

Special Rapporteur on violence against women and girls
OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneve 10, Switzerland
hrc-sr-vaw@un.org

April 1, 2025

Introduction

Surrogacy presents complex ethical, legal, and human rights challenges, particularly concerning the rights and well-being of women and girls. While some view surrogacy as a means of reproductive autonomy, its practice has led to concerns regarding exploitation, coercion, and violence against women and children. The grief and heartache of infertility is palpable, but that pain can never justify the harmful, exploitative nature of the surrogacy industry. We in no way minimize the heartache that comes from infertility, but we must not harm women and children. The Center for Bioethics and Culture has been a voice educating on the exploitive nature and harms of surrogacy for the last 25 years via film-making, writing, researching, and other efforts. This submission from the Center for Bioethics and Culture aims to address some of the key questions outlined by the Special Rapporteur, examining the risks, accountability mechanisms, and legal frameworks governing surrogacy, while providing recommendations for enhanced protections.

The Exploitative Nature of Surrogacy

Surrogacy is deeply regressive. A surrogate mother is used for her womb and discarded. An egg “donor” is only as valuable as long as she has eggs to give and then is lost in medical history. Neither women nor the children conceived from these technologies are followed, tracked, or researched. Instead, they are exploited and harmed all in the name of family building.

Surrogate mothers are subjected to multiple forms of harm, including coercion, forced pregnancy or forced abortion, physical and psychological abuse, medical harms, and economic exploitation. Surrogacy can intersect with human trafficking, particularly where women are coerced or deceived into participating in reproductive arrangements that amount to forced reproductive labor. Cases have emerged where surrogate mothers are transported across borders, denied legal rights, and subjected to conditions akin to modern slavery. Even in countries like the United States, many surrogate mothers, are pressured into relinquishing control over their bodies, medical decisions, and legal rights, as reflected in the contracts they sign.

The Impact on Mothers and Children

When a mother is discarded after delivery, as in surrogacy, the important bond between the infant and birth mother (surrogate mother) is treated as relevant only during the pregnancy, and is completely irrelevant afterward. Research indicates that the maternal-fetal bond is crucial in

the fourth trimester as the baby adjusts to time outside the womb. In 1991, WHO and UNICEF launched a global effort to implement practices to protect, promote, and support breastfeeding called the Baby-friendly Hospital Initiative (BFHI).¹ Skin-to-skin contact between mother and baby in the golden hour after birth is a fundamental part of this initiative with long-lasting benefits for mother and child. Surrogacy disrupts this critical bonding process, depriving mother and child from the benefits and leading to potentially harmful effects on the infant.

Not only is the precious, beneficial bond between mother and baby interrupted, the surrogate mother and the children she carries are at risk for serious medical harm as well. Research has shown that there are serious medical and psychosocial risks that gestational surrogacy confers onto women who serve as surrogates and on the babies they carry for another person or couple. Surrogate pregnancies are more likely to result in cesarean section, maternal gestational diabetes, hypertension or preeclampsia, placenta previa, and other life-threatening complications like postpartum depression.^{2,3} Children born from IVF (surrogacy requires IVF) have increased incidences of pre-term birth, low birth weight, cerebral palsy, and other conditions that result in NICU admissions and longer hospital stays.⁴ There have even been confirmed deaths of surrogate mothers in both the United States and abroad.

Most people are unaware that a surrogate pregnancy, even if the surrogate is only carrying one baby, is a higher-risk pregnancy. Of course, high-risk pregnancies put mother and baby(ies) at risk. Dr. Anthony Diehl, an Ob/Gyn doctor in Rapid City, South Dakota, talks about the conflicts of interest when a physician, who is treating a surrogate mother, is paid by the intended parents. The U.S. has one of the highest maternal mortality rates in the developed world, yet it continues to expand the fertility market, further endangering women and the babies she carries.

Economic and Legal Exploitation of Surrogate Mothers

Surrogacy exploitation varies across jurisdictions, but in many low-income countries, surrogacy is facilitated by intermediaries who take advantage of financially vulnerable women. Reports indicate that surrogate mothers, particularly in commercial surrogacy, receive minimal financial compensation relative to the fees paid by intended parents or agencies. Although it is impossible to place an actual number of just how many women and children have been harmed by the fertility industry, one is too many. Many developed countries have prohibited commercial surrogacy on human rights and women's health grounds because surrogacy often depends on the exploitation of low-income and poor women by those with the means to pay for surrogacy. The European Parliament stated in 2011 that surrogacy is "an exploitation of the female body and her reproductive organs." They have also stated very simply that surrogacy is, "violence against women." More recently, in January 2024, the Belgian presidency of the Council and

¹ Geneva: [World Health Organization](#); 2009.

² <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1311&context=dignity>

³ [https://www.fertstert.org/article/S0015-0282\(17\)31941-6/fulltext](https://www.fertstert.org/article/S0015-0282(17)31941-6/fulltext)

⁴ https://pmc.ncbi.nlm.nih.gov/articles/PMC5767478/?utm_source=chatgpt.com

representatives of the European Parliament reached a provisional agreement to add surrogacy as a type of exploitation covered by the EU's anti-trafficking law⁵.

While some legal frameworks offer redress for surrogate mothers facing coercion or abuse, enforcement mechanisms remain weak. Women often lack access to legal representation, making it difficult to challenge exploitative contracts or unethical practices. The only reasonable answer to surrogacy is prohibition. If prohibition is not feasible, then the only ethical path forward is to end cross-border surrogacy arrangements, eliminate financial incentives, and impose strict oversight mechanisms. Governments should ensure intermediaries and agencies operate within ethical guidelines or face severe civil and criminal penalties. International cooperation should be strengthened to prevent surrogacy-related trafficking and the sale of children. Existing human rights treaties, including CEDAW and the CRC, should guide surrogacy regulations that prioritize the rights of women and children. Given surrogacy's transnational nature, an international treaty should be explored to ban commercial surrogacy entirely.

The Forgotten Voices: Children Born Through Surrogacy

Surrogacy affects all parties involved, especially children, who are often overlooked. Many children conceived through surrogacy and donor conception long to know their biological origins and may experience identity issues, legal limbo, or abandonment. Research indicates that individuals conceived through surrogacy or donor conception may experience challenges related to their biological origins, leading to identity issues and emotional distress. The concept of "genealogical bewilderment," introduced by psychologist H. J. Sants in 1964, describes the confusion and stress experienced by individuals uncertain about their biological parentage, which can impact their self-esteem and emotional well-being.

A systematic review conducted by King's College London in 2024 found that while donor-conceived individuals often have similar well-being outcomes compared to non-donor-conceived people, they are more prone to identity difficulties and trust issues. The study emphasized that secrecy and anonymity regarding genetic parentage can profoundly affect well-being.⁶

Furthermore, the Spanish Supreme Court has recognized that commercial surrogacy can violate a child's fundamental rights, including the right to know their biological origins. The court highlighted that such practices might compromise the dignity and moral integrity of the child.⁷

These findings underscore the importance of transparency and openness in addressing the needs and rights of individuals conceived through surrogacy and donor conception.

⁵ https://home-affairs.ec.europa.eu/news/new-agreement-paves-way-stronger-eu-rules-against-trafficking-human-beings-2024-01-24_en?utm_source=chatgpt.com

⁶ https://www.news-medical.net/news/20240628/Systematic-review-investigates-the-psychological-experiences-of-donor-conceived-individuals.aspx?utm_source=chatgpt.com

⁷ https://www.child-identity.org/supreme-court-rules-that-commercial-surrogacy-seriously-violates-the-fundamental-rights-of-the-child-including-the-right-to-know-their-biological-origins/?utm_source=chatgpt.com

Jessica Kern, who discovered at age 16 that she was a product of gestational surrogacy, stated: “I think commercial surrogacy is wrong. It really is the buying and selling of babies, and the commodification of women’s bodies.” She continued, “I think that there is a very important voice missing from the ongoing cultural debate over surrogacy: the voices of the children themselves.” To date, there is no research on how offspring of surrogacy feel about their origins, reinforcing that surrogacy is driven by adult desires rather than the well-being of children.

The Legal Landscape and Policy Considerations

Surrogacy laws vary widely around the globe and within the United States, from outright bans (e.g., France, Germany) to regulation (e.g., UK, Canada) or full commercialization (e.g., USA). The absence of international regulation or abolition leads to jurisdictional inconsistencies that expose women to risks. The principle of the child’s best interests is inconsistently applied, particularly in cross-border surrogacy cases where nationality and parentage remain legally uncertain.

Article 7.1 of the UN Convention on the Rights of the Child, which guarantees a child’s right to know and be cared for by their parents, is not uniformly upheld in surrogacy laws. Some jurisdictions allow anonymity, depriving children of their right to knowledge of their genetic and birth origins. Countries that permit surrogacy often lack stringent protections for surrogate mothers, leaving them vulnerable to contractual abuses, health risks, and emotional trauma. Mechanisms to ensure voluntary consent and fair compensation are often inadequate.

The demand for surrogacy is driven by infertility, same-sex couples seeking biological children, and individuals unable to carry a pregnancy. Additionally, the commercialization of surrogacy through transnational agencies exacerbates exploitation. Surrogate mothers are often economically disadvantaged women, disproportionately from developing countries. Many lack alternative economic opportunities and higher education, making them vulnerable to exploitation in unregulated surrogacy arrangements.

Legislative efforts to regulate surrogacy have had mixed success. Where commercial surrogacy is permitted, enforcement of ethical standards is inconsistent, leading to exploitation. Courts in various countries have ruled on surrogacy-related disputes, with some prioritizing the surrogate mother’s rights, while others emphasize the intended parents’ interests. These rulings influence national policies but lack a harmonized international standard.

Conclusion

As we stated initially, surrogacy is deeply regressive, reinforcing harmful stereotypes that depict women as mere vessels for reproduction, undermining gender equality, and erasing women. The commercialization of reproduction risks reducing women to biological functions rather than recognizing their full autonomy and dignity.

Surrogacy presents significant human rights challenges, necessitating a global response to prevent violence, exploitation, and discrimination against women and girls. By fostering international cooperation to end reproductive tourism and closing borders to international surrogacy arrangements, globally we can mitigate the risks associated with surrogacy until surrogacy everywhere is eliminated. We must uphold the dignity and rights of all individuals involved, everywhere.

Allowing some people to buy other people, even if they are young and small, is not a pro-liberty policy. Legislation, as a matter of good public policy, should help and protect citizens, especially the most vulnerable. As we seek to assist those who long for a family, we must realize that surrogacy is not a solution. A global ban on surrogacy is the only way to protect the lives of women and children, valuing each as a human life, not a product for sale.

Kallie Fell, R.N., B.S.N., M.S.
Executive Director, The Center for Bioethics and Culture