

(m) Guarantee every child the right to a nationality and prevent statelessness by ensuring that the child acquires the nationality of the mother or the State of birth;

(n) Establish and maintain registries of egg and sperm donors and make the information available to children born through surrogacy;

(o) Ensure the compliance of all relevant actors with their positive obligations to prevent, monitor and punish all human rights violations and abuses related to surrogacy;

(p) Hold surrogacy agencies, intermediaries and others that profit from or facilitate surrogacy arrangements accountable, including through criminal sanctions and asset confiscations;

(q) Provide training for judges and lawyers on a human rights-based approach to surrogacy disputes;

(r) Create specialized judicial and law enforcement mechanisms to address surrogacy-related matters, and train law enforcement to detect and address risks of cross-border surrogacy arrangements;

(s) Systematically gather disaggregated data related to surrogacy, including surrogate mothers and children born through surrogacy.