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The Declaration on Women's Sex-Based Rights has been signed by 39,294 individuals from 160 countries and is supported by 523 organisations

To: Reem Alsalem, Special Rapporteur on violence against women and girls, OHCHR,
hrc-sr-vaw@un.org

From: Women's Declaration International

Re: Surrogacy and violence against women and girls

Date: APRIL 16 2025

INTRODUCTION

Women's Declaration International (WDI) is an international human rights organization that drafted the Declaration on Women's Sex-Based Rights ('the Declaration' <https://www.womensdeclaration.com/en/declaration-womens-sex-based-rights-full-text/>). The Declaration has been disseminated worldwide. As of today, the Declaration has 39,294 individual signatories from 160 countries and 543 organisational collaborators. The organisation is registered in the UK and Wales since 2019.

This submission will address the legal, policy, and institutional measures required at the international level to effectively address human rights violations associated with surrogacy.

THE FUNDAMENTAL BASIS OF HUMAN RIGHTS IS VIOLATED BY SURROGACY

The underlying purpose of all human rights is to maintain the inherent human dignity and strive for equality of all persons. Actions that promote sexism, racism, or colonialism are prohibited. Surrogacy perpetuates patriarchy, racism, and colonialism in violation.

Sexism, racism, and colonialism drive this practice that is a replication of a pattern of wealthy countries having the citizens of poorer countries do their work for them. In the \$14 billion dollar business that is surrogacy today, the main issue is not infertility but the wish of wealthy women not to go through the body changes of pregnancy or of wealthy gay men to have a child.

The surrogacy targets are poor women desperately in need of money. Women are treated as breeders and children as commodities. Women's bodies are the capital in a capitalist model. Impoverished women do the one thing they can do to survive – sell their body. This is the same

dynamic of prostitution and pornography. The society then refuses to provide education and job training for the women to escape poverty because she can always sell that one thing. There could hardly be a clearer example of using a woman of color to do the work of a white, rich woman.

As the International Coalition for the Abolition of Surrogate Motherhood (<https://abolition-ms.org/en/home/>) shows surrogacy is completely based on patriarchy's focus on women as a vessel for the exploitation of their reproductive capabilities that supports the sexual stereotypes that create and sustain the societal inequalities between women and men. The patriarchal myth that a woman who cannot have a child is a failure and cannot be "fulfilled," and the corresponding myth that a man who can't father a child is emasculated and less a man reduces both women and men to their mechanized body parts divorced from human dignity.

The commodification of women.

Surrogacy subjects a woman's body to dangerous medical intervention for no medical reason. While much research has proven the increased risk to women and the children, men do not risk any health complications at all. But surrogacy has resulted in a "market" in eggs and mother's milk that in the past exploited enslaved women. Allen, Anita L., "*Surrogacy, Slavery, and the Ownership of Life*" (1990) Faculty Scholarship at Penn Carey Law. 805)

Even more dangerous, Anna Smajdor, Professor of philosophy at the University of Oslo, published an article titled "*Whole Body Gestational Donation*" (*Medicine and Bioethics*. Theoretical Medicine and Bioethics (2023) 44:113–124 <https://doi.org/10.1007/s11017-022-09599-8>) in which she argued that women who have been declared "brain dead" could be used as "whole-body surrogates." She claims that if an individual has agreed in advance to being an organ donor, it could be assumed this includes her uterus, which is an organ.

In her article, Genes and Spleens: Property, Contract, or Privacy Rights in the Human Body?, 35Journal of Law 371 (2007). Available at: http://repository.uchastings.edu/faculty_scholarship/654 Radhika Rao focuses on the problem that current biomedical research allows commodification and commercialization of the body by researchers, universities, doctors, hospitals, and even for-profit enterprises, but not for the person themselves.

She breaks down her analysis of how to protect people by interrogating the body as property, the body under contract, and the body as a public resource (as birth mothers in surrogacy) and outlines the shortcomings of each of these regimes. She then turns to privacy as the best basis, though not perfect, for protection of the humans involved.

Law professor Tan argues that while the surrogate serves the goods of life-in-its-transmission and sociability vis-à-vis the intended parents, the surrogate's act possibly damages the good of life in herself and the child because the act is done for the interests of the intended parents and herself not the child. The ends (a child) cannot justify the means (commercialization of both women and child) because destroying something (her dignity at the very least) cannot be a justification for creating something else that is of equal or lesser value (parenthood). There is no human right to be a parent; there is a human right to dignity as a person. The surrogate is treated instrumentally – her body is used, and she is cast aside when she has served her purpose. (Surrogacy and human

flourishing, Seow Hon Tan, *Journal of Legal Philosophy*, Vol. 45, No. 1, 2020, pp. 49–79
<https://doi.org/10.4337/jlp.2020.01.03> Associate Professor, School of Law, Singapore Management University)

The commercialization of the body reduces both women and child to commodities in commerce – things. This is a violation of international human rights foundational principles. The process of pregnancy and birth becomes a mechanistic procedure in which the woman is just a machine. The mother is framed and often referred to as a womb, an oven, a breeder, a producer, a carrier – not a human with inherent rights. The child has become the product. These concepts are completely antithetical to the overarching international human rights principle that every person is owed human dignity by dint of birth. Reducing women and children to body parts, processes, and products violates their inherent dignity and worth

The argument of services versus products does not solve the problem.

It is disingenuous to argue that what is provided is a service not a product because without the intended transfer of a child (the product), the interaction (the service) would never have taken place at all. The analogy to someone selling their services as a bricklayer, a factory worker, or an elite athlete is false because in these scenarios, the payer is providing the raw material and the process by which to make the product. The worker is not responsible for the final product. Even the elite athlete may have some contractual restrictions on their behavior, though not as severe as those on birth mothers, the contract can be terminated with no physical harm to the athlete, and the athlete is not using her body to produce the very object being bought.

In surrogacy, the woman herself is providing the raw material i.e. her own body and the process by which the product (the child) is produced. She is responsible for the final product which, should it not be to the “commissioning parents” standards may be rejected. “Commercial surrogacy lies at the intersection of patriarchy, medical power, and market, where the child becomes a simple ‘product’ of the arrangement and the woman’s body as a ‘resource’” (p. 80 in Rainhorn/Boudamoussi). A woman and a child should be more important under international human rights law than a brick wall, a car, or points in a game.

Informed Consent is Illusory

It is a universal norm that no one should be exploited and that everyone should give informed consent to all medical procedures. The concept of consent fractures the unity of the human body, reducing it to mere parts of the body the use of which others desire. Contract law and the provision of such “services” in this arena disembodies the person and shows that bodies of women have become instruments to deliver serve to others. (Frison-Roche, Marie-Anne. « Pour protéger les êtres humains, l’impératif éthique de la notion juridique de personne », *Archives de philosophie du droit*, vol. 60, no. 1, 2018, p. 366.) Contract law is a woefully inadequate way to deal with such weighty issues that implicate human rights and international conventions on trafficking, slavery, and racism.

A person cannot consent to a crime because crime is against society i.e. upending the norms established for the baseline behavior in that society. An individual person cannot ignore those norms. Though the birth mother might need the money desperately she cannot consent to give up

her fundamental rights, temporarily or permanently, which is required by contract from all surrogate mothers. When a woman “consents” due to poverty and the need to care for her existing family, that is not consent but exploitation.

Surrogacy revives the discredited practice of eugenics.

Before individual rights rose to prominence, forced sterilization laws were not uncommon because individual rights were subordinated to what those in power called the “common good.” Stereotypes on class and race often substituted for facts in these cases such as *Buck v. Bell* (274 U.S. 200, 1927) where it turned out she was not an imbecile at all. The eugenics of genocide in WWII resulted in most states banning the practice after the war.

But in surrogacy, the oocytes (eggs) are often selected from a “catalogue” of women, and sperm is chosen either from a donor or the male client. The “choice” of the donor is also made based on genetic and biological characteristics the “commissioning parents” are looking for. This is eugenic selection. (*Eugenics and human rights*, Daniel J Kevles Division of Humanities, California Institute of Technology, Pasadena, CA 91125, USA, kevles@its, BMJ 1999;319:435–8)

EXISTING INTERNATIONAL INSTRUMENTS ARE VIOLATED BY SURROGACY

CEDAW is violated by the erasure of the mother.

According to Webster’s New Collegiate Dictionary, “surrogate” means: to choose in place of another, substitute, to put in the place of another, to appoint as successor, deputy, or substitute for oneself. Under any of these definitions, the surrogate mother is the “commissioning parent” not the woman who is giving birth. The birth mother is not in the place of another; she’s the mother. That was the law in every country in the world until now.

By applying the word “surrogate” to the wrong person, it lowers the position of the birth mother but does not elevate the position of the “commissioning mother.” Instead, the position of the sperm donor is elevated as the “father” and the only person with “rights.” In the case of surrogacy, biology and facts have been reversed and the mother is now irrelevant. It’s the sperm that is of primary importance and control in birthing. In surrogacy, the birth mother has been made a mechanistic part while the important aspect of the birth process becomes the sperm.

This exacerbates the inequality of women and men. “A comparative study on the regime of surrogacy in EU Member States 2013” provides a preliminary overview of the wide range of policy concerns relating to surrogacy as a practice at national, European, and global level. The study concludes that it is impossible to indicate a particular legal trend across the EU. <http://www.europarl.europa.eu/studies>. The study, though it focuses on the child not the woman, acknowledges that legitimating the practice of surrogacy has a negative impact on the attitude toward women in a society in general, not just the birth mother, but also the commissioning mother, and egg donor. Global studies finding the same can be found in: *New Cannibal Markets: Globalization and Commodification of the Human Body*, Editions de la Maison des sciences de l’homme, 2015 by Jean-Daniel Rainhorn & Samira El Boudamoussi (ED.)

This reversal of meaning is a violation of CEDAW Article 1 that demands nondiscrimination; Article 5 that demands the end of sex role stereotypes and prejudice especially in maternity (b); Article 11 that demands nondiscrimination in maternity (2); and Article 12 that demands equality regarding health care.

The sale of sperm and eggs violate the Vienna Convention.

The donor is “one who gives, donates, or presents.” Donate means to “make a gift.” Most donors are not “giving” eggs or sperm but being paid. The sperm or eggs of a Caucasian model, a world-class athlete or an intellectual genius sells for far more than that of the average person. That makes the “donor” a seller. But since biological material can’t be sold in the 29 states that have ratified the Vienna Convention, a legal fiction has been created to pretend it’s a donation. A second definition of “donor” had to be created to read “one used as a source of biological material,” to evade this law. This is a violation of the Vienna Convention.

Surrogacy violates the Slavery Conventions.

The Slavery Convention of 26 September 1926 defines slavery, in Article 1, as “the status or condition of a person over whom any or all of the attributes of the right of ownership are exercised.” In surrogacy, the “commissioning parents” acquire both: the right to take the “fruits” of the surrogacy, one or more children, and a right of use over the body of the birth mother once the contract or court decision is concluded because the birth mother relinquishes her most fundamental rights over bodily autonomy in accordance with the requirements of the “commissioning parents.”

Surrogacy violates the Biomedicine Convention

The “Convention on Human Rights and Biomedicine,” known as the “Oviedo Convention,” Article 2 states “the interests and welfare of the human being shall prevail over the sole interest of society or science,” while Article 14 states “the use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child’s sex, except where serious hereditary sex-related disease is to be avoided.” Surrogacy is contrary to the principle of the primacy of the human being as defined by the Oviedo Convention, in the sense that the use of a birth mother to procure a child is tantamount to subjecting a woman to the desires of others through the use of invasive medical acts and treatments that have nothing to do with health care.

Surrogacy Violates the International Labor Organization Conventions.

If surrogacy is simply a service for a fee, then it should be covered by the International Labor Organization conventions. These conventions cover a wide area of social and labour issues including basic human rights, minimum wages, industrial relations, employment policy, social dialogue, social security and other issues including No. 3 on maternity protection (#183), discrimination (#111), and equal pay (#100). <https://www.ilo.org/resource/ilo-conventions> The current contracts violate many of those provisions.

THE CLOSEST MALE COMPARATOR

Because giving birth can only be done by women, there is no comparable comparator for men. Being a mercenary seems to come the closest. Many men become mercenaries because they need

the money. They often have limited employment options in their own country. In that sense, they are doing it for the same reason women become surrogates.

Some however do it because they love the adventure and the adrenaline and some because they have an ideological connection to the cause e.g. those joining with the Taliban or those going to defend Ukraine. In that sense, they are also doing it for the same reason as women are i.e. altruism or an ideological or familial connection.

However, regardless of the person's intention, international conventions prohibit mercenaries and make the behavior a crime. The International Convention against the Recruitment, Use, Financing, and Training of Mercenaries, was adopted by the United Nations on 4 December 1989, Resolution A/RES/44/34, and entered into force on 20 October 2001. The OAU Convention for the Elimination of Mercenarism in Africa focuses on both colonialism and racist domination and also makes it a crime. The purpose of these conventions is not to regulate but to eliminate mercenaries through criminalization.

Opponents will say but the mercenary is committing aggression and hurting someone else while the birth mother is helping someone. But the birth mother is putting herself and the child at risk for another. The man is also putting himself at risk for others. His reason could be to assist Ukraine in self-defense or the Palestinians to avoid genocide. In that case, he is helping someone but under the conventions, it is not allowed. Why are women allowed to consent to risk, but a man is not? It is because her dignity and value rank lower than his in direct violation of international human rights.

ANIMAL BREEDING PRACTICES HAVE MORE PROTECTION THAN WOMEN IN SURROGACY.

In a form stud bull rental agreement, they suggest insuring the bull, determining that it's reproductively healthy, establishing general lease terms including value, and outlining how the lease ends which includes making sure that the bull is restored to health. It's unclear whether birth mothers are insured or screened for reproductive health, but the contract does not include that the birth mother be restored to health.

In the Guidelines for Ethical Breeding Practices from the Siberian Husky Club of America they insist that medical health must be checked first, the pros and cons must be discussed, and the fee is for breeding not for producing a litter so the purchaser must pay at the beginning. They set an age requirement on the female and how frequently she can be impregnated. They insist that breeding is to produce a better dog not to increase the sales of pups. The purchasers must be investigated to make sure they have the proper care ability, and they personally supervise all breeding for the safety of the dog. One puppy born dead or alive is a litter and the breeder must allot proper time for socialization and play with the puppies before taking them away. Further, the breeder must follow up for a year to ensure the safety and proper treatment of the pups.

The contracts for women are far inferior. It's not clear whether or how much their health is checked, they don't get paid in advance, the pros and cons may be explained in a foreign language or legalize they can't understand. There doesn't seem to be an age requirement or a frequency limit. The breeding is precisely to increase the sale of babies. The "commissioning parents" are not investigated beforehand to ensure their suitability. The mother does not get any

socialization time with the baby, nor does anyone follow up for a year to ensure the mother is returned to health or the baby is getting proper care.

CONCLUSION

The only response to the denigration of women's dignity is to prohibit surrogacy. It should be made a crime so that proper investigation and accountability exists. The practice violates many current international human rights instruments and those must be used until there is a treaty in place.

Surrogacy violates foundational human rights documents in addition to CEDAW, the Geneva Convention, the Slavery Conventions, the Trafficking protocol, the Biomedical Convention, and ILO Conventions. Payment of women who are lacking money, education, and opportunity to be "surrogates" is not "empowerment" but exploitation. To suggest it represents "empowerment" is to speak from a privileged position.

The decentering of women in the birthing process centers men. In 1999, Sweden's Sex Purchase Act was enacted with the rationale that "gender equality would remain unattainable as long as men buy, sell and exploit women and children by prostituting them." The same is true for surrogacy.