

Submission from the Center for Reproductive Rights following the call for inputs by the Special Rapporteur on the Sale and Sexual Exploitation of Children on Safeguards for the protection of the rights of children born from surrogacy arrangements

The Center for Reproductive Rights (the Center)—an international nonprofit legal advocacy organization headquartered in New York City, with regional offices in Nairobi, Bogotá, Kathmandu, Geneva, and Washington, D.C.—uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to respect, protect, and fulfill. Since its inception 25 years ago, the Center has advocated for the realization of women and girls’ human rights on a broad range of issues, including on the right to access sexual and reproductive health services; preventing and addressing sexual violence; and the eradication of harmful traditional practices. We are pleased to provide this submission for the report of the Special Rapporteur on the Sale and Sexual Exploitation of Children on Safeguards for the protection of the rights of children born from surrogacy arrangements.

A) Context

Recent conversations pertaining to surrogacy at the U.N and global level have almost exclusively focused on the impact of surrogacy from a child rights perspective, with the principle of ‘the best interests of the child’ being used as the basis to guide policy recommendations. While these conversations are important and necessary, it is also paramount to examine the interlinkages between the practice of surrogacy and the fundamental human rights of equality and non-discrimination, to highest attainable standard of health, to sexual and reproductive health, to decide whether to form a family and on the number and spacing of children, and to the benefits of scientific advancement, as well as with regard to human rights principles of informed consent and inclusion of the perspectives and participation of those most impacted.

A human-rights based approach and framing to surrogacy must ensure that the human rights of all stakeholders involved in surrogacy arrangements, including those of women who act as surrogates, are respected, protected and fulfilled.

B) International Legal framework

Apart from the report presented to the Human Rights Council by this mandate at the 37th session of the Human Rights Council,¹ several international human rights mechanisms and UN agencies have provided or are currently working on standards pertaining to the practice of surrogacy.

For instance, the Special Rapporteur on violence against women, its causes and consequences, in her report following her visit to Georgia, has implied that compensated surrogacy needed to be regulated (and not prohibited).²

a. U.N. System: Treaty Bodies

The **Committee on the Rights of the Child** (CRC Committee) has issued concluding observations to Mexico³, India⁴ and the U.S.⁵, calling on the States to monitor surrogacy arrangements, and criminalize and prevent the sale of children. The CRC Committee has also issued concluding observations to Georgia, recommending that ‘a child born through surrogacy motherhood be able to get access to the information about his or her origin’.⁶

It is worth noting that there has been an evolution in the language used by the Committee in its concluding observations since its first one on the topic to the U.S. in 2013. While in 2013 the Committee strongly recommended that [the U.S.] ‘*Define, regulate, monitor and criminalize the sale of children at federal level and in all states in accordance with the Optional Protocol, and in particular the sale of*

children for the purpose of illegal adoption, in conformity with article 3, paragraphs 1 (a) (ii) and 5, of the Protocol; including issues such as, surrogacy and payments before birth and the definition of what amounts to “reasonable costs”, in subsequent concluding observations the Committee has focused on recommending that States ensure the protection of the rights of children born through surrogacy arrangements.⁷ The Committee has never stated that all compensated surrogacy arrangements are de facto sale of children per se, and to the extent the Committee has discussed surrogacy in concluding observations to States, there has been a clear evolution towards delinking surrogacy from sale of children.

So far, the **CEDAW Committee** and other Treaty Monitoring Bodies have not addressed the issue of surrogacy.

Recent advances in technology have made assisted reproductive technologies (ARTs) a topic of global relevance. In recent country reviews, the Human Rights Committee has called on the elimination of excessive restrictions on the use of ARTs⁸, while the CEDAW Committee has praised States for passing legislation that regulates ARTs and guarantees access to all scientific methods of ARTs.⁹ As with other reproductive health services, there is concern that access to ARTs is not available to all women.¹⁰ The CESCR Committee has recently found in a recent decision that Italy’s mandatory transfer of embryos represented a violation of the CESCR and specified that the transfer of an embryo to the woman’s uterus without her valid consent constituted a violation of her human right to the highest attainable standard of health and her human right to gender equality.¹¹

b. U.N. System: Agencies

As part of its work programme for 2018-2019, **International Bioethics Committee (IBC)** of UNESCO (The United Nations Educational, Scientific and Cultural Organization) decided to address the topic of “modern parenthood, reflecting on the interactions between societal and technological developments that are leading to new concepts and forms of parenthood, including the impact on cross-border practices and reproductive justice.” The IBC has drafted a report on the subject, a preliminary version of which is available [online](#).

Currently there is no one uniform legal, policy and normative approach to the regulation of surrogate pregnancy and the technologies upon which it depends, in vitro fertilization, especially gamete provision. There is, however, a plethora of knowledge and evidence – laws, policies, standards, empirical studies, qualitative interviews – being developed from a range of disciplines.

A careful consideration is needed to ensure the respect, protection and fulfilment of the human rights and ethical mandates of all concerned parties.

Surrogacy requires an integrated, holistic approach that takes into account the human rights of all stakeholders involved in surrogacy arrangements and emphasizes rather than undermines the universality, interdependence, indivisibility and interconnectedness of the human rights of all.

C) Regional legal frameworks

a. Council of Europe and European Union

At the regional level, 29 countries have ratified the **Council of Europe’s** 1997 Convention on Human Rights and Biomedicine (Oviedo Convention)¹², which, among other things, prohibits financial gain from a human body and its parts (Article 21). In this respect, in 2018, the Council of Europe issued a guide¹³ on the implementation of the principle of prohibition of financial

gain with respect to the human body and its parts, which allows for the reimbursement of expenses incurred and compensation for loss of earnings, stating that, “donors should neither lose nor gain financially as a result of donating.” Similarly, EU law prohibits making the human body and its parts as such a source of financial gain and requires EU member states to ensure that donations of reproductive tissues and cells be voluntary, while specifying that donors may receive reimbursement for their expenses and inconveniences related to the donation.

The European Court of Human Rights has decided several cases dealing with parental recognition or filiation with intended parents in one domestic jurisdiction (e.g. France) for children born from surrogacy arrangements in a different jurisdiction (e.g. United States).

In its most recent decision, the ECtHR issued an advisory opinion¹⁴ on issues of parental recognition for children born from surrogacy with their intended mother. The Court held that respect for the rights of the child to private and family life, and specifically the principle of best interests of the child, required France to provide legal recognition for the parent-child relationship of a child born through surrogacy with its intended mother, including where there is no genetic link between the child and the intended mother. In the Courts view the fact that surrogacy is prohibited in France did not allow the French authorities to refuse to provide legal recognition to the family relationship between a child born from surrogacy in a foreign country but living and being cared for in France with its intended mother. It held that, “*the lack of recognition of a legal relationship between a child born through a surrogacy arrangement carried out abroad and the intended mother thus has a negative impact on several aspects of that child’s right to respect for its private life. In general terms [...] the non-recognition in domestic law of the relationship between the child and the intended mother is disadvantageous to the child, as it places him or her in a position of legal uncertainty regarding his or her identity within society. In particular, there is a risk that such children will be denied the access to their intended mother’s nationality which the legal parent-child relationship guarantees; it may be more difficult for them to remain in their intended mother’s country of residence [...]; their right to inherit under the intended mother’s estate may be impaired; their continued relationship with her is placed at risk if the intended parents separate or the intended father dies; and they have no protection should their intended mother refuse to take care of them or cease doing so.*” In terms of the domestic legal mechanism by which to provide such legal recognition, the European Court held that the French authorities had discretion (a margin of appreciation) to choose the best relevant mechanism.

The Council of Europe **Commissioner for Human Rights** focuses on a range of thematic issues including children’s rights, LGBTI issues, and women’s rights and gender equality. In 2017, the Commissioner published an issue paper¹⁵ on women’s sexual and reproductive health and rights. The paper states that fulfilment of the right to sexual and reproductive health requires states to provide universal access to, inter alia, diagnosis and treatment of infertility.¹⁶ The Council of Europe also published a Strategy for the Rights of the Child (2016-2021)¹⁷, stating that it will “undertake action on the best interests of the child in the context of new family forms and bioethics, especially with reference to surrogacy and donor-assisted human reproduction.”

D) Key Human Rights Principles

A human rights-based approach and framing to surrogacy needs to be enshrined in the following rights and principles:

- Personal and Bodily Autonomy
- Equality and Non-Discrimination
- Highest Attainable Standard of Health
- Benefit from Scientific Progress
- Informed Consent
- Inclusion and Participation of Perspectives of Those Most Impacted
- Best Interests of the Child

a. Every person¹⁸ has the right to make decisions about their reproductive life.¹⁹

- The right to autonomy is grounded in numerous international and regional human rights treaties, as well as in national constitutions, in the rights to dignity, health, liberty and security of person, privacy, equality and non-discrimination, and information, among others.
- Pregnancy can never be used as a reason to deny individuals their rights to bodily autonomy and reproductive self-determination, including for individuals acting as surrogates.
- Surrogacy contracts, especially cross-national surrogacy contracts where income and class differentials are stark, must include measures to address potential power imbalances between the potential surrogate and the intended parents.
- During pregnancy, a person acting as surrogate retains their fundamental right to autonomy and decision-making, including their right to keep or terminate a pregnancy.

b. Reproductive healthcare and decisions require a person's full and informed consent based on comprehensive, unbiased, and evidence-based information and services.²⁰

- Informed consent is especially critical given potential power imbalances between the potential surrogate and the intended parent(s).

c. People struggling with infertility have a right to benefit from scientific progress.²¹

- While the right to found a family protects individuals from discrimination and requires supportive conditions, it does not equate to an assurance that all people who want a child will have one. For example, while governments have an obligation to provide enabling conditions that protect the rights of all parties, they do not have an obligation to provide intended parents with a person to act as a surrogate or to guarantee that a child results from a surrogacy arrangement.

d. Governments must ensure that reproductive healthcare is available, accessible, appropriate, and of good quality, on a non-discriminatory basis.²²

- The right to the highest attainable standard of health is grounded in numerous international and regional human rights treaties as well as national constitutions all over the world.
- Every person is entitled to dignified, safe, respectful, affordable, and accessible reproductive health care including infertility treatment and at all stages of pregnancy, including pre-, during delivery, and post-partum for all pregnant people, including persons acting as surrogates.
- Governments must ensure that health facilities, goods, and services are available in sufficient quantity throughout the country, accessible to all, ethically and culturally acceptable, of good quality, and equitably distributed so that they are allocated to groups that are most disadvantaged, including all parties to a surrogacy arrangement.
 - e. Laws and policies must not discriminate against intended parents, surrogates or children born from surrogacy on prohibited grounds, such as gender, race, sexual orientation, marital status, nationality, class/caste, disability or other status.²³**
 - This right includes laws and policies regarding surrogacy arrangements and protects the right to equality and non-discrimination of all parties to a surrogacy arrangement, including intended parent(s), persons acting as surrogates or children born from surrogacy arrangements.
 - In many cases, laws and policies that are not discriminatory on their face, may nonetheless result in direct or indirect discrimination and reinforce or perpetuate inequalities.²⁴
 - f. Persons directly impacted by surrogacy should be central participants in the development, adoption, and implementation of laws and policies that regulate the practice.²⁵**
 - A human rights-based approach requires that the perspectives of communities and individuals directly impacted, such as surrogates, intended parents, and children born from surrogacy, inform the laws and policies that govern them.
 - Persons acting or who have acted as surrogates have been excluded from discussions on surrogacy as a reflection of pervasive stereotypes and discrimination based on, inter alia, gender, class, caste and race.
 - g. Surrogacy should not be criminalized.²⁶**
 - Criminalization violates the rights of women and intended parents to life, privacy, health, found a family, and autonomy.
 - Criminalization exacerbates stigma around surrogacy and compromises access to resources and legal protections for persons who act as surrogates.
 - h. A legal vacuum in national law with respect to surrogacy results in legal uncertainty with respect to the rights of stakeholders, with the potential for exploitation, particularly of surrogates.**
 - Uncertainty as to the legality or illegality of surrogacy can harm surrogates, intended parents or the children born of surrogacy arrangements. Without legal clarity, , surrogates have no assurance that their reproductive rights will be protected, children have no assurance that their

best interest will prevail, and intended parents have no assurance that civil laws will recognize their filiation with the children born of surrogacy

- Legalization and regulation of the practice may have the potential to ensure legal certainty, recognize power dynamics rooted in gender, economic, and structural inequalities and help ensure the respect, protection, and fulfilment of the human rights of all stakeholders impacted by surrogacy, in particular persons acting as surrogates and children born through surrogacy.
- In this context, states must guarantee the human rights, including the sexual and reproductive health and rights, of persons acting as surrogates.

i. Rights protections do not adhere before birth.²⁷

- Laws and policies concerning surrogacy may not grant pre-natal protections that undermine the autonomy of persons acting as surrogates.
- Surrogacy must be treated distinctly - and should not be conflated with - the sale of children.

j. States must ensure that laws, policies, and practices guarantee the rights of all children born of a surrogacy arrangement including, but not limited to, the right to a nationality.²⁸

- In international surrogacy arrangements, there is a danger of statelessness when the country in which the intended parent(s) live neither permits surrogacy arrangements nor recognizes the intended parent(s) legal parentage as established in the country in which the surrogate gave birth.

E) Impact of the framing of compensated surrogacy as sale of children

Surrogacy being an arrangement in which a person agrees to become pregnant with the intention to deliver the child(ren) to the intending parents, and compensated surrogacy being an arrangement where the person acting as surrogate is paid a fee beyond reimbursement for “reasonable” medical expenses, compensated surrogacy is therefore an arrangement where the person acting as a surrogate is being paid for the gestational services and reproductive labor they are providing.

Framing the practice of compensated surrogacy as sale of children fails to acknowledge this reproductive labor and implies that human rights adhere before birth, thereby undermining the current human rights framework²⁹. The emphasis on compensated surrogacy as being inherently exploitative and of altruistic surrogacy as being somehow less so, first and foremost goes against women’s right to bodily autonomy and sexual and reproductive self-determination and undermines women’s agency. In particular, altruistic surrogacy within families is often legalized and is perceived as an altruistic service persons who act as surrogates provide for family members. However, this framing doesn’t account for power dynamics and imbalances within families that could play a coercive role in a person’s decision to act as a surrogate. It also denies the agency of persons being compensated for their reproductive labor, thus reiterating the stereotype of women’s ‘natural’ and innate role as ‘selfless mothers’.³⁰

This framing also erases the experiences and voices of persons who act as surrogates, whose full, effective and meaningful participation in all areas that concerns them is of primary importance to ensure that their rights are respected, protected and fulfilled.

States have a human rights obligation to ensure effective participation of those persons affected in development of laws and policies.³¹

While the responsibility and accountability for taking decisions ultimately rests with public authorities, the participation of various sectors of society allows the authorities to deepen their understanding of specific issues; helps to identify gaps, as well as available policy and legislative options and their impact on specific individuals and groups; and balances conflicting interests. As a consequence, decision-making is more informed and sustainable, and public institutions are more effective, accountable and transparent. This in turn enhances the legitimacy of States' decisions and their ownership by all members of society.³²

Thus, to comport with the human rights principle on meaningful participation by and inclusion of impacted persons, laws and regulations to legalize and regulate compensated surrogacy should be developed with significant and authentic engagement with and input from people most impacted, including persons acting as surrogates, intended parent(s), and children born of surrogacy arrangements. At the same time, such laws and policies must promote government accountability and transparency in decision-making at every level of government.

Another implication of framing compensated surrogacy as sale of children is the potential criminalization of the practice, with dire consequences on the rights of persons who act as surrogates, including on their right not to be arbitrarily deprived of liberty. Criminalization will push the practice underground, making it more difficult for persons acting as surrogates to access services and making them vulnerable to dubious practices.

a. Impact of criminalization: the case of Cambodia

Cambodia became a hub for transnational compensated surrogacy after restrictive laws were put in place in former hubs such as India and Thailand. Compensated surrogacy was banned in Cambodia in 2016 by way of a government edict sent to all fertility clinics.

The offence of selling a child is punishable by 15 to 20 years of imprisonment.³³ Since the ban, there have been two instances of raids and arrests of pregnant surrogate women: In June 2018, at least 32 Cambodian women were arrested in a raid; initially the authorities thought they were victims of trafficking and sent them to shelters. When they learned that these women were pregnant and hired to act as surrogates, they were formally charged with offence of sale of children and sent to a police-run hospital for detention. They were released on bail after they signed documents declaring they would take care of the children until the age of 15 or 18 (A Chinese national and four Cambodians were also arrested and charged under Cambodia's anti-trafficking law.)³⁴

In November 2018, an additional 18 persons, including 11 pregnant surrogate women were arrested. The 11 women and four other people were charged with surrogacy and human trafficking; three other people were charged with conspiracy.³⁵ This time, the pregnant women were all sent directly to prison. These women have now been released on the terms that they agree to raise the children.³⁶

Babies born after the ban were not allowed to be taken from the country. After months of lobbying by Australian intended parents, the Embassy and brokers, temporary guidelines were put in place to allow some Australian intended parents to legally take their children out of the country.

F) Recommendations to the Special Rapporteur

Given the complexities and need for nuances of the issue of surrogacy, we urge the Special Rapporteur to:

- 1) Delink the practice of compensated surrogacy from the framing of sale of children
- 2) Focus her report on the rights of surrogate-born children, including but not limited to, their right to health, citizenship, to parental recognition and non-discrimination
- 3) Recognize the importance of respecting, protecting and fulfilling the rights of women acting as surrogates, including their rights to personal and bodily autonomy.

We are grateful for this opportunity to input in the Special Rapporteur's report. Should the mandate need any additional information, please do not hesitate to reach out to Rebecca Brown, Senior Director for Global Advocacy, at rbrown@reprorights.org and Paola Salwan Daher, Senior Global Advocacy Advisor, at pdaher@reprorights.org.

¹ See Special Rapporteur on the sale of children, child prostitution, and child pornography, *Rep. of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material*, U.N. Doc. A/HRC/37/60 (Jan. 15th 2018) (containing a thematic report on surrogacy and sale of children), available at https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/60.

² Special Rapporteur on violence against women, its causes and consequences, *Rep. of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia*, para. 33, U.N. Doc. A/HRC/32/42/Add.3 (July 22nd, 2016), available at <https://www.ohchr.org/Documents/Issues/Women/SR/A.HRC.32.42.Add.3.pdf>.

³ Committee on the Rights of the Child (CRC Committee), *Concluding Observations: Mexico*, paras. 69(b), 70(b), U.N. Doc. CRC/C/MEX/CO/4-5 (2015).

⁴ CRC Committee, *Concluding Observations: India*, para. 58(d), U.N. Doc. CRC/C/IND/CO/3-4 (2014).

⁵ CRC Committee, *Concluding Observations: United States*, para. 58(d), para. 30(b), U.N. Doc. CRC/C/OPSC/USA/CO/2 (2013).

⁶ CRC Committee, *Concluding Observations: Georgia*, para. 19(b), U.N. Doc. CRC/C/GEO/CO/4 (2017).

⁷ See CRC Committee, *Concluding Observations: Israel*, para. 29, U.N. Doc. CRC/C/OPSC/ISR/CO/1 (2015).

⁸ Human Rights Committee, *Concluding Observations: Costa Rica*, paras. 19-20, U.N. Doc. CCPR/C/CRI/CO/6 (2016).

⁹ Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Argentina*, paras. 4(d), 32, U.N. Doc. CEDAW/C/ARG/CO/7 (2016).

¹⁰ Committee on Economic, Social and Cultural Rights (ESCR Committee), *General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, para. 39, U.N. Doc. E/C.12/GC/22 (2016) [hereinafter ESCR Committee, *Gen. Comment No. 22*]; CEDAW Committee, *Concluding Observations: Lithuania*, para. 36, U.N. Doc. CEDAW/C/LTU/CO/5 (2014).

¹¹ Committee on Economic, Social and Cultural Rights Views adopted by the Committee under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, concerning communication No. 22/2017* Communication submitted by: S.C. and G.P. (represented by counsel, Cesare Romano) available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f65%2fD%2f22%2f2017&Lang=en

¹² Full text, ratifications, and more information available here: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/164>

¹³ Council of Europe, March 2018. Guide for the implementation of the principle of prohibition of financial gain with respect to the human body and its parts from living or deceased donors. Available at: <https://rm.coe.int/guide-financial-gain/16807bfc9a>.

¹⁴ Advisory opinion P16-2018-001. Available here: <http://hudoc.echr.coe.int/eng-press?i=003-6380685-8364782>.

¹⁵ Council of Europe, December 2017. Women's sexual and reproductive health and rights in Europe - Issue paper published by the Council of Europe Commissioner for Human Rights. Available at: <https://rm.coe.int/women-s-sexual-and-reproductive-health-and-rights-in-europe-issue-pape/168076dead>.

¹⁶ *Costa and Pavan v. Italy*, Application No 54270/10 (2013), paras. 52-71 (finding that Italy violated applicants' right to private and family life when it banned them from using ARTs and preimplantation genetic diagnosis [PGD] to conceive a child unaffected by cystic fibrosis, a genetic disease which they both carried) and *S.H. and Others v. Austria*, Application no. 57813/00 (2011), paras. 80-82, 85-118 (where the law prohibited certain kinds of ART services that were necessary for the applicants to become parents: finding that access to ART services is protected by the right to private and family life; ruling that, because the events occurred in the mid-1990s, when the science and related legislation were in an early stage of development, Austria was entitled to a wide margin of appreciation at that time and therefore finding no violation; and emphasizing that "this area, in which the law appears to be continuously evolving and which is subject to a particularly dynamic development in science and law, needs to be kept under review").

¹⁷ Council of Europe, March 2016. Council of Europe Strategy for the Rights of the Child (2016-2021). Available here: <https://rm.coe.int/168066cff8>.

¹⁸ Although surrogacy centers on the experience of cisgender women, we recognize that transgender men and gender non-conforming people can also become pregnant.

¹⁹ Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, art. 16(e), G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1980), U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW] ("States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:... the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights..."); International Covenant on Civil and Political Rights, *adopted* Dec. 16, 1966, arts. 3, 17, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter ICCPR] ("The States Parties...undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."); "No one shall be subjected to arbitrary or unlawful interference with his privacy, family...everyone has the right to the protection of the law against such interference..."); International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, art. 1, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* Jan. 3, 1976) [hereinafter ICESCR] ("All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."); Convention on the Rights of Persons with Disabilities, *adopted* Dec. 13, 2006, art. 3, 23(1)(b), G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611 (1980) (*entered into force* May 3, 2008) [hereinafter CRPD] ("respect for inherent dignity, individual autonomy including the freedom to make one's own choices..."; "The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided."); CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention – Women and Health*, (20th Sess., 1999), para. 31(e), U.N. Doc. A/54/38/Rev.1, chap.1 (1999) [hereinafter CEDAW Committee, *Gen. Recommendation No. 24*] (urging that States parties should "require all health services to be consistent with the human rights of women, including the rights to autonomy, privacy, confidentiality, informed consent and choice."); CEDAW Committee, *Concluding Observations: Sierra Leone*, para. 32, U.N. Doc. CEDAW/C/SLE/CO/6 (2014) ("the right to autonomy [for women] requires measures to guarantee the right to decide freely and responsibly on the number and spacing of their children... and that reproductive rights include "the right of women to autonomous decision-making about their health"); CEDAW Committee, *Concluding Observations: Portugal*, para. 45, U.N. Doc. CEDAW/C/PRT/CO/8-9 (2015) (urging the state to "adopt legislative measures aimed at facilitating and expanding women's right to decide freely and responsibly on the number of their children in accordance with article 16(e) of the Convention, and ensure access to assisted reproductive services, including in vitro fertilization, for all women without any restrictions."); CEDAW Committee, *Concluding Observations: Costa Rica*, para. 33(b), U.N. Doc. CEDAW/C/CRI/CO/5-6 (2011) ("consider lifting the ban on in vitro fertilization and adopting legislative measures aimed at facilitating and expanding women's right to decide freely and responsibly on the number of their children...and ensure access to assisted reproductive services, including in vitro fertilization..."); CEDAW Committee, *Concluding Observations: New Zealand*, para 35(a), U.N. Doc. CEDAW/C/NZL/CO/7 (2012) (urging the government to amend its abortion law to "ensure women's autonomy to choose."); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Interim Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, para. 21, U.N. Doc. A/66/254 (Aug. 3, 2011) ("Criminal laws penalizing and restricting induced abortion...infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health."); American Convention on Human Rights *adopted* Nov. 22, 1969, art. 11(2), O.A.S.T.S. No. 36, O.A.S. Off. Rec. OEA/Ser.L/V/II.23, doc. 21, rev. 6 (*entered into force* July 18, 1978) [hereinafter ACHR] ("No one may be the object of arbitrary or abusive interference with his private life, his family, his home..."); European Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* Nov. 4, 1950, art. 8, 213 U.N.T.S. 222, Eur. T.S. No. 5 (*entered into force* Sept. 3, 1953) [hereinafter ECHR] ("Everyone has the right to respect for his private and family life...there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law...").

²⁰ CEDAW Committee, *Gen. Recommendation No. 24*, *supra* note 19, para. 22 ("Acceptable services are those which are delivered in a way that ensures that a woman gives her fully informed consent, respects her dignity, guarantees her

confidentiality and is sensitive to her needs and perspectives.”); ESCR Committee, *General Comment No. 14: The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, (22nd Sess., 2000), para. 8, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter ESCR Committee, *Gen. Comment No. 14*] (“The right to health... contains... the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.”); CRPD, *supra* note 19, art. 25(d) (“require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities...”); CEDAW Committee, *Concluding Observations: Belgium*, para. 35, U.N. Doc. CEDAW/C/BEL/CO/7 (2014) (underscoring that in the context of female sterilization, states must “ensure that, in practice, there is not any non-consensual sterilization of women with intellectual and/or psychosocial disabilities...and that those women are provided with the support necessary to decide whether they wish to give their informed consent to sterilization.”); CEDAW Committee, *Concluding Observations: Finland*, paras. 28-29, U.N. Doc. CEDAW/C/FIN/CO/7 (2014) (recommending to Finland that it “take immediate steps to repeal section 2 of the Sterilization Act, which permits the sterilization of women with disabilities who have limited legal capacity or who have been deprived of their legal capacity without their consent.”); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, paras. 9, 54, U.N. Doc. A/64/272 (Aug. 10, 2009) (“informed consent is not a mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well-being.” Noting that “gender inequalities reinforced by political, economic and social structures result in women being routinely coerced and denied information and autonomy in the health care setting. Women’s sexual and reproductive health rights demand special considerations.”).

²¹ Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, art. 27(1), G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [hereinafter UDHR] (“Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”); CEDAW Committee, *Concluding Observations: Costa Rica*, para. 33(b), U.N. Doc. CEDAW/C/CRI/CO/5-6 (2011) (“consider lifting the ban on in vitro fertilization and adopting legislative measures aimed at facilitating and expanding women’s right to decide freely and responsibly on the number of their children...and ensure access to assisted reproductive services, including in vitro fertilization...”); ICESCR, *supra* note 19, art. 15 (“The States Parties to the present Covenant recognize the right of everyone... (b) to enjoy the benefits of scientific progress and its applications...”); Artavia Murillo et al. (“in vitro fertilization”) v. Costa Rica, Judgment of November 28, 2012, para. 150, Inter-Am. Ct. H.R. (Nov. 28, 2012), *available at* http://www.corteidh.or.cr/docs/casos/articulos/seriec_257_ing.pdf [hereinafter *Murillo v. Costa Rica*] (recognizing that “the right to have access to scientific progress in order to exercise reproductive autonomy and the possibility to found a family gives rise to the right to have access to the best health care services in assisted reproduction techniques, and, consequently, the prohibition of disproportionate and unnecessary restrictions, *de iure* or *de facto*, to exercise the reproductive decisions that correspond to each individual.”); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador,” *adopted* Nov. 17, 1988, art. 14(1), O.A.S.T.S. No. 69, *reprinted* in Basic Documents Pertaining to Human Rights in the Inter-American System, O.A.S. Off. Rec. OEA/Ser.L.V/11.82 doc. 6 rev.1, at 67 (1992) (*entered into force* Nov. 16, 1999) [hereinafter Protocol of San Salvador] (“The states parties to this Protocol recognize the right of everyone... (b) to enjoy the benefits of scientific and technological progress...”).

²² CEDAW, *supra* note 19, art. 12(1)-(2), 14(2) (“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”; “States parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”; “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas [and] ensure to such women the right... (b) to have access to adequate health care facilities, including information, counselling and services in family planning...”); *Beijing Declaration and the Platform for Action, Fourth World Conference on Women*, para. 89, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF.177/20 (1996) (“Women have the right to the enjoyment of the highest attainable standard of physical and mental health. The enjoyment of this right is vital to their life and well-being and their ability to participate in all areas of public and private life. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”); *Programme of Action of the International Conference on Population and Development*, at 12, principle 8, Cairo, Egypt, Sept. 5-13, 1994, U.N. Doc. A/CONF.171/13/Rev.1 (1995) (“Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health. States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health-care services, including those related to reproductive health care, which includes family planning and sexual health.”); UDHR, *supra* note 21, art. 25(1) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including . . . medical care.”); ICESCR, *supra* note 19, art. 12 (“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”); CRPD, *supra* note 19, art. 12; Convention on the Rights of the Child, *adopted* Nov. 20, 1989, art. 24, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter CRC] (States Parties recognize the right of the child to the enjoyment of the highest

attainable standard of health..."); Convention on the Elimination of All Forms of Racial Discrimination, *adopted* Dec. 21, 1965, art. 5, G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969) [hereinafter CERD] ("States parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee [to] everyone... (e)(iv) the right to public health, medical care, social security and social services."); World Health Organization, Constitution of the World Health Organization, *signed* July 22, 1946 (*Off. Rec. Wld. Hlth. Org.*, 2, 100), at 1, *entered into force* Apr. 7, 1948 ("The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction..."); CEDAW Committee, *Concluding Observations: Hungary*, para. 31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013) ("Provide adequate access to family planning services and affordable contraceptives, including emergency contraception, to all women including women with disabilities, Roma women, women living with HIV/AIDS and migrant and refugee women..."); CEDAW Committee, *Concluding Observations: Poland*, para. 27, U.N. Doc. E/C.12/POL/CO/5 (2009) ("The Committee recommends that the State party provide adequate access to basic services in the area of sexual and reproductive health. The Committee reiterates its recommendation, calling on the State party to provide family planning services through the public health-care system, including by making contraceptives available at affordable prices."); ESCR Committee, *Gen. Comment No. 14, supra* note 20, paras. 9, 12 (noting that the right to health has four essential elements: governments must ensure that "functioning public health and health care facilities, goods and services, as well as programmes" are "available in sufficient quantity", accessible to all "without discrimination," ethically and culturally acceptable, and of good quality and scientifically and medically appropriate. Accessibility has four overlapping dimensions: Non-discrimination; Physical accessibility; Economic accessibility; and Information accessibility); Protocol of San Salvador, *supra* note 21, art. 10 ("Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being" and "States Parties agree to recognize health as a public good..."); African Charter on Human and Peoples' Rights, *adopted* June 27, 1981, art. 16(1), O.A.U. Doc. CAB/LEG/67/3, rev. 5, 21 I.L.M. 58 (1982) (*entered into force* Oct. 21, 1986) [hereinafter Banjul Charter] ("Every individual shall have the right to enjoy the best attainable state of physical and mental health.");²³ UDHR, *supra* note 21, art. 2 ("Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind..."); CEDAW, *supra* note 19, arts. 1, 2, 12(1) ("[t]he term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."); "States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women..."; "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health services, including those related to family planning."); ICCPR, *supra* note 19, arts. 2(1), 3, and 26 ("Each State Party...undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."); "The States Parties...undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."; "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination..."); CRPD, *supra* note 19, art. 6(1), 23(1) ("States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms."); "States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that: a) The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognized; b) The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognized, and the means necessary to enable them to exercise these rights are provided; c) Persons with disabilities, including children, retain their fertility on an equal basis with others."); CERD, *supra* note 22, arts. 2(1), 5 ("States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms..."; "In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms..."); CRC, *supra* note 22, art. 2(1), ("States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind..."); *Alyne da Silva Pimentel Teixeira v. Brazil*, CEDAW Committee, Comm'n No. 17/2008, para. 7.7, U.N. Doc. CEDAW/C/49/D/17/2008 (2011) (finding the government of Brazil accountable for a preventable maternal death and acknowledging the "existence of de facto discrimination against women, especially women from the most vulnerable sectors of society such as women of African descent," and that "Ms. Da Silva Pimentel Teixeira was discriminated against, not only on the basis of her sex, but also on the basis of her status as a woman of African descent and her socio-economic background."); CEDAW Committee, *Concluding Observations: Portugal*, U.N. Doc. CEDAW/C/PRT/CO/8-9 (2015); ESCR Committee, *General Comment No. 20: Non-discrimination in economic, social, and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, U.N. Doc. E/C.12/GC/20 (2009); CEDAW, *Gen. Recommendation No. 24, supra* note 19; CRC Committee, *General Comment No. 7: Implementing child rights in early childhood*, U.N. Doc. CRC/C/GC/7/Rev.1 (Sept. 2006) (noting the particular vulnerability of young children to discrimination); *Murillo v. Costa Rica, supra* note 21, para. 299 ("...even though the ban on IVF is not expressly addressed at women, and thus appears neutral, it has a

disproportionately negative impact on women” and noting that the ban discriminated against people without the financial means to travel to other countries to access IVF); Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2nd Ordinary Sess., Assembly of the Union, *adopted* July 11, 2003, art. 2, CAB/LEG/66.6 (2000) (*entered into force* Nov. 25, 2005) (“States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.”); Banjul Charter, *supra* note 22, art. 2 (“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind...”); ACHR, *supra* note 19, art. 1 (“The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination...”); ECHR, *supra* note 19, art. 14 (Prohibition of discrimination).

²⁴ Laws that require that at least one intended parent contribute their own genetic material to create an embryo(s) used in a surrogacy arrangement discriminate against single individuals and couples who are unable to provide their own genetic material and rely on donated gametes to create an embryo and have a child.

²⁵ ESCR Committee, *Gen. Comment No. 14*, *supra* note 20, para. 11 (“A further important aspect [of the right to health] is the participation of the population in all health-related decision-making at the community, national and international levels.”); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Rep. of the Special Rapporteur, Paul Hunt: The right of everyone to the enjoyment of highest attainable standard of physical and mental health*, para. 48, U.N. Doc. E/CN.4/2004/49 (Feb. 16, 2004) (“The right to health requires that health policies, programmes and projects are participatory... Since sexual and reproductive health are integral elements of the right to health, it follows that all initiatives for the promotion and protection of sexual and reproductive health must be formulated, implemented and monitored in a participatory manner.”).

²⁶ Working Group on the Issue of Discrimination Against Women in Law and in Practice, *Rep. of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, para. 32, U.N. Doc. A/HRC/38/46 (May 14, 2018) [hereinafter *Rep. WGDAW*] (“Criminalization of behavior this is attributed only to women is inherently discriminatory. So is denying women’s autonomous decision-making and access to services that only women require and failing to address their specific health and safety, including their reproductive and sexual health needs.”); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, para. 46, U.N. Doc. A/71/304 (Aug. 5, 2016) (by Dainius Puras) (“Laws criminalizing abortion or restricting the provision of sexual and reproductive information or services put women and girls at increased risk of pregnancy-related complications and maternal mortality.”); *Mellet v. Ireland*, Human Rights Committee, Comm’n No. 2324/2013, para. 9, U.N. Doc. CCPR/C/116/D/2324/2013 (2016) (finding that Ireland’s prohibition and criminalization of abortion violated international human rights law and directed the government of Ireland to enact legislative change to ensure “effective, timely and accessible procedures” for abortion); *L.C. v. Peru*, CEDAW Committee, Comm’n No. 22/2009, para. 9.2(c), U.N. Doc. CEDAW/C/50/D/22/2009 (2011) [hereinafter *L.C. v. Peru*] (calling explicitly on the government to decriminalize abortion in cases of rape); CEDAW Committee, *Concluding Observations: Hungary*, para. 31(a), U.N. Doc. CEDAW/C/HUN/CO/7-8 (2013) (“The Committee urges the State party to (a) Cease all negative interference with women’s sexual and reproductive rights including by ending campaigns that stigmatize abortion and seek to negatively influence the public view on abortion and contraception.”); Human Rights Committee, *Concluding Observations: El Salvador*, para. 10, U.N. Doc. CCPR/C/SLV/CO/6 (2010); Committee against Torture (CAT Committee), *Concluding Observations: Nicaragua*, para. 16, UN Doc. CAT/C/NIC/CO/1 (2009); ESCR Committee, *Concluding Observations: Chile*, paras. 26, 53, UN Doc. E/C.12/1/Add.105 (2004); CEDAW *Gen. Recommendation No. 24*, *supra* note 19, para. 14 (“The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals... [f]or example, States parties should not restrict women’s access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities... Other barriers to women’s access to appropriate health care include laws that criminalize medical procedures only needed by women punish women who undergo those procedures.”).

²⁷ UDHR, *supra* note 21, art. 1 (“All human beings are born free and equal in dignity and rights.”); *Rep. WGDAW*, *supra* note 26, para. 36 (noting that there is no “symmetrical balance between the rights of ... the woman and the fetus... in international human rights law” and that personhood at conception is not a belief that should be imposed on others through the legal system.); CEDAW, *supra* note 19, art. 12(2) (“States Parties shall ensure to women appropriate services in connection with pregnancy...”); ICCPR, *supra* note 19, art. 6(1); CRC, *supra* note 22, preamble (“the child, by reasons of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”); *but see* CRC Committee, *Concluding Observations: Chad*, at para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Chile*, para. 55, U.N. Doc. CRC/C/CHL/CO/3 (2007); *Uruguay*, para. 51, U.N. Doc. CRC/C/URY/CO/2 (2007) (urging states to reform punitive abortion legislation and ensure access to safe abortion services, irrespective of the legality of abortion); *K.L. v. Peru*, Human Rights Committee, Comm’n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) (establishing that the denial of a therapeutic abortion, where continued pregnancy posed a significant risk to the life and mental health of the pregnant woman, violated the woman’s right to be free from cruel, inhuman, or degrading treatment); *L.C. v. Peru*, *supra* note 26 (finding that the government violated a pregnant girl’s rights by prioritizing the fetus over her health by postponing an essential surgery until the girl was no longer pregnant); *Evans v. UK*, No. 6639/05 Eur. Ct. H.R., para. 54 (2007) (“an embryo does not have independent rights or interests and cannot claim . . . a right to life under Article 2 [of the Convention]”).

²⁸ UDHR, *supra* note 21, art. 15(1) (“Everyone has the right to a nationality.”); CRC, *supra* note 22, art. 7(1), 8(1) (“The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents” and “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”); CRC Committee, *Concluding Observations: Georgia*, para. 19(b), U.N. Doc. CRC/C/GEO/CO/4 (2017) (recommending the government examine its regulations to address “international surrogacy arrangements” and “ensure that a child born through surrogacy motherhood will be able to get access to the information about his or her origin”); *Mennesson v. France*, No. 65192/11 Eur. Ct. H.R., para. 99 (2014) (finding that the rights to respect for private life of the child born of an international surrogacy agreement – which includes the ability to “establish the substance of his or her identity, including the legal parent-child relationship – was substantially affected when the government refused to recognize the parent-child relationship.”).

²⁹ *Supra* note 20.

³⁰ Human Rights Committee has recognized in the case of *Mellet v. Ireland* that this gender stereotype holds that “women should continue their pregnancies regardless of the circumstances, their needs and wishes, because their primary role is to be mothers and self-sacrificing caregivers. *Mellet v. Ireland*, Communication No. 2324/2013, U.N. Doc. CCPR/C/116/D/2324/2013 (2016), para. 3.19 The CEDAW Committee in the case of *L.C. v. Peru*, has affirmed that this stereotype, “understands the exercise of a woman’s reproductive capacity as a duty rather than a right. *L.C. v. Peru*., *supra* note 26, para 7.7. The Working Group on discrimination against women in law and in practice has indicated that the use of criminal law, “to regulate women’s control over their own bodies is a severe and unjustified form of State control. This can include punitive provisions ... governing extramarital consensual sex, same-sex consensual adult relations, gender non-conforming expressions, provision of reproductive and sexual education and information, termination of pregnancy and prostitution/sex work. The enforcement of such provisions generates stigma and discrimination and violates women’s human rights. It infringes women’s dignity and bodily integrity by restricting their autonomy to make decisions about their own lives and health Report of the UN Working Group on the issue of discrimination against women in law and in practice, U.N. Doc. A/HRC/32/44 (2016), para. 76. These stereotypes operate to deny women information to make informed decisions about their reproductive health, substitutes the decisions of others for their own, and deprives them of control over their own bodies. Working Group on discrimination against women has recognized, “[p]atriarchal negation of women’s autonomy in decision-making leads to violation of women’s rights to health, privacy, reproductive and sexual self-determination, physical integrity and even to life.” Para. 63.

³¹ ESCR Committee, *Gen. Comment No. 22*, *supra* note 10, para. 49.

³² Office of the High Commissioner for Human Rights (OHCHR), Guidelines for States on the effective implementation of the right to participate in public affairs, p.5, available at https://www.ohchr.org/Documents/Issues/PublicAffairs/GuidelinesRightParticipatePublicAffairs_web.pdf.

³³ Royal Kram No. NS/RKM/0208/005: Law on Suppression of Human Trafficking and Sexual Exploitation 2008 (Feb. 15, 2008) (Cambodia), *English translation available at* https://www.unodc.org/res/cld/document/khm/2008/law_on_suppression_of_human_trafficking_and_sexual_exploitation_html/Cambodia_03_-_Law-on-Suppression-of-Human-Trafficking-and-Sexual-Exploitation-15022008-Eng.pdf (last visited Mar. 29, 2019.)

³⁴ Erin Handley & Kong Meta, ‘I will not give them the baby’: the plight of Cambodia’s detained surrogates, THE GUARDIAN, Oct. 2, 2018, available at <https://www.theguardian.com/global-development/2018/oct/02/i-will-not-give-them-the-baby-plight-cambodia-detained-surrogates>.

³⁵ *Cambodia accuses 11 pregnant women of breaking surrogacy law*, ASSOCIATED PRESS, Nov. 13, 2018, available at <https://www.apnews.com/de1458061c1744f3b2a0267a56a906ae>.

³⁶ *Cambodian surrogates freed after agreeing to keep babies*, JAKARTA POST, May 15, 2019, available at <https://www.thejakartapost.com/seasia/2019/05/15/cambodian-surrogates-freed-after-agreeing-to-keep-babies.html>.