



May 14, 2019

To the UN Special Rapporteur on the sale and sexual exploitation of children,

We are women and men of diverse ethnic, religious, cultural, and socio-economic backgrounds from all regions of the world. We come together to voice our shared concern for women and children who are exploited through surrogacy contract pregnancy arrangements. We are here to answer your call for input regarding the sale and exploitation of children that surrogacy produces.

Together we affirm the deep longing that many have to be parents. Yet, as with most desires, there must be limits. Human rights provide an important marker for identifying what those limits should be. We believe that surrogacy should be stopped because it is an abuse of women's and children's human rights.

### **Identity, Origins and Parentage**

The United States is one of few developed countries that has, in some states, legalized commercial surrogacy. Within the United States, there is a patchwork of legislation with some states having no laws, other states allowing commercial surrogacy for a select population (married, heterosexual couples for example), and in other states, like California, truly anything goes. In the world of artificial reproductive techniques, California is the wild west with laws meant only to protect the stakeholders, not the children. Fertility clinics claim that California is one of the easiest places in the world to become a surrogate parent and is thus marketed as one of the friendliest states towards surrogacy. California is truly a place where everyone can become a parent and, regardless of laws in place, fertility clinics are continually allowed to push boundaries and test the limits in bioethics.

Although traditional surrogacy is not explicitly addressed in California surrogacy laws, the practice is still permitted and carelessly regulated. In these instances, children are literally separated, not only from their birth mother, but from their biological mother as well. Intended parents purchase babies from both the gestational and genetic mother.

Prior to 2013, gestational surrogacy in California was governed through case law (specifically *Johnson v. Callaert* 1993 and *Bazzunca v. Bazzunca* 1998) and the Uniform Parentage Act. In 2013, the legality of surrogacy in California was officially confirmed with the passage of California Assembly Bill 1217; part of California Family Law Sections 7960-7962.

Case law provided that intended parents in an assisted reproduction arrangement, whether or not biologically related to the resulting child, should be declared the legal parent of the resulting child. The previous legislation in California under the Uniform Parentage Act defines the parent-child relationship as the legal relationship existing between a child and the child's parents, and it governs proceedings to establish that relationship. Existing law also regulates the practice of surrogacy facilitators in assisted reproduction agreements, including surrogacy agreements.

Current legislation, provides additional guidance relating to the manner in which surrogacy agreements must be executed, when medical procedures can be commenced, and where parental establishment cases may be filed. In relation to Gestational Surrogacy Agreements, the new law requires that intended parents and a surrogate be represented by separate legal counsel, requires notarization of gestational surrogacy agreements, requires the execution and notarization of an agreement prior to the administration of medications used in assisted reproduction or any embryo transfer procedure, requires the parties to a gestational surrogacy agreement to attest, under penalty of perjury as to their compliance with these provisions, provides that an gestational surrogacy agreement executed in accordance with these provisions is presumptively valid. None of these laws directly protect the child, the product of surrogacy. Our organization has seen time and again how such safeguards—laws, regulations, and contracts—treat children as mere commodities to be ordered, discarded, or abandoned.

In many states, a child must be born before intended parents can lay a rightful custody claim on a child. Additionally, some states force intended parents to go through an adoption process in order to gain custody. However, this is not the case in California. Due to the new bill, indented parents can establish parentage well before a baby is born, even if there is no biological link to the child. The new bill also requires that a copy of the gestational surrogacy agreement be filed with the court as part of the parentage action, seals records of the agreement to all except parties except the intended parents, surrogate, their attorneys and the state Department of Social Services. Once born, the child has no access to any information concerning who his or her biological parents are. The child has no way to know who donated the egg or sperm or whose wombs he or she was born from.

Further, surrogacy in the United States requires no screening or background checks of intended parents, unlike adoption cases. Gestational surrogates, also unlike mothers seeking to surrender their children through adoption, cannot reconsider her decision.

It has been noted that California courts now look at the intent of the contracting parties when faced with a surrogacy dispute, rather than the best interest of the child. We have personally been involved with many surrogacy cases gone wrong. In two cases, surrogate mothers were pregnant with healthy triplets, but the intended parents demanded they reduce the pregnancies. These birth mothers, Melissa Cook and Brittney Rose Torres, were both low-income women who were threatened with breach of contract and told they'd have to return all the money; which of course was already spent paying bills. Neither had money to secure legal representation. Even though these women signed contracts with "termination clauses," they had a change of heart because they bonded with the babies they were carrying. They could not understand why the intended parents, people who wanted so badly to be parents, would want to end the life of a healthy baby. These children will now grow up with the story of their contract birth arrangement gone bad, perhaps being raised by parents that didn't want them—if the intended parents even kept the children. This is similar to the famous Baby Gammy case in Thailand. Sadly, in surrogacy friendly states, like California, there are many more legal cases of abuse and exploitation.

Recently, our organization brought to light the story of Jessica Allen, a surrogate mother, also in California, who gave birth to twins for a Chinese couple; surrogacy is illegal in China. Unbeknown to anyone, one of the children was Jessica's own child. As most surrogates are not allowed to see the babies at birth, it was not until two months later that Jessica was told something was wrong. How could a Caucasian surrogate mother,

married to an African-American man, give birth to a Chinese baby and an obviously bi-racial baby? This is a rare event known as superfetation. Jessica and her husband had to fight to get their own child back.

Megan Hoffner from California was a surrogate for two men. She delivered twins via emergency c-section and never saw the boys again. She endured verbal abuse from the millionaires who own and operate the surrogacy agency she worked through and was embroiled in a legal battle just trying to get her medical bills paid. Will these twins grow up knowing that Megan carried them? What will these children think when they are old enough and read about their story in the tabloids?

### **Sale of Children**

In 2012, Theresa Erickson, a Californian surrogacy broker was sentenced to prison for leading an international baby-selling ring. Erickson, a former board member of the American Fertility Association, recruited surrogates and sent them to Ukraine, where they were implanted with embryos created from donated eggs and sperm. She put the resulting babies up for adoption, telling prospective parents that they were the result of surrogacies in which the original intended parents had backed out. Erickson collected between \$100,000 and \$150,000 for each baby. After she was sentenced, she told NBC San Diego that her case represented the “tip of the iceberg” of a corrupt industry.

At the very core of surrogacy is a contract where a child, prior to being brought into existence, is being purchased. The surrogate is being paid to surrender a child. If the surrogate does not comply, she is in breach of contract and has to pay all of the money back to the intended parents. No product equals no payment. There is no other way to view this other than selling a child. Individuals and couples are allowed to come from all over the world to exploit American women and purchase children from them. The surrogate mother has no maternal rights and the child has given no informed consent. The surrogate mother has no legal standing.

It has also become more popular for intended parents to customize the type of child they wish to purchase. Fertility doctors like Dr. Jeffrey Steinberg of California offer preimplantation genetic testing to ensure the consumer (intended parents) gets the product (child) they desire. Sex selection is becoming increasingly common and again, is unregulated. Doctors offering sex selection are hoping to offer more choices in the future, like eye color. Men and women are shopping for designer babies and artificial reproductive techniques like surrogacy facilitate this shopping spree.

One of the birth mothers that our organization spoke with was emotionally abused and blamed when the intended parents “paid for” one boy and one girl and ultrasound showed that they would be having twin boys. The intended parents were outraged throughout the pregnancy, and at birth the twin boys were left alone in the neonatal intensive care unit for days with no support from their new intended parents; still too angry that their purchase was incorrect, not overjoyed that they would be parents of two sweet babies needing love and support as they started their lives as premature infants.

### **Unnecessary Risks to Children**

Of children born through artificial reproduction techniques, artificial insemination, and surrogacy, studies are showing that there is an increased risk for preterm birth and low birth weight babies. Specifically, one study performed in California showed a fourfold increase in preterm births and a 4 to 5-fold increase in stillbirths in pregnancies utilizing ART/AI. Both preterm birth and low birthweight babies have increased risk for long term

health risks and morbidities in childhood and later in life. We are allowing the desire to have children trump any best interest of a child by subjecting that child to possible health risks at delivery and beyond.

Surrogate pregnancies also intentionally sever natural maternal bonding that takes place during pregnancy. A study in the *Journal of Child Psychology and Psychiatry* found: “surrogacy children showed higher levels of adjustment difficulties at age 7” and “the absence of a gestational connection to the mother may be more problematic.” The study also reported that such difficulties “may have been under-reported by reproductive donation mothers who may have wished to present their children in a positive light.” Young adult children born via anonymous gamete donation suffer serious genealogical bewilderment according to both empirical studies and actual testimonies. A study in the journal *Human Reproduction* concluded, “Disclosure to children conceived with donor gametes should not be optional.”

## **Data**

Data on surrogacy are elusive, however, the US Department of Health and Human Services Centers for Disease Control and Prevention reports on data received from fertility clinics across the country. According to that data between 1999 and 2013, about 2% (30,927) of all assisted reproductive technology cycles used a gestational carrier. From 1999 to 2013, gestational carrier cycles resulted in 13,380 deliveries and the birth of 18,400 infants. The most recent data, from 2016, shows the number of transfers for ART cycles using gestational carriers almost tripled, from 1,957 in 2007 to 5,521 in 2016. From this data, it has been estimated that approximately 200 surrogacy arrangements take place in California each year.

Kelly Martinez is a low income, three-time gestational surrogate. She was lied to, lied about, almost ruined financially, and left for nearly dead. Kelly participated in two international surrogacies. The first for a gay couple in France and then for a heterosexual couple in Spain; surrogacy is illegal in both of these countries. The gay couple threatened that Kelly would have to keep and raise the twins herself if she did not agree to their scheme to lie about having an affair with her in order to secure passports so that the babies could leave the United States. France does not recognize children born by surrogacy as French citizens.

During her twin pregnancy for the Spanish couple, Kelly suffered from severe maternal hypertension and pre-eclampsia (common in surrogate pregnancies, especially when the woman is pregnant with multiple babies). Kelly had to be hospitalized early and had to deliver by emergency C-section at 30 weeks. The Spanish intended parents accused Kelly of deliberately delivering early since her contract stated she would receive her full compensation if she carried the pregnancy to 30 weeks. The couple left the country with their twin boys without paying Kelly’s hospital bills of nearly \$8,000. After a year of trying to get her bills paid, Kelly found me through the internet, and I was able to assist her in getting these paid by the fertility agency in the U.S. Kelly spoke with me at the U.N. and traveled with me to Madrid, Spain to speak with members of the Spanish Parliament.

There is very little data on how much surrogacy is happening, how many women are surrogates, how often the same mother is a repeat surrogate, how many babies are born via surrogacy, how many children born via surrogacy are abandoned, how many babies a surrogate gives birth to during one pregnancy (twins, triplets, etc.), or even how these children are doing mentally, socially, and physically as the products of surrogacy. The data that we do have, although limited, does paint a grim picture; surrogacy is bad for both mothers and children.

## Conclusion

Stop Surrogacy Now demands recognition that children conceived for surrogacy are quality-controlled: subject to sex-selection or abandonment for disability or simple change-of-mind. Children produced through surrogacy are objects of contract as well as products of inequitable bargaining power and unregulated markets. Most often, these commercially produced children experience the sudden and complete severance of the natural bond between mother and child and are intentionally deprived of contact with and knowledge of one or both biological parents in direct violation of the U.N.'s Declaration of the Rights of the Child. Signatories to Stop Surrogacy Now demand a complete stop to surrogacy in order to protect women and children worldwide and to end efforts that would seek to legitimize and normalize trafficking children.

We could continue to tell numerous tragic stories from the women and children whom we have met and served. I hope you see that regulation can never protect against or dictate maternal-child bonding. Regulation can never prevent superfetation from occurring. Regulation can never protect the children born, designed, or abandoned when adults change their minds. Regulation is not the answer; abolition of surrogacy is.

We will leave you with the words of Jessica Kern, a child of gestational surrogacy and advocate against it:

“Personally, as a product of surrogacy, I take most offense that typically this process is done with the intent of separating the child from their biology without guaranteeing the product any right to know where they come from.”

“Surrogacy is a great way to circumnavigate the intensive home studies that are required with traditional adoption... after years of physical abuse by my adoptive mother and emotional abuse by both my adoptive mother and biological father I was ultimately removed from their custody.”

“As product surrogacy, it's hard not to be aware that there is a price tag. There is an awareness that, in essence, you were bought by the family that you grow up with. You are a product at the end of the day.”

On behalf of StopSurrogacyNow representing over 20 NGOs worldwide and a membership of over 20,000 signers,

Jennifer Lahl, R.N., M.A.

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