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Commission On Status Of Women
Background Guide
Illegal Surrogacy and Commercialization of Human Reproduction

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UN WOMEN: A background of the Committee

In July 2010, the United Nations General Assembly created UN Women, the United Nations Entity for Gender Equality and the Empowerment of Women. In doing so, UN Member States took an historic step in accelerating the Organization’s goals on gender equality and the empowerment of women. The creation of UN Women came about as part of the UN reform agenda, bringing together resources and mandates for greater impact. It merges and builds on the important work of four previously distinct parts of the UN system, which focused exclusively on gender equality and women’s empowerment:

- Division for the Advancement of Women (DAW)
- International Research and Training Institute for the Advancement of Women (INSTRAW)
- Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI)
- United Nations Development Fund for Women (UNIFEM)

The main roles of UN Women are:

- To support inter-governmental bodies, such as the Commission on the Status of Women, in their formulation of policies, global standards and norms.
- To help Member States to implement these standards, standing ready to provide suitable technical and financial support to those countries that request it, and to forge effective partnerships with civil society.
- To hold the UN system accountable for its own commitments on gender equality, including regular monitoring of system-wide progress.

Meeting the Needs of the World’s Women

Over many decades, the UN has made significant progress in advancing gender equality, including through landmark agreements such as the Beijing Declaration and Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Gender equality is not only a basic human right, but its achievement has enormous socio-economic ramifications. Empowering women fuels thriving economies, spurring productivity and growth. Yet gender inequalities remain deeply entrenched in every society. Women lack access to decent work and face occupational segregation and gender wage gaps. They are too often denied access to basic education and health care. Women in all parts of the world suffer violence and discrimination. They are under-represented in political and economic decision-making processes. For many years, the UN has faced serious challenges in its efforts to promote gender equality globally, including inadequate funding and no single recognized driver to direct UN activities on gender equality issues.

UN Women was created to address such challenges. It will be a dynamic and strong champion for women and girls, providing them with a powerful voice at the global, regional and local levels.
Grounded in the vision of equality enshrined in the UN Charter, UN Women, among other issues, works for the:

- elimination of discrimination against women and girls;
- empowerment of women; and
- achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security.

**What is surrogacy?**

Surrogacy is an arrangement in which a woman carries and delivers a child for another couple or person. Most commonly, the surrogate is impregnated with an embryo created with the egg of another woman. This is termed "gestational surrogacy." In "traditional surrogacy," the surrogate is also the child's genetic mother.

Surrogacy is often used to allow women who are unable to carry a child, but whose eggs are viable, to have a child genetically related to both her and her partner. In other cases, "intended parents" including gay couples use surrogates and third-party eggs to create a child genetically related to one member of the couple.

Some surrogacy arrangements involve no financial considerations between the parties involved, or compensate the surrogate only for expenses and, perhaps, lost wages involved with carrying the child. Increasingly, however, surrogacy is a commercial arrangement.

A number of countries and U.S. states prohibit commercial surrogacy arrangements, or limit compensation to expenses and lost wages. Others have no regulations and market-like conditions prevail.

In the U.S., costs for surrogacy are upwards of $100,000. This has led to the practice known as "reproductive tourism," in which prospective parents travel to avoid regulations or to save money. Some people seeking surrogates, especially Europeans, come to the U.S., but even more go to less developed regions where fertility practices are loosely regulated, if at all. India, perhaps the world's number one hub for cross-border medical treatment, has a reproductive tourism market with revenues estimated to be over half a billion dollars.

Industry supporters often defend this practice saying that women in developing countries can earn many times a normal salary by being a surrogate. However, women's health and human rights advocates and scholars raise serious concerns about how these arrangements take advantage of socially marginalized women, compromising their health and reproductive autonomy to make a profit. Some surrogate brokers, for example, routinely perform C-sections on all of their surrogates so that hiring parents can schedule to be present for the delivery. There have been several scandals involving the exploitation of surrogate mothers or fraud committed by brokers on would-be parents.

There may be legal issues after the birth of a child to a foreign surrogate. Questions of citizenship remain unresolved in several jurisdictions.
What does commercialization of human reproduction connote?

The push of biomedical profits and pull of consumer desire for greater happiness and superior performance heralds a robust market in offspring enhancement. There are two reasons we might worry about the reach of commerce into the realm of selective reproduction. The first concern is that for-profit genetic enhancement, under conditions of economic necessity, would exploit the poor, by coercing them, in effect, to part with reproductive material they would prefer not to sell for money, if not for their desperate situation. The second concern is that the market valuation and exchange of sperm, eggs, and embryos would distort the meaning, and degrade the worth, of those procreative goods.

Paid Surrogacy: Legal or Illegal?

Some countries ban surrogacy outright, including Germany, Sweden and France. Authorities in the U.K. have also been known to present legal roadblocks. Despite the growth in international surrogacy, there is no international regulation of surrogacy or minimum standards to which nations must adhere. Moreover, there are no international conventions, or reciprocal arrangements for the recognition of the legal parentage of a child. Thus, a parental order obtained, for instance, in California will not be recognized in England.

Some countries demand evidence that at least one parent of the child has a genetic relationship with the child, usually by DNA testing, while other countries insist on seeing the legal release of the child by the husband of any married surrogate (which makes the use of a single surrogate mother more attractive). Where surrogacy follows a gifted embryo and neither new parents are genetically linked obtaining citizenship and travel document becomes far more difficult and protracted, even into U.S. In any event, compliance with numerous regulations and formalities takes months and greatly adds to the stress of the intended parents.

The legal complexities of surrogacy make it essential that potential parents seek legal advice both in their home countries.

"I think international commercial surrogacy is the new frontline in human trafficking. We have enough anecdotal evidence to believe that people are commissioning children willy-nilly without any proper protections for the children or the surrogate mothers."
Addressing the broader issue: Human Trafficking

According to the Polaris Project, human trafficking is defined as,

Human trafficking is a form of modern-day slavery where people profit from the control and exploitation of others. As defined under U.S. federal law, victims of human trafficking include children involved in the sex trade, adults age 18 or over who are coerced or deceived into commercial sex acts, and anyone forced into different forms of “labor or services,” such as domestic workers held in a home, or farm-workers forced to labor against their will. The factors that each of these situations have in common are elements of force, fraud, or coercion that are used to control people.

Does surrogacy fit this description? When a woman willingly enters into a contract to carry a child for someone else, is she being used, controlled and/or exploited? Christopher White answers with an emphatic, “Yes.”

White, the Director of Education and Programs at the Center for Bioethics and Culture, recently wrote in Forbes that surrogacy is the epitome of human trafficking, “nothing short of the buying and selling of children.” If someone is exchanging money for a person, is controlling that person even for a short period of time, and is exploiting a weakness of that person, it’s human trafficking.

Circle Surrogacy, a leading industry agency estimates that surrogate pregnancies average between $80,000 to $120,000.

Figures from another agency, ConceiveAbilities, lists a base fee of $30,000 “paid monthly from the second heartbeat through delivery” to the surrogate. Most surrogate agencies require their surrogates to have already given birth in order to prove they can carry children to term, and the profile of a typical surrogate is a stay at home mom or part-time worker looking to contribute to her family’s income, which is usually under $60,000 a year.

Women typically choose to become surrogates for one of two reasons: compassion and/or money. For those who become surrogates for money, the average pay is $3/hour, based on the length of a typical pregnancy. In the United States alone, some $8 billion dollars is spent every year by parents seeking surrogacy as a means to become parents. White recounts the story of Jessica, a young woman who was the product of surrogacy, a fact her parents hid from her. She is now actively working to make surrogacy illegal.

For surrogate children, this is nothing short of the buying and selling of children—a modern form of human trafficking. Jessica’s own blog refers to her being a product of surrogacy in order to emphasize the commodification of human life brought about by this industry. While Jessica was conceived via traditional surrogacy in which the surrogate used her own eggs, increasingly more common is gestational surrogacy where donor eggs are used so that the child has no biological relation to the surrogate. Motivating these efforts are parents who want to ensure that since they are already spending tens of thousands of dollars on their child, that they are also able to select the perfect egg—most often one produced from an attractive and smart egg donor.
And for the surrogates who are motivated by compassion for the infertile couple desperately seeking a child, they too admit to underestimating the emotional and physical tolls of carrying someone else’s child. In the stories they recount, they speak of their own unexpected attachment to the child—an attachment that lasts long after the birthing is complete. Also told are stories of intended parents treating surrogate mothers as mere vessels or second-class citizens who are simply hired to rent out their wombs. Little consideration is given to the fact that pregnancies involve much more than just the rental or hiring of one’s uterus—it demands full bodily commitment.

One could argue that a woman chooses to become a surrogate; no one forces her. Therefore, it’s not “slavery” or “trafficking.” However, if you knew someone was going to volunteer to be held in a windowless basement for a year for pay, working to clean a family’s home daily, with no contact with the outside world and no ability to control their own comings and goings, wouldn’t you wonder how free that person was in “volunteering?” Wouldn’t you wonder why a person would “volunteer” for such treatment, why they would even consider living in this situation?

**Stateless Limbo for babies born out of International Surrogacy**

The lack of regulation around international commercial surrogacy has left many babies in stateless limbo, with no country granting them citizenship because of complex conflicts over who the legal parents are.

Experts said the problem could affect thousands of babies as more and more couples seek surrogates in countries like India, Mexico and Thailand, turning it into a multimillion dollar business.

Problems arise when the country of the intended parents and the country of the surrogate mother both refuse to grant the baby nationality, or when the parents who ordered the baby decide to abandon it.

“International commercial surrogacy can and does lead to child statelessness,” said Claire Achmad, a New Zealand lawyer told experts told the first international forum on statelessness. Stateless people have no nationality and are not accepted as citizens by any country. Without citizenship, stateless children are deprived of basic rights most people take for granted and cannot access healthcare and education.

Achmad cited the case of a Norwegian woman, Kari Ann Volden, who had used an Indian surrogate to carry a baby created from a donated egg and sperm. The surrogate gave birth to twin boys in early 2010, but Norway refused to give Volden passports to take the twins home, saying the Indian surrogate was the legal parent. India also refused to recognize the babies, saying that Volden was the legal parent.

"For the first two years of their life, these twins (were) stateless,” Achmad said. Volden and the twins were stranded in India until she was able to go back to Norway and legally adopt them.
The statelessness forum, which ended on Wednesday, focused on large-scale stateless situations. The United Nations is launching a major drive to end statelessness, which affects 10 million people around the world. Achmad said the rise in surrogacy was creating “a new generation of children born lost, at a time when we are trying to eliminate statelessness”.

She cited another case in which a gay couple from Belgium arranged for a baby to be born in Ukraine, but Belgian authorities refused to accept the men as the boy’s legal parents.

Neither Belgium nor Ukraine recognized the baby as a citizen, and he ended up spending the first 16 months of his life with foster parents and another year in an orphanage before he was allowed into Belgium.

Lawyers said cases were currently sorted out in an ad hoc way, and there is a need for international regulation that takes into account the child’s best interests.

Sanoj Rajan, a professor at the School of Law at ITM University in India, said surrogacy was big business and the issue of potential statelessness was not as marginal as might appear. He said there were at least 10,000 surrogacy clinics in India, and most are not registered.

“No one knows how many surrogate children are being born in India,” he said. Would-be parents come to India from other parts of Asia and the Middle East Gulf, as well as Europe and the United States. Rajan said most citizenship problems arise when the parents are from a country that bans commercial surrogacy, like France, Italy, Germany and Spain, and the baby is created in a country where surrogacy is allowed like India, Ukraine, Russia and Thailand. Babies born to surrogates may also end up stateless if the "commissioning parents" reject it, Rajan said. This can happen if there is a fertility mix-up whereby the wrong sperm or egg was used, if the child is born with a disability, or if the parents divorce before the baby is born. He suggested countries that ban surrogacy could find alternative ways to penalize parents who break the law without penalizing the baby by denying it a nationality.

**Ethics and principles governing the trade of human tissue, sperm and eggs**

The following five criteria to be applied in decision-making about whether or not the commercial use of human tissue is ethically permissible (in brackets is the ethical principle on which each criterion is based):

- Commoditisation – the extent to which a person or the community may regard the buying and selling of a human tissue product to be objectification of the human body (Respect for the Human Person).
• Genomic Significance – the degree to which genomic information remains in the human tissue product so that there is the potential to link it to the donor, his or her family or ethnic grouping (Justice).

• Community Benefit – the degree to which commercialisation of a human tissue product may provide a benefit to the community and equity of access to products derived from donated human tissue (Justice).

• Perverse Incentive – the manner in which incentive for donation, trade, exchange or commercialisation of human tissue changes behaviour by or towards the people involved in ways that would otherwise not occur, and that may also place those people at risk of harm (Respect for the Human Person).

• Unique Value – the realisation of market value on the basis of properties or characteristics that are unique to the donor, donor family or ethnic grouping, so that trade may therefore be seen as exploitative and likely to undermine willingness to donate (Justice and Beneficence).

**Overarching Principles**

• Respect for the human person – People should be able to make their own decisions regarding their bodies; there is intrinsic value in the human body. The privacy, confidentiality and cultural sensitivities of individuals and their communities need to be considered when using or commercialising human tissue product.

• Justice – All citizens should have equitable access to high quality health care.

• Beneficence – It is vital that the altruistic spirit that underpins donation be maintained. Some degree of scrutiny of commercial processes may be needed to ensure that consideration for others is not eroded (eg, by on-selling of donated tissues).
Important Case Studies to consider

Quoted Article:

“The issues around choice in surrogacy agreements are fraught with disturbing disparities that encompass race, class, and gender. When we remove the political content, as well as the social and economic context in surrogacy, we can clearly see that myth and rhetoric are used by the powerholders. These lies are used to ensure the women are manipulated, coerced, and even trafficked to produce a pregnancy and baby. This promotion is done at the cost of women and children’s dignity, their humanity, their identity, and in some cases their lives. This article will provide definitive examples of how “choice” in surrogacy is impossible, in fact would be laughable, if wasn’t so insidiously malevolent. I cannot even begin to imagine the denial or desperation women must be facing to even consider prostituting their circulatory systems, livers, kidneys, uteri and brains.

Women entering into surrogacy agreements generally contract with the Intended Parents (IP) prior to conception. These contracts stipulate whether or not the woman is being contracted as a traditional surrogate, a gestational surrogate, an altruistic surrogate or a paid surrogate, and if a paid surrogate what renumeration she can expect. The contracts also include whether or not additional expenses, such as counselling, will be made available during pregnancy and after her baby is born. The contract will state whether or not medical expenses will be paid, and if she will have ongoing contact with her child as he or she grows up.

What these contracts do is essentially commodify women’s bodies as well as commodify children. IPs are essentially renting the body and womb of a woman to produce a baby for their consumption and use. Many women when entering into surrogacy agreements are not made aware of the health hazards of the high-dose hormone medications required to induce egg retrieval and embryo transfer. These drugs have been known to cause significantly higher health risks, such as cervical cancer, ovarian hyperstimulation syndrome, late term miscarriages, stillbirths, and ectopic pregnancies. In addition, surrogates are not made aware of the fact that it will likely take several cycles of these dangerous drugs and and several embryo transfers to obtain implantation. In many cases all of this abuse will not result in a pregnancy. Even after implantation, 2/3 of all ART pregnancies miscarry. Many women do not consider that pregnancy is life-threatening. The paid lobbyists who promote surrogacy on behalf of the medical establishment and agencies romanticize the entire process to the legislators. The women are also subjected to intense manipulation and told by the agencies that they are “saints” and that they are giving “gifts” t people who cannot have babies (much like what pregnant girls and women targeted for adoption purposes are told).

“I am currently observing a closed surrogacy support group on facebook and many of the women are talking about it being “God’s plan” to help an infertile couple give them a baby. It is “Christian” and a “calling.” I have noticed that the legal rights are focused on the
intended parents, not the surrogate mother or the child. The rights of the surrogate mother are missing from the discourse. This silencing further evidence that the promotion “choice” in surrogacy is merely being used as a tool to dominate women and exploit their bodies. The moderators of the group appear to be “counsellors” hired by the surrogacy agencies as they address each individual surrogate mother’s fears, concerns, and grossly downplay the risks. Now why on earth would women who were truly choosing to be surrogate mothers need to be constantly reassured that they are doing the right thing? Why on earth would they need to be reassured by a party which has a vested interest in the commodification of her body?"

Women enter into these agreements well before they have given birth. They repeatedly underestimate the attachment they have towards their baby while in utero. They do not realize until it’s too late that there is significant anxiety and psychological damage experienced when they are going through what the industry ficticiously has coined “the detachment process.” Their grief and trauma is palpable in the documentary films “Breeders: A second class of women” and “Google Baby.” We also know from previous studies, and from the oral and written history of mothers who have lost children to adoption, that they suffer lifelong Post Traumatic Stress Disorder, Dissociative Disorder, Major Depressive Disorder, and Disenfranchised Grief. We can draw conclusions that this life-long psychological impairment is a common occurrence and is interchangeable between these two groups of women.

Surrogate mothers or women considering entering into surrogacy agreements, will deny the extent of the damage they will experience.

The only conclusion that one can draw is that surrogates will suffer psychological damage, regardless of the fact that they are receiving payment for renting out their wombs. We also know through the studies and the oral history of adopted children and sperm donors, that they too have suffered from psychological damage. Disorders in these children such as Reactive Attachment Disorder and Identity Disorders and Anxiety Disorders are prevalent. Have these women considered this? Are they being made aware of these issues that could affect themselves and the baby they are bringing into the world for the rest of their lives? Have they considered how this may effect the children they are currently raising? Will the children internalize the detachment from the surrogate baby and think that she might get rid of them too?

Many are not provided independent legal advice and made aware of their human and legal rights. Many are illiterate and do not understand the documents they are signing and many have never experienced pregnancy, childbirth, and motherhood. Are they even being made aware that in many cases the baby they produce may be stateless?

India holds the market share of surrogacy agreements. This in itself is cause for alarm due to the fact that the intended parents, usually very wealthy Westerners, are contracting with women who are in a much lower socioeconomic status and cannot read or write. This ownership of women’s bodies is also being promoted in a country that has very few if any regulations for surrogacy agreements, prostitution, human trafficking, and women’s human
and reproductive rights and freedoms. This disparity causes a dominant hierarchy of the intended parents over the subordinate surrogate mother. It is no coincidence that women in the 1st world are more protected from this abuse, due to a history in which Western feminists demanded women to have bodily integrity.

The surrogacy industry has been taken to the depths of depravity. Such as the case with Baby 101 that was operating in Thailand, Cambodia, Vietnam, and Taiwan. Poorer women were being smuggled out of their countries and repeatedly raped, impregnated, and confined against their will, their passports stolen, and their babies sold in illegal international surrogacy agreements. The police broke up the ring and rescued several women aged nineteen to twenty-six. Even in the United States, there were lawyers who were creating an inventory of unborn babies by having women implanted with embryos overseas. These babies sold for over $100,000 each. The FBI investigated this case and several attorneys were arrested for fraudulently submitting false declarations and pleadings in California Superior Courts in order to obtain pre-birth judgments which fraudulently established parental rights for intended parents. The lawyers lied to the intended parents and said that the original IPs had backed out and new IPs had to be arranged.

In contrast, countries in the Europe have either completely banned surrogacy or have severe restrictions. Germany, Austria, Switzerland, Sweden Norway, Italy, and Bulgaria have completely banned surrogacy because of the dangers of surrogacy agreements. In these countries surrogacy goes against public policy. In France, babies who are born to surrogate mothers, in International Surrogacy Agreements where the IPs are French citizens, France has banned them from obtaining birth certificates in the IPs name because because the definition of “mother” is only the mother that gave birth to the baby. Canada only allows for altruistic surrogacy agreements and has completely banned commercial surrogacy agreements. British Columbia is the only province in Canada that permits IPs to register as the mother and father of the child on the child’s birth certificate. In the United States, 12 states allow for commercial surrogacy contracts. Many of the current surrogate mothers are Christian army base wives with children that they are raising with their husbands.

If the powerholders continue to deny the damage done to mothers and children, I predict that we will find 20-30 years from now, yet another class of damaged women and children. It doesn't matter if money changes hands in surrogacy, it is fraught with trauma to mother and child. A first-time mother may believe she can "handle" or "deal" with the trauma because she has never given birth before. These falsehoods that the industry has been permitted to propagate unchecked, until now, have caused a wake of devastation and loss in mothers, children, and families, which will be seen for years to come. It is up to the damaged mothers and children to “move from the personal is political to the communal good is in everyone’s interest” (Boscoeetal). They need to advocate for the banning of this practice otherwise it will result in further psychological damage to women and children.

Surrogacy is a form of “biopiracy: the misappropriation of life” because women are not being told the truth about the enslavement of their bodies.”
The Gammy Case in Australia: Justifying the need for reform in the International Law and Regulation

The practice of reproductive surrogacy is in the news in Australia because of the story of a Thai child, Gammy, a twin who was apparently abandoned by the buyers because he was sick. They took his healthy sister.

This story should not be seen as just an individual bad news story. It has much to tell us about the effects of commercial surrogacy. This industry is an offshoot of the very profitable reproductive technology industry, which created, through IVF, the possibility of persons buying children in the marketplace.

The surrogacy industry has created the trafficking in women for the use of their wombs. In extreme forms it includes the imprisonment of women in slave camps. It trafficks babies from one continent to another.

The result is that children can be rejected, left over or abandoned like the sofa that buyers decided was in the end not the right colour. Children have become goods to be traded.

Discussion of surrogacy usually revolves around the rights of the buyers and how the industry can be better regulated. The debate should be about whether such a harmful industry should be permitted at all.

Transforming the place of motherhood

The surrogacy industry has transformed the understanding of motherhood. It creates two classes of mothers, birth mothers and commissioning mothers, who may or may not be related to the babies they pay for. An industry created for profit has already upturned generationalism, with grandmothers bearing children for their own daughters.

The women who give birth to the children are called surrogate mothers, in an attempt to distance them from the “real” or commissioning mothers. Yet the surrogate mothers are the persons who have carried the infants in their wombs. They created them out of their flesh and blood for nine months.

They suffer not just the exploitation of having their bodies controlled by others – the buyers, agents and doctors – but then must suffer the psychological effects of having their babies removed. The pain of poor and often desperate women in other countries who are sometimes repeatedly pimped out to baby farms by male partners or families for profit is
not considered relevant. They are expected to treat their bodies as factories and their babies as products that are unrelated to their humanness.

Trafficking is made easier because the surrogacy industry has separated childbirth from motherhood. Once the ability to give birth was a source of women’s strength, something women could do in a male-dominated society that men could not. It is now possible for men to acquire children without the bother of developing a relationship with a woman.

A Japanese businessman has reportedly managed to acquire 13 babies by surrogacy, nine of whom were kept in a nursery he sometimes visited. He intended to take them to Japan to run his business when they grow up.

This story reveals the problems that can arise when single men or men in couples can buy children who will have no mother of any kind. These children may be acquired for the purposes of abuse, and there may be no woman with an interest in the child’s welfare around to protect that child.

The Australian buyer of the Thai child has a wife, but has been found to be a serious child sex offender, which raises questions about his intentions for the child. There are precedents
of the creation of children for the specific purpose of sexual abuse. The father in the baby Gammy case has **publicly denied** this was his intention.

A Queensland male gay couple **were imprisoned** last year for, the police believe, creating a boy child by surrogacy specifically for abuse. The boy was acquired from a Russian surrogate mother and the abuse started shortly after birth. Sexual abuse of him was uploaded to a boy lovers’ site and he was taken around the world for abuse by other paedophiles.

**Money for babies invites trafficking**

The surrogacy industry not only rips apart the connection between motherhood and reproduction, but undermines the welfare of trafficked women and babies. It raises disturbing questions about what children are for, an end in themselves or to serve the purposes of their buyers.

Surrogacy industry entrepreneurs are **campaigning to change the law** in Australia, where only altruistic surrogacy is allowed. Their aim is to enable the commercial surrogacy industry to grow in this country. A supposedly well-regulated industry here, they say, is the answer to abuses overseas.

It is time to open a debate among feminists, ethicists and politicians about the implications of the commercial industry for the surrogates and for the children. While three Australian states now have laws to prevent the use of surrogates in other countries, these need to be adopted in all states.

Any attempt to recreate in Australia the harms that the commercial surrogacy industry has created elsewhere should be resisted.

**There are renewed calls for an inquiry into international commercial surrogacy laws, following the ABC’s revelations about another Australian couple having surrogate twins overseas and leaving one baby behind.**

The latest case involves twins born to a surrogate mother in India.

The **Australian family only wanted to take home one of the babies, with the selection allegedly being made because of the child’s gender.**

The Indian case happened about two years ago and echoes the recent case of baby Gammy, who was born in Thailand to a surrogate mother and whose Australian parents only brought back his twin sister.

Chief Judge of the Federal Circuit Court John Pascoe has been campaigning for an inquiry into international commercial surrogacy.
"I find it almost unbelievable that Australians would be choosing a child on the basis of sex," he told the ABC.

"It's particularly tragic, when you think there are wonderful people out there who would love to have a child of any sex, that someone would choose to leave a baby behind.

"I think international commercial surrogacy is the new frontline in human trafficking. We have enough anecdotal evidence to believe that people are commissioning children willy-nilly without any proper protections for the children or the surrogate mothers."

Attorney-General George Brandis said he listened with respect to Judge Pascoe's observation at a conference on Wednesday, and noted his call for a Commonwealth inquiry.

A Family Law Council report is also calling on Senator Brandis to ask for a Law Reform Commission inquiry into international surrogacy.

Senator Brandis says the report is a valuable contribution to this complex area, and the Government is considering the recommendations.

But Labor's shadow parliamentary secretary Graham Perrett urged Senator Brandis to call an inquiry.

"The reality is we've had 800 babies come into Australia in the last five years. This is something that is happening right now," Mr Perrett said.

Surrogacy under the spotlight

"My understanding is those numbers are ramping up. There's certainly been a suggestion put to me that in some ways this can almost be child trafficking.

"Get the empirical data. Work out what would be best practice and what would be best for children, for surrogate mothers, for the commissioning parents, and what's in the national interests rather than these ad hoc arrangements that vary from state to territory to the Commonwealth."

He said there were many issues to examine, including the consent of the surrogate mothers.

"If there is an incredible economic imbalance between the commissioning parents and a poor mother who is being paid expenses to have a child, is that true consent? Is that consent in a legal nature? Because we are talking about a consent contractual arrangement here."
Chief Justice of the Family Court Diana Bryant said consular officials involved in the Indian case told her there was pressure from Australia to provide a visa to allow the couple to come home with only one baby. She stressed the consular staff were not at fault, saying they had to operate in a legal vacuum where the laws are far from straightforward or clear.

Points to address in the Session

1. The lack of uniform internationally accepted laws on surrogacy

2. The exploitation of both the surrogate mother and the Intended Parents

3. Human Trafficking

4. Statelessness and abandonment of infants

5. The lack of international organizations to regulate these activities and overlapping mandates that do not lead to effective control.
References

1. http://www.academia.edu/Documents/in/Commercial_Surrogacy_Intercountry_Adoption_Trafficking/ 


