

# **Surrogacy: a violence against women**

## **Legal-ethical challenges to surrogacy: Rights of Ukrainian women and children**

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## Argument :

Most of the time, surrogacy motherhood is presented as a *means* through which people can become parents. The images and statements of their happiness would justify considering surrogacy as a means whose only reason for being is the satisfaction of those who want to use it.

The *feminist analysis of surrogacy* proposes a complementary *approach, centered on the experience of the surrogate mother.*

This approach considers *surrogacy* not as a means, but as a *global experience of life*, a specifically *female experience.*

Considered in its globality, which includes all the relationships of the surrogate mother and her experience of all the stages of this practice, surrogacy reveals itself as an accumulation of violence against women. An invisibilized and normalized violence.

**The violent dimension of surrogacy is structurally invisibilized because it is a violence made specifically to women.** Not naming it, accepting it, *weakens the women human rights.*

## What is violence against women ? 1/2

- Violence is considered a violation of human rights, as well as a detriment to health and sustainable economic development, « *Ending (or simply reducing) violence would contribute to human well-being* ».
- Violence against women is a specific form of violence, and must be understood and addressed with this specificity in mind. Walby, Sylvia & al., 2017, [\*The concept and measurement of violence against women and men\*](#), Policy Press, p. 1.

## What is violence against women ? 2/2

The UN General Assembly adopted a definition of VAW, in 1993 in its Declaration on the Elimination of All Forms of Violence against Women- first international instrument to deal exclusively with this phenomenon : (article 1)

« the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, **physical, sexual or psychological harm or suffering to women**, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life »

## What is in the surrogacy contract ?

None of the provisions in this Agreement shall be construed as a fee for termination of Gestational Carrier's parental rights or a payment in exchange for surrender of a child, for Gestational Carrier's placement of a child with Intended Parents or for consent to an adoption. In recognition of Intended Parents' obligation of support toward the Child, to assist Gestational Carrier with her living expenses, for Gestational Carrier's physiological changes, discomfort and inconvenience she will experience as a result of her participation in this Agreement, and to reimburse her in part for the pain, suffering and emotional distress she may suffer as a result of her participation in this Agreement, Intended Parents shall provide Gestational Carrier with the amounts set forth below.

### A. Payments to Gestational Carrier

1. Intended Parents will pay Gestational Carrier thirty thousand dollars (\$30,000.00) as base compensation with the payments to be made throughout the pregnancy and after birth as follows:

- The experts (*The concept and measurement of violence against women and men*) show that it is important to introduce the comparative variable of gender, to better understand specificities of VAW. That is, to compare the same type of violence perpetrated against men and women: « *Gender relations are in part constituted through violence. Gender relations are part of the social relations that constitute the institution of violence. **The analysis of the gendered nature of violence requires comparisons between women and men [...]** ».*
- **Surrogacy includes violence exclusively against women, since only the surrogate mothers suffer harm, damage and pain as a result of their surrogacy.**
- For this reason, it is necessary to use international definitions in the description of the practice, in order to highlight its violent dimension, which is **invisible in the discourses that consider it is only a means.**

- The practice of surrogacy is not part of the VAW covered by international texts.
  - The particular nature of this practice,
  - its relatively recent temporality in relation to the dates of adoption of the UNtext and
  - the complexity inherent in the fact that it includes, inextricably intertwined, issues concerning both the woman mother and the child she gives birth to, have delayed its recognition as violence against women.

However, given the harm it causes to surrogate mothers in particular and to women's rights in general, it is necessary to fill this gap.

## What is surrogacy ?

- Surrogacy is the practice of recruiting a woman (who has no desire for a child),
  - whether for remuneration or not,
  - to bear one or more children,
  - whether or not conceived with her own eggs,
  - for the purpose of handing them over to a person or persons who wish to be assigned as parents of those children
- The child may or may not be genetically related to the persons who request the delivery.
- Depending on the country, the practice is legal, tolerated or prohibited.



- To observe and analyze surrogacy is to put the woman mother at the center of the practice, that is, to recognize her **unique and indispensable place**.
- In order to follow experts' (Walby & al.'s) recommendations, it is essential to take into consideration all the people involved in this practice, and to show, according to their gender, who are the de facto victims of violence, taking into account the intentions (actions) and consent, when it comes to identified damages.

## Why is it a violence against women ?

- The *ecological framework* to analyze violence against women (Lori Heise) is also operational to examine surrogacy. This framework addresses gendered-based violence as :

*« a multifaceted phenomenon grounded in an interplay among personal, situational and sociocultural factors »*,

and its application highlights the embedded levels of causality.

- As a **global experience of life**, surrogacy includes *procedures performed exclusively on women*, which cause or may cause them damage, harm or suffering of various kinds: physical, sexual, psychological or economic.

- First of all, surrogacy is **a medical violence**. 1/2 :

The fact that a woman in good health and without any desire for a child, receives a **powerful hormonal treatment** in order to become pregnant, is in itself a medical violence, insofar as these treatments can have, and often do have, **harmful consequences** in the short and medium term on the health of the woman who receives them (the long term consequences are rarely researched and known).

Doctors are well aware of these consequences, and they know that the woman has no desire for a child; nevertheless, they do not hesitate to administer medication **without medical justification**.

### Section 5.09 Assumption of the Medical and Psychological Risks

The Gestational Carrier represents and warrants that she has consulted with a physician and is aware of all physical, personal injury and medical risks, including death, which may result from the administration of medications including Lupron, Estradiol, progesterone, embryo transfers, pregnancy complications, and childbirth contemplated by this Agreement.

The Gestational Carrier represents and warrants that she has consulted with a mental healthcare professional and is aware of the psychological risks associated with the Gestational Carrier acting as a gestational host and relinquishing the Child that the Gestational Carrier has carried and delivered. In the event of delivery complications

- First of all, it is **a medical violence**. 2/2

Before and during pregnancy, the woman also undergoes **intrusive obstetric procedures** (obstetric ultrasounds, repeated check-ups), some of which may not be medically justified, but which are simply desired by the clients.

The number of embryos inseminated is, most often, decided by the clients, as well as the number of fetuses to be kept, in case of multiple pregnancy. Several medical researches show the consequences of surrogacy pregnancies on the health of women.

- A study of ten years of surrogacy data in the Netherlands shows that **the health risks of surrogate mothers are much higher than those of ordinary pregnancies:**
  - 20.6% of surrogate mothers experienced hypertension (in France, for ordinary pregnancies, this risk is on average 10%);
  - a hemorrhage of the delivery occurred in 23.5% of cases (this rate is 5% to 10% in developed countries);
  - the delivery was induced in 52.9% of situations (the World Health Organization recommends not to exceed 10%).

Peters, Henrike & al., 2018, « Gestational surrogacy: results of 10 years of experience in the Netherlands », *Reproductive biomedicine online* 37(6)

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- An american study that analyzed data on the pregnancies and deliveries of **124 american women**, comparing their ordinary pregnancies with those that they carried as surrogates (nearly 500 in total), shows that **surrogacy deliveries record more obstetric complications**, such as gestational diabetes, hypertension, amniocentesis, placenta previa, administration of antibiotics during labor and cesarean section. Woo I &al., 2017, „[Perinatal outcome after natural conception versus in vitro fertilization \(IVF\) in gestational surrogates : a model to evaluate IVF treatment versus maternal effects](#)“, in *Fertility and Sterility*, 108(6):993-998 (December 2017)

We can also identify **psychological violence**, generated by **anxiety** or **depression**. The psychological suffering appears as well in personal testimonies of mothers, as in studies:

\* « *Surrogates had higher levels of depression during pregnancy and post-birth, displayed lower emotional connection with the unborn baby, and greater care towards the healthy growth of the foetus, than the comparison group of mothers* ». S. Golombok, 2018, « The psychological well-being and prenatal bonding of gestational surrogates », dans *Human Reproduction*, 33(4), pp. 646-653.

\* J. Lahl & al, 2022, « [A Comparaison of American Women's Experiences with Both Gestational Surrogate Pregnancies and Spontaneous Pregnancies](#) », *Dignity : A Journal of Analysis of Exploitation and Violence*, vol.7 : *Women in this study were significantly more likely to experience postpartum depression following the delivery of surrogate children than after delivering their non-surrogate children (p=.01), and overall, they were more likely to have adverse outcomes during a surrogate pregnancy.*”



- The risks generated by **dissociation** are not measured, although many testimonies of surrogate mention this injunction which is addressed to them, and which can also be stipulated in the contracts, which ask the mother to guarantee that she will not become attached to the child she will give birth to.
- Kajsa Ekis Ekman has studied this aspect, and shows how dissociation takes place, through the repetition of mental distancing and bodily separation, which are achieved in several ways: « hiding thoughts, inhibiting feelings or transferring them to someone else. »

- A **legal dimension to the abuse** may also be identified : the law or contract provides for actions that may be harmful to the mother. **The contract may make illegal demands without the mother's knowledge** (e.g., sharing medical information about other times in her life, or about other family members, or agreeing to medical procedures that are unnecessary or harmful to her).
- And the law can ensure that the contract is honored, regardless of the suffering and damage inflicted on the mother; it can also ensure that the child is taken from the mother, despite her opposition. Situations of this type have occurred even in the United States, where mothers have been prevented from seeing or touching the child they have given birth to (as witnessed by the well-publicized situation of Melissa Cook, who gave birth to three children, triplets, when the client wanted to force her to perform an embryo reduction; she asked to keep the children, but was forbidden to do so).

- Surrogacy also contains a dimension of **economic violence**. First of all, the vast majority of women who become surrogate mothers do so in a family and socio-professional context where the money they can bring in is very important - this is notably the case of Indian, Ukrainian, Russian, Mexican, Georgian, Thai, Cambodian, Bulgarian and Lithuanian women. An Indian woman explains it to the researchers who came to interview her :
- *« They give us the money and we give them the baby. We should give them away with a smile and not being upset. You feel upset of course but you have to give them away, you sign in the agreement. You have nothing but just lending your womb. Like how you take a house for rent, similarly our womb was taken for rent. »* K.S. Rotabi, op.cit. p. 13.

- As for the American women, although many of them, when asked, said that money was not their main motivation, they also acknowledged that it was very useful to the family. And for the American surrogate mothers who speak spontaneously, several of them acknowledged that the only motivation had been the need for money.
- In this context, the clients find ways to negotiate the mother's remuneration, seeking to reduce it, with the help of agencies, which can go so far as to put the women in competition with each other, in order to persuade them to lower their financial claims.

- Other clients change their mind and refuse to pay, without any regard for the "surrogate" mother. Already in financial difficulties when she starts the procedure, the woman has few means to invest to call a lawyer, in order to make respect the contract. Kelly Martinez testifies of the situation in which she found herself, after a Spanish couple refused to pay her the sum promised by contract, even though the parents had recovered the children that she had given birth. (*Big Fertility. It's all about the money*, documentary, CBC Network, 2018).
- When the clients live in a country other than the mother's, non-payment of the full sum initially announced can frequently occur, especially since the women have neither the money nor the knowledge nor the connections necessary to assert their rights, **if** the law protects them. Sheela Saravanan, Pinki Virani, Rita Banerji have exposed these situations for several years in India.

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- By applying the *ecological framework* of analysis of violence to surrogacy, we observe that **the only people who are harmed are the surrogate mothers:**
- the only ones to suffer harmful consequences for their health, in the form of more or less long-lasting affections, during the pregnancy or after ;
- the only ones to suffer psychological and emotional violence, through the injunctions to dissociation made to them by psychologists, by the clients and by themselves;
- the only ones to be denied their rights, when they are refused the right to keep the child they have given birth to;
- the only ones to experience economic violence, when the clients change their minds and reject the arrangement, or do not pay in full for the services requested.
- **the only ones who can die.**

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- **No man suffers any of these damages.** The attempts of some mothers to keep the child born in a surrogacy arrangement have all ended in failure, both in Great Britain, where the mother had this right legally, and in the United States.
- Clients who did not want to continue the surrogacy arrangement, have come forward in their countries (USA, Ukraine, Romania, India), without any sanctions being taken against them.
- It thus appears that **surrogacy is a form of sex-based violence exercised exclusively against women.**
- Accepting, for the happiness of others, to experience violence that puts one's health and life at risk, is not a sign of liberation, but a neo-liberal trap, making consent the source of profit.  
**Identifying and naming violence against women is the first step to stop this predation, and to make women's rights respected**