



# General Assembly

Distr.: General  
21 February 2017

English only

---

## Human Rights Council

Thirty-fourth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Associazione Comunita Papa Giovanni XXIII, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2017]

---

\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.17-02776(E)



\* 1 7 0 2 7 7 6 \*

Please recycle



## Commercial Maternal Surrogacy amounts to sale of children

The Associazione Comunità Papa Giovanni XXIII (APG23) welcomes the report of the Special Rapporteur on the sale of children, child prostitution and child pornography<sup>1</sup> that contains a thematic study on illegal adoptions and recommendations on how to prevent and combat the phenomenon.

We regret the fact that the Special Rapporteur decided not to cover the phenomenon of “international commercial surrogacy”<sup>2</sup> in her comprehensive analysis of illegal adoption and mentioned it only in few paragraphs that are related to illicit adoption.

The references to commercial maternal surrogacy contained in the report of the Special Rapporteur are as follows:

- Para 52 where the Special Rapporteur clearly says: “International commercial surrogacy is a growing phenomenon quickly overtaking the number of inter-country adoptions. The international regulatory vacuum that persists in relation to international commercial surrogacy arrangements leaves children born through this method vulnerable to breaches of their rights, and the practice often amounts to the sale of children and may lead to illegal adoption. Indeed, several countries do not recognize such arrangements and, in order to establish a parent-child relationship, national laws often require parents to legally adopt the child born through international commercial surrogacy. However, if the international commercial surrogacy arrangement is found to amount to the sale of a child, the adoption too will consequently be illegal under international standards. Such a situation underscores the need for States to ensure that they are not inadvertently legitimizing the sale of children born through international commercial surrogacy by granting adoption orders.”
- Recommendation at national level - paragraph 95 letter g) - where the Special Rapporteur suggests to “take particular care in the use of adoption orders to establish a parent-child relationship in cases of international commercial surrogacy... (omissis)”;
- Para 99 and 100 where “international commercial surrogacy arrangements” are related to “illegal adoptions”.

Such references already show that commercial maternal surrogacy may amount to the sale of children.

Substitute motherhood, or surrogacy, which is practised in several countries, is the loaning of women’s bodies in order to give birth to children who will be handed over to those who ordered them. Far from being just an individual act, this social practise is orchestrated by human reproduction companies, in an organized production system involving laboratories, doctors, lawyers, agencies etc. This system needs women as means of production, so that pregnancy and childbirth become a functional process that has a use value and a commercial value and is part of the globalization of human body markets. In countries where no law protects them, women’s bodies are turned into resources for the reproduction industry and babies are considered as commodities.

Often, commercial surrogate motherhood is an arrangement between people from high-income countries and surrogate mothers selected in developing countries, where poor women are encouraged to “rent out” their bodies as a survival strategy. Children born in commercial surrogate motherhood become the object of a legal contract and, as such, they are picked in a catalogue, ordered and purchased.

APG23 believes that the Human Rights Council should urgently address the issue of “international commercial surrogacy”, a phenomenon that needs to be analysed in depth since it includes questions related to morality, parentage, the natural mother–infant bond, and the complexities of inequalities in a globalized world that interface with a multi-million dollar industry. Above all, such a practice involves the violation of human dignity and human rights both of women and children. In the commercial maternal surrogacy, in fact, children are treated as assets that can be bought and chosen and women, especially the poorest in developing countries, are exploited.

---

<sup>1</sup> A/HRC/34/55

<sup>2</sup> Para 14 A/HRC/34/55;

According to the CRC's Optional Protocol on the sale of children, child prostitution and child pornography Art. 2. (a), the sale of children is defined as "any act or transaction whereby a child is transferred by any person or group of person to another for remuneration or any other consideration"<sup>3</sup>.

Looking at this definition, it is evident that commercial maternal surrogacy is a new form of sale of children.

In our opinion, commercial maternal surrogacy is not only a question of sale of children but can be compared to a situation of slavery where slavery is defined, at international level, as: "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."<sup>4</sup> Such a condition of slavery exists both for the surrogate mothers and for the babies that are treated as simple products. Some women, in fact, consent to enter into a contract, which will alienate their health, their lives and their selves, under multiple pressures, family or gender based, economic, or geopolitical. Furthermore, the newborn becomes the object of a legal contract and can be eugenically selected according to the buyers' requests and even aborted if presenting some malformations or diseases.

Recently (on the 24<sup>th</sup> January 2017) the High Chamber of the European Court of Human Rights (CEDU) published a sentence (case of Campanelli & Paradiso vs. Italy) where some additional arguments are stated. In paragraph 202 of the sentence it is clearly said: "by prohibiting private adoption based on a contractual relationship between individuals and restricting the right of adoptive parents to introduce foreign minors into Italy to cases in which the rules on international adoption have been respected, the Italian legislature is seeking to protect children against illicit practices, some of which may amount to human trafficking. By prohibiting surrogacy arrangements, Italy has taken the view that it is pursuing the public interest of protecting the women and children potentially affected by practices which it regards as highly problematic from an ethical point of view."<sup>5</sup>

The Special Representative of the Secretary-General on Violence against Children in its annual report<sup>6</sup> clearly states: "It is imperative that we act with the urgency that the situation requires. Guided by the human rights imperative of freeing children from violence and by the evidence gathered in recent years, we must seize the historic opportunity offered by the 2030 Agenda<sup>7</sup>. Investing in violence prevention, protecting children's lives and futures and saving the resources of States will lead to a brighter future for all children."<sup>8</sup>

We think that this same "imperative" should be adopted for newborn babies coming from commercial maternal surrogacy. Banning international commercial surrogacy is a way to protect children's lives and futures. Commercial Maternal Surrogacy is a threat to human dignity and violates the rights children (and women) and we have to "redouble policy efforts to build a world where children can grow up free from violence, everywhere and at all times."<sup>9</sup>

In this prospective, APG23 reiterates the appeal to the "Human Rights Council to decisively condemns the phenomenon of commercial maternal surrogacy and ban this practice at international level."<sup>10</sup>

<sup>3</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography A/RES/54/263;

<sup>4</sup> Art. 1 n. 1) Slavery Convention, signed at Geneva on 25 September 1926; entry into force: 9 March 1927, in accordance with article 12

<sup>5</sup> <http://hudoc.echr.coe.int/eng#%7B%22sort%22:%5B%22kdate%20Descending%22%2C%22languageisocode%22:%5B%22ENG%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22%22%7D>

<sup>6</sup> A/HRC/34/45

<sup>7</sup> Especially target 16.2, to eliminate all forms of violence against children

<sup>8</sup> Para 12 A/HRC/34/45

<sup>9</sup> Para 18 A/HRC/34/45; and also paragraph 19 where it says: "Protecting children from violence must not remain simply an ideal; indeed, the international community has a special responsibility to translate the ideal into tangible change for every child.

<sup>10</sup> A/HRC/31/NOG/147