International Coalition for the Abolition of Surrogate Motherhood
Coalition Internationale pour l'Abolition de la Maternité de Substitution
Coalición Internacional para la Abolición de la Explotación Reproductiva

ICASM - CIAMS

Surrogacy and Human Rights: A feminist and child-centered rebuttal to legalization in Australia

A critical submission to the Australian Law Reform Commission on the commodification of women's bodies and children through surrogacy

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WHY THIS SUBMISSION?

On behalf of the International Coalition for the Abolition of Surrogate Motherhood (ICASM), we are submitting this contribution to the Australian inquiry commission in order to strongly denounce the proposed legalization of commercial surrogacy. The ICASM is a transnational feminist network that brings together associations, collectives, and activists committed to defending the rights of women and children. Surrogacy is considered as a form of sexist, neocolonial and commercial exploitation. ICASM's members share a radical feminist analysis of surrogacy as an organized system of bodily dispossession and the denial of motherhood, incompatible with the principles of equality, dignity, and social justice. ICASM uncompromisingly defends the dignity of women and children and rejects any form of commodification of human bodies and procreation.

Surrogacy is not simply a "reproductive choice" or a regulated altruistic act, but a practice that organizes the exploitation of surrogate mothers, often from precarious backgrounds, and reduces the child to a product. Any attempt to open up a commercial market for this inhumane practice is a true negation of the fundamental rights of women and children.

This contribution is based on legal, social, and ethical analyses that demonstrate that surrogacy, far from being a step forward, is institutionalized violence that legitimizes the commodification of bodies and lives. Commercialization would only exacerbate these abuses by legitimizing human trafficking under the guise of individual freedom. We solemnly call on the committee to reject any reform aimed at legalizing commercial surrogacy in Australia. Instead, we ask the committee to consider strong measures to protect women and children and abolish this unacceptable practice.

CRITICAL GLOSSARY OF SURROGACY. TERMS TO USE.

✴Commissioning people (not "intended parent")

This term is preferred to "intended parent," which obscures the contractual and economic reality of surrogacy. The sponsor is the person or couple who commissions a child via a woman's body. The term emphasizes the market logic, the purchase, and the delegation of gestational work to others, often to a less privileged woman.

✴ Surrogacy (not "assisted reproductive technology")

It is crucial not to confuse surrogacy with the vague field of health assistance. Unlike other techniques, surrogacy involves a complete pregnancy by a third-party woman, often without any emotional or family ties to the future child. It is reproductive work, not neutral medical assistance.

✴ Surrogate mother / Gestational carrier / Gestational woman

The word "mother" is deliberately omitted by supporters of surrogacy in favor of technical or sanitized terms such as "gestational carrier" or "surrogate." However, the woman who carries the child assumes all the biological, psychological, and social burdens for nine months. She is indeed a mother in the physiological sense, even if the law attempts to delegitimize her. The rejection of the word "mother" makes it possible to render invisible the maternal dispossession at the heart of the practice.

✴ Surrogacy contract and not "parental project"

The expression "parental project" masks the reality of a commercial contract in which a woman agrees to give up the child she will give birth to. This contract includes clauses controlling lifestyle, mandatory medical examinations, and even dietary or sexual restrictions. It is a commercial legal act, not a simple family project.

✴ Transfer of parentage - Erasure of the mother

Surrogacy assumes that the child is legally attached to the sponsor, thereby erasing the existence of the mother who carried the child. This is referred to as "intentional parentage," but in reality it is an act of appropriation: pretending that the child was not brought into the world by a real woman, with a body, experiences, and a history.

✴ Reproduction market

The promoters of surrogacy talk about "journeys," "solutions," or "support"; in reality, it is an internationalized market structured by economic and geopolitical inequalities. Surrogate mothers are mostly recruited from precarious backgrounds, while the clients come from privileged backgrounds.

SURROGACY DOES NOT INHERENTLY RESPECT WOMEN'S RIGHTS - IT CAN NEVER BE FEMINIST

Q2. "What principles should guide this Inquiry's reform work?"

Q3. "What are the key human rights issues raised by domestic and/or international surrogacy arrangements? How should they be addressed?"

Q7. "What types of C supports are needed to help people become surrogates?"

Q16. "Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?"

Q17. "If Australia was to allow for compensated or 'commercial' surrogacy, how could this be implemented?"

Q25. "Do you think there is a need to improve awareness and understanding of surrogacy laws, policies and practices?"

Among the topics covered is a section on the rights of "surrogates," which lists certain basic human rights: freedom of choice, bodily autonomy, fair compensation and protection against exploitation. But this supposedly progressive approach omits the essential: the reality of women. At no point in these questions do we explicitly mention women, even though they are the only ones biologically affected by this practice. Instead, neutral terms like "surrogates" or "pregnant persons" are used. This sanitized language makes the gendered dimension of the problem invisible and ignores the specific power relations that surrogacy organizes and reinforces.

Surrogacy, in all its models, whether altruistic, commercial, national or transnational, is, in fact, based on the instrumentalization of the female body in the service of the reproductive desire of others. This is not a simple service contract, but a logic of exploitation, which places the responsibility of "giving life" on certain women, often in precarious situations, socially dominated and from minority backgrounds, for others, often more affluent.

It is no coincidence that surrogacy concerns only one sex; this system would not function without women's bodies.

It is sometimes argued that surrogacy, if properly regulated, would respect fundamental rights, that it could be an informed "choice," a generous approach, a free act. But this interpretation denies the weight of gendered socialization. From childhood, women are educated to be gentle, altruistic, focused on others and ready to sacrifice. They are taught to be mothers even before they are and to find their value in self-giving. This conditioning deeply structures what we call their "will". When a woman says she wants to carry a child for another, this desire is inseparable from the social injunction to be good, loving, and selfless. It is precisely because women are expected to be willing to step aside that they "choose" to carry out surrogacy for others. The framework for this choice is flawed from the outset.

Worse still, this discourse on individual "choice" serves to neutralize any political criticism. If a woman "wants to", then there would be nothing left to say. This is a profound error of reasoning. The fact that a person consents to their own exploitation does not abolish exploitation; there is nothing feminist about it. One cannot consent to one's own exploitation. Any argument to the contrary is flawed and therefore invalid. Moreover, just because an act is consented to does not mean it is just. The most effective systems of oppression are those in which the dominated internalize the logic of their own domination. It is therefore not enough to talk about autonomy; we must question the framework within which decisions are made.

The argument of respecting bodily integrity is also misleading. Surrogacy involves invasive and highly dangerous hormonal treatments (risk of cancer and other diseases), constant medical monitoring and major physical (forced cesarean delivery) and psychological (no postpartum support) restraints. Women are often subject to strict contractual clauses that limit their freedom of movement (confinement in surrogate motherhood homes), as well as their diet, sex life, and medical decisions. This dispossession of the body is disguised under legal terms such as "informed consent," but in reality, the body becomes an instrument serving a project that is not its own. The simple fact that the medical or parental wishes of others can override the intimate experience of pregnancy is sufficient to demonstrate the violation of the fundamental principle of bodily freedom.

Subsequently, the debate over surrogate mothers' remuneration, often presented as legitimate recognition of their "work," reinforces this commodification of the female body, so denounced by some other so-called altruistic pro-surrogacy advocates. But pregnancy is not a professional activity and never will be. It engages the entire body 24/7 for 9 months, including emotions, mental health, self-perception and the bond with the child. By claiming to regulate this through a contract and compensation, we deny the profound specificity of this experience and we accept that the female body becomes a legitimate transactional space in which it is acceptable to enter into contracts.

One final point must also be added, the immense emotional pressure that society places on women in this context. Women are constantly pressured to demonstrate kindness. They are flattered, held up as altruistic heroes against their will. And when they hesitate, doubt, express their suffering, their attachment, their ambivalence, they are made to feel guilty. This observation is also valid for women involved in the process (former surrogate mothers or children born through surrogacy), but also for women who organize and fight against this exploitation by denouncing it as much as possible. This emotional pressure constitutes a form of symbolic violence that prevents women from saying no.

Ultimately, surrogacy is based on a profoundly sexist logic: one that considers women to be, by their very nature, made to give, to carry, to serve. Even in its regulated versions, it reproduces a pattern in which women's bodies are made available, their reproductive capacity exploited, and their subjectivity denied. Feminism cannot support a system that legitimizes this dispossession. Feminism means refusing to allow women to be reduced to a function, even if some claim to "want to do good". Because this "want" itself is produced by a world that demands that they sacrifice themselves. Surrogacy cannot respect human rights and women's rights because it is not based on equality. It is based on the bodily availability of women for the benefit of others, on the social organization of a transfer of maternity, pregnancy, and flesh.

CHILDREN'S RIGHTS ARE BEING VIOLATED

Q3. "What are the key human rights issues..."

Q4. "What information about the circumstances of their birth should children born of surrogacy arrangements be entitled to access?"

Q18. "What do you think of the current legal process for transferring legal parentage..."

Q19. "Who should be recognised as the legal parent(s)..."

Q27. "Are there other important issues..."

Promoters of surrogacy like to talk about love, family, and generosity. But they never, or almost never, mention the child. In their discourse, the child exists only as an expected reward, a logical outcome. They are never considered as a person, with their own rights, their own dignity, their own story. And that's where the problem lies. Because in this entire supposedly altruistic operation, the child is created to be given away. They are sold or programmed as a consumer good before birth. This is the sine qua non of the contract.

Common sense dictates that a child should never be conceived to fulfill an order, much less to be separated at birth from the one who carried them. This is not a detail, it is not a "side effect". It is the heart of the system, which directly violates the fundamental principles of child protection enshrined in international law. Can this be considered in the best interests of the child? By linking it solely to economic interests, this notion is completely evacuated by entirely emptying it of its primary meaning. The child's right to know one's origins, not to be treated as an object of transaction? This is trampled.

The Palermo Protocol, intended to protect human beings against trafficking, is clear: people are not to be moved from one country to another for the purposes of exploitation, especially when it involves financial compensation and a form of vulnerability. But in surrogacy, this is exactly what happens. Women are recruited in the context of war, poverty, and disaster and the creation of children is organized in order to be transferred to clients, in all apparent legality. The language is sanitized, the clinics are clean, the contracts are well-crafted, but the logic remains the same: powerful adults buy what vulnerable women produce with their bodies.

In order to become surrogate mothers, women are being trafficked as defined by the Palermo Protocol.

According to the Palermo Protocol adopted in 2000, trafficking is based on three conditions: an action, several means and a purpose:

1- An Action. Surrogate mothers are recruited by the industry under very strict criteria.

2- Means. The recruitment of a surrogate mother is based on a triple deception: that the child is not being sold, that the surrogate mother is not the mother and that the child she is giving birth to is not her own. How can anyone claim that she is not the mother of a child on the basis of only one out of more than 15 billion cells, of which the baby will be made up.

3- The purpose is exploitation. Exploitation occurs whenever a woman gives birth to a child, not for her own parental project, but for the project of a third party, which is the case with surrogacy.

In cases that involve human trafficking, consent is irrelevant.

Mothers are erased from birth certificates. It is recorded that the child was "voluntarily abandoned". Biological realities and the suffering associated with separation are erased. All of this is to guarantee administrative ease and a tailored parentage for the buyers. But a child is not a service rendered, a parental project or a desire transformed into a right. It is a person that is knowingly deprived of their origins, of their surrogate mother, and sometimes even of any possibility of accessing their history.

Presenting this as progress is not only dishonest; it is undignified. It puts the interests of adults before those of the child, under the pretext of emancipation. It transforms a situation of dependency into a business plan. It disguises a

form of trafficking as an opportunity for solidarity. And all of this is supposedly in the name of love? No. It is in the name of the market, ego and a refusal to confront the most fundamental ethical limits.

It is time to stop talking about surrogacy as societal progress. It is a market and like any market, it has its losers. The child is part of this. They deserve better. They deserve a birth outside of a contract, outside of a commissioning and outside of a profit-making strategy. They deserve a society that recognizes them as a subject of law, not as the object of a transaction.

In cases involving surrogacy, the notion of the child's best interests is almost systematically invoked by the courts to justify the transcription of birth certificates and the recognition of the intended parents' filiation. This logic is deployed even when surrogacy is prohibited in the country concerned. But this reference, supposedly intended to protect the child, is increasingly exploited and misused to legitimize practices that, in reality, violate the fundamental rights of children and women.

Implicit in this discourse are distinct biases and the first of these is with regard to money, which has become an implicit and decisive criterion in the construction of filiations resulting from surrogacy. Those who manage to obtain legal recognition are almost always the wealthiest parents, capable of financing international surrogacy and mobilizing substantial legal resources. The idea that financial resources guarantee the best interests of the child is a dangerous shortcut: money is no substitute for love, emotional stability, or respect for fundamental rights. In reality, it is less about meeting the best interests of the child than about securing the financial investment of the buyers.

The Baby M case in the United States in 1988 illustrates this shift. Mary Beth Whitehead, a surrogate mother under a traditional surrogacy arrangement, wished to keep her child after birth. The contract was annulled as contrary to public policy, but custody was awarded to the intended father and his wife in the name of the "best interest of the child," a rationale based on the couple's material stability and financial capacity to raise the child. Biological motherhood and the emotional bond with the surrogate mother were completely erased in favor of economic and logistical criteria. This case marked a turning point: the notion of the best interests of the child began to be used to validate legally and ethically questionable situations. The Baby M case is therefore the starting point for this analysis. We also note that courts use fallacious arguments to justify their decisions, particularly the largely overestimated risk of statelessness. In reality, cases of children born through surrogacy who remain without nationality are extremely rare, as national legislation and international conventions provide safeguards. The United Nations High Commissioner for Refugees (UNHCR) itself has pointed out that situations of statelessness can be resolved without automatic recognition of the intended parents' filiation. Yet, this threat is regularly raised to pressure courts and expedite transcriptions.

This shift is all the more problematic given that the best interests of the child, as defined by the International Convention on the Rights of the Child, are far more demanding than simple integration into a "pre-existing" family unit.

Article 7 of the CRC states that children have the right to know their parents and to be raised by them. They also have the right to access their biological origins, which presupposes transparency regarding their true filiation. In cases of commercial surrogacy, these rights are often deliberately concealed: birth certificates are sometimes falsified, the surrogate mother disappears from the legal narrative and the child is deprived of essential information about their identity. By claiming to defend their immediate interests, their right to access their origins and to construct their personal history is compromised.

In Spain, the Supreme Court recently, forcefully reiterated this (2022 ruling). According to the court, commercial surrogacy violates human dignity and the best interests of the child by transforming them into the object of a contract. The Court insisted: it is not up to adults to define what would be the child's best interests according to their own wishes or parental plans. Recognition of parentage under these conditions cannot be automatic, especially when the practice took place within a commercial framework. Spain here defends a demanding interpretation of the child's best interests, based on the protection of their rights and not on the regularization of de facto situations.

MANIPULATION OF THE NOTION OF THE BEST INTERESTS OF THE CHILD

Q3. "What are the key human rights issues..."

Q18. "What do you think of the current legal process..."

Q19. "Who should be recognised as the legal parent(s)..."

Q20. "What, if any, are the main issues with obtaining: (a) Australian citizenship..."

Q21. "How could the process of obtaining citizenship, a passport or visa be improved?"

Q27. "Are there other important issues..."

More broadly, the use of the concept of the child's best interests in surrogacy contributes to normalizing an illegal practice because case law retrospectively validates contracts concluded abroad, thus rendering the national prohibition ineffective. This logic of regularization effectively legitimizes an international market in maternity, where the wealthiest can circumvent local prohibitions without fear of sanctions. We are witnessing a form of commodification tolerated under the guise of child protection.

Behind this protective facade, the concept of the child's best interests is being legally emptied. Fundamental rights are no longer protected; instead, adult projects, economic investments, and a logic of parental consumption are protected. We forget that the best interests of the child, in its original sense, require guaranteeing:

- the right to one's origins;

- the right to a true legal and biological identity;

- the right to a lineage free from any commercial transaction;

- the protection of the dignity of the woman who carried the child.

Far from being a neutral legal concept, the best interests of the child thus become a legitimizing tool, enabling the securing of commercial practices and offering "quick" solutions to those who commission the child, without truly considering the child's deep needs and inalienable rights.

THE INSTRUMENTALIZATION OF LGBT RIGHTS

Q2. "What principles should guide this Inquiry's reform work?"

Q3. "What are the key human rights issues..."

Q16. "Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?"

Q27. "Are there other important issues..."

One of the recurring arguments in favor of surrogacy is based on the idea that it would represent a step forward for the rights of LGBT people, and more specifically for same-sex male couples wishing to become parents. This presentation, at first glance generous, inclusive, and progressive, actually conceals a process of political and media exploitation of the LGBT cause, used as leverage to legitimize a practice based on the exploitation of women's bodies.

Equating the ban on surrogacy with a form of homophobia obscures a fundamental fact: the majority of buyers in countries where surrogacy is practiced are heterosexual couples. This is therefore not a discriminatory measure against homosexual people, but a general regulation of a practice that raises major ethical issues, regardless of the sex, sexual orientation, or marital status of the sponsoring parties. Reducing the debate to an opposition between homophobic conservatism and egalitarian progress constitutes a discursive maneuver that prevents us from addressing the real issues: ethical and feminist discussions, the commodification of the body, economic vulnerability, and the legal dissociation between motherhood and gestation.

This rhetoric works all the more effectively because it is part of a dynamic of contemporary political communication where references to equality, diversity, and inclusion are omnipresent. The invocation of "LGBTQ+ rights" thus becomes a screen of legitimacy behind which hides a thriving industry, in the hands of well-organized private actors. By equating any criticism of surrogacy with hostility toward LGBT people, the proponents of this practice seek to immediately disqualify opponents, classifying them as reactionaries or extremists. This strategy produces a double perverse effect: it prohibits debate on the power relations inherent in surrogacy, and it gives the illusion that the demands of homosexual people are aligned with the interests of a globalized reproduction market. However, this illusion is deeply contested, including within LGBT communities. Many gay and lesbian voices, including those long engaged in the fight for equality, refuse to be associated with a practice they consider contrary to the principles of social justice. For example, the Irish association "Not All Gays" recently published a petition against surrogacy, reaffirming that it is possible to be homosexual and oppose surrogacy. For these people, demanding access to parenthood cannot justify resorting to a surrogate mother whose living conditions, safety, and bodily integrity are neglected in favor of a desire for a child presented as a right. The suffering associated with infertility or belonging to a sexual minority can in no way justify the reification of another person. This is not to deny the legitimacy of the parental project of same-sex couples, but to question the means by which this project is accomplished—and the structures of inequality on which it is based.

In reality, other paths to parenthood exist: adoption, fostering children within extended families. These modalities, although less spectacular, are often more respectful of children's rights and those of women. Yet they are systematically relegated to the background in the dominant discourse, as they support neither the commercial logic of the reproduction industry nor the media representations of a parental model based on rapid consumption and tailor-made products. The establishment of guilt-inducing rhetoric is particularly dangerous: opposing surrogacy would amount to harming homosexuals, betraying a progressive cause, and demonstrating selfishness or narrow-mindedness. This injunction to sacrifice is profoundly sexist and cannot be considered a form of emancipation. Behind the discourse on equality, a logic of monopolization thus emerges. Women's bodies, especially those of poor and racialized women, are needed to resolve the contradictions of a model of filiation centered on individual desire, not on the fundamental rights of the people involved.

The strategic use of LGBT rights serves to obscure this reality by covering it with a veneer of social progress. But this supposed conquest of rights benefits neither women nor children, nor even the majority of homosexuals, who lack the means to access such services. It primarily benefits a wealthy minority, a globalized medical industry, and a

political class eager to present itself as modern and inclusive, without ever challenging the structural power relations on which this practice is based.

CRITICISM OF THE NOTION OF CONSENT IN THE CASE OF HUMAN TRAFFICKING (APPLICABLE TO SURROGACY)

Q3. "What are the key human rights issues..."

Q7. "What types of support are needed to help people become surrogates?"

Q24. "What other measures (tools, structures, safeguards) might assist in overseeing surrogacy arrangements?"

Q27. "Are there other important issues..."

In her June 2025 report to the United Nations Human Rights Council (A/HRC/59/47/Add.4), the Special Rapporteur on violence against women and girls, Reem Alsalem, offers a rigorous feminist critique of the notion of consent. This is highly relevant when considering the various forms of oppression and exploitation of women.

She demonstrates that the mere fact that a woman has "accepted" a situation is not enough to guarantee the absence of violence or exploitation, particularly when there are structural relationships of domination or economic, social, or political vulnerability.

This analysis, although formulated within a broad framework addressing issues of abolition (prostitution, pornography, invasive biomedical practices), is fully transposable to surrogacy. Surrogacy is indeed based on a contractual logic that gives consent a central role, presented as the sole ethical guarantee. But as Special Rapporteur Reem Alsalem points out, consent given in a context of coercion, whether financial, emotional, or linked to gender relations, is not and will never be free consent in the full sense. On the contrary, it is often extorted or induced by a situation of domination.

In the case of surrogacy, the surrogate mother is frequently bound by a legal system that controls her body, her medical choices, her lifestyle, and the transfer of the child at birth. Presenting this process as a "voluntary act" amounts to instrumentalizing consent in order to neutralize any political criticism. This lends an appearance of legitimacy to a practice based on the temporary, but total, appropriation of the female body.

As the Special Rapporteur summarizes, exploitation does not cease to be exploitation simply because it has been consented to. On the contrary, in organized systems of domination, consent becomes a tool of normalization, even justification. Applying this analytical grid to GPA (What does GPA refer to?) allows us to understand that recourse to consent is often a legal mask intended to make a form of reproductive dispossession acceptable.

THE RISK OF OVEREXPLOITATION OF RACIALIZED MINORITIES: REINFORCEMENT OF SYSTEMIC RACISM

Q3. "What are the key human rights issues..."

Q5. "What, if any, are the main barriers to accessing domestic surrogacy in Australia?"

Q16. "Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?"

Q24. "What other measures..."

Q27. "Are there other important issues..."

In Australia, as in many Western countries, racialized minorities, particularly Asian communities, and notably Filipinos, already occupy a precarious position in undervalued labor sectors, such as maintenance and care work. These populations are often confined to underpaid, precarious jobs marked by a high degree of exploitation.

Opening up commercial surrogacy would only reproduce, or even exacerbate, these exploitative dynamics. Women from these minorities, already economically and socially vulnerable, risk being the first to be affected by a surrogacy market that seeks to maximize profits at the expense of their health, autonomy, and fundamental rights. Due to lack of funds, manipulation, or lack of resources, these already precarious and fragile women will be exposed to serious risks of trafficking, non-compliance with consent, and will be subject to the forced acceptance of clauses that completely alienate them. Commercial surrogacy, far from being a free and voluntary act, often takes place in a context of economic constraint where women in extremely precarious situations are forced to rent their bodies as a commercial resource. It is a form of total, contractual exploitation, allowing buyers and agencies to dispose of these women as they wish.

In this context, racialized minorities in Australia, particularly Filipino migrants, could become prime targets for this form of exploitation. These women are already mistreated, abused, and virtually enslaved in many countries. Adding the possibility of exploiting their reproductive capacities would be absolutely devastating. The few safeguards envisaged will in no way counter the agencies' pursuit of profit and profit maximization. These women will be condemned to this condition without being truly informed of the risks they face. This risk raises a double injustice: these women would be victims of both the commodification of their bodies and a form of systemic racism that places them in subordinate social positions. This reality must be taken into account with the utmost seriousness by the commission of inquiry. Legalizing or opening up commercial surrogacy in Australia means legalizing a new form of racialized exploitation, with all the dramatic human consequences this entails.

The example of India, before the ban on commercial surrogacy in 2016, is particularly illuminating. Agencies overwhelmingly targeted women from rural, poor backgrounds and belonging to the lowest castes. As anthropologist Daisy Deomampo documents, this configuration establishes a "racialized reproductive hierarchy" where the bodies of precarious women become an instrument for satisfying the desires of the international ruling classes.

This model, far from being an exception, reveals the deep logic of commercial surrogacy. Even in the United States, where the legal framework is more robust, researchers highlight the reproduction of racial and economic inequalities: surrogate mothers are often from racialized minorities (Latinos, African Americans, Asians), while the majority of clients remain white and wealthy. These women already occupy precarious positions in the care and maintenance sectors; surrogacy is merely a reproductive extension of this, with embellished vocabulary and more muted violence.

Australia, by considering opening up to commercial surrogacy, thus runs the risk of exposing its own racialized and migrant populations (particularly Filipino, Vietnamese, and South Asian women) to a new form of exploitation, this time reproductive. The Indian precedent should serve as a warning: this is not a deviation, it is a systemic operation.

A PARTICULAR RELATIONSHIP TO PRACTICE DUE TO A PAINFUL COLONIAL HISTORY: THE CASE OF THE STOLEN GENERATIONS

Q2. "What principles should guide this Inquiry's reform work?"

Q3. "What are the key human rights issues..."

Q5. "What, if any, are the main barriers to accessing domestic surrogacy..."

Q16. "Do you support a) compensated surrogacy and/or b) 'commercial' surrogacy?"

Q23. "What do you think of the role of criminal law..."

Q27. "Are there other important issues..."

The issue of commercial surrogacy in Australia must be addressed with full awareness of the heavy historical legacy it entails. The country's recent history is marked by the Stolen Generations, a shameful chapter in which thousands of Indigenous children were torn from their families without consent, as part of a process of forced assimilation. This past is now widely recognized in Australia and internationally as an unjust and violent process, accompanied by official apologies and efforts to redress the wrongs. Yet, it would be profoundly contradictory and dangerous to allow history to repeat itself in another form, by legalizing a practice that, under the guise of "freedom of contract" or "social progress," organizes a new form of dispossession and child uprooting. Surrogacy, whether commercial or "altruistic," must not be analyzed solely from the perspective of adults' right to contract. It is also, and above all, a system in which children are produced and delivered on demand, detached from the woman who carries them, and in which the latter's body becomes an object of commodification. In this context, women who agree to be surrogate mothers very often come from economically precarious backgrounds, which places them in a vulnerable position susceptible to exploitation.

In Australia, ethnic minority groups, particularly Indigenous populations, but also Asian migrant communities such as the Philipinos, already occupy precarious positions in the economy, particularly in the maintenance and care sectors, where their rights are often fragile and poorly protected.

As explained above, these same populations could become the preferred target of commercial surrogacy agencies if they were to become open and regulated for profit. These agencies, in other countries, have shown a tendency to identify and recruit economically vulnerable women, offering them contracts that often amount to a form of economic coercion. They exploit precariousness to impose strict medical and contractual conditions, while keeping these women in a situation of social isolation and biased information. The experience of other countries sadly illustrates this reality.

These women, selected to be surrogate mothers, are subjected, due to their precarious position, to intense medical and psychological pressure, sometimes forced into invasive procedures, all in order to deliver children to wealthy foreign couples. Their fundamental human rights are ignored, and their precarious economic situation is used as a lever for exploitation, in a logic that borders on modern-day slavery.

The various examples cited in other contributions illustrate that this exploitation resulting from legalization is recurring. It would therefore be unrealistic to think that Australia could escape these exploitative dynamics, especially by targeting populations already in a vulnerable economic and social situation. Indigenous minorities, often facing persistent inequalities, as well as migrants from Southeast Asia, are groups at risk of being recruited into conditions bordering on economic exploitation. The risk is that commercial surrogacy in Australia transforms these populations into cheap reproductive labor, thus exacerbating inequalities and social injustices.

Commercial surrogacy, by its very nature, sacrifices the rights of surrogate mothers and children in favor of so-called "intended parents." It disrupts the biological maternal bond through a commercial logic, denying the complexity and richness of motherhood in favor of a strictly contractual relationship. This commodification of the body and human life violates fundamental rights, particularly in a country like Australia, which still bears the scars of a history of violent dispossession of Indigenous children. Through the history of the Stolen Generations, Australia knows how

the removal of children from their family, cultural, and identity environments can generate profound trauma that spans generations. Opening up commercial surrogacy today risks reproducing this pattern in another form, by legalizing and trivializing a process of separating children for commercial purposes. This would be an unacceptable moral and political choice, which would contradict not only commitments to historical reparation but also the fundamental principles of respect for human rights.

Australia's past should inspire vigilance and responsibility, not blindness and experimentation. Commercial surrogacy cannot be an accepted public policy in a country that claims to respect the rights of Indigenous peoples, women, and children. Protecting the maternal bond, recognizing the body as non-commodifiable, and defending the fundamental rights of the most vulnerable must remain the cardinal principles of any discussion on assisted reproduction. It is therefore imperative that Australia reject the opening of commercial surrogacy and, instead, undertake measures to strengthen the protection of women and children against all forms of reproductive exploitation, even in cases of so-called "altruistic" or "ethical" surrogacy. Failure to do so would be a step backward, a betrayal of the lessons of the past, and further institutional violence inflicted on already marginalized populations.

OUR ANSWERS TO YOUR QUESTIONS REGARDING LEGALIZATION AND MAXIMUM OPENNESS

Question 1: Personal experience

As an organization committed to defending the fundamental rights of women and children, our contribution is not based on personal or individual experience of surrogacy, but on an in-depth legal, ethical, sociological, and feminist analysis. We believe it is essential to emphasize that the evaluation of such a structuring practice cannot depend solely on individual experiences, sometimes marked by an emotional or circumstantial bias, but requires a systemic and critical approach based on the power relations it establishes. (Perhaps the re-wording of this last sentence could be considered in order to make explicit the reference of the final 'it'.)

Furthermore, we are fortunate to be able to work with people who can share their personal experiences, whether they are children born through surrogacy or surrogate mothers. Their stories help us better address and understand the phenomenon in depth and in its entirety.

Question 6: Eligibility Criteria for Surrogacy

The question of eligibility criteria for surrogacy presupposes that this practice can be ethically regulated, an assumption we challenge. Surrogacy, regardless of the supposedly stringent conditions imposed on those who commission it or on surrogates, is still based on a logic of appropriation of the female body and the erasure of true motherhood. Discussing the criteria is already entering into a logic of legitimization. However, it is the very existence of this practice, and not its access methods, that must be questioned and rejected.

Question 8: Improving Access to Surrogacy

We cannot make any proposals aimed at "improving access" to a practice that we consider contrary to human dignity, the rights of women, and the rights of children. Opening surrogacy to all, regardless of whether it is domestic or transnational, altruistic or commercial, contributes to the normalization of a system of reproductive exploitation based on the trafficking of women and their reproductive capacities, as well as that of children.

To speak of accessibility is to euphemize and distort the reality of this system, and to treat it as a legitimate health service, stemming from a so-called "right to family" (which, incidentally, does not exist! Its exact definition concerns children and their right to have a family once they are born), when it should be fought in the name of equality, the non-commodification of bodies, and child protection.

Questions 9 to 15: Reimbursement and Compensation for Surrogate Mothers

Questions regarding the reimbursement of expenses or "compensation" for surrogate mothers are based on a fundamentally flawed conception of pregnancy as a form of "reproductive labor" that could be legally regulated, financially assessed, and partially compensated. This is absolutely not the case. Have you ever heard of labor that lasts 24/7, all for 9 months?

This shift toward commoditizing the gestational process is unacceptable. It places pregnancy within a health service delivery regime, thereby denying the uniqueness of the maternal experience, the symbolic significance of the bond with the child, and the major psychological and physical risks involved. No scale, no framework can morally justify such reproductive dispossession.

Question 22: Harmonization between jurisdictions

We reject the idea of harmonization that would aim to facilitate or uniformly regulate the legalization of surrogacy. What needs to be harmonized internationally are prohibitions, legal protections, sanctions, and prevention measures against the reproductive exploitation of women. The existence of disparities between states is currently being exploited by transnational actors, including agencies, who grant themselves the right to circumvent laws and create a globalized market in maternity, trafficking poor women all over the world: Ukraine, the United States, Colombia, etc. The urgent need is to erect common barriers to this industry, not to facilitate its establishment and circulation.

Question 26: Scope of the study

We welcome the initiative for this consultation, but wish to draw attention to a worrying blind spot: the place of abolitionist and feminist criticism. Too often, the public debate on surrogacy is framed in terms of regulating, improving, or recognizing individual journeys, to the detriment of a structural reflection on systems of domination and the issues surrounding the commodification of the human body. The women and men who organize and oppose the practice are not listened to, and their arguments are reduced to conservative arguments, even though we are fighting against it. It would be desirable for the scope of the survey to explicitly integrate critical analyses of the feminist, postcolonial, and abolitionist types, without reducing them to a supposedly conservative stance. This inclusion is necessary to ensure a truly pluralistic debate.