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

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

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

[20 August 2020]

* Issued as received, in the language(s) of submission only.

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Commercial maternal surrogacy: a serious violation of children and women rights

Associazione Comunità Papa Giovanni XXIII (APG23) would like to denounce the serious violation of children and women' rights caused by the practice of commercial maternal surrogacy.

During the period of lock-down due to the Coronavirus pandemic, dozens of babies born from surrogacy at the BioTexCom clinic, the largest provider of surrogacy services in Ukraine, were crammed into a salon of the Venice hotel in Kiev, waiting to be delivered after an account balance (plus 54 dollars for every day of non-collection, with a 50% discount granted by the company) to the "intending parents" who were unable to travel due to the border blockade. These intending parents, as said by the company, were from the United States of America, Italy, Spain, the United Kingdom of Great Britain and Northern Ireland, China, France, Romania, Austria, Mexico and Portugal. Those babies were looked after just by caregivers and doctors and given to the intending parents only after two months.

The situation of those children was revealed by BioTexCom itself in May 2020, through a circulating video¹ showing dozens of stranded babies in cribs. That video brought under the eyes of the world the reality of surrogacy, in particular the commercial one, a degrading and inhuman practice, linked to the exploitation and trade of human beings, women already victims of conditions of poverty and children.

A similar episode has happened in the Russian Federation, where "as many as 1,000 babies born from surrogate mothers for foreign families have been left stranded in the country by the coronavirus pandemic and closure of international borders. The babies, some born as far back as February 2020, have been cared for mainly by hired caregivers in rented apartments in Moscow, Saint Petersburg, and other Russian cities.... Border closures have put additional strain on surrogate mothers, who usually give the babies to their biological parents within days of birth. Some surrogates are now being asked to provide additional care in the interim"²

Several studies demonstrate the attachment of the foetus to the mother who carries it in her womb³. The link between the foetus and the pregnant woman is quite clear and has been studied for long time. Foetuses recognize the voices of their mothers, recognize the music that mothers listen to and according to some scholars they are also connected through other senses such as touch or smell. It is therefore important to recognize that a real relationship is created between the foetus and the woman carrying it in her womb, a relationship that, through surrogacy, is debased and annihilated by the handover from the surrogate mother to the commissioning parents. It is therefore legitimate to think that the interruption of the first important relationship of our life can have an impact on our future relationship modalities. Furthermore, those babies left stranded in the cribs, have been deprived for months not only of breastfeeding, that is the most healthy and protective nourishment after birth, but also of the loving tender maternal and paternal care.

APG23 delegation in Geneva, as well as other non-governmental organizations⁴, has denounced several times the practice of commercial surrogacy to the Human Rights Council with written and oral interventions⁵ during the interactive dialogue with the Special Rapporteur on the Sale and Sexual Exploitation of Children, pointing out how this practice represents a serious violation of the rights of children and women and amounts to sale of children.

The former Special Rapporteur on the sale and sexual exploitation of children, Ms Maud de Boer-Buquicchio, produced a study on the commercial maternal surrogacy⁶ and on March 6th 2018 released a statement in Geneva where she clearly stated that "Children face

¹ https://www.youtube.com/watch?time_continue=253&v=xPdRx_L96C0&feature=emb_logo.

² The Guardian, « Up to 1,000 babies born to surrogate mothers stranded in Russia » by Andrew Roth, published on Wednesday 29 July 2020.

³ <https://pubmed.ncbi.nlm.nih.gov/23737011/>.

⁴ ADF International, ECLJ (European Centre for Law and Justice).

⁵ A/HRC/31/NGO/147; A/HRC/37/NGO/103.

⁶ A/HRC/37/60.

becoming commodities as surrogacy arrangements become more prevalent, and urgent action is needed to protect their rights... “There is no right to have a child under international law” ... “Children are not goods or services that the State can guarantee or provide. They are human beings with rights »...“Surrogacy is a growing industry driven by international demand, making it an area of concern for children’s rights and protection. Commercial surrogacy, as currently practised in some countries, usually amounts to the sale of children.”

The Special Rapporteur explained that if a surrogate mother or third party receives remuneration or any other consideration for the transfer of the child, a sale occurs, as defined under international human rights law. She also said that “The best interests of the child need to be at the heart of any decision taken in respect to parentage and parental responsibility decisions,” « Courts or other competent authorities should be involved in such determinations, as private contracts generally do not provide sufficient human rights safeguards ».

The Special Rapporteur also highlighted concerns over intending parents from wealthy States engaging surrogate mothers in developing States, which have weak institutions and regulations: “This practise entails power imbalances and increases the vulnerability of the children and surrogate mothers to various forms of exploitation.”

Commercial maternal surrogacy is a commodification of human life since its coming into existence, it considers children as consumer goods to be manufactured to order for couples who commission them.

Human dignity that is recognized internationally as inalienable, is desecrated by the practice of commercial maternal surrogacy. On one hand, women are considered only a vessel that is possible to rent in order to produce a baby who will satisfy the individual wish to have a child and on the other hand, children, often bought from a catalogue of egg and sperm donors, are delivered as a packet at the end of the pregnancy, when the product is accomplished. The surrogate mother-child relation is not taken into account at all.

Human dignity is already recognized in the Universal Declaration of Human Rights, but this is not enough. There are categories of people who are too weak to combat against the power of markets. They need the international community to protect them. APG23 strongly believes that the international community, being responsible for the protection of human rights, has to deliver laws that ban commercial surrogacy and protect women and children from this new type of exploitation and slavery.
