

Opinion of the Ordo Iuris Institute for the Special Rapporteur on violence against women and girls

1. What specific forms of violence are women and girls subjected to in the context of surrogacy?

Scientific research provides detailed information on the forms of violence experienced by women and girls in the context of surrogacy. Below is a comprehensive analysis based on available data, taking into account various aspects such as psychological, economic, and physical violence. Surrogacy, particularly in its commercial form, raises controversies due to the potential risk of exploitation and violence against surrogates. Studies indicate that these women may be exposed to different forms of violence, which vary depending on cultural, legal, and economic contexts. This report focuses on identifying specific forms of violence, drawing on scientific literature and including examples from various countries, such as India, Iran, and the United Kingdom.

Psychological violence

Studies such as [Emotional experiences in surrogate mothers](#), conducted in Iran in 2014, indicate that surrogates often experience significant psychological issues. An analysis of 18 interviews with surrogates revealed that many of them struggle with postpartum depression, feelings of guilt, and anger after relinquishing the child. Particularly vulnerable are women undergoing genetic surrogacy (using their own egg), which can lead to a strong emotional attachment to the child. This study highlights the risk of long-term effects, such as reduced self-esteem and quality of life, especially in the absence of social support.

Another study, [The Psychological Impact of Surrogacy on Surrogate Mothers](#), conducted in the United Kingdom in 2012, it found that 15% of surrogates reported persistent emotional difficulties, such as sadness and regret, one year after giving birth. Risk factors included a lack of family support and limited contact with the "intended parents" after the birth. These findings suggest that surrogacy can lead to emotional trauma, particularly in the absence of adequate psychological support programs.

Economic violence

In developing countries such as India, commercial surrogacy is often associated with economic exploitation.

Article [Globalization and Exploitation: Surrogacy as a Labor Market](#) from 2013 indicates that surrogates in India received an average of \$4,000 to \$7,000 per pregnancy, while agencies and clinics earned between \$25,000 and \$40,000 per contract. This means that surrogates received less than 20% of the total amount, constituting a form of financial exploitation.

Additionally, many women were forced to sign contracts in languages they did not understand, which limited their ability to negotiate terms.

Study [The social paradoxes of commercial surrogacy in developing countries](#), published in 2020, conducted among 33 surrogates in India, shows that the decision to pursue surrogacy was often motivated by the need to improve the family's economic situation, indicating economic pressure.

Physical violence

Physical violence against surrogates often manifests in the form of invasive medical procedures and a lack of adequate healthcare. The book [Wombs in Labor: Transnational Commercial Surrogacy in India](#) by Amrita Pande, published in 2014, indicates that in India before 2015, 95% of surrogate births were performed via cesarean section, despite the WHO recommending a limit of 10–15% for such procedures. These procedures were imposed for the convenience of the „intended parents”, increasing the risk of complications such as infections or hemorrhages, especially in the absence of postpartum care.

Study [The Health Implications of Surrogacy: A Systematic Review](#), published in 2018, confirms that surrogates are at an increased risk of ovarian hyperstimulation syndrome (OHSS) due to the use of high doses of hormones during in vitro fertilization. The incidence of OHSS ranges from 1% to 10%, and in countries with weak regulation, the risk is higher due to a lack of monitoring, which can be considered a form of physical violence resulting from neglect.

2. What are the legal, political, or regulatory frameworks governing surrogacy in your country?

According to Article 619 of the Act of February 25, 1964 – Family and Guardianship Code (hereinafter referred to as: FGC), **the mother of a child is the woman who gave birth to it.** The inclusion of this provision in the FGC aimed to eliminate doubts that arose due to advancements in science and the spread of phenomena such as „surrogacy”. As a result of extracorporeal fertilization (so-called in vitro fertilization), a situation may arise in which there is no genetic bond between the child and the woman who gave birth to it. As aptly noted in the relevant literature, under Article 619 of the FGC, the fact that a woman gives birth to a child unequivocally determines that, in the eyes of the law, she is the child’s mother, which serves as the basis for recording this fact in civil status records. The principle of indivisibility of civil status entails that each child can have only one mother and one father.

The definitive adoption by the legislator of the rule that the mother of a child is the woman who gave birth to it allows for the unambiguous conclusion that so-called surrogacy agreements are absolutely invalid. Pursuant to Article 58 § 1 of the Act of April 23, 1964 – Civil Code (hereinafter referred to as: CC), a legal act contrary to the law or intended to circumvent

the law is invalid unless a specific provision stipulates a different consequence, in particular that the invalid provisions of the legal act are replaced by the relevant statutory provisions. Such an agreement would undoubtedly exceed the limits of contractual freedom as defined in Article 353¹ of the CC. According to this provision, parties entering into a contract may structure their legal relationship as they see fit, provided that its content or purpose does not contravene the nature of the relationship, the law, or the principles of social coexistence. The essence of a hypothetical legal relationship concerning surrogacy would involve a "service" consisting of carrying a pregnancy and giving birth to a child for another person following extracorporeal fertilization, followed by the "delivery of the subject of the service," which would be the child, reduced to the category of an object. Such a construction cannot stand in light of legal regulations, both those specified in the FGC and other statutory provisions, which will be addressed later in this discussion. The view that surrogacy agreements are absolutely invalid prevails in the relevant literature. While the fundamental constitutional doubts that such a solution would raise (if it were legally permitted) are beyond the scope of this opinion, it is worth noting that treating a conceived and newborn child as an object (including reducing it to the category of a commodity or the subject of an obligation) stands in stark contradiction to Article 30 of the Constitution of the Republic of Poland, which imposes on public authorities the duty to respect and protect human dignity, and Article 18 of the Constitution of the Republic of Poland, which addresses the obligation of public authorities to protect and care for, among other things, motherhood.

It should also be noted that the consequences arising from Article 619 of the FGC in relation to surrogacy are not free from doubts of a very fundamental nature. The maternal bond established in this way, devoid of the characteristic of genetic connection between the child and its mother (the woman who gave birth to it), may not only lead to a violation of the child's rights, as the child would have no legal means to ascertain its genetic origins, but also affect its knowledge of its own health status (in connection with genetically conditioned diseases and similar matters). The only solution that could prevent the accumulation of legal and social problems stemming from the effective „split” of the concept of motherhood into „genetic” and „legal” is a complete ban on surrogacy (including so-called altruistic surrogacy, i.e., non-commercial surrogacy), explicitly expressed in statutory provisions.

3. What steps should states, regional bodies, and international institutions take to counteract violence and other human rights violations related to surrogacy?

To effectively counteract violence and other human rights violations related to surrogacy, states, regional bodies, and international institutions must adopt a comprehensive and coordinated approach, with the cornerstone being the adoption of an Optional Protocol to the Convention on the Rights of the Child explicitly prohibiting surrogacy. First, states should advocate for and ratify this protocol, which would establish a clear international norm banning surrogacy, thereby addressing the root cause of associated violations such as child trafficking, exploitation of women, and identity confusion for children. Second, national governments

should enact domestic legislation aligned with the protocol, criminalizing the practice of surrogacy and imposing strict penalties on individuals and organizations facilitating it, whether commercially or altruistically. Third, regional bodies, such as the European Union or African Union, should develop binding frameworks to harmonize anti-surrogacy laws across member states, preventing cross-border exploitation and ensuring consistent enforcement. Fourth, international institutions like the United Nations should support the protocol's implementation by providing technical assistance, monitoring compliance, and establishing a reporting mechanism for violations linked to surrogacy. Fifth, states must invest in public awareness campaigns to educate communities about the human rights risks of surrogacy, including the commodification of children and the coercion of vulnerable women. Sixth, the Optional Protocol should mandate regular reviews by a UN committee to assess progress and address emerging challenges. Tenth, regional judicial bodies, like the European Court of Human Rights, should interpret existing treaties in light of the protocol to reinforce its legal weight. Finally, by embedding the prohibition of surrogacy within the framework of the Convention on the Rights of the Child, the global community would affirm its commitment to protecting the dignity, autonomy, and rights of children and women, effectively dismantling a system that perpetuates violence and inequality.