

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)**Request for a CEDAW recommendation against legalising surrogate motherhood ***

Signatories to the request: associations and leading institutional and political figures

We, the undersigned, urge the United Nations bodies responsible for ensuring compliance with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the UN Convention on Human Rights and the UN Convention on the Rights of the Child, to initiate a process aimed at recommending that surrogate motherhood be prohibited as a practice that is incompatible with human rights and the dignity of women.

In the preamble of the CEDAW Convention great importance is attached to the elimination of all economic, political and especially social and cultural obstacles hampering equality between women and men; in addition, the fundamental value of gender equality is recognised, which thus appears to be superior even to the self-determination of different cultures and the principle of cultural relativism. The Convention's reference to the physical and psychological protection of women, as recognised in the Universal Declaration of Human Rights, is of crucial importance. Indeed, in the Universal Declaration of Human Rights the protection of human dignity is considered a key goal to be pursued within the framework of both state sovereignty and international relations, thus the legitimacy of all exchange practices involving a human being - whether they be of a commercial or altruistic nature - is ruled out.

Surrogate motherhood consists in the specific appropriation of women's reproductive abilities; in this connection it is important to acknowledge the biological difference between women and men. Surrogate motherhood leads to the exerting of strict control over all aspects of women's lives during pregnancy and endangers their physical and mental health for the sole purpose of fulfilling the desire of third parties.

In this respect one should not be deceived by the rhetorical arguments on individual freedom and the 'wonderful gift of life'. Surrogate motherhood leads to an actual objectification of the mother and the child because it consciously creates a situation of relinquishment and abandonment. The wish to become a father or mother cannot be elevated to the status of a

client's individual right to control a woman's body for the purpose of gaining possession of the life of her child.

1. Surrogacy limits one of the most important opportunities created by the unprecedented historical process initiated by women's struggle to achieve the full enjoyment of freedom. What, indeed, is a first tangible novelty brought about by women's 'collective' access to free self-expression, both material and cultural? That all humankind can reach the dimension of freedom. Therefore not just political activity and intellectual work, not just crafting or intellectual creation, but also childbirth and taking care of the human body shall no longer be regarded as mere natural necessities and can be finally brought out of the shadows and enjoy the right to freedom. Hence, it becomes possible to redefine what is meant by 'full human being' in a manner that finally includes motherhood. Motherhood becomes a choice linked to the development of the whole personality. However, it is precisely this choice that will no longer be available if surrogacy is legalised: by seemingly heightening the wish to procreate, motherhood - which is a unitary whole of desires, thoughts and emotions alongside chemical and biological processes affecting a woman and her unborn child – is broken down into many separate pieces as if it were an object. From being a quintessentially human act, the highest expression of the human dignity of women is debased to a mechanical procedure whose separate components become commodities that can be marketed.

2. The term 'gestational carrier' is deliberately reductive, since it suggests that pregnancy may be merely reduced to the functions of the uterus as a container used to fulfil the desires of others. Leaving aside the fact that the 'gestational carrier' offers not just her uterus, but her whole body and her psyche, to others in order to 'manufacture a child' meant to be relinquished at birth, there is a glaring contradiction here between the advances in medical research that show the bonds and the biological and affective interaction between mother and foetus and the use of a technique that denies their existence. The pro-surrogacy argument is that these bonds are of no importance and can be undone without any damage to the woman or child. Surrogacy endangers the physical and mental health of women, as complications may arise during pregnancy and childbirth that may lead to possible impairment or even death.

3. The practice of surrogate motherhood (euphemistically called 'third-party parenting') entails a number of obligations and constraints which are veritable attacks on the private life and self-determination of women: their bodies and their health are offered to clients and specialised agencies. In many cases a 'surrogate' mother is not even consulted on decisions affecting her health. In those cases in which these decisions formally rest with her, she *de facto* loses control over them due to the economic consequences envisaged in the agreement if her actions run counter to the interests of the clients. This has led to tragic human situations and legally inextricable cases, including the most evident one of a termination of pregnancy possibly imposed by third parties. In many countries where surrogacy is legal, the decision to terminate a pregnancy rests with the pregnant woman alone. In surrogacy, if continuing the pregnancy threatens her health or in case of foetal malformations, the mother loses the power to decide. Offering to others a surrogate mother's entire physical and mental life is an act that restricts the freedom of women - unprecedented since the abolition of slavery.

4. Contrary to what has been said and done, this is a new practice driven by the development of new reproductive technologies. Surrogate motherhood *per se* is not a reproductive technique,

but a social practice that uses techniques originally designed for other purposes; it is driven by the rapid growth of a huge market in human reproduction that violates the freedom, dignity and physical integrity of women. Specialised agencies recruit surrogates and manage an international network of clients earning huge sums of money. The surrogacy market has been estimated at several billion dollars a year. In some countries surrogates are recruited amongst the poorest people: in India they are recruited from villages and then admitted to clinics where they are kept until the babies are born. Thanks to the sum they receive as consideration, which is higher than the average yearly income, these women hope to lift themselves out of poverty. In the United States, for reasons linked to risk minimisation, surrogates are not recruited amongst the poorest classes, but amongst the lower middle class. Although the agencies try to convince people of the contrary, by extensively publicizing extremely rare cases, income inequality between the clients and the surrogate mother is the norm.

5. Legalising such human reproductive practice would be a defeat for women and for international law, especially for the Convention on the Elimination of all forms of Discrimination against Women (CEDAW).

In addition, third-party parenting runs counter to many international legal instruments for the protection of human rights. First of all, it is against the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Indeed, as it consists in the specific appropriation of women's reproductive abilities, it is profoundly discriminatory and runs counter to the goal of women's full development and their advancement towards the full enjoyment of fundamental human rights as provided for in Article 3. Similarly, it violates Article 6 of CEDAW which envisages the suppression of trafficking in women: indeed, exploiting the economic and/or social weakness of some women to induce them to offer their reproductive abilities to the richest in exchange for money is nothing but trade.

Surrogacy also contravenes the United Nations Convention on Slavery (Article 1 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, in the case at hand the acquisition of a right of use on the person and body of a woman in order to gain possession of the child she is carrying), the International Convention on the Rights of the Child (Article 7 § 1 the right to know and be cared for by his or her parents, Article 9 §1 that aims at ensuring that a child shall not be separated by his or her parents against their will and Article 35 envisaging that measures be taken to prevent the abduction of, the sale of or trafficking in children for any purpose or in any form), the Optional Protocol to the Convention on the Rights of the Child, concerning the sale of children, child prostitution and child pornography (Article 2 a) which defines the sale of children as any act or transaction whereby a child is transferred by a person to another for remuneration or any other consideration and Article 3 demanding that the sale of children or the act of improperly inducing consent for the adoption of a child in violation of applicable international legal instruments on adoption be considered a criminal offence), the Additional Protocol to the United Nations Convention against Transnational Organised Crime aimed at preventing, suppressing and punishing human trafficking, especially trafficking in people and children (Article 3 a which defines trafficking in persons as the recruitment, transportation, transfer or harbouring or receipt of persons especially by means of the threat of use of deception, of the abuse of power or of a position of vulnerability for the purpose of exploitation), the Convention on Intercountry Adoption (especially Article 4 on the absence of

agreements before the birth of the child and the absence of compensation of any kind, as well as the general spirit of the Convention), the European Convention on the Adoption of Children (Article 5 on the absence of a mother's consent before the birth of the child), the Council of Europe Convention on Action against Trafficking in Human Beings, known as the Warsaw Convention, the Council of Europe Convention on Human Rights and Biomedicine, known as the Oviedo Convention (Article 21) and the EU Charter of Fundamental Rights stipulating that “the human body and its parts must not, as such, be sources of profit”.

6. In this connection it is important to recall the stances against the recognition and regulation of surrogate motherhood recently taken by regional institutions such as the European Parliament and the Parliamentary Assembly of the Council of Europe. It is also important to recall the warnings against surrogacy contained in the conclusions drawn by the Swedish Government Inquiry Committee as well as the national protection measures taken or about to be taken in India, Cambodia, Thailand, Tibet that are facing the danger of being ranked, in the new international division of human reproduction made by the market, as 'countries with availability of wombs' or 'reproductive countries'.

7. We live in a global system where a ban in one country can easily be bypassed by the simple fact that its citizens, often contacted by surrogate-parenting agencies, travel abroad to circumvent national law. Often national jurisdictions, when involved, accept the *de-facto* situation and ratify it, as they ignore the existence of a surrogate mother.

8. The UN agencies must therefore be enlisted to create the conditions, at international level, for the abolition of surrogate motherhood. In this light the adoption of a CEDAW recommendation on the abolition of surrogate motherhood, similarly to that adopted to combat FGM, is urgently needed.

This is the most widely supported option in the action aimed at its universal abolition.

To effectively fight against this practice, international agreements should also be envisaged in order to deter citizens from states where surrogacy is prohibited from travelling to countries where it is legal; in addition enforcement system must be put in place to crack down on intermediation activities.

Moreover, with regard to the existing cases, a procedure should be developed for the recognition of the newborn in compliance with the provisions on the rights of the child, especially with Article 7 §1 of the Convention on the Rights of the Child that should be interpreted as an article giving the child the right to know the mother who has brought him or her into the world after carrying him/her inside her womb for nine months - and where possible - to be cared for by her.

*the French version of this text has been sent to the CEDAW Committee on April 3, 2017