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UN Committee on the Elimination of Discrimination Against Women (CEDAW)
Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson – 52, rue des Pâquis

CH-1201 Geneva, Switzerland

**Re: Women’s Rights and Global Surrogacy**

Dear Members of the Committee:

Enclosed, please find the Cambodian case study of *Human Rights Implications of Global Surrogacy* (2019) and a link to the full report by the International Human Rights Clinic of the University of Chicago Law School in advance of the 74th Session of the Committee on the Elimination of Discrimination against Women. This report is submitted in support of your review of Cambodia’s compliance with its obligations under the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). This submission and the report address articles 2, 3, 5, 6, 11 and 16 of the Convention.

The report examines surrogacy practices globally and identifies the human rights implications of how different jurisdictions regulate the practice, with a focus on women’s rights. Section IV, in particular, focuses on Cambodia and includes interviews with three women who served as surrogates and were arrested and released on condition that they raise the children born of surrogacy. Over the last few decades, gestational surrogacy has grown into a transnational industry creating new opportunities for many previously unable to have genetically-related children, but also the potential for exploitation and/or abuse of women who serve as surrogates and the children born of the process.

The report identifies the human rights implicated in the Cambodian government’s responses to surrogacy as well as the adverse impact of criminalizing surrogates. The practice of gestational surrogacy has the potential to promote important rights including the rights of intended parent(s) to found a family and to do so free from discrimination. It also implicates women’s rights to reproductive freedom and bodily autonomy.  Careful consideration of global and state approaches to the practice requires striking the right balance of regulation and freedom in reproductive matters through well-informed and measured laws and policies.

The submission may be posted on the CEDAW website for public information purposes.

Sincerely,

 

Claudia Flores

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**Executive Summary: Human Rights Implications of Global Surrogacy[[1]](#footnote-1)**

Full Report: <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1009&context=ihrc>

**Overview**

The recent medical advancement of gestational surrogacy has opened new possibilities for many to found families. In this process, a woman (“surrogate”) becomes pregnant through *in vitro* fertilization (IVF) and gives birth to a child on behalf of a third-party unable to do so (“intended parent(s)”). As surrogacy becomes more accessible, however, questions have arisen about the impact on the human rights of the various parties involved. Vulnerable women working as surrogates have reportedly been exploited in countries without regulation of the surrogacy industry. Intended parents have been deceived and defrauded by surrogacy agencies. These reports, along with concerns about the welfare of the children born of surrogacy, have led several countries to prohibit domestic and/or transnational surrogacy.

Yet, documented reports of human rights violations in the context of surrogacy remain sparse. In fact, likely due to the fact that surrogacy is a relatively recent medical advancement, there is minimal research and evidence of the actual harms of surrogacy.

In July of 2019, the International Human Rights Clinic published a report on the global surrogacy industry, which includes a case study focusing on Cambodia. The report aims to assist policymakers in crafting a proper regulatory approach to the practice. It analyzes surrogacy from an international human rights perspective, assessing how responsive laws, policies and regulations might enhance and protect the fundamental rights of all parties. Review and analysis of surrogacy practices reveals both the ways that surrogacy can protect and promote the rights of those involved in the practice and also the ways that unregulated surrogacy practices can undermine the rights of these same parties.

While various stakeholders in the surrogacy process, including states and intermediaries (surrogacy agencies), may have distinct and often competing interests, the human rights of the primary parties guaranteed by international treaties must be prioritized. Women’s rights to reproductive freedom, bodily autonomy, and the right to just and favorable working conditions; children’s rights, including the right to an identity and the right to have their best interests promoted; and the rights of individuals and couples to found families are all present in the practice of surrogacy and require protection. International law prohibitions, such as the prohibition on forced labor and human trafficking, must be guarded against as well.

Currently, the majority of countries lack laws or regulations on surrogacy. Ten countries have made surrogacy legal and have regulated the practice. In approximately ten other countries, the practice is prohibited. The market for surrogacy has expanded in recent years, but most countries restrict surrogacy to its altruistic form in which surrogates provide the service without compensation. Some countries and states in the United States allow for commercial surrogacy, permitting compensation to the surrogate, in addition to reimbursement of medical and other expenses incurred during the process.

Transnational commercial surrogacy, where the surrogate receives compensation and is located in a different country from the intended parents, has also expanded and gained popularity in certain regions in the early 2000s due to the lower costs for intended parents. India was one of the first countries to legalize it and became, for a period of time, the world’s largest provider of the service. However, following reports of exploitation of women serving as surrogates, India began to regulate the industry in 2012, before banning it in 2016. Following India’s ban, surrogacy practices continued in Thailand, Laos, Malaysia and Cambodia, where they were largely unregulated. Thailand then banned international surrogacy in 2015, and Cambodia followed in 2016. This report features the Cambodian ban as a case study for transnational commercial surrogacy.

The surrogacy process, which can vary, generally includes the following stages: surrogates are identified, usually through an agency, and then undergo medical testing; intended parent(s) seeking a surrogate procure sperm and egg through either a donor, bank, or extraction process; the surrogate and intended parent(s) are matched, negotiate and sign (or agree orally to) a contract, whose terms depend in part on the regulations of the particular state or country where the surrogacy process occurs; the surrogate is then impregnated via IVF, carries the child to birth, and then gives the child to the intended parent(s). Following birth, the surrogate is usually provided follow-up care, depending on the requirements of the surrogacy agreement or governing law.

There are limited empirical studies of surrogacy practices and none that identify any medical or psychological risks inherently associated with the practice. The majority of studies to date show no major medical risks in surrogacy as compared to traditional pregnancies and no studies have determined that surrogacy, inherently, has a detrimental psychological impact on surrogates or the children born through surrogacy. Some studies conducted in India did find a detrimental psychological impact on the surrogate within India’s social context, where the stigma associated with the practice added emotional and physical stress experienced by surrogate women during pregnancy.

However, in the absence of regulation, the potential does exist for human rights violations of the parties at various stages of the process. Reports indicate that intermediary agencies do not always fully inform surrogate mothers of the medical risks involved, women are not always provided with adequate healthcare, and contracts between surrogates and intended parent(s) are sometimes unduly harsh or restrictive towards the surrogate or may be unenforceable due to an absence of effective legal mechanisms. States, including in Cambodia as described in more detail below, have criminalized surrogates and compelled them to raise the children born of surrogacy. Children of surrogacy can be left orphaned or stateless in cases where the surrogate and intended parent(s) are citizens of countries that have conflicting laws on surrogacy.

These contextual factors, not unique to surrogacy, appear to be the most influential in whether surrogacy can be conducted in a human rights compliant manner. For example, where the lack of an adequate standard of health care makes the process of surrogacy dangerous or unreliable for surrogates, regulations and other measures must ensure that such care is provided and that informed consent is given in all surrogacy arrangements. Similarly, where the lack of state institutions capable of effectively enforcing contracts and agreements leave surrogate women vulnerable to exploitation or at risk of medical complications without protection or recourse, a mechanism must be in place to ensure the parties comply with their obligations within the process. These and other safeguards should aim to promote and protect the human rights invoked in surrogacy and address underlying vulnerabilities caused by non-compliant state laws, policies and practices.

**Cambodia: Criminalizing Surrogates**

In 2015, following the restrictions of surrogacy in India and Thailand, the commercial surrogacy industry increased its presence in Cambodia. Surrogacy agencies found Cambodia attractive because, at the time, it lacked regulations on surrogacy or any other form of reproductive technology. Approximately fourteen agencies and clinics opened in Phnom Penh after Thailand imposed restrictions on surrogacy. However, the lack of regulations led Australia and other states to issue warnings to couples seeking Cambodian surrogacy services.

In September and October of 2016, Cambodia’s Ministry of Women’s Affairs and Ministry of Justice adopted public positions that surrogacy was exploitation of women and a form of child trafficking. Eventually, the Ministry of Health banned all forms of surrogacy and commercial sperm donations and mandated all IVF services to acquire government permission before operating. Fifty agencies in Phnom Penh were notified of the change. Shortly after the ban, an Australian nurse and two Cambodian citizens were charged and eventually sentenced for human trafficking for brokering surrogacy arrangements. In 2018 and 2019, several women serving as surrogates were arrested and detained. Ultimately, many were released on bail. As a condition of bail, each woman has agreed to parent the child they were carrying until the child reached 18 years of age. Reports continued in 2019 of further arrests of women serving as surrogates.

Accounts have varied on whether the intended parent(s) of the babies being raised by the Cambodian surrogate mothers have made efforts to claim the children. The Cambodian government has stated that only a few—three or four—intended parent(s) have filed applications claiming parentage, despite having a year to do so according to the Ministry of Interior policy.

Cambodia is currently considering surrogacy reform, with the Inter-Ministerial Working Group reviewing a draft law. Key provisions of the draft law require informed consent, medical screening, and a written agreement witnessed by the National Committee on the Management of Surrogacy. The draft law includes several other qualifications: women volunteering to be surrogates must be Cambodian, related to the intended parent(s), never have committed a crime, be married, and have permission from their spouse. Using the egg of the surrogate is not permitted. The law criminalizes surrogates, intended parent(s), and any agencies aiding in the process without proper approvals. Any improper use of the embryos, such as scientific research or improper disposal of an embryo created for surrogacy, carries a sentence of five years imprisonment and a fine.

**Cambodia: Interviews with Surrogates**

The International Human Rights Clinic interviewed three of the twenty-nine women arrested in June 2018. All three women have been released on bail and are being monitored. None were aware that surrogacy was banned in Cambodia when they agreed to serve as surrogates. In order to protect their identities, they will be referred to as A, C, and K.

A and C both moved from smaller provinces to Phnom Penh. A worked in a garment factory, but now stays home to raise several young children. While working at the factory, she earned 130 USD per month on nine-hour shifts. A hoped that becoming a surrogate would help her pay off her family’s debt of 18,000 USD, a debt she incurred when she borrowed money from her bank to start a fishing business in her old province. C also worked in a garment factory, where she earned 120-150 USD per month. When she became a surrogate, C owed her bank around 3,000-4,000 USD, a debt accrued from her mother’s medical expenses. K also worked in a garment factory, but has since moved to construction. Her garment job provided 50-60 USD per month for eight-hour shifts, and her new construction job provides 6.25 USD per day for the same shifts. K also has debt, totaling around 2,000 USD. None of the three women have husbands who earn enough money to pay off the debts. The husbands all work in construction, bringing in 5-10 USD per day.

A, C, and K each experienced similar recruitment processes, and none claims to have been coerced. A’s co-worker introduced them to the idea of surrogacy and explained that they would receive an initial payment of 500 USD, in addition to 300 USD per month, plus another lump-sum payment at the end of the process. In total, the women were promised 10,000 USD, along with group housing during pregnancy. Each woman met with surrogates who had attested to being paid in full.

After agreeing to surrogacy, each woman went through a similar medical examination involving a blood test. A, C, and K were never warned of the medical risks, and the doctors never performed a psychological evaluation. At no point did they receive information about the intended parent(s), and not one of the three women recalled signing a contract. After this process, each woman had a slightly different procedure to prepare for pregnancy. A took medicine allegedly to thicken her uterus for fourteen days, was given an injection (for an unknown purpose), and then the doctor implanted the embryo. She proceeded to take pills and receive daily injections for three months and twelve days. C received injections for five days until the embryo was implanted, and then received continuous injections for three months. K took one pill a day for five days until implantation, and then received injections for three months. After this process, A, C, and K were all paid 500 USD and transported to a group home, where meals were prepared for them. The surrogates were directed to rest and to remain in the house.

The women were arrested in a raid on the group home on July 21, 2018. None of the interviewed women were aware that surrogacy was banned in Cambodia and so the raid came as a shock. At the time, A was one month pregnant, C was eight months pregnant, and K was four months pregnant. The police brought the surrogates to the police station. A and K were detained for 24 hours and C was detained for 48 hours. They were charged with human trafficking and held in a police hospital for five months without a conviction. C gave birth during this time. They were released on bail in December 2018 on the condition that they raise the children. On the day of the release, K gave birth. A gave birth in January 2019. The three surrogates are currently being monitored. Each month, they must report to the police and confirm that they still have the child, a requirement they assume will continue until the child is an adult. This requires K to travel to Phnom Penh each month, a two-hour trip that costs 1.25 USD. Neither A, C, nor K earned full compensation, receiving 500 USD, 3,000 USD, and 1,100 USD respectively.

According to the surrogates, efforts were made by the surrogacy agency and intended parent(s) to request the child born of the process. A received a phone call while in detention about the baby, though she was unsure who called and assumed it was the agency. The broker contacted C, and C met with both the broker and the intended father upon release. C allowed the intended father to see the child but did not allow him to take the child for fear of being imprisoned. She also claims that the intended father filed a claim in the court but was unclear on the outcome of his claim.

The three women described both criticism and pity from their communities as a result of serving as surrogates. A says some members of her community have expressed compassion for the difficult situation she now finds herself in, but others believe that she is lying and that she accidentally became pregnant due to promiscuous behavior. C also has faced criticism from her family. Her husband did not want her to be a surrogate and is now resentful of the additional burden of raising the child. C’s brother-in-law has offered to adopt the child, but she refused because she was unsure how he would treat the child. K did not speak of her community but did express hope that the child will grow up to help her family.

**Conclusion**

The continued demand for surrogacy will require protection of rights of those involved, especially women’s rights to reproductive freedom, bodily autonomy, privacy and the right to equal treatment. Bans on surrogacy that criminalize surrogates restrict women’s reproductive freedom and right to bodily autonomy and can rely upon and promote stereotypes of traditional conceptions of motherhood and maternity, violating the right to non-discrimination. Any restrictions that are not justified by a legitimate need to protect other parties’ rights aggravate gender inequality. Cambodia’s laws and policies on surrogacy should be developed in consultation with the various stakeholders impacted, most especially surrogate women, in order to ensure that these laws reflect the rights and interests of impacted women.

1. This report was researched and authored by the International Human Rights Clinic during the academic year 2018- 2019, and was submitted to the U.N. Office of the High Commissioner for Human Rights in order to contribute to on- going work on human rights and global surrogacy by a team of graduate students in law and law faculty of the University of Chicago Law School. The research and drafting team included the following members: Alexa Rollins, Kelly Geddes, Marcela Barba, and Marie Umbach (student authors); Claudia Flores, Associate Clinical Professor of Law, and Nino Guruli, Lecturer (faculty authors). The report was also edited by Elizabeth Lindberg, Legal Assistant. This report represents the views and perspectives of the authors based on research conducted and is not an institutional position of the University of Chicago Law School. [↑](#footnote-ref-1)