



CONSULTATION SUBMISSION

SUBMISSION TO THE UNSRVAWG'S CONSULTATION ON SURROGACY
AND VIOLENCE AGAINST WOMEN AND GIRLS

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EUROPEAN NETWORK OF MIGRANT WOMEN

www.migrantwomennetwork.org | info@migrantwomennetwork.org

The European Network of Migrant Women (ENOMW) is the only pan-European migrant women led platform that directly represents the views of migrant, refugee and asylum-seeking women and girls at the EU and international levels. The network's membership includes women of Arab, African, Latin American, South / South-East Asian and Eastern European descent and counts over 50 organisations, in 23 states, advocating for non-discrimination and equality for migrant women. ENOMW's missions are related to the prevention and combating of all forms of discrimination impacting migrant women and girls and to promote their rights and interests through advocacy, capacity building and direct action.

INTRODUCTION

This submission responds to the Special Rapporteur's call for input on the human rights implications of surrogacy. The European Network of Migrant Women (ENOMW) **strongly opposes all forms of surrogacy**, whether **commercial** or so-called "**altruistic**," on the grounds that it **constitutes a form of violence against women and girls, commodifies female reproductive capacity, and reinforces sexual, racial, and economic inequalities**.

Surrogacy cannot be separated from the systems of exploitation and coercion that underpin it. It reflects and reinforces global power asymmetries, whereby women's reproductive capacity - especially that of impoverished, migrant, and racialised women - is purchased by more privileged parties. It is a manifestation of patriarchal control over women's bodies, enabled by **neoliberal commodification** and often legitimised through **narratives of choice and altruism**.

This report analyses the **structural violence inherent in surrogacy**, its **implications for women and surrogacy-born children**, and the **urgent need for international legal action to address it**.

SURROGACY AS VIOLENCE AGAINST WOMEN

- **Physical and medical violence:** Surrogate mothers are subjected to **invasive medical procedures** such as **hormonal stimulation, embryo transfer, and caesarean sections** - often without full or informed consent. They are frequently victims of **overmedicalisation**, as fertility clinics prioritise the success of the embryo transfer over the health and well-being of the woman¹. For instance, medications like Medrol, an immunosuppressant linked to heart failure, are commonly administered to suppress the body's natural rejection mechanisms². Contracts often require women to **waive their rights to refuse medical interventions** or to **terminate a pregnancy**, violating their bodily autonomy. Support systems are often inadequate, and informational materials fail to fully explain potential physical complications or the rights of surrogate mothers³ - particularly for **migrant women**, who may **face language barriers and legal vulnerability**.
- **Psychological violence:** The psychological impacts of surrogacy on birth mothers remain significantly under-researched, reflecting the broader invisibilisation of the exploited women in the reproductive industry, their commodification as tools for gestation, and the systemic disregard for their mental well-being. Women are often compelled to suppress emotional attachment to the child they carry, frequently under threat of financial penalties embedded in surrogacy contracts. This enforced detachment amounts to psychological coercion and constitutes a profound violation of maternal identity and emotional integrity.

1 Coalition Internationale pour l'Abolition de la Maternité de Substitution. 2024. "Fact Sheet: Surrogacy and Violence against Women - Coalition for the Abolition of Surrogate Motherhood." Abolition-Ms.org. June 6, 2024. <https://abolition-ms.org/en/news/fact-sheet-surrogacy-and-violence-against-women/>.

2 ibid.

3 Alavi, NeginMasoudi, Mahboubeh Taebi, and SeyedMehdi Ahmadi. 2020. "The Experiences of Surrogate Mothers: A Qualitative Study." Nursing and Midwifery Studies 9 (1): 51. <https://doi.org/10.4103/nms.nms.19.19>.



Birth mothers are at **increased** risk of **postpartum depression** and **emotional trauma**, particularly when they are made to give up a child they may have wished to keep⁴. The *Johnson v. Calvert* case in the California Supreme Court⁵ set a legal precedent affirming that the **"intent"** behind the surrogacy contract prevails - meaning the **commissioning party retains custody of the child**, even if the birth mother changes her mind. This judgment reduces the **birth mother to a contractual vessel**, denying her evolving will and treating her not as a person with agency, but as a **commodified tool for reproduction**.

- **Economic exploitation:** Most mothers engaged in surrogacy come from **economically disadvantaged backgrounds**, and the surrogacy industry actively **capitalises on their poverty**. This represents a clear form of **economic violence** and **exploitation of women in vulnerable situations**. A stark disparity often exists between what commissioning parents pay to surrogacy agencies and what these agencies actually compensate the women who carry the pregnancies. In this profit-driven model, intermediaries prioritise their financial gain, frequently acting with complete disregard for the rights, wellbeing, and dignity of surrogate mothers⁶. For example, in **Ukraine**, it is often single, economically vulnerable mothers who turn to surrogacy as a **means of supporting their families**⁷ - left dependent on the "good will" of agencies and intended parents. In **India**, many women have reported being **lured into surrogacy under false financial promises**, revealing a pattern of deception and systemic exploitation. These examples illustrate how surrogacy **disproportionately targets marginalised women** and reinforces a **racialised and class-based hierarchy** within the global reproductive market⁸.
- **Reproductive coercion:** Surrogacy arrangements constitute reproductive labour under contract. The **commodification of the womb** reduces women to **service providers of a product** - children - for the benefit of those who can afford to pay. Frequently, mothers exploited in surrogacy are **recruited** through various forms of **coercion**, whether **economic, social, familial, or psychological**, aligning with the definition of **coercion** and trafficking in persons under the Palermo Protocol. Moreover, under **Article 12 of the Universal Declaration of Human Rights (UDHR)**, **Article 17 of the International Covenant on Civil and Political Rights (ICCPR)**, and **Article 8 of the European Convention on Human Rights (ECHR)**, women are protected against unlawful interference with their privacy. In the context of surrogacy, however, these rights to **privacy** and **bodily autonomy** are routinely restricted and undermined - subordinated to the interests of profit-driven agencies and commissioning parties. We challenge the notion that altruistic surrogacy is harmless. Even in non-commercial settings, the social pressure, emotional manipulation, and lack of real choice experienced by women - particularly within families - can amount to coercion.

STRUCTURAL AND GLOBAL DRIVERS OF SURROGACY

The expansion of surrogacy is not an isolated reproductive phenomenon but rather the result of **deeply entrenched global inequalities, neoliberal economic structures, and patriarchal social norms**. Surrogacy operates within a global system that systematically devalues women's bodies - particularly those of poor, migrant, and racialised women - while catering to the reproductive desires of more privileged groups. Understanding the drivers of this practice requires situating it within broader political, economic, and ideological contexts.

4 *ibid.*

5 "Johnson v. Calvert (1993)." 1993. Justia Law. 1993. <https://law.justia.com/cases/california/supreme-court/4th/5/84.html>.

6 Horsey, Kirsty. 2023. "The Future of Surrogacy: A Review of Current Global Trends and National Landscapes." *Reproductive Biomedicine Online* 48 (5): 103764-64. <https://doi.org/10.1016/j.rbmo.2023.103764>.

7 European Network of Migrant Women, and Coalition Internationale pour l'Abolition de la Maternité de Substitution. 2022. "Migrant Women and Reproductive Exploitation in the Surrogacy Industry: Joint Investigation." <https://www.migrantwomennetwork.org/2022/10/21/migrant-women-and-reproductive-exploitation-in-the-surrogacy-industry-joint-investigation-by-enomw-and-icasm/>.

8 University of Chicago Law School - Global Human Rights Clinic. 2019. "Human Rights Implications of Global Surrogacy." Global Human Rights Clinic. <https://chicagounbound.uchicago.edu/ihrcl/10>.



Neoliberal Commodification of Reproduction

Surrogacy is the **commodification of human life** under **neoliberal economic structures**⁹. In a global market that increasingly turns human capacities - labour, care, reproduction - into commercial services, the **womb is transformed into a site of economic transaction**. The logic of the market invades intimate spaces, framing children as products, pregnancy as a service, and women as manufacturers¹⁰.

This process is particularly visible in the **rise of a global fertility industry** projected to reach nearly **\$129 billion by 2032**¹¹. Fertility clinics, legal intermediaries, brokers, and surrogacy agencies form part of an expansive infrastructure designed to turn **reproductive capacities** into **profit-generating mechanisms**.

Cross-Border Reproductive Tourism

A critical driver of the surrogacy boom is cross-border reproductive tourism. Intended parents from high-income countries **seek surrogacy services in countries** where **regulation is weak, legal enforcement is minimal**, and the **costs are significantly lower**. This dynamic fosters an exploitative transnational relationship, often between wealthy Western clients and vulnerable women in the Global South or Eastern Europe.

Countries like **Ukraine, Georgia, India** (before its partial ban), **Mexico**, and **some U.S. states** have become key hubs for surrogacy. Not the case for its strong reproductive rights for women, but because of **permissive or ambiguous legal regimes** and the **availability of economically disadvantaged women** willing to **rent** their wombs for their survival, and their families. Migration status and lack of economic opportunity further heighten women's vulnerability in these contexts.

Structural Poverty and Inequality between Women and Men

The overwhelming majority of mothers exploited in surrogacy share common characteristics: they are **poor, under-or unemployed**, have **limited access to education and healthcare**, and are often **single mothers themselves**. They are recruited precisely because of their economic precarity and social marginalisation¹². The global surrogacy market thrives on this inequality, offering women temporary economic relief in exchange for permanent physical, emotional and legal risks.

Migrant and racialised women are particularly targeted due to their **perceived docility, lack of information** and **access to legal recourse**. In many documented cases, women exploited as surrogates face **language barriers, misinformation, coercion**, and are **prevented from seeking medical or psychological help** if complications arise. This is not a system of reproductive altruistic choice - **it is a system of reproductive coercion and extraction**.

Legal Fragmentation and Market Opportunism

The **lack of international legal consensus** on surrogacy has created fertile ground for opportunism. Commissioning parents engage in "**jurisdiction shopping**" to locate the most favourable legal and economic environments for securing a child, regardless of the legal status or protection of the surrogate. **Surrogacy agencies** facilitate this practice by offering **full-service reproductive packages**, including legal documentation, cross-border travel, and surrogate recruitment.

10 Debs, Carolina, Elena Hanh, and Jade Robinson. 2024. "The Need for Global Surrogacy Guidelines: A Focus on the Current Ethical and Legal Considerations Regarding Surrogates, Intended Parents and Children." OxJournal, August. <https://www.oxjournal.org/the-need-for-global-surrogacy-guidelines/>.

11 Marin, Siobhan, and Jack Schmidt. 2025. "Surrogacy Is a Booming Business. Some Say It's 'Empowering', Others Believe It Exploits Women." Abc.net.au. ABC News. January 22, 2025. <https://www.abc.net.au/news/2025-01-23/surrogacy-is-a-multi-billion-dollar-industry-but-is-it-ethical/104817390>.

12 Debs, Carolina, Elena Hanh, and Jade Robinson (n 10).



The **absence of uniform legal standards** has allowed surrogacy to operate in a **quasi-legal grey zone**, with women's rights, health, and dignity sacrificed for the sake of convenience and profit. This fragmentation reinforces the need for **coordinated international action to close legal loopholes and prohibit the exploitation of women under the guise of reproductive choice**. This legal fragmentation is particularly highlighted by cases such as European Court of Human Rights (ECtHR) case *Menneson v. France*¹³, where a French couple travelled to the United States of America for a commercial surrogacy agreement. Upon returning to France, French authorities refused to recognise the children's north-american passports. Still, the **ECtHR reinforced French sovereignty in regulating surrogacy**, while **calling for the recognition of the child**.

Ideological Discourses of Altruism and Choice

The industry and its defenders often frame surrogacy as a matter of individual choice or altruism. This discourse masks the **coercive structures that constrain women's options**, and **reinforces liberal narratives** that disconnect women's choices from the social, economic, and cultural pressures in which they are made. Whether in familial settings or across borders, so-called "altruistic" surrogacy often relies on **emotional obligation**, or **community expectations**. Framing these forms of coercion as consent fails to recognise the structural violence embedded in the practice. **No amount of regulation can eliminate the inherent power asymmetries that define surrogacy contracts.**

LEGAL GAPS AND CROSS-BORDER EXPLOITATION

Surrogacy thrives in a fragmented and inconsistent global legal landscape. The absence of binding international norms, coupled with divergent national laws, has enabled a **transnational industry marked by jurisdictional loopholes and legal grey zones**. This regulatory vacuum actively facilitates the **exploitation and commodification of women**.

Legal Incoherence and Jurisdiction Shopping

Some states, such as **France, Germany, and Sweden**, **prohibit all forms of surrogacy**. **Italy** recently went further and banned obtaining children via surrogacy for Italian nationals. Others, like the **United States** (on a state-by-state basis), **Ukraine, Georgia, and India**¹⁴ (prior to its 2021 ban on commercial surrogacy), allow or regulate the practice to varying degrees. This **patchwork framework** has created a thriving market in legal arbitrage, where commissioning parents - often from prohibitionist countries - engage in jurisdiction shopping to exploit poorly regulated legal systems. **Agencies and intermediaries** play a key role in **facilitating cross-border arrangements**.

Violation of Women's Legal Rights

In most jurisdictions where surrogacy is practiced, women's rights as birth mothers in surrogacy are **systematically restricted**:

- Informed consent is undermined when women are required to **sign contracts before conception** that **pre-emptively waive medical decision-making** during pregnancy, including the right to refuse treatment or terminate a pregnancy.
- **Contractual coercion** binds women to **exploitative agreements**, often **under threat of losing compensation or facing legal retaliation**.

¹³ *ibid.*

¹⁴ "Surrogacy Law in India - New Era for Surrogacy in India (2025)." 2025. Dr. Rita Bakshi. March 27, 2025. <https://drritabakshi.in/the-surrogacy-regulation-act-2021-a-new-era-for-surrogacy-in-india/>.



- Lack of enforceable protections means that when women used in surrogacy experience **medical complications, abandonment, or emotional trauma**, there are **few legal mechanisms for redress**.
- In many cases, **birth mothers are not legally recognised as having maternal status**, even immediately after birth. The law is weaponised to strip women of parental recognition, facilitating the **immediate handover of the child as a “product” of contract** rather than a subject of maternal care – **reinforcing once again the idea of women as a baby manufacturer**.

Breach of International Human Rights Law

Surrogacy arrangements violate core principles of international law, including:

- **The Convention on the Rights of the Child (CRC): Article 7** guarantees the child's right to know and be cared for by their parents. Surrogacy **deliberately severs this right**, treating maternal separation as a contractual outcome rather than a harm.
- **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC):** The **exchange of children for monetary or other compensation** - whether labelled as reimbursement, "altruism," or fees for services - can constitute the sale of children.
- **Convention on the Elimination of Discrimination Against Women:** Surrogacy **undermines women's reproductive autonomy and dignity** by treating their bodies as vessels for others' reproductive projects.
- **Palermo Protocol:** In instances where **coercion, fraud, or abuse of power** is present, surrogacy may meet the **legal definition of human trafficking** for the purpose of exploitation.

Exploitation in the Shadow of Law

The legal status of surrogacy often obscures the real-world conditions under which surrogacy takes place. Even in jurisdictions that claim to “regulate” surrogacy to make it safer, **enforcement is weak, oversight mechanisms are absent, and power asymmetries go unchecked. Regulation has not eliminated exploitation, it has institutionalised it.** Moreover, children born through cross-border surrogacy often find themselves in legal limbo: **unregistered or caught in custody disputes** when commissioning parents abandon them¹⁵ (or contracts are contested). The law in such cases defers to the desires of the most powerful actors - those commissioning and paying - rather than protecting the fundamental rights of biological mothers and children.

IMPACT ON SURROGACY-BORN CHILDREN, ESPECIALLY GIRLS

Children born through surrogacy arrangements are subjects whose fundamental rights and long-term well-being are directly shaped - and often undermined - by the commercial and contractual logic of surrogacy. While much of the discourse focuses on adult desires and parental entitlement, **the lived experiences and rights of surrogacy-born children, particularly girls, remain marginalised**¹⁶.

Violation of Identity and Origin Rights

Surrogacy arrangements **deliberately sever the bond between a child and mother**. In many cases, the **biological mother's name is erased from the birth certificate and replaced by that of commissioning individuals** - effectively rewriting the child's legal and familial identity from birth. This practice contravenes **Article 7 of the CRC**, which guarantees a child's right to know and be cared for by their parents, and to preserve their identity, including nationality, name, and family relations. The commodification and transfer of children **treats children** not as rights-holders, but as **deliverables**.

¹⁵ See Baby Gammy case (Thailand), available here: <https://www.abc.net.au/news/2016-04-14/baby-gammy-twin-must-remain-with-family-wa-court-rules/7326196>.

¹⁶ “A Woman Born of Surrogacy Is Now Fighting against It - Rome Reports.” 2024. Rome Reports. February 20, 2024. <https://www.romereports.com/en/2024/02/20/a-woman-born-of-surrogacy-is-now-fighting-against-it/>.



Being a Girl Born Through Surrogacy

In patriarchal contexts, son preference may drive sex-selective practices, even in surrogacy, leading to elimination of female embryos or the selective abortion of female fetuses. In such cases, girls may be less likely to be chosen, valued, or kept. Surrogacy-born girls may also face psychosocial stigma and internalised shame, particularly in communities where non-traditional birth arrangements are seen as morally questionable. The narrative of having been "given away" by one woman and "owned" by another set of adults can be especially psychologically harmful for female children in cultures where maternal bonds are sacred or symbolically central to femininity.

Unequal Treatment and Abandonment Risks

Children born with disabilities or health complications are at heightened risk of abandonment or discrimination, as seen in high-profile cases like Baby Gammy¹⁷. This reflects the market logic of surrogacy: if a child fails to meet the expectations of the commissioning party, they may be treated as defective goods. In cases where the child's sex, health status, or appearance do not align with what was "ordered," commissioning parents may refuse to assume responsibility, placing children - often girls - at the mercy of legal systems that offer little protection or redress.

RECOMMENDATIONS AND CALL FOR INTERNATIONAL ACTION

Given the systemic nature of exploitation and violence inherent in all forms of surrogacy, the European Network of Migrant Women urges states and international institutions to recognise surrogacy not as a question of family formation or individual autonomy, but as a globalised industry that commodifies women and children under the guise of reproductive assistance.

To States: Enact National Bans and Provide Protection

- Prohibit all forms of surrogacy, both commercial and "altruistic," through comprehensive national legislation that recognises surrogacy as a violation of women's rights and dignity.
- Criminalise the purchase and facilitation of reproductive labour, including intermediaries, agencies, and medical professionals who profit from or facilitate surrogacy arrangements.
- Recognise surrogacy as a form of violence against women under domestic laws, consistent with CEDAW Article 6 on Trafficking in Women, and CEDAW General Recommendation 19 and 35.
- Ensure state-funded support services for women exiting surrogacy or vulnerable to recruitment, including:
 - Legal aid and redress mechanisms
 - Trauma recovery and mental health support
 - Economic alternatives and social reintegration programmes
- Ban the advertising, promotion, or international marketing of surrogacy services, including online and cross-border commissioning.

To International Human Rights Bodies and UN Mechanisms

- Develop a binding international legal instrument prohibiting surrogacy, grounded in core human rights treaties, including:
 - The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
 - The Convention on the Rights of the Child (CRC)
 - The Palermo Protocol on Trafficking in Persons



- Reinforce and interpret existing human rights instruments to explicitly:
 - Recognise surrogacy as a form of reproductive exploitation and trafficking
 - Define the sale of children to include surrogacy arrangements involving financial or other forms of compensation
 - Clarify that “best interests of the child” do not legitimise the violation of their rights to origin, identity, and non-commodification
- Establish a UN-led monitoring mechanism to:
 - Track surrogacy-related abuses, especially in cross-border arrangements
 - Document and publicise testimonies from affected women and children
 - Provide oversight of medical and legal industries profiting from surrogacy

Call for a Feminist Global Response

ENoMW urges the Special Rapporteur and the international community to adopt a **zero-tolerance approach to surrogacy**. No regulatory model can eliminate the entrenched inequality, exploitation, and commodification at the heart of this practice. The only human rights-based, feminist response is abolition. **Surrogacy is not a form of empowerment or care - it is a transnational system of reproductive violence**. The global community must act decisively to end this industry, protect the rights of all women and children, and uphold the principles of non-commodification and bodily autonomy.

