

Mandate of the Special Rapporteur on violence against women and girls, its causes and consequences

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(Please use this reference in your reply)

8 July 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on violence against women and girls, its causes and consequences, pursuant to Human Rights Council resolution 50/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the **national legislation regarding surrogacy**.

According to the information received:

Greece is among the few countries in Europe, and indeed globally, where altruistic surrogacy arrangements are legally recognized. A regulatory framework for surrogacy in Greece was established through Law 3089/2002, which amended the Greek Civil Code. Subsequent amendments to the relevant legislation were made in 2005 (Law 3305/2005) and in 2014 (Law 4272/2014).

Article 1458 of the Civil Code only permits the so-called "altruistic" surrogacy, understood as any arrangement where the surrogate mother does not receive any financial compensation, and prohibits commercial surrogacy entirely (see also, article 13, para. 4 of Law 3305/2005). However, the payment of "reasonable expenses" related to pregnancy is allowed as per decision 36 of the Greek National Authority of Assisted Reproduction, which monitors the practice of surrogacy and determines the maximum allowable expenses that can be paid to the surrogate mother. These expenses can cover costs related to the insemination process, pregnancy, and childbirth, as well as any incurred damages, such as temporary inability to work.

In addition, the promotion or intermediation in surrogacy arrangements are not allowed. Since only altruistic surrogacy is permitted, advertising these arrangements or facilitating such arrangements is prohibited, as per article 26 para. 8 of Law 33/05/2005. Surrogacy arrangements must also undergo a judicial assessment as per article 1458 of the Civil Code. Once the parties involved, i.e., the surrogate mother and the commissioning parents, reach an agreement, it must be submitted to the Multi-Member Court of First Instance for approval. This means that once the child is born, the commissioners can register the child under their names immediately after birth, without requiring further authorization. This ensures that only the names of the commissioners will appear on the child's birth certificate. The judicial assessment involves the following criteria:

- All parties involved in the surrogacy arrangement participate freely. If the surrogate mother is married, it is required that her spouse also

provide authorization for the process;

- The reasons for recourse to surrogacy must be based on medical grounds.
- The arrangement must be altruistic in nature;
- The commissioning mother must be between 25 and 45 years old, and must have already given birth to at least one child of her own (decision 73 of the Greek National Authority of Assisted Reproduction of 24 January 2017);
- The commissioning parents must be a legally married heterosexual couple or in a recognized union, or they may be single women. While there have been exceptions where single men were allowed by lower court judges to enter surrogacy arrangements citing unconstitutional differential treatment,¹ these decisions were later overturned on appeal. Same-sex couples are not permitted to enter into arrangements of this nature;
- According to available information, the requirement for the commissioning parents or the surrogate mother to be citizens or permanent residents of Greece has been eliminated following the adoption of Law 4272/2014;
- The Greek National Authority of Assisted Reproduction is also tasked with overseeing the activities of assisted human reproduction centers.

While I do not wish to prejudge the accuracy of the alleged facts mentioned above, I am concerned that the regulation of surrogacy in Greece appears to disproportionately focus on the protection and security of the commissioning parents, while lacking effective safeguards and due considerations to the rights of the surrogate mother, and the children born through surrogacy.

Exploitation and abuse of surrogate mothers and children

I also observe with concern the absence of monitoring, prevention, prosecution, and punishment of unlawful behaviors, which have reportedly led to violations of the human rights of women who act as surrogate mothers, as well as their children, including girls in Greece. I am also concerned about the harmful human rights impacts stemming from the regulation of surrogacy in Greece, including the lack of oversight over private medical centers performing surrogacy procedures (although the Greek National Authority of Assisted Reproduction exists, no reports were found regarding its activity, and it has been evidenced to have encountered funding issues), risks to the life and health of women, lack of or inadequate

¹ Decision No 13707/2009 of the One Member Court of First Instance of Thessaloniki and Decision No. 2728/2009 of the One Member Court of First Instance of Athens.

consideration of the child's best interest, potential ties to human trafficking, and threats to women's privacy. These violations and abuses, reported to be committed against surrogate mothers and children conceived through surrogacy within Greece's jurisdiction, include violations of privacy through highly invasive medical treatments; economic violence; adverse effects on women's physical and mental health; absence of adequate mechanisms for redress; and situations of trafficking involving women and children, including girls.

With reference to the matter at hand, I wish to draw your attention to the risks inherent in the practice of surrogacy for the rights and integrity of women and girls, as well as highlight the apparent absence of legal safeguards in this context. I echo the concerns that have been raised by several experts that we must not ignore the discrimination against women and girls when their bodies are instrumentalized for cultural, political, economic and other purposes, including when rooted in patriarchal conservatism.² Furthermore, I express concern at the structural inadequacy of Greek legislation in providing effective protections for both surrogate mothers and the children conceived through this practice, which suggests that mere changes to existing legislation may not be sufficient to ensure its full compliance with Greece's obligations under international human rights law.

The surrogate arrangements lack provisions specifically aimed at protecting surrogate mothers, who appear to be entirely subjected to the terms of surrogacy agreements without any limits by law, appropriate prevention and, particularly, redress mechanisms, especially considering that the woman acting as a surrogate mother is one of the most vulnerable parties in the arrangement. The rights of surrogate mothers appear to be severely and excessively restricted in what appears to be a derogation of their fundamental human rights. A prime example of this situation is the *ex-ante* model of surrogacy in Greek legislation, which denies the surrogate mother any right to contest parental rights if she changes her mind during pregnancy or post-birth. Conversely, the commissioning parents, even without a biological link to the child, can enforce the surrogacy agreement. Similarly, there are no safeguards to protect the bodily integrity and autonomy of surrogate mothers, such as preventing forced cesarean sections.

Insufficient consideration for the best interests of children, including girls

According to international law on the rights of the child, States are obliged to consider the best interests of children in all circumstances that affect them. While the best interest of the child is a complex concept that typically requires a case-by-case analysis to consider the contextual characteristics of each child, the Committee on the Rights of the Child has indicated that "for collective decisions – such as by the legislator –, the best interests of children in general must be assessed and determined in light of the circumstances of the particular group and/or children in general. In both cases, assessment and determination should be carried out with full respect for the rights contained in the Convention and its Optional Protocols" (CRC/C/GC/14, para. 32).

These rights include the right to identity, to family life, to not be separated from their parents, to not be sold, and to have safeguards to prevent against the sale of children, among others, as noted in the Optional Protocol to the Convention on the

² A/HRC/37/60, para. 11.

Rights of the Child (CRC) on the sale of children, child prostitution and child pornography, ratified by Greece on 22 February 2008. Furthermore, as advocated by the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children, surrogacy for altruistic purposes need to be tightly regulated in order to avoid human rights violations.

On family matters and considering the impact of a child's separation from their parents, article 21 of the CRC establishes, for example, that in cases of adoption, States "shall ensure that the best interests of the child **shall be the paramount consideration** [emphasis added]." Given that surrogacy itself entails the separation of the child from the woman who carried them, the best interests of the child should not only be an important consideration but the primary consideration, as demanded, for example, in the case of adoption. In a similar vein, surrogacy raises serious concerns regarding children's right to know their origins as part of their right to identity. It also raises concerns about the potential health effects not only of the method of conception but also of the separation from the woman who carried them, as well as the risks of commodification and trafficking of children. With great concern, I fail to identify any provision in Greek legislation for the review of the best interests of the child in surrogacy proceedings, nor does it establish any safeguards concerning these risks.

In this regard, considering that in Greece, surrogacy arrangements are approved by national judges even before the conception of the child, it becomes practically impossible to conduct an assessment of the best interests of the child, as the specific circumstances cannot be evaluated. Moreover, the *ex ante* model, which prevents the registration of the surrogate mother, significantly hampers access to their origins and the possibility of family reunification in these cases. Furthermore, in its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee on the Rights of the Child stated that States are obliged with "reviewing and, where necessary, amending domestic legislation and other sources of law so as to incorporate article 3, paragraph 1, and ensure that the requirement to consider the child's best interests is reflected and implemented in all national laws and regulations, provincial or territorial legislation, rules governing the operation of private or public institutions providing services or impacting on children, and judicial and administrative proceedings at any level, both as a substantive right and as a rule of procedure" (CRC/C/GC/14, para. 15).

Lack of oversight over private medical centers engaged in surrogacy procedures

I also wish to bring to your attention information I have received indicating that the majority of clinics engaged in artificial insemination and the management of the medical aspects of surrogacy licensed by the Greek Authority for Assisted Reproduction are private. It is in this regard reported that several medical violations occur within these private clinics. For example, there have been reported instances where clinics have advertised procedures performed on women, such as live-streaming medical examinations or exposing women to cameras, without their explicit consent. Additionally, I received information about a case where a cesarean section was performed without medical justification and without the surrogate mother's consent, as well as about another case involving women who were initially utilized as egg donors and then as surrogate mothers, without any medical consideration for their health or safety. Furthermore, it has been reported that clinics fail to disclose full

information with surrogate mothers, leaving them feel deprived of any control or agency over their own pregnancy.

Also, I share concerns regarding the presumably coercive practices faced by surrogate mothers at the hands of clinic staff. Women used as surrogate mothers by a Greek clinic were confined to at least 14 different houses and were not allowed to leave freely. In some circumstances, the women lived in several houses under surveillance and were only allowed to leave for grocery shopping and medical examinations at the Assisted Reproduction Center. Additionally, it has been reported that surrogate mothers feel constantly monitored by nurses. Moreover, it has been reported that some clinics provide no information about the rights of surrogate mothers or the risks they face in this position, focusing instead on information tailored to potential clients. Additionally, I also share concerns about the lack of available data and statistics regarding the surrogacy procedures carried out in these private clinics and the supervisory and monitoring activities carried out by the National Authority.

The obligation of States to prevent violence against women and girls

According to international law, including the Declaration on the Elimination of Violence against Women, proclaimed in 1993 by the United Nations General Assembly, women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms across various spheres, including protection against all forms of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering. In line with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) States bear a responsibility for acts of omission by its organs and agents for acts that constitute violence against women, including through exercising their due diligence obligations.

As indicated above, States bear accountability for human rights violations resulting not only from their actions, but also from the omissions of their agents. Therefore, the failure of relevant legislation to proactively address risk factors affecting the rights women and girls, including but not limited to the right to be free from violence, within the framework of surrogacy arrangements implicates international responsibility. Similarly, as discussed below, the failure to monitor the activities of private entities which could result in acts of violence against women and girls can also infringe the State's international obligations.

These concerns are further heightened in the context of surrogacy by the very object of the arrangements, which is the reproductive function of women acting as surrogate mothers, and the children conceived through this means. Therefore, given the inherent inequality in these arrangements, if a State chooses to legalize them, it must ensure to prevent violence in a naturally unequal context for women. Positive measures must be taken to protect the most vulnerable parties in these agreements: women and children, including girls.

In light of this information, I call the attention of the Government to the fact that these situations - which occur in the context of private clinics or agencies - could lead to multiple human rights violations, including of women's rights to life, health, privacy, personal freedom, and the right to live free of violence. In this sense, I wish to draw your attention to the obligation to monitor the activities of non-state actors that may engage in activities which may violate human rights. Hence, concerns are raised regarding the possible lack of supervision and control of clinics providing

surrogacy services. Indeed, although, according to Law 3305/2005, the National Authority for Assisted Reproduction is responsible for supervising and monitoring clinics providing such services, this authority was dissolved in 2020.

Similarly, on the website of the National Authority for Assisted Reproduction, there is no updated information on surveillance and control activities carried out, as including investigations into possible violations against women and girls. There is also no information regarding the monitoring conducted by the National Authority on potential violations of the law or its human rights implications. Additionally, as previously mentioned, Greek legislation does not provide effective safeguards (if at all possible) to protect the rights of women acting as surrogate mothers. Moreover, there are no resources provided by the State to address potential violations of human rights and access appropriate remedies.

I wish to highlight in this regard that the duty and responsibility of States to strengthen incident reporting mechanisms related to human rights violations also applies to surrogacy services, in accordance with the third pillar of the Guiding Principles on Business and Human Rights, which states the obligation of States to have effective remedies for individuals whose rights may be violated by non-state actors (A/HRC/17/31). On the other hand, I would like to express concerns about the lack of data and statistics on the state of surrogacy in Greece, also having in mind the role played by women in this practice.

Risks to the rights to life, liberty, including freedom from violence, and health of women in surrogacy contexts

I wish to express concern about the lack of safeguards for the rights to life, liberty, including freedom from violence, and health as outlined within the framework of the laws regulating surrogacy in Greece, including the Greek Civil Code, for but not limited to the surrogate mother and the child conceived through this practice. It is concerning that invasive surgical procedures are being performed on pregnant women, such as cesarean sections, presumably without any medical justification or necessity. Additionally, attention is drawn to the fact that health implies not only the obligation of States regarding physical health but also mental health, which is why it is worrying that surrogacy regulation does not include an obligation to provide psychological support to women who become surrogate mothers during or even after their pregnancy, considering the significant impacts it can have on their mental well-being. Likewise, the lack of regulation regarding the possibility that women who were first utilized as egg donors could then be employed as surrogate mothers, without giving due consideration to their health or safety, is of particular concern.³

I would also like to draw to your attention that the regulation of surrogacy in Greece also has gaps concerning the protection of women living in situations of economic vulnerability. Indeed, according to information received, poor or migrant women are selected to be surrogate mothers precisely because of their vulnerable situation. Hence, according to data received, more than 60 per cent of surrogate mothers are not citizens of Greece. A study noted that most of them are from Bulgaria, Poland, Georgia, Albania, and Romania.⁴ This was intensified by the regulatory change in 2014, which allows surrogate mothers to not be Greek citizens,

³ European Center for Legal Education and Research and Voluntari în Europa- Romania. <https://www.youtube.com/watch?v=syih6xlDI0>

⁴ Hellenic Republic National Bioethics Commission. 2017.

or even have permanent residency, placing migrant women at greater risk.

Additionally, I share the concern that, although according to Law 3089/2002 surrogacy should be carried out exclusively for “altruistic” purposes, there are allegations that surrogacy and egg “donation” are, in fact, carried out for financial reasons. It is possible to observe surrogate mothers who pretend to be the commissioner’s best friends (in accordance with the principle of altruism) but in reality, are usually younger non-Greeks than the commissioning parents or, in some situations, their foreign-born domestic workers. Information about the socio-economic conditions of women acting as surrogate mothers is crucial to accurately assess their vulnerability. Therefore, it is imperative that legislation in Greece mandates the collection of accurate, objective and reliable data in this context.

Risks associated with human trafficking: impact on women and children

I note with regret the lack of preventive measures within the legislation regulating surrogacy in relation to human trafficking. It is particularly alarming to observe that, based on publicly available information, there have been documented instances of human trafficking networks for the purpose of surrogacy in 2019 and 2023.⁵ Consequently, it is deeply troubling to note that a significant proportion of women involved in surrogacy are non-Greek residents. Reports indicate that as recently as last 2023 the Greek police dismantled a criminal network centered around a fertility clinic in Chania, Crete, involved in illegal surrogacy and baby trafficking. This organization recruited and exploited financially distressed women from Ukraine and Romania to donate eggs and become surrogate mothers, charging fees of up to 120,000 euros for the service.⁶ These recurring incidents are paradigmatic of the need for specific measures enabling the prevention, prosecution, and punishment of trafficking for the purposes of surrogacy. According to international law that your Excellency’s Government is bound by, the trafficking in persons for the purposes of exploitation is prohibited. Consent from the victim of trafficking for the purposes of exploitation is rendered irrelevant if any coercive measures were employed.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandates provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the measures taken regarding data collection and monitoring of clinics performing surrogacy procedures.

⁵ Human trafficking for reproductive surrogacy purposes have been often reported, for example in 2019 <https://www.europol.europa.eu/media-press/newsroom/news/66-suspected-of-arranging-illegal-adoptions-and-surrogacies-and-human-egg-trafficking-in-greece> and again in 2023 <https://greekreporter.com/2023/08/10/baby-trafficking-ring-crete-greece-arrested-police/>

⁶ Greece. Surrogacy. http://abolition-ms.org/en/observatoire/greece/#_ftn23

3. Please provide information regarding the consideration and application of the best interests of the child in the regulation of surrogacy.
4. Please explain what preventive measures are taken to combat human rights violations against women and girls undergoing surrogacy.
5. Please indicate the safeguards included in Greece's national legislation to prevent violence against women in the context of surrogacy and other potential human trafficking. Please also indicate the mechanisms for implementing these safeguards and the outcomes of such mechanisms.
6. Please provide information on the mental health support services available to women involved in surrogacy.
7. Please provide information on the number and results of investigations conducted on the cases of potential human trafficking related to surrogacy.
8. Please explain the medical protocols concerning surrogacy, with specific reference to requirements for informed consent and the protection of personal data of women engaged in surrogacy.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Reem Alsalem

Special Rapporteur on violence against women and girls, its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw your Excellency's Government attention to the international standards and norms applicable to them.

Gender-based violence against women, as provided in article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified by Greece on 7 June 1983, is deemed as discrimination against women. In alignment with general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992) of the CEDAW Committee, it is emphasized that under the Convention and general international law, a State party holds responsibility for acts or omissions by its organs and agents constituting gender-based violence against women. These include actions or oversights of officials in executive, legislative, and judicial branches. States parties are mandated to prevent such acts or omissions by their organs and agents, ensuring appropriate legal or disciplinary sanctions, investigations, prosecutions, and reparations for all instances of gender-based violence against women. Additionally, states must uphold their obligation of due diligence under article 2(e) of the Convention, encompassing measures to prevent, investigate, prosecute, punish, and provide reparations for acts or omissions by non-state actors resulting in gender-based violence against women and girls. The CEDAW Committee, in its general recommendation No. 19 (1992), subsequently updated by general recommendation No. 35 (2017), also noted that "gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention," whether perpetrated by State or non-State actors, in public or private life.

Moreover, gender-based violence against women may amount to torture or cruel, inhuman, or degrading treatment in specific circumstances. It is crucial to reiterate the absolute and non-derogable prohibition of torture and other cruel, inhuman, or degrading treatment and punishment, as articulated in articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), as well as article 4(2) read in conjunction with article 7 of the International Covenant on Civil and Political Rights (ICCPR). Article 2 of the CAT underscores the obligation of States parties to prevent acts of torture.

Furthermore, according to the CEDAW Committee's general recommendation No. 28 on the core obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, to fulfill obligations aimed at eliminating discrimination against women, States must "provide mechanisms that collect relevant sex-disaggregated data, enable effective monitoring, facilitate continuing evaluation, and allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate" (CEDAW/C/GC/28, para. 28).

In addition, it is imperative to emphasize the crucial link between the right to health and the right to privacy. The right to privacy is a fundamental human right enshrined in various international instruments, including the Universal Declaration of

Human Rights (art. 12) and the ICCPR (art. 17). It encompasses the right to control one's personal information, decisions, and bodily autonomy. Particularly concerning women's rights, the need for robust protections safeguarding a woman's right to privacy is underscored by various legal frameworks. The Beijing Declaration, for instance, affirms that women have the right to make decisions free from coercion or intrusion. This includes the right to privacy in matters related to medical treatments (A/CONF.177/20, para. 89).

Furthermore, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health ascertained that it is crucial that health services respect and uphold women's right to privacy (A/64/272, para. 57). This entails ensuring confidentiality, autonomy, and dignity throughout the provision of care. Any breach of privacy, such as unauthorized disclosure of medical information or invasive procedures without informed consent, constitutes a violation of rights (CEDAW/C/36/D/4/2004).

I wish to remind you that under international human rights law, states are required to exercise due diligence to prevent, investigate, punish, and provide redress for acts of violence against women. Within the definition of violence, economic violence can certainly be included. For example, the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, known as "Istanbul Convention") that Greece ratified on 18 June 2018, recognizes economic violence as a form of violence against women.

I also wish to bring to the attention of Your Excellency's Government the 2000 Palermo Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. According to this instrument, trafficking in persons is prohibited, which, as defined in article 3, "shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." Furthermore, it states that "The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth subparagraph (a) have been used."

Furthermore, I would like to remind to your Excellency's Government that the CRC, ratified by Greece on 11 May 1993, establishes the obligation to consider the best interests of both boys and girls in all circumstances that may affect them, by all state authorities. This is underscored by the preamble of the Convention, which states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

In accordance with general comment No. 14 (2013) on the right of the child to have his or her best interests taken as primary consideration of the Committee on the Rights of the Child, the best interests of the child constitute a rule, a principle, and a right of children. The Committee emphasized that the best interests of children require that their best interest be taken into account in every decision affecting them as

individuals, groups of individuals, or even children in general. In the same General Comment, the Committee points out that the CRC requires that “all judicial and administrative decisions as well as policies and legislation concerning children demonstrate that the child’s best interests have been a primary consideration,” including private activities that particularly affect children. Thus, in cases where legislation affects girls and boys, the State must demonstrate that it conducted an assessment regarding the best interests of the child.

I also wish to draw the attention of Your Excellency’s Government to the International Covenant on Economic, Social and Cultural Rights, which Greece acceded to on 16 May 1985. Particularly, article 12 establishes that the “States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” In the context of women’s rights, the Special Rapporteur on the right to health has argued that “the failure to take all necessary measures to protect women against violence, to prosecute perpetrators or to discourage harmful medical (...) practices is a violation of the obligation to protect the right to health. States violate the right to health when they fail to take effective steps to prevent third parties from undermining the enjoyment of the right to sexual and reproductive health” (A/HRC/50/28, para. 20).

Furthermore, the sale of children is expressly prohibited in article 35 of the CRC, which states that “State Parties shall take all appropriate national, bilateral, and multilateral measures to prevent the abduction of, sale and of traffic of children for any purpose in any form.” The Optional Protocol to the CRC defines the sale of children as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”

Finally, although there is no explicit regulation in international law regarding surrogacy, certain United Nations bodies have made significant considerations on the matter. In the 1992 report, the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children emphasized the need for safeguards to prevent the exploitation of those involved in surrogacy (E/CN.4/1992/55). The Special Rapporteur also noted in 1994 that “States and national and international organizations should ensure that there are effective laws, policies and a medical code of ethics to prevent commercialization of in vitro fertilization and surrogacy. The close cooperation of the medical sector is sought to establish rules for these practices. Bilateral and transfrontier arrangements are needed to prevent “forum shopping” for services which give rise to abuses.”

The Special Rapporteur on the sale, sexual exploitation and sexual abuse of children also drew attention on commercial surrogacy in 2018 (A/HRC/37/60), noting that “commercial surrogacy as currently practiced usually constitutes sale of children as defined under international human rights law. As will be described in section IV below, commercial surrogacy may not constitute sale of children if it is closely regulated in compliance with international human rights norms and standards, and in a manner contrary to what exists in many commercial surrogacy regimes. Altruistic surrogacy, too, must be appropriately regulated to avoid the sale of children.”

Regarding the registration of the name of the surrogate mother and her removal from the birth certificate, the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children emphasized that “a blanket enforcement of anonymity for gamete donors, and/or the surrogate, including by only recording the

intending parents on the birth certificate, will prevent the child born from a surrogacy arrangement from having access to his or her origins. This is a particularly common violation of the rights of the child and is amplified in the case of international surrogacy arrangements” (A/74/162). Regarding potential scenarios of exploitation of vulnerability, the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children “raised concerns over the possibility of abusive practices exploiting the economic vulnerabilities of women and girls and the power imbalances with medical professionals and the individuals requesting surrogacy arrangements” (A/HRC/43/40).