



Submission to the UN Special Rapporteur on violence against women and girls in preparation for the General Assembly 80th session on surrogacy and violence against women and girls

April 18, 2025

(1) Reproductive surrogacy intersects with human trafficking, including for the purposes of exploitation of women and the sale of children.

Reproductive surrogacy is an arrangement whereby a woman carries and gives birth to a child for another person or couple (the contractor/s or contracting parent/s or) who cannot or will not conceive but desire genetically related offspring. The surrogate mother is contractually obligated to give the child or children she bears to the contracting parent/s upon the birth of the child or children.

The practice of reproductive surrogacy is violative of international law and human rights principles. It jeopardizes women's rights to health and to equality and heightens the risk of trafficking in women and children for purposes of commercial surrogacy and "reproductive tourism."

Surrogacy violates a number of international legal instruments, including the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol).

The **Palermo Protocol** offers the internationally accepted legal definition of "trafficking in persons" and provides three elements to understand the process of human trafficking, namely (i) the act (recruitment, transport, transfer, harbouring, receipt of persons), (ii) the means (threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim) and (iii) the purpose (for the purpose of exploitation, which includes, at a minimum, exploitation of the prostitution of others, sexual exploitation, forced labour or services, slavery or similar practices, servitude, and the removal of organs). ⁱ

Under **CEDAW**, a number of articles could address surrogacy, including Article 1, which prohibits discrimination on the basis of sex; Article 5, which mandates Member States to combat harmful

cultural practices; and in particular, Article 6 obligating States Parties to: “...take all appropriate measures, including legislation, to suppress all forms of traffic in women...”ⁱⁱ

The definition of human trafficking also specifically states that the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means set forth have been used.ⁱⁱⁱ Women in situations of vulnerability, including financial and socio-economic vulnerabilities, are often recruited for the use of their eggs and wombs by third parties who profit from such recruitment, both use and sale of women and their reproductive organs, respectively.

The sale of children under surrogacy arrangements

The **Optional Protocol to the CRC** requires States Parties to prohibit the sale of children, with Article 2 defining the sale of children as any act or transaction whereby (1) a child is transferred by any person or group of persons (2) to another (3) for remuneration or any other consideration.

Both UNICEF and the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, expressed extreme concern that children born through surrogacy, are at risk of multiple human rights violations “– particularly, their right to an identity, including name, nationality, family relations and access to origins; the right to the enjoyment of the highest attainable standard of health; and the right to not be sold.”^{iv} The UN Special Rapporteur also underlined that surrogacy involves an inherent power imbalance that opens the door to various forms of exploitation and usually constitutes the sale of children under human rights law.^v

The financial exploitation of vulnerable women in egg donation and commercial surrogacy is acute. Egg donors are typically university-aged women in precarious financial situations, saddled with school tuition debt, or are from economically disadvantaged communities. Inherent to a commercial surrogacy contract is an acute economic and power imbalance between the parties, whereby the contracting parent(s) must have between US\$100,000 and upwards of US\$200,000^{vi} in disposable income to contract women to sell their eggs or offer their reproductive organs, and the women being contracted, invariably in economic distress, receive an average of US\$45,000^{vii} to survive a high-risk pregnancy.

(2) Reproductive surrogacy: a predatory and global multi-billion-dollar industry of exploitation and third-party profit that harms women.

As part of its marketing and recruitment strategies to increase their profit, the global multi-billion-dollar reproductive technology industry aggressively targets vulnerable women online, through social media platforms and on university campuses.^{viii}

The global surrogacy market is expected to grow from US\$27.9 billion in 2025 to US\$201.8 billion in 2034.^{ix} This market includes fertility clinics, hospitals, and healthcare professionals involved in assisted reproductive procedures.

When states allow for surrogacy or loosen the regulations around surrogacy, what can occur is “forum shopping,” whereby contractors look for the least restrictive and least expensive jurisdictions to find women as surrogate mothers.^x

The consequences of surrogacy

Pregnancy presents many risks to a woman’s health. According to the World Health Organization, approximately 810 women die every day from preventable causes related to pregnancy and childbirth, and between six and nine million more experience serious related complications.^{xi} These complications have a compounded effect on women of color, and in the U.S., especially on Black women.^{xii}

The U.S. Centers for Disease Control and Prevention (CDC) found that Black women are three to four times more likely to die from pregnancy-related complications than Caucasian women, in large part due to racial and socio-economic disparities.^{xiii} Native American or Alaskan Native women die at a rate 2.5 times greater than white women.^{xiv}

These risks and dangers to surrogate mothers, especially women of color and from the Global South, are exponentially acute. Women contracted to become surrogates face serious health risks from potentially carcinogenic fertility drugs they are required to take, as do egg donors.

Due to the implantation of multiple embryos at the same time in the womb, surrogate mothers by definition carry high-risk pregnancies, therefore at heightened incidence of life-threatening prenatal diseases such as pre-eclampsia, maternal hypertension, gestational diabetes, premature birth. The fetus the surrogate mother carries and the baby she bears faces heightened risks as well.^{xv}

Children born of reproductive commercial surrogacy are at higher risk of negative health consequences. Studies show that children who are twins or triplets or whose mothers were preeclamptic while pregnant with them are more likely to be born prematurely, leading to increased hospitalizations and health consequences that can include developmental delays, cerebral palsy, epilepsy, hearing and vision loss, and myriad other chronic health challenges. Even when a surrogate mother is carrying a single fetus implanted through in-vitro fertilization (IVF), she, like all other IVF-assisted pregnant women, face an increased risk of maternal morbidity compared with spontaneous pregnancies.^{xvi}

Notwithstanding the universally recognized risks associated with transferring multiple embryos to a woman to carry, it is estimated that 85% of surrogacy arrangements in the United States involve transfers of multiple embryos to the surrogate for her to carry.^{xvii}

Socio-cultural, economic and sex-based discrimination as a few drivers of surrogacy

Suffering from infertility when one wants to become parents can be a personal tragedy. Without diminishing empathy for the visceral yearning to bear a child, it is unconscionable for the State, however, to create a legal right to purchase or rent human organs. States generally prohibit the sale of kidneys, for example, so the State must question why it would explicitly make an exception, and legislate accordingly, for the reproductive organs of women.^{xviii}

The top driver that leads women to enter into surrogacy contracts is their desperate need for money. Second is their tender willingness as women to offer the “gift of life” and what better way, some have testified, than to receive some much-needed money in the process?^{xix}

Member States must examine these patterns within the framework of Article 5 of CEDAW, which mandates States Parties to take appropriate measures to “modify the social and cultural patterns...with a view to achieving the elimination of prejudices and customary and all other practices...based...on stereotyped roles for men and women.”

Surrogacy is now a widespread culturally accepted harmful practice based on stereotypes against women. If one searches online for the main factors driving the demand for commercial surrogacy, the engine results are indicative of the socio-cultural acceptance of the practice of surrogacy. Top factors listed include rising infertility rates, growing acceptance of diverse family structures, employer benefits offering reimbursement of surrogacy costs, and potential contracting parents seeking biological connection to future offspring. The ever-growing list of celebrities and prominent personalities who publicly celebrate their use of commercial surrogacy also contributes to the mainstreaming and glamorization of the practice without any consideration of it as a violation of the human rights of the surrogate mother and the child or children she bears.^{xx}

The normalization of surrogacy masks the practice’s inherent commodification and exploitation of women, ignores the health risks, both medical and psychological, inflicted on the contracted woman to use her womb (or sell her eggs in the case of egg donors), and dismisses links to third-party exploitation, abuse of power, and socio-economic inequalities.^{xxi}

Women contracted to act as surrogate mothers and egg donors: An unknown population

The population of both surrogate mothers and egg donors is unknown, since a great number of Member States have no government-operated data portals or registries to collect information on the women and the state of their health, prior to, during and after the pregnancy, and for egg donors, the long-term negative effects of the procedure. Reports indicate that these women are rarely fully informed about the related medical procedures and potential extensive health risks they face, from ovarian hyperstimulation syndrome to cancer to post-partum depression, respectively.^{xxii}

(3) Jurisdictional Case Study: Legal, policy and regulatory framework in the United States.

In the United States, like prostitution, surrogacy is governed by the states. No U.S. federal law governs surrogacy. Many U.S. states are "surrogacy-friendly" because they enforce surrogacy agreements. U.S. states that legalize commercial surrogacy prohibit the use of the surrogate mother's eggs or embryos. Therefore, especially in cases of infertility of a female contractor, a single contractor, or a male gay couple, two women are required for the process of surrogacy: a fertile woman for the sale of her eggs and a woman to carry the implanted embryo that leads to the delivery of a child or children.^{xxiii}

New York State Commercial Surrogacy Law

From 1985 to 2020, New York State officially prohibited commercial surrogacy, finding "surrogate parenting as indistinguishable from the sale of children" and the practice "morally and socially unacceptable because it violates the dignity of children and the societal prohibition against the purchase and sale of human beings....[resting] on...respect for the inherent dignity and equality of all persons..." and "Euphemisms like 'womb rental' or 'the provision of services,' developed in part as marketing techniques, disserve the public by seeking to obscure the nature of the transaction. The intended parents do not seek a pregnancy or services as the ultimate object of the arrangement; they seek the product of those 'services' —the child. The surrogacy contracts themselves make this intent unmistakably clear."^{xxiv}

Thirty-five years later, the New York legislature presented a bill in 2019 to legalize surrogacy. Despite deep opposition to the bill, including in a letter signed by over one hundred New York women leaders and surrogate survivors,^{xxv} no legislative hearings nor public discussions were afforded to review that bill,^{xxvi} and in April 2020, the Child-Parent Security Act ("CPSA") was enacted as a line-item in former Governor Andrew Cuomo's 400-page budget package at the height of the COVID-19 pandemic.^{xxvii}

The CPSA defines a surrogacy agreement *as one "between at least one intended parent and a person acting as surrogate intended to result in a live birth where the child will be the legal child of the intended parent or parents."*^{xxviii}

Among provisions violating the rights of women and the children they bear for surrogacy contractors, the CPSA:

- requires the surrogate mother to transfer the child to the contracting parent(s) regardless of the contracting parent(s) fitness, including accusations or convictions of serious crimes or sexual crimes (e.g. pedophilia, rape, incest, etc.) committed or alleged to have been committed by the contractor.
- requires the courts to enforce commercial surrogacy agreements obligating the surrogate mother to surrender custody of all resulting children to the contractors immediately upon their birth in exchange for compensation.

- jeopardizes the right to identity of children born of commercial gestational surrogacy by not including the name of the surrogate mother on the birth certificate, violating the child's fundamental human right to know the identity of his or her birth mother.
- the weak residency requirements are that *either* the surrogate mother *or* at least one contracting parent need to fulfill the residency requirements in New York state for at least six months prior to signing the surrogacy contract, further increasing the risks of "reproductive surrogacy tourism" and reproductive trafficking in New York.

The commodification of women's bodies and their reproductive organs allowed under the CPSA, and other state laws around the United States, establishes a disproportionately unequal power dynamic between a multi-billion-dollar global industry and the surrogate mother.^{xxix}

Increased cultural shifts, as mentioned above, led to the passage of the CPSA cement the false and dangerous public perception that individuals have a right to a biological family. While fundamental human rights include the right to enjoy a family, there is no human right to a biological family, and certainly no human right to purchase one at the expense of upholding the human rights of women and children.

Ironically, while the Governor of New York expounded that the CPSA was an extension of the New York Marriage Equality Act,^{xxx} legalizing same-sex marriage, the CPSA does not require the contracting parents or single contractor to be married.

The history of human trafficking and the enslavement of human beings as a socio-cultural and economic institution across the Americas offers a somber backdrop to reproductive surrogacy. Women of African descent were of distinct worth on the marketplace, offering considerable value to the institutions of slavery^{xxxi} and medicine^{xxxii}, fueling property wealth, research and economic growth of nations. "Surrogate mothers are silenced, which is why the public knows nothing about our trauma," says Toni Bare, an African American woman who contracted with a Caucasian couple in 2016 and gave birth to white twin girls for a surrogacy fee of \$13,000. Only one twin survived.^{xxxiii}

The CPSA has rendered New York State a global outlier in protecting and promoting the rights of women and children. Given the prohibition of reproductive commercial surrogacy across Europe, in China, India, Thailand, Nepal, Cambodia, Brazil, New Zealand, to name a few countries,^{xxxiv} New York will become a global destination for reproductive tourism and the risk of reproductive trafficking remains significant.

Recommendations

It is critical for Member States, regional bodies, and international institutions to address violence and other human rights violations and abuses linked to surrogacy to develop and ratify a dedicated international instrument that bans surrogacy. Until then, current international legal

instruments are applicable to the practice of surrogacy as a human rights violation against women and children.

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ⁱ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, Article 3

ⁱⁱ Article 5 of CEDAW states: “States Parties shall take all appropriate measures: (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women; Article 6 requires State Parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”; UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, <https://www.refworld.org/docid/3ae6b3970.html>

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