REVIEW OF LAWS
ON
SURROGATE MOTHERHOOD

AUSTRALIAN COMMISSION
OF THE REFORM OF LAWS

July 2025

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The Syndicat de la Famille thanks the Australian government for opening a consultation on the review of Australia's surrogacy laws. Our association is delighted to be able to make its contribution to the debate, essential for the dignity and rights of women and children.

Since our creation, our association has not ceased to speak at the UN, at the European Parliament and in all national and international institutions, to defend the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Rights of the Child.

The defense of these two fundamental international texts involves a constant, firm and well-argued denunciation of reproductive exploitation including, in particular, surrogacy.

The Syndicat de la Famille therefore takes the opportunity of the review of Australian laws to alert your Parliament on the urgency to take up this issue to strongly condemn any form of surrogacy.

This gender-based exploitation is indeed added to other forms of exploitation that girls and women are already victims of around the world. It targets them for their reproductive capacities, confiscates them for the benefit of third parties and uses them as a means of production. Surrogacy creates a de facto subcategory of women reduced to the status of objects.

There is no form of surrogacy that respects the law or international conventions to any extent. It is also unrealistic to think that any regulation can respect, let alone protect, the human rights of children born through surrogate mothers and those of surrogate mothers.

Our association defends this position supported by fieldwork with all the actors involved in surrogacy processes: since 2012, we have been constantly collecting testimonials from surrogate mothers around the world, to meet professionals involved in these steps and observe the consequences of the different legislative provisions taken by the countries.

GREECE, THE ILLUSION OF A FRAMEWORK

Greece was commonly presented as an example of successful "ethical" surrogacy: framed since 2005, agreements are allowed for heterosexual couples and single women, overseen by the National Assisted Reproduction Authority, compensation is regulated, profits are prohibited... everything was apparently framed to avoid any risk of trafficking and exploitation.

The reality of this supposedly idyllic model was exposed when in August 2023 a scandal broke out. The Mediterranean Fertility Institute in Crete was raided by police following charges of human trafficking and fraud. The clinic, which practiced surrogacy for foreign clients including many Australians, is suspected by the Greek police of having exploited 169 vulnerable foreign women, forcing them to be "donors" of eggs or surrogate mothers[1].

These women were from Ukraine, Romania, Moldova, Georgia and Albania, displaced because of their economic vulnerability and the war in Ukraine.

Nikolas Vrachnis, head of the National Authority for Assisted Reproduction, was fired and accused of profiting from this traffic.

The Greek example shows how the supervision of surrogacy is not a solution but rather a pretense that attempts to respectably dress up trafficking in women.

Because surrogacy is indeed a form of human trafficking: it recruits women, often moves them but also rents them out. As for the children, they are systematically moved and are subject to payment.

This is, implicitly, what the Iowa code in the United States admits: in the section 'Buying or selling an individual', it says that the person who attempts, buys or sells a human person commits a crime with the exception of: "this paragraph does not apply to surrogacy arrangements".[2]

In these arrangements, the woman sells her reproductive capacities for the benefit of third parties and the child resulting from this operation is sold/transferred to commissioning parents. Which, in this case, clearly characterizes a transfer of persons, despite the legislative provisions that attempt to mask this reality.

Used for their reproductive capacities, women are more particularly the targets of this gender-based exploitation, especially in conflict contexts.

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[1] https://greekherald.com.au/news/fertility-clinic-raided-in-crete-has-left-australian-parents-denied-access-to-their-newborn/

[2] https://www.legis.iowa.gov/docs/code/710.11.pdf

UK, CIRCUMVENT THE LAW

The United Kingdom, which has been regulating surrogacy for much longer than Greece, is also very enlightening on the illusion of a legislative framework for such a practice.

Supervised since 1985, surrogacy is called 'altruistic' with a ban on lucrative operations, advertising or remuneration of intermediaries.

The British Ministry of Justice published the number of requests for transfer of parental authority following a gestational surrogacy: 117 in 2011 compared to 435 in 2021. The data reveal on this occasion that the vast majority of surrogate mothers involved in these surrogacy contracts are foreign: American, Indian, Ukrainian, Canadian, Thai or even Nigerian.

The majority of British citizens who have recourse to surrogacy therefore circumvent national legal barriers in order to gain more flexibility. This is confirmed by the study *'Cross-border and domestic surrogacy in the UK context : an exploration of practical and legal decision-making'* [3] published in 2018 indeed indicates that 69% of British citizens intending to have recourse to surrogacy want to do it abroad.

Greece and the United Kingdom clearly show how the pressure of procreative tourism renders obsolete any desire to regulate surrogacy.

And anyway, the exploitation and transfer of human beings, it doesn't fit!

PROCREATIVE TOURISM

The combination of global infertility and the development of assisted reproduction techniques has led to the development of a new type of cross-border movement: procreative tourism.

This practice, also called Cross Border Reproductive Care (CBRC), «reprotravel» or even «reproductive exile», is an international trade, as it exists in other fields. It has experienced a particularly rapid development over the past ten years.

Indeed, two elements have played the role of accelerator: the explosion of digital communication means on a global scale.

Websites and social networks provide global promotion to medical techniques and structures that sell their services. These means of communication allow the rapid and effective linking of applicants with "donors" of gametes, surrogate mothers, specialized clinics or all kinds of intermediaries necessary for the realization of parental projects.

For example, and despite the so-called 'altruistic' laws of the different Australian states, the use of international surrogacy by Australians is massive: already in 2013, the agency Families Through Surrogacy estimated at 400 the number of children born under these conditions for

[3] https://pubmed.ncbi.nlm.nih.gov/30537445/

Australians whereas the Australian "altruistic" gestational surrogacy had given birth to only 35 children.

Boosted by procreative tourism, the market can thrive: the Observatory of Assisted Reproduction estimated it at 21 billion dollars worldwide.

There is therefore considerable pressure on governments to facilitate or close their eyes to this practice.[4]

[4] https://www.smh.com.au/national/nsw/australian-surrogacy-laws-need-reform-say-advocates-20160523-gp1v0k.html

WOMEN'S UTERUS, NEW RAW MATERIAL FOR A GLOBAL MARKET

Gold, commercial, framed, 'ethical', 'altruistic', legal... surrogacy or surrogacy can have different modalities but the central mechanism remains always the same.

It is about inseminating a woman, whose uterus and body will allow the development of the child, which will be given from birth to one or more sponsors.

This practice totally confiscates the woman's body and psyche in favor of the sponsors, trampling on her privacy and her right to medical confidentiality throughout pregnancy and childbirth.

Our association was able to obtain some of the standard contracts offered to surrogate mothers in the context of so-called 'ethical' surrogacy. These documents regulate very precisely the life of surrogate mothers: their sexual life with their spouse, a detailed food program, the need to validate any activity project, the possibility of imposing confinement throughout the gestation, the ban on going out in recent weeks...

The clauses of these contracts are very precise and the accumulation of recommendations, prohibitions, instructions, draw a life subject to the wills of third parties: do not apply nail polish, do not use microwaves, do not attend funerals, submit to all the controls required by the sponsors... Finally, some contracts prohibit surrogate mothers "*from forming or attempting to form a parent-child relationship with any child born under this agreement*"[5]. Not content to regulate one's body, these contracts also aim to take control of the psyche of surrogate mothers, particularly in order to make them invisible afterwards in the child's filiation and life, to avoid any mother-child, but nothing can prevent the child from needing his mother!

Surrogacy is medically very risky for women: the child they carry having no genetic link with them, they undergo significant injections of hormones daily to avoid a miscarriage.

Many scientific studies warn of the significant risks they take for their lives, as well as the consequences that scheduled caesareans and multiple pregnancies, very frequent for surrogacy, have on women.

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[5] Le Figaro, « Les incroyables clauses des contrats de mères porteuses » https://www.lefigaro.fr/actualite-france/2017/06/20/01016-20170620ARTFIG00254-les-incroyables-clauses-des-contrats-de-meres-por- teuses.php

Thus, the study "*A comparison of American Women's experiences with both gestational surrogates pregnancies and spontaneous pregnancies* "(2022) highlights among other things the fact that surrogate mothers are five times more likely to give birth before term with all the risks that this entails, but also an increase in the risks of postpartum depression. This study also highlights the increased risks of medical complications after birth for surrogate mothers[6] and the subsequent risks, for their health, of hormones taken massively.

The conditions for recognizing a situation of trafficking and exploitation have been defined by the Additional Protocol to the United Nations Convention against Crime: "***The recruitment, transportation, transfer, harbouring or reception of persons, by the threat of force or other forms of coercion, by kidnapping, fraud, deception or the acceptance of payment or benefits to obtain the consent of a person having authority over another for the purposes of exploitation[7].***

The criteria established by this text correspond in all respects to the mechanisms implemented by surrogacy, leading to the conclusion that, whatever the context, any woman used as a surrogate mother and any child ordered are victims of human trafficking.

Our association has observed that all women of childbearing age present on social networks are exposed to multiple advertisements from agencies and other intermediaries promising them a very important income supplement by becoming a surrogate mother.

Once recruited, surrogate mothers are very often forced to leave their homes and approach the clinic, the agency, or even the sponsors. Over the course of the studies, different profiles of surrogate mothers emerge:

- Migrant women used as surrogates in their country
- Women recruited and displaced to another country for exploitation as surrogate mothers
- Surrogate mothers moved during the gestation process to bypass laws[8]

Economically, psychologically, emotionally and familiarly vulnerable, these women are easy prey for reproductive exploitation.

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[6] « A comparison of American Women's experiences with both gestational surrogates pregnancies and spontaneous pregnancies" / Dignity, juillet 2022 https://digitalcommons.uri.edu/dignity/vol7/iss3/1/

[7] https://www.ohchr.org/fr/trafficking-in-persons

[8] Femmes migrantes et exploitation reproductive dans l'industrie de la maternité de substitution » En- quête conjointe par ENoMX et la CIAMS, 2021-2022 http://abolition-ms.org/non-classe-fr/rapport-en- quete-enomw-et-ciams-3-femmes-migrantes-et-exploitation-reproductive-dans-lindustrie-de-la-mater- nite-de-substitution-gpa/

RECOMMENDATIONS

The Syndicat de la Famille stresses the fact that, to respect its strong commitments to defend the rights of women and children, Australia must necessarily prohibit any form of surrogacy.

Indeed, a law that does not prohibit all forms of surrogacy passes a message of tolerance about the use of women as surrogate mothers: instead of being recognized as intolerable, regardless of the context and the way of doing it, this makes this practice potentially acceptable seem: in the face of this sexist violence and this reproductive exploitation, firmness and determination are essential.

The Syndicat de la Famille also stresses that, due to the instrumentalization of women as "incubators" to obtain one or more children, surrogacy cannot be "altruistic": it remains sexist regardless. Furthermore, a child cannot be given any more than sold: thus, even if surrogacy is supposedly free or simply compensated, it remains a practice unworthy of human beings: they do not belong to anyone, it is not possible to behave towards him as if one were his owner. Using a woman, giving or selling a child, is a form of slavery according to the definition given in Article 1 of the 1926 Slavery Convention: «***slavery is the state or condition of an individual over whom the attributes of property right are exercised, or some of them***».[9]

The surrogacy is also contrary to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Additional Protocol to the United Nations Convention against Transnational Organized Crime to prevent, to suppress and punish trafficking in persons, particularly trafficking in women and children.

In light of the issues and contradictions raised above, The Syndicat de la Famille suggests the following recommendations to Australia:

a. Adopt a federal law clearly prohibiting all forms of surrogacy: there can be no tolerance for a practice that reduces women to a reproductive function. And, otherwise, the law would not be fully effective.

b. Effectively prosecute Australian nationals using international commercial surrogacy despite existing laws.

c. Denounce the work of the Hague Conference on Private International Law on Surrogacy. This work aims to create an international legal framework for international surrogacy agreements. This work has in reality only one goal: to facilitate the work of agencies and to streamline global traffic by eliminating visa and passport problems, offering the greed of a global traffic of thousands of vulnerable women.

[9] https://www.ohchr.org/FR/ProfessionalInterest/Pages/SlaveryConvention.aspx

d. Initiate work within the Bali Process to effectively combat reproductive exploitation in all its forms. Australia must help the countries of the Southeast Asia zone to protect the women and children of this region. It is therefore imperative to strengthen measures against reproductive exploitation in order to prevent any procreative tourism and effectively combat this exploitation, in accordance with the Sustainable Development Goals 5.1, 5.2 and 5.6.

Through this action, Australia would assert itself as a leading country in the defense of women's rights and could be a global example of measures to be implemented to effectively combat the global expansion of any form of surrogacy.