

**Committee on the Elimination of Discrimination against Women (CEDAW)**

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis  
CH-1201 Geneva (Switzerland)**United Nations Resolution against surrogate motherhood**

The Signatories: personalities and associations.

We, signers, request the United Nations bodies, in charge of honouring the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on child and human rights, to create a procedure aimed at recommending the practice of surrogate motherhood to be prohibited, as incompatible with the respect of human rights and women dignity.

In its preamble, the CEDAW Convention gives indeed a special relevance to the elimination of all economic, political and above all social and cultural barriers preventing equality between men and women and particularly recognizes the fundamental value of the difference between men and women, that seems to be therefore superior also to the self-determination of different cultures and to the principle of cultural relativism. Particularly crucial is the reference to physical and mental defence of women, as universally recognized by the Universal Declaration of Human Rights. The Universal Declaration of Human Rights has, indeed, considered the principle of defence of human dignity as a main goal to be pursued within national sovereignty, but also within international relations, excluding therefore the legitimacy of every exchange practice, both economic and altruistic, with human being playing the main character.

The surrogate motherhood refers in fact to the specific appropriation of women reproductive capacities. It leads to a strict control over all aspects of their life during pregnancy and to a threat for their physical and mental health, with the sole goal of satisfying the desire of a third party.

In this respect, we don't have to fall into the rhetorical trap of individual freedom and "the wonderful gift of life". The surrogate motherhood leads to a real dehumanization of mother and child as it consciously creates a state of sacrifice and abandonment. The desire of becoming a parent can't be raised to an individual right for the "customer" in order to take control over a woman's body and consequently making a child's life a private property.

1. The surrogate Motherhood goes to sabotage one of the most important opportunities, spurred by the battles fought by women throughout history, to fully enjoy their freedom. What is the actual first noticeable message that generates from the "common" access that women

have to the freedom of expressing themselves both materially and culturally? That the whole human life can raise to a dimension free of chains. So not only the political or intellectual creation, but also the very physical aspect of it can at last leave the shadow cone of natural necessities and access freedom. With the inclusion of pregnancy, it is now possible to re-define the concept of “Human whole” all together.

Validating the surrogate motherhood, means on the other hand to vanish this chance: in the illusory celebration of the desire of giving birth, pregnancy – which represents a shared complex of desire, thoughts and emotions, together with chemical-biological processes involving mother and the unborn baby – is instead divided in many separated pieces, as if it were an “object”. Pregnancy loses its fundamental human act and becomes a merely mechanical process, and its separated pieces only goods to be sold.

2. The term “gestational carrier” is intentionally reductive, as it suggests that pregnancy can be reduced to the functioning of uterus as a container to satisfy the needs of a third party. This procedure not only makes the “gestational carrier”'s uterus and her very soul available to others for the production of a baby which will be given away at the moment of birth, but it also creates a contradiction with the development of medical research, that talks about the biological and emotional bonds between mother and foetus that are going to be denied to them with the use of this technique. In order to legitimate surrogate motherhood, it is argued that these bonds are irrelevant and can be erased without any risk for mother and child. The surrogate mother puts the physical and mental health of woman under threat, (as the potential risk of complications during both pregnancy and childbirth could lead to dire consequences such as disabilities or death.

3. The practice of surrogate motherhood (called euphemistically “gestation for others or GFO) can be summed up into a list of duties and commitments that could attempt to a woman's private life and self-determination: her body and health are at customers and specialised agencies disposal. In many cases the “host mother” is not even consulted upon decisions regarding her health. In the instances in which she would have control over her decisional power, she could then run into the risk of economic losses foreseen by the contract itself, in case her choices clash against the interest of the customer. This led to dramatic humanly and legally unsolvable situations and the most relevant regard the possibility of an abortion imposed by a third party. In the several countries in which it is authorized, the decision over an abortion only belongs to the pregnant mother. In gestation for others, the mother actually loses this power; both in case of a pregnancy putting into risk her health and a deformity of the foetus. Making the complexity of physic and mental life of the “gestational carrier” available to others is an act of restriction upon women’s freedom, unheard from the abolition of slavery.

4. Contrarily to what has been written or said on this issue, this practice represents a brand new phenomenon, favored by the development of new reproduction technologies. Surrogate motherhood is not a reproduction technique in itself. Rather, it is a social practice that uses practices initially conceived for other purposes, favored by a rapid growth in the huge market for human reproduction, which violates women’s freedom, dignity and physical integrity. Specialized agencies recruit gestational carriers and set up international networks of customers, from which they gain large amounts of money. The turnaround of the market for human reproduction is estimated at several billion dollars per year. In certain countries, gestational carriers are recruited among the poorest. In India, for instance, they are recruited in villages and

then brought to clinics, where they are hospitalized up until the birth of the child. In such a way, gestational carriers hope to escape misery thanks to a compensation that is higher than their average annual income. By contrast, in the United States, in an effort to minimize risks, gestational carriers are not recruited among the poorest, but among low-income middle class women. Despite the various attempts by the agencies to prove the contrary, there exists a non-negligible income disparity between customers and gestational carriers.

5. To legitimize the market for human reproduction would represent a defeat for women as well as for International Law, especially as far as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is concerned.

In addition, the practice of gestation for others conflicts with many international law agreements protecting human rights. First, it is against the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). In fact, as it consists mainly in the specific appropriation of women's reproductive capacities, this practice is profoundly discriminatory and contrary to the objective of full realization and progress by women towards their full attainment of fundamental human rights, as foreseen by Article 3. Similarly, such a practice is contrary to Article 6 of the CEDAW Convention, which focuses on countering traffic in women. To take advantage of women's economic and/or social fragility in order to push them to put their reproductive capacities at the service of the rich in exchange for money is nothing but business.

Such a practice is also contrary to the UN Slavery Convention (as per Article 1, which defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised", which in this specific case corresponds to the acquisition of a right of ownership over a person and over the woman's body so as to get in possession of the child of whom she is pregnant); to the Convention on the Rights of the Child (as per Article 7 § 1, on the child's right to know and be cared for by his or her parents; Article 9 §1, on ensuring that a child is not separated from his or her parents against their will; and Article 35, on preventing the abduction of, the sale of or traffic in children for any purpose or in any form); to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (as per Article 2 a), which 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"; Article 3, on ensuring that sales of children and improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption are fully covered under the national criminal or penal law); to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (as per Article 3 a), which defines trafficking in persons as "the recruitment, transportation, transfer, harboring 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"); to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (as per Article 4, on the need to ensure that the consent of the mother, where required, has been given only after the birth of the child and that the consent has not been induced by payment or compensation of any kind,

in the general spirit of the Convention); to the Council of Europe Convention on the Adoption of Children (as per Article 5, on the need to ensure that a mother's consent to the adoption of her child shall be valid when it is given at such time after the birth of the child); to the Council of Europe Convention on Action against Trafficking in Human Beings; to the Council of Europe Convention on Human Rights and Biomedicine (Article 21); and to the Charter of Fundamental Rights of the European Union, which prohibits to make “the human body and its parts as such a source of financial gain”.

6. With this regard, it is important to remind the recent positions taken by regional institutions – such as the European Parliament and the Parliamentary Assembly of the Council of Europe – against the recognition and regulation of surrogate motherhood. It is also important to remind the signs to the contrary contained in the commission findings of a government investigation in Sweden, as well as the national protection actions already undertaken or in the process of being undertaken in India, Cambodia, Thailand, Tibet so as not to be classified – in the framework of a new international repartition of human reproduction operated by the market – as “womb-reserve countries or reproducer countries”.

7. We live in a global system in which the ban on surrogate motherhood that is in force in some countries is virtually canceled by the simple fact that these countries' citizens, often reached out by the agencies for host mothers, go abroad in order to circumvent national legislation. In addition, national jurisdictions, ignoring the existence of a gestational carrier, often adapt to the circumstance and ratify it.

8. Therefore, it becomes necessary to involve UN agencies to start building up the conditions to abolish surrogate motherhood at the international level. In this regard, it is urgent to adopt – in the framework of the CEDAW – a recommendation against surrogate motherhood on the model of the one adopted to fight female genital mutilation practices.

This option reaches the widest consensus in the process leading to its universal abolition.

In addition, to make the fight against such a practice fully effective, it will be helpful to foresee the adoption of an international agreement to prevent people from moving from a country where surrogate motherhood is illegal to one where it is allowed, as well as to establish repression systems to intermediation activities.

Lastly, for the ongoing cases, it would be important to set up a procedure for the recognition of the newborn, which shall be consistent with the rules on the rights of the child, especially with Article 7 § 1 of the Convention on the Rights of the Child, which recognizes the right of the child to know his or her mother and, as far as possible, to be cared for by her.