

Reproduction as Work: Addressing a Gap in Current Economic Rights Discourses

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Abstract

In 2022, the global commercial surrogacy industry was valued at approximately US\$14 billion. This paper explores the issue of surrogacy to reveal how international human rights standards and labor laws treat reproduction as work, building on previous scholarship analyzing similar framing at the grassroots level in Mexico. I argue that the failure to recognize surrogacy as labor is rooted in three lacunae: (1) contemporary policies and practices around surrogacy globally pay little attention to the well-being and rights fulfillment of surrogates themselves, particularly the economic rights of surrogates; (2) the stigma of surrogacy as sexualized care work results in neglect of the labor rights of surrogates in mainstream economic rights discourses; and (3) relevant international rights law has not yet addressed the economic rights of surrogates, nor has it effectively articulated the interdependent relationship between economic rights and reproductive rights. Lastly, I discuss where reproductive rights and economic rights overlap in existing human rights conventions and standards and what possibilities these offer for articulating the interdependence of reproductive and economic rights and for advancing the labor rights of surrogates.

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Introduction

“[Surrogacy], for me, this is work. I basically don’t see anything else in it.”¹

Commercial gestational surrogacy is an arrangement by which an individual agrees to become pregnant and give birth to a child who is not genetically related to them in exchange for monetary compensation, including but not only compensation for medical expenses.² Surrogates may be recruited for hire through a number of channels; for example, the hiring party (typically referred to as the intended parent/s) can recruit surrogates through informal strategies, such as personal advertisements or online forums, or through surrogacy placement agencies that match intended parents with surrogates and receive compensation from the intended parents, sometimes from a portion of the surrogates’ compensation.

Because of the various degrees of legality of hiring surrogates and becoming surrogates, as well as the stigma surrounding the practice of surrogacy, surrogates are not represented in national or international employment data. Further, in economic rights discourses, surrogacy has been undertheorized as a form of labor that complicates the process of claiming these rights. Human rights laws have primarily addressed the relationship between surrogacy and human rights from the perspective of intended parents and children rather than the rights of surrogates, and even where the rights of surrogates are addressed, it is negative rights (e.g., freedom from discrimination) rather than positive rights (e.g., entitlement to a living wage) that are addressed.³

Surrogates are working within a rapidly expanding and changing reproductive tourism economy, which is a transnational economy that includes a variety of actors, such as egg donors, sperm donors, and private third-party agencies that coordinate transactions between donors, health care providers, and consumers.⁴ In particular, sur-

rogates are central in the ongoing ethical debates around commodifying human reproduction in the reproductive tourism economy; feminist scholars have critically examined the practice of surrogacy as a product and reflection of the historical systemic violation and exploitation of working class women of color’s reproductive autonomy and economic precarity and have raised concerns about the commodification of human reproduction and how it impacts the social construction of motherhood.⁵

The Universal Declaration on Bioethics and Human Rights has attempted to specifically address concerns about the ethical treatment and rights of individuals within this economy. However, while the declaration identifies the right to informed consent, the right to human dignity, the protection of “human vulnerability,” and the right to health “without distinction of ... economic or social condition,” it does not specify the economic rights of workers in the reproductive tourism economy, thus leaving workers in this market in various states of vulnerability to rights violations.⁶ Hegemonic powers such as the United States have largely dictated the landscape of reproductive choice through economic influence and coercion to advance specific reproductive agendas, particularly in the Global South, and have influenced the global devaluation of reproductive labor, contributing to what scholar Shelle Colen calls stratified reproduction—the idea that “physical and social reproductive tasks are accomplished differentially according to inequalities that are based on hierarchies of race, class, ethnicity, gender, place in the global economy, and migration status and are structured by social, political, and economic forces.”⁷

Under the lens of Frances Winddance Twine’s work on inequities in the reproductive tourism economy, surrogates are engaged in a form of reproductive labor and face barriers to claiming human rights, often because of the ambiguity of where and how they can make claims for rights based on the work they do.⁸ As scholar Amrita Pande notes,

the “commercial surrogacy regime exploits [the] production-reproduction duality” of surrogacy, meaning that surrogates are treated as “productive” workers under contracts and employed by surrogacy agencies and intended parents while also expected to engage with surrogacy as an altruistic, maternal endeavor.⁹ Given the lack of regulations and visibility of surrogacy as work, claims for rights may be most clearly made on the contracting party (i.e., the intended parents) or surrogacy placement agencies rather than the state.¹⁰

This paper explores how human reproduction can be reimagined through the case of surrogacy to advance reproductive and economic rights under international human rights law. Specifically, this paper examines workers’ rights, such as the right to decent work and fair wages, the right to autonomy in reproductive decision-making, and the rights of pregnant workers (e.g., the right to maternal health care) as an important set of rights that explicitly illustrates the relationship between reproductive and economic rights. The following section examines the existing literature on surrogacy as work and the influence of stigma on framings of surrogacy. The next section analyzes the conventions and treaties that link reproductive rights and economic rights to human reproduction as work in the case of surrogacy to make salient the interdependence of reproductive rights and economic rights. The paper concludes with a discussion of recommendations for negotiating rights in the reproductive tourism economy and considerations for future research.

Grassroots movements to promote reproductive rights and justice recognize how socioeconomic status and structural economic conditions shape one’s ability to claim reproductive rights.¹¹ As Loretta Ross notes, reproductive justice is not only about “including poverty” in reproductive justice debates but also about looking critically at the social context “in which individuals live and make their personal decisions.”¹² However, unlike grassroots reproductive justice movements, few international

rights conventions and standards have effectively articulated this relationship and have failed to capture the structural underpinnings of reproductive injustice, particularly the violations of economic rights along multiple axes of inequality.

Literature review

Existing debates on surrogacy

Using Colen’s concept of stratified reproduction, Twine maps the intersections between colonialism, globalization, racism, and reproductive labor through her analysis of surrogacy, highlighting how “neoliberal discourse” is invested in “active, responsible, and positive (reproductive) actors.”¹³ In the United States, the movement for fertility regulation is connected to the fight to legalize abortion access, the history of reproductive violence against enslaved Black women, and changing demographic shifts in women’s access to economic and educational opportunities, thus making surrogates’ rights a meaningful site for examining the interdependence of reproductive and economic rights.¹⁴

According to the existing literature, surrogates occupy a variety of economically and socially precarious statuses and thus face interlocking vulnerabilities both in the law and in social life.

There has been much debate about if and how surrogacy should be conceptualized as labor.¹⁵ Marxist feminist scholarship has framed reproductive labor such as surrogacy in productive terms in order to account for new forms of labor that have emerged from the reproductive technologies economy under modern capitalism.¹⁶ Other scholars have examined the commodification of care and intimacy and the ways in which “intimate labors” such as surrogacy, sex work, and care work maintain structural economic inequalities and reflect a pervasive devaluation of care work and feminized labor.¹⁷ Others argue that the commodification of pregnancy impedes the broader rights fulfillment of women and their families and that surrogacy

is “reproductive exploitation.”¹⁸ Further, there is overlap between political communities campaigning for the criminalization of abortion and for the criminalization of surrogacy.¹⁹ Sharmila Rudrappa notes that legal bans on surrogacy risk deepening the exploitation of surrogates and further devaluing reproductive labor.²⁰

Ethnographic scholarship looking at the lived realities of surrogates has historically focused on India, Israel, Russia, and, increasingly, the United States.²¹ While there is overlap in how scholars interrogate the notion of surrogacy as work and the idea of surrogacy as a challenge to “the ‘ideology of motherhood,’” there are distinct “repro-regional moral frameworks” that play a key role in shaping surrogacy.²²

Existing scholarship reveals how surrogates reject the label of motherhood. Christina Weis’s work reveals that surrogates in Russia employ an explicit labor framing of their experiences of surrogacy, and Elly Teman’s study of surrogates in Israel, while not explicitly framing surrogacy as work, similarly reveals a rejection of maternal status and notes that surrogates and intended mothers are placed in “unique relations with the nation-state.”²³ When the nation-state is the primary duty bearer of economic rights, the legal ambiguity of surrogates leaves their rights vulnerable to violation. Alternatively, Amrita Pande’s work reveals that Indian surrogates reject the labor framing and connect being a “good mother” with being a “good surrogate,” thus reinforcing a moral framing of motherhood.²⁴

Scholars of labor rights have not fully engaged with the challenges of surrogacy as work because it is sometimes considered illegitimate feminized labor; Anindita Majumdar notes how the stigmatization of surrogacy informs the ways in which it is delegitimized as labor.²⁵ Drawing parallels between productive labor and reproductive labor offers an opportunity to assert the economic rights of surrogates under existing economic rights conventions.²⁶ Pande and Rudrappa point out how laborers are

rendered disposable under a global capitalist economy, noting that the framing of surrogates as “wombs for rent” contributes to the framing of surrogates as unskilled laborers.²⁷ Additionally, Pande notes how surrogates are disciplined to become “good mother workers” similar to the construction and reinforcement of the “good worker” in traditional occupations.²⁸

Sexualized care work and stigma

Pande’s definition of sexualized care work as “a new type of reproductive labor ... similar to existing forms of care work but [one that] is stigmatized in the public imagination, among other reasons, because of its parallel with sex work” offers greater insight into the stigma around surrogacy and reveals the tension between the rights associated with sexual citizenship and economic rights for those engaged in reproductive labor.²⁹ This definition is consistent with Sophie Lewis’s observation of a pervasive “whore stigma” shaping the social perception of surrogates’ work in the global economy.³⁰ Human rights scholars have noted that barriers to sexual and reproductive rights have been largely shaped by stigma and that less stigmatized care work is slightly less contested within international standards around interdependent economic and reproductive rights, such as paid family leave and expanded social security benefits.³¹

The existing literature demonstrates that surrogates are acutely aware of how stigma shapes perceptions of surrogacy: Pande observes how surrogates mitigate stigmas associated with surrogacy, such as framing their role as surrogates through the lens of altruism and emphasizing the differences between sex work and their work as surrogates, and Heather Jacobson’s work similarly finds that US surrogates in some cases also deploy an altruistic framing of their role as surrogates.³² Zsuzsa Berend’s work shows that the altruistic framing of surrogacy coexists with the language of paid work also simultaneously deployed by surrogates to dis-

cuss their experiences.³³

How stigma informs perceptions of surrogacy is largely dependent on the local context of the surrogacy market. Indian surrogates in Pande's study reject a framing of their participation in surrogacy as work, instead deploying an altruistic framing to minimize stigma, and Daphne Yeshua-Katz and Natalia Khvorostianov's work similarly shows the strategies that surrogates deploy in response to stigmatization, such as internalizing stigma by self-identifying as "bad-wives" and minimizing the appearance of their surrogate pregnancies by avoiding public spaces and constructing narratives to "cover" their pregnancies.³⁴ Stigma contributes to the "invisibilization" of surrogacy, which is resonant with other forms of sexualized care work that have been rendered invisible and thus excluded from the ability to claim economic rights under legal frameworks.³⁵

Human reproduction as work

Opponents of legalizing surrogacy often invoke the biological relationship between the fetus and carrier as justification for why surrogates should be considered the mothers of the fetus; this argument is rooted in pronatalist constructions of motherhood as a condition for women's citizenship in social life.³⁶ Additionally, given the variation in "repro-regional frameworks," there is varied cultural resistance to framing surrogacy as work.³⁷

Compared to the literature on reproductive labor as a site for claiming economic rights, less work exists on the framing of human reproduction as work within economic rights.³⁸ There is some mention of reproduction as work within materialist feminist movements addressing the devaluation of women's reproductive labor; in *Wages Against Housework*, Silvia Federici invokes a framing of reproduction as work, characterizing miscarriages as "work accident[s]."³⁹ Additionally, in her work on how activists have strategically advocated for hu-

man rights, Shareen Hertel examines how feminist organizers in Mexico fought against pregnancy discrimination in maquiladoras by arguing that human reproduction was ultimately reproducing society and thus was an essential form of labor requiring compensation and labor protections.⁴⁰ Framing reproductive rights as economic rights asserts their interdependence in advancing human rights and shows how both need to be fulfilled in order for either of them to be fully realized. Thus, economic rights, like all other human rights, are "indivisible and interdependent," meaning that "one set of rights cannot be enjoyed fully without the other."⁴¹

One of the challenges of situating surrogacy within economic rights discourse is that the surrogacy market exists across "reproductive, productive, and virtual economies," and, as a form of sexualized care work that is simultaneously framed as productive and reproductive labor, cannot be neatly categorized within mainstream labor rights frameworks.⁴² Like other reproductive rights challenges, surrogacy is imbued with moral and political framings rooted in gender injustice, intensifying economic stratification, and stigmas around reproduction and sexuality.⁴³ Additionally, the legal permission of altruistic surrogacy, alongside restrictions and a lack of legal status for commercial surrogacy, further reinforces the devaluation of reproductive labor and the moral "inferiority" of commercial surrogacy, creating additional barriers to legitimizing surrogates as laborers eligible to claim workers' rights.⁴⁴

Despite these challenges, analyzing legal frameworks and treaties addressing reproductive rights and economic rights can offer meaningful insights into how and where surrogates can claim economic and reproductive rights. One example is the 2011 Convention No. 189 Concerning Decent Work for Domestic Workers, put forth by the International Labour Organization.⁴⁵ Having an international treaty that explicitly outlines the

rights of domestic workers globally has given local movements a concrete legal and policy framework through which to frame local struggles for ensuring the economic and social rights of domestic workers.⁴⁶ Similarly, the strategic use of conventions such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) at the local level has been meaningful in addressing barriers to claiming gender-based rights.⁴⁷ These two instruments—Convention No. 189 and CEDAW—which have already been strategically implemented at the local level, may thus provide useful templates for surrogates to organize and to make claims for economic and reproductive rights. This recommendation complements Rudrappa’s call for surrogacy cooperatives as a meaningful reformist measure in addressing the rights of surrogates. The following section examines relevant treaties and conventions linking reproductive rights and economic rights that offer possibilities for strategic implementation to advance surrogates’ rights.

International rights conventions linking reproductive rights and economic rights

There are several conventions and documents integral to analyzing the legal foundations of protections for the economic rights of surrogates and

to locating where economic rights and reproductive rights intersect in international human rights standards: the International Covenant on Economic, Social and Cultural Rights (ICESCR), CEDAW, the 1994 International Conference on Population and Development (ICPD) Programme of Action, the International Labour Organization’s Maternity Protection Convention No. 183, and a 2018 report from the Special Rapporteur on the sale and exploitation of children on surrogacy (see Table 1).⁴⁸ There are limitations to looking solely at existing documents in international law for enshrining human rights. However, while limited, critical examination of existing laws and treaties regarding issues of reproductive rights has been important for fulfilling and protecting reproductive rights. Addressing the specific legal vulnerabilities of surrogates within the international human rights framework reveals opportunities for solidifying the relationship between economic rights and reproductive rights, particularly for those most vulnerable to rights violations.⁴⁹

The ICESCR offers a partial acknowledgment of reproductive rights as necessary for fulfilling economic rights. Article 12(2)(a) emphasizes children’s health as one of four defining conditions of the right to health, but it fails to include specific provisions for the right to maternal health beyond

TABLE 1. Overlap between economic rights and reproductive rights in international human rights standards

ICESCR	CEDAW	ICPD Programme of Action	Special Rapporteur report on surrogacy	ILO Maternity Protection Convention No. 183
<p>Article 7: “equal pay for equal work”</p> <p>Article 10: “protections for working mothers”</p> <p>Article 12(2)(a): “the healthy development of the child”</p>	<p>Article 3: “to ensure the full development and advancement of women”</p> <p>Article 5: “gender stereotypes and maternity”</p> <p>2019 comment on the criminalization of surrogacy in Cambodia</p>	<p>Paragraph 7.3: “negative attitudes towards women and girls”</p>	<p>Paragraph 73: “a properly regulated system of commercial surrogacy”</p> <p>Paragraph 78(b): “the rights of surrogate mothers”</p>	<p>Article 2(1): “atypical dependent work”</p>

“special protection” for mothers “during a reasonable period before and after childbirth,” and it does not include provisions for the right to reproductive choice as it relates to other economic, social, and cultural rights included in the convention.⁵⁰ Regarding workers’ rights and reproductive rights, article 10 notes that “working mothers” have a right to special protections such as paid leave and social security benefits “during a reasonable period before and after childbirth.”⁵¹

The 1994 ICPD Programme of Action, regarded as one of the most ambitious international human rights documents outlining sexual and reproductive rights, does not establish an explicit connection between economic rights and the fulfillment of reproductive rights: article 7.3 notes “high risk sexual behavior,” discrimination, “negative attitudes towards women and girls,” and “the limited power many women and girls have over their sexual and reproductive lives” as explanations for existing barriers to reproductive health, omitting any mention of how these barriers are reinforced by barriers to the fulfillment of economic rights.⁵² Despite both naming special protections with regard to the status of women and girls, neither the ICESCR nor the Programme of Action establish explicit connections between economic rights and reproductive rights. Beyond addressing the discrimination that surrogates may encounter, the Programme of Action is limited in its ability to account for the nuances of the reproductive technologies market.

While CEDAW addresses the right to freedom from gender-based discrimination, violence, stereotyping, harassment, and the right to equal opportunities in social life, it addresses neither specific reproductive rights nor the role that fulfilling economic rights plays in advancing reproductive rights. The most explicit acknowledgment of reproductive rights is found in the introduction, which acknowledges the “social significance of maternity” and reproductive labor and states that “the role of

women in procreation should not be a basis for discrimination.”⁵³ While this addresses the right to freedom from discrimination regarding maternal reproductive labor, it does not address positive reproductive rights, such as the right to accessible reproductive health care services, the right to protections against environmental reproductive health hazards, and the right to economic conditions that support one’s autonomy in family planning.

The ILO Maternity Protection Convention does not address the linkage between reproductive rights and economic rights beyond the right to maternity leave for pregnant workers. The convention has language regarding the protection of mothers employed in formal and informal work (framed as “atypical dependent work”), as well as the enforcement of rights such as maternity leave and the right to employment protection and nondiscrimination as it relates to pregnancy. This convention details the economic benefits that pregnant women are entitled to from the state, protections against discrimination in the labor market, and rights to freedom from their employment infringing on their health or their children’s health. However, the language regarding the reproductive rights of pregnant persons is vague, stating that members should ensure that “pregnant or breastfeeding women” are not forced to perform labor that jeopardizes their health or the health of their “child.”⁵⁴ While this addresses the right to freedom from harmful working conditions, it does not acknowledge the myriad other ways in which maternal health is impacted by the fulfillment of positive economic rights, such as the right to an adequate standard of living and the right to fair wages. However, this language establishes that reproductive health and one’s status as a laborer are linked by pregnancy’s impacts on the body of the rights claimant, and thus raises the possibility for future rights laws and standards to consider how recognizing economic rights, like reproductive rights, as embodied rights may help establish their interdependence.⁵⁵

The above analysis demonstrates a lack of internationally consistent standards for surrogates to claim reproductive and economic rights together, as well as a lack of systemic regulation to maintain ethical practices. The challenge of non-regulation is also seen in other sectors of the informal economy, such as sex work and agriculture, as well as in issues such as unregulated fishing.⁵⁶

Surrogates as rights claimants

There has not yet been a judicial case before an international body adopting an approach to advancing the rights of surrogates through labor law, and, as a result, surrogates are unable as workers to claim economic rights on the state under existing international human rights laws and standards.⁵⁷ The aforementioned 2018 report from the Special Rapporteur on the sale and sexual exploitation of children argues that a lack of international regulations for the surrogacy economy risks leaving the children of surrogacy arrangements vulnerable to rights violations, but the report does not address the vulnerability of surrogates' rights.⁵⁸ Most of the report's recommendations regarding the regulation of surrogacy and concerns for the human rights implications focus on the perceived threats that surrogacy poses to the rights of children.

A case regarding the criminalization of surrogacy in Cambodia offers insight into how existing conventions could establish state obligations to protect and fulfill the rights of surrogates.⁵⁹ Following the 2016 ban on commercial surrogacy in Cambodia, numerous surrogates in the country were arrested. Some women were faced with either a 20-year prison sentence or having to raise the child of the intended parents as their own, placing an additional financial burden on the surrogates who were already living in economic precarity. The ruling essentially favored forced parenthood. Others who were arrested were charged with human trafficking. The Committee on the Elimination of

Discrimination against Women first acknowledged the rights of surrogates in 2019 in response to Cambodia's law, arguing that surrogates should have protections against exploitation, discrimination, and violence.⁶⁰ While the committee recognized surrogates' rights to freedom from discrimination and violence, it did not explicitly address surrogates' positive economic rights, such as their right to a decent standard of living, or who should be the duty bearer of these rights for surrogates.

Articles 3 and 5 of CEDAW may also offer a place to advocate for the inclusion of surrogacy in international labor law, because they outline state requirements to address gender-based stereotypes and create measures that "ensure full and equal enjoyment of social, political and economic rights for women."⁶¹ This language explicitly addresses gender-based "stereotypical assumptions" as they relate to labor and thus may be useful in addressing the stigma of surrogacy as "indecent work" in the claims-making process.⁶² Additionally, article 11(f) may be an opportunity to assert the relationship between economic rights and reproductive rights, as it outlines "the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction."⁶³ Other than the 2019 comment, the Committee on the Elimination of Discrimination against Women has been largely silent on the rights of surrogates despite the implications for gender-based human rights. Additionally, the language used by the committee to address the status of surrogates speaks more to a framing of surrogates as "mothers" rather than as workers entitled to labor rights.⁶⁴ This is also reflected in the ICESCR, which addresses the rights to paid leave and social security benefits for "working mothers," reinforcing the notion that pregnant people's ability to claim economic rights is dependent on claiming maternal status.⁶⁵ Yoking the claim-making in this way essentially excludes the many surrogates who do not identify as mothers to the child they are gestating and surrogates

who, although they may consider themselves a mother or “mother-worker,” are not recognized as mothers within their specific regional human rights framework.⁶⁶

Further, the concept of “equal pay for equal work” in article 7(a) of the ICESCR is also limited; this article guarantees states the right to ensure “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”⁶⁷ While this provision addresses the devaluation of women’s work in the productive economy, it fails to capture the nuances of reproductive labor and of the contractual relationships within the reproductive tourism economy.

Similar to the ICESCR and CEDAW, the ILO Maternity Protection Convention outlines the protection of mothers employed in both formal and informal work and the right to maternity leave and the right to employment protection and nondiscrimination as it relates to pregnancy but does not address the unique role of surrogates as laborers.⁶⁸ According to article 2(1), the convention “applies to all employed women, including those in atypical forms of dependent work.”⁶⁹ However, the protections outlined speak specifically to pregnant *mothers* and thus is limited in its ability to cover surrogates. Additionally, as article 6 states regarding the “means test” for economic benefits when the rights claimant does not qualify under national laws and regulations, the lack of national legal protections leaves surrogates unable to claim rights if their rights as laborers are not recognized at the national level. While the convention has been ratified by 43 states, key commercial surrogacy hubs—such as the United States, India, and Ukraine—have not ratified it. This trend is similarly seen in conventions addressing the rights of migrant workers: ratifiers include the “sending” states from which large numbers of migrant laborers come, while “receiving”

states are reluctant to ratify, leaving migrant workers vulnerable to labor rights violations.⁷⁰ Given the variation in laws concerning surrogacy among states, there is a need for international and national legal frameworks regarding the economic rights of surrogates.⁷¹

Assisted reproductive technologies and the right to access

The development of in vitro fertilization has dramatically shifted the surrogacy market by “[reducing] the legal and emotional risks” of traditional surrogacy practices by removing the genetic relationship between the surrogate and the fetus, thus making surrogacy arrangements more appealing to intended parents.⁷² Reproductive technologies have offered more pathways to parenthood, particularly for same-sex couples and couples who are infertile and desire biological children, and, as a result, questions of access regarding reproductive technologies are also relevant to the intersection of reproductive rights and LGBTQ+ rights. Organizations such as Men Having Babies are advocating to increase gay men’s access to the surrogacy economy in an effort to address barriers to parenthood; however, there is still a centering of the needs of the “consumer” rather than surrogates.⁷³ National laws restricting or banning commercial surrogacy have also been aligned with conservative agendas to restrict same-sex couples from becoming legal parents, revealing concerns around who has the right to parent in the age of reproductive technologies, a dimension of reproductive rights often overlooked in mainstream reproductive rights discourses.⁷⁴ As assisted reproductive technologies expand, it will become more urgent for states to ensure positive reproductive rights and positive economic rights in their national laws and standards, both for intended parents who have been historically marginalized from pathways to parenthood and for workers in the reproductive

tourism economy, and for these protections to be consistent with international standards given the transnationality of reproductive tourism.

Conclusion

Existing international conventions and standards addressing reproductive rights and economic rights have not sufficiently adapted to the realities of the global reproductive technologies economy, leaving surrogates unable to claim both positive economic and reproductive rights. Additionally, aside from organizations such as Surrogacy360, few organizations have offered policy recommendations or guidelines for ensuring the rights and ethical treatment of surrogates in surrogacy contracts.⁷⁵ Support for national legal protections for surrogates as workers may be more likely where there is demonstrated support for legal protections enshrining the rights of queer parents.⁷⁶ As this analysis of existing rights conventions shows, the systemic sanctification of motherhood and the existing rights protections for pregnant people being tied to specific expectations of claiming motherhood as a status has created a substantial barrier to recognizing surrogates' rights under international human rights conventions, reinforcing the notion that work associated with motherhood is an altruistic "labor of love" rather than remunerative labor. Raising awareness about the realities of surrogacy through more comprehensive education is one potential avenue to address the stigma surrounding surrogacy and further the conversation around advancing economic and social rights for surrogates.

My recommendations are as follows: first, per Melinda Cooper and Cathy Waldby's work, future research should explore multinational trade organizations such as the World Trade Organization and trade agreements as potential sites for articulating the economic rights of surrogates given the ways that property rights inform the reproductive technologies market.⁷⁷ Similar to the work that has

been done on the case of Cambodia, further inquiry into how the legal restrictions on commercial surrogacy impact the fulfillment of surrogates' rights should take a country- or region-specific approach to account for the cultural nuances of surrogacy markets and experiences. Additionally, echoing Andrea Whittaker, Trudie Gerrits, and Christina Weis's recommendation, more research into under-explored surrogacy hubs such as Ghana, Laos, and Kazakhstan is needed to better reflect the current landscape of the industry.⁷⁸

Second, in order to secure protections for reproductive rights, more work needs to be done to articulate the interdependence of reproductive rights within the framework of economic rights in order to better account for reproductive labor and how it has been historically excluded from reproductive rights and economic rights discourses. Recognizing surrogates as claimants of workers' rights offers an opportunity to expand the recognition of reproductive labor as labor within economic rights discourses and challenges the devaluation of work that persists along gendered, classed, and racialized lines. By drawing parallels between reproductive labor and productive labor and understanding surrogacy as work through the lens of stratified reproduction, as scholars such as Twine have done, existing rights frameworks such as ILO Convention No. 189 and strategic state-level implementations of this and other existing conventions may be useful in providing a template that surrogates can use to claim rights as workers and as a tool for organizing collective action against labor exploitation and other human rights violations that emerge within the practice of surrogacy. Ultimately, however, the fulfillment of one's human rights should not be dependent upon participation in paid work.

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References

1. C. Weis, *Surrogacy in Russia: An Ethnography of Reproductive Labour, Stratification and Migration* (Bingley: Emerald Publishing Limited, 2021), p. 69.
2. University of Chicago Law School Global Human Rights Clinic, *Human Rights Implications of Global Surrogacy* (Chicago: Global Human Rights Clinic, 2019) pp. 8, 22.
3. Human Rights Council, *Surrogacy and the Sale of Children: Special Rapporteur on the Sale and Exploitation of Children*, UN Doc. A/HRC/37/60 (2018).
4. F. W. Twine, *Outsourcing the Womb: Race, Class, and Gestational Surrogacy in a Global Market* (New York: Routledge, 2015). For a discussion of the debate over the term “reproductive tourism,” see A. Speier, *Fertility Holidays: IVF Tourism and the Reproduction of Whiteness* (New York: New York University Press, 2006).
5. Twine (see note 4); P. L. Abrams, “The Bad Mother: Stigma, Abortion and Surrogacy,” *Journal of Law, Medicine, and Ethics* 43 (2015); Z. Arat, “Neoliberalism and Women’s Rights,” in Mahmood Monshipouri (ed), *Why Human Rights Still Matter in Contemporary Global Affairs* (England: Routledge, 2020); S. M. Rai, B. D. Brown, and K. Ruwanpura, “SDG 8: Decent Work and Economic Growth; A Gendered Analysis,” *World Development* 113/2019 (2019); M. Davies (ed), *Babies for Sale?: Transnational Surrogacy, Human Rights, and the Politics of Reproduction* (London: Zed Books, 2017).
6. Universal Declaration on Bioethics and Human Rights, 33/C Res. 36 (2005).
7. Generations Ahead, “A Reproductive Justice Analysis of Genetic Technologies: Report of a National Convening of Women of Colour and Indigenous Women,” in M. Davies (ed), *Babies for Sale?: Transnational Surrogacy, Human Rights, and the Politics of Reproduction* (London: Zed Books, 2017); S. van Wichelen, “Postgenomics and Biogitimacy: Legitimation Work in Transnational Surrogacy,” *Australian Feminist Studies* 31/88 (2016); J. Kirby, “Transnational Gestational Surrogacy: Does It Have to Be Exploitative?,” *American Journal of Bioethics* 14/5 (2014); V. Panitch, “Global Surrogacy: Exploitation to Empowerment,” *Journal of Global Ethics* 9/3 (2013); N. Brooks, E. Bendavid, and G. Miller, “USA Aid Policy and Induced Abortion in Sub-Saharan Africa: An Analysis of the Mexico City Policy,” *Lancet Global Health* 2019/7 (2019); Ñ. P. Carranza Ko, “Making the Case for Genocide, the Forced Sterilization of Indigenous Peoples of Peru,” *Genocide Studies and Prevention: An International Journal* 14/2 (2020); S. Colen, “‘Like a Mother to Them’: Stratified Reproduction and West Indian Childcare Workers and Employers in New York,” in F. D. Ginsburg and R. Rapp (eds), *Conceiving the New World Order: The Global Politics of Reproduction* (Berkeley: University of California Press, 1995), p. 78.
8. M. Cooper and C. Waldby, *Clinical Labor: Tissue Donors and Research Subjects in the Global Bioeconomy* (Durham: Duke University Press, 2014), p. 102; International Labor Organization, “Making Decent Work a Reality for Domestic Workers” (2021), <https://www.ilo.org/digitalguides/en-gb/story/domestic-workers#introduction>; F. Bonnet, J. Vanek, and M. Chen, *Women and Men in the Informal Economy: A Statistical Brief* (Manchester: WIEGO, 2019); see Twine (see note 4) for applications of Colen’s concept of stratified reproduction to examine surrogacy.
9. A. Pande, *Wombs in Labor: Transnational Commercial Surrogacy in India* (New York: Columbia University Press, 2014), p. 126.
10. International Domestic Workers Federation, “Our Work: Domestic Workers” (2018), <https://idwfd.org/our-work/domestic-workers/>.
11. L. Ross and R. Solinger, *Reproductive Justice: An Introduction* (Berkeley: University of California Press, 2006), p. 117; D. Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, 2nd edition (New York: Penguin Random House, 2017), p. 145; Z. Luna and K. Luker, “Reproductive Justice,” *Annual Review of Law and Social Science* 9/3 (2013); Asian Communities for Reproductive Justice, “A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights, and Reproductive Justice” (2005); Combahee River Collective, “The Combahee River Collective Statement” (1977).
12. Ross and Solinger (see note 11).
13. Twine (see note 4).
14. Ibid.
15. S. Saravan, “‘Humanitarian’ Thresholds of the Fundamental Feminist Ideologies: Evidence from Surrogacy Arrangements in India,” *analyze: Journal of Gender and Feminist Studies* 6/2016 (2016); E. S. Anderson, “Is Women’s Labor a Commodity?,” *Philosophy and Public Affairs* 91/1 (1990).
16. Cooper and Waldby (see note 8); S. Lewis, “Surrogacy as Feminism: The Philanthrocapitalist Framing of Contract Pregnancy,” *Frontiers: A Journal of Women’s Studies* 40/1 (2019) pp. 17, 20.
17. E. Boris and R. S. Parreñas (eds), *Intimate Labors: Cultures, Technologies, and the Politics of Care* (Stanford: Stanford University Press, 2010); D. Bandelli, *Sociological Debates on Gestational Surrogacy* (Cham: Springer, 2021); B. K. Rothman, “The Legacy of Patriarchy as Context for Surrogacy: Or Why Are We Quibbling Over This?,” *American*

Journal of Bioethics 14/5 (2014).

18. International Coalition for the Abolition of Surrogate Motherhood, "Charter" (2018), <http://abolition-ms.org/en/charter/>; H. Jacobson and V. Rozée, "Inequalities in (Trans) national Surrogacy: A Call for Examining Complex Lived Realities with an Empirical Lens," *International Journal of Comparative Sociology* 63/5–6 (2022).

19. K. Hunt, "Social Movements and Human Rights Language in Abortion Debates," *Journal of Human Rights* 20/1 (2021); L. McLatchie and J. Lee, *Surrogacy, Law, and Human Rights* (New York: ADF International, 2022); Abrams (see note 5); E. Teman, *Birthing a Mother: The Surrogate Body and the Pregnant Self* (Berkeley: University of California Press: 2010), pp. 7, 288.

20. S. Rudrappa, "Reproducing Dystopia: The Politics of Transnational Surrogacy in India, 2002–2015," *Critical Sociology* 44/7–8 (2018).

21. M. Jana and A. Hammer, "Reproductive Work in the Global South: Lived Experiences and Social Relations of Commercial Surrogacy in India," *Work, Employment, and Society* 36/5 (2022); Jacobson and Rozée (see note 18); S. Rudrappa, *Discounted Life: The Price of Global Surrogacy in India* (New York: NYU Press, 2015); Pande (2014, see note 9); K. Vora, "Medicine, Markets and the Pregnant Body: Indian Commercial Surrogacy and Transnational Labor in a Transnational Frame," in *Reimagining Reproduction: Essays on Surrogacy, Labor, and Technologies of Human Reproduction* (Oxfordshire: Taylor and Francis, 2022); S. Saravanan, "An Ethnomethodological Approach to Examine Exploitation in the Context of Capacity, Trust, and Experience of Commercial Surrogacy in India," *Philosophy, Ethics, and Humanities in Medicine* 8/1 (2013); Teman (see note 19); V. Siegl, *Intimate Strangers: Commercial Surrogacy in Russia and Ukraine and the Making of Truth* (Ithaca: Cornell University Press, 2023); N. Khvorostianov, "The Motives Behind Post-Soviet Women's Decisions to Become Surrogate Mothers," *Sexuality and Culture* 27/1 (2023); D. Yeshua-Katz and N. Khvorostianov, "'Only My Husband and My Doctor Know. And You, Girls': Online Discussions of Stigma Coping Strategies for Russian Surrogate Mothers," *International Journal of Environmental Research and Public Health* 18/21 (2021); E. Ziff, "'Honey, I Want to Be a Surrogate: How Military Spouses Negotiate and Navigate Surrogacy with Their Service Member Husbands,'" *Journal of Family Issues* 40/18 (2019); E. Teman and Z. Berend, "Surrogate Non-motherhood: Israeli and US Surrogates Speak about Kinship and Parenthood," *Anthropology and Medicine* 25/3 (2018); Z. Berend, *The Online World of Surrogacy* (New York: Berghahn Books, 2016); H. Jacobson, *Labor of Love: Gestational Surrogacy and the*

Work of Making Babies (New Brunswick: Rutgers University Press, 2016).

22. Teman (see note 19); M. Smietana, S. Rudrappa, and C. Weis, "Moral Frameworks of Commercial Surrogacy within the US, India and Russia," *Sexual and Reproductive Health Matters* 29/1 (2021).

23. Teman (see note 19).

24. A. Pande, "Commercial Surrogacy in India: Manufacturing a Perfect Mother-Worker," *Signs: Journal for Women in Culture and Society* 35/4 (2010).

25. J. L. Peet, "A Womb That Is (Not Always) One's Own," *International Feminist Journal of Politics* 18/2 (2016), p. 180; A. Majumdar, "Conceptualizing Surrogacy as Work-Labour: Domestic Labour in Commercial Gestational Surrogacy in India," *Journal of South Asian Development* 31/2 (2018), p. 217.

26. Pande, "Commercial Surrogacy" (see note 24); Majumdar (see note 25).

27. Pande "Commercial Surrogacy" (see note 24); Rudrappa (2015, see note 21).

28. Pande "Commercial Surrogacy" (see note 24).

29. A. Pande, "'At Least I am Not Sleeping with Anyone: Resisting the Stigma of Commercial Surrogacy in India,'" *Feminist Studies* 36/2 (2010).

30. Lewis (see note 16).

31. S. Corrêa, R. Petchesky, and R. Parker, *Sexuality, Health, and Human Rights* (Oxfordshire: Taylor and Francis, 2008); International Labor Organization, "International Labor Standards on Maternity Protection" (2023), <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang-en/index.htm>; United States Social Security Administration, "Social Security Programs throughout the World" (2020), <https://www.ssa.gov/policy/docs/progdsc/ssptw/>.

32. Jacobson (see note 21); Pande, "At Least" (see note 29).

33. Berend (see note 21).

34. Yeshua-Katz and Khvorostianov (see note 21); Pande, "Commercial Surrogacy" (see note 24).

35. Yeshua-Katz and Khvorostianov (see note 21).

36. Abrams (see note 5).

37. For further discussion on cultural resistance to surrogacy as work, see Rudrappa's (2015, see note 21); Pande (2014, see note 9); Yeshua-Katz and Khvorostianov (see note 21); Teman (see note 20).

38. S. Ferguson, *Women and Work: Feminism, Labour, and Social Reproduction* (London: Pluto Press, 2019); A. Davis, "The Approaching Obsolescence of Housework: A Working Class Perspective," in *Women, Race, and Class* (New York: Random House, 1981).

39. S. Federici, *Wages Against Housework* (London: Pow-

er of Women Collective, 1974).

40. S. Hertel, *Unexpected Power: Conflict and Change among Transnational Activists* (Ithaca: Cornell University Press, 2006), p. 67.

41. Office of the United Nations High Commissioner for Human Rights, “What Are Human Rights?,” <https://www.ohchr.org/en/what-are-human-rights>.

42. Peet (see note 25); Cooper and Waldby (see note 8).

43. Twine (see note 4); Corrêa et al. (see note 31).

44. University of Chicago Law School Global Human Rights Clinic (see note 2).

45. B. Shwarz and N. Varia, “Celebrating 10 Years of Global Domestic Workers’ Rights,” (June 16, 2021) <https://www.hrw.org/news/2021/06/16/celebrating-10-years-global-domestic-workers-rights>.

46. WIEGO and IDWF, *Your Toolkit on ILO Convention 189: The Domestic Workers Convention (Africa Region)* (Manchester: Women in Informal Employment: Globalizing and Organizing, 2018).

47. J. Alvarez and J. Bauer, *Women’s Property Rights under CEDAW* (Oxford: Oxford University Press, forthcoming); R. J. Cook (ed), *Frontiers of Gender Equality: Transnational Legal Perspectives* (Philadelphia: University of Pennsylvania Press, 2023); S. Fredman, *Discrimination Law* (Oxford: Oxford University Press, 2023).

48. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A (XX) (1965); International Conference on Population and Development, Programme of Action, UN Doc. A/CONF.171/13/Rev.1 (1994); International Labour Organization, Maternity Protection Convention, No. 183 (2000); Human Rights Council (2018, see note 3).

49. Corrêa et al. (see note 31); L. Ashford, “What Was Cairo? The Promise and Reality of ICPD,” Population Reference Bureau (September 14, 2004), <https://www.prb.org/resources/what-was-cairo-the-promise-and-reality-of-icpd/>.

50. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966).

51. Ibid.

52. Corrêa et al. (see note 31); Ashford (see note 49); International Conference on Population and Development, Programme of Action, UN Doc. A/CONF.171/13/Rev.1 (1994), p. 60.

53. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (1979), arts. 3, 5, 11(f).

54. International Labour Organization, Maternity Protection Convention, No. 183 (2000).

55. S. Armstrong, “Surrogacy: Time We Recognized It as a Job?,” *Journal of Gender Studies* 30/7 (2021).

56. Pew Charitable Trusts, *The Post State Measures Agreement: From Intention to Implementation* (Washington DC: Pew Charitable Trusts, 2018).

57. Armstrong (see note 55); University of Chicago Law School Global Human Rights Clinic (see note 2).

58. Human Rights Council (2018, see note 3); Center for Reproductive Rights, “CEDAW Joint NGO Submission: Cambodia’s Surrogacy Situation and Surrogacy Draft Law for Consideration by the Committee during Its 74th Session,” <https://reproductiverights.org/cedaw-joint-ngo-submission-cambodias-surrogacy-situation-and-surrogacy-draft-law/>.

59. L. Kijewski, “UN Reiterates Call to Abolish Criminalization of Surrogates,” *VOA News: East Asia* (2019), https://www.voanews.com/a/east-asia-pacific_un-reiterates-call-abolish-criminalization-surrogates/6179318.html.

60. Center for Reproductive Rights (see note 58).

61. University of Chicago Law School Global Human Rights Clinic (see note 2); Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (1979).

62. University of Chicago Law School Global Human Rights Clinic (see note 2).

63. Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180 (1979).

64. S. Allan, “Governing Transnational Surrogacy Practices: What Role Can National and International Regulation Play?,” in M. Davies (ed), *Babies for Sale?: Transnational Surrogacy, Human Rights, and the Politics of Reproduction* (London: Zed Books: 2017), p. 359; Office of the United Nations High Commissioner on Human Rights “Experts of the Committee on the Rights of the Child Praise Cambodia for Policies Protecting Children’s Rights, Ask about Unregistered Births and Laws Banning Surrogacy” (May 6, 2022), <https://www.ohchr.org/en/news/2022/05/experts-committee-rights-child-praise-cambodia-policies-protecting-childrens-rights>.

65. A. Pande, “Transnational Commercial Surrogacy in India: Gifts for Global Sisters?,” *Reproductive BioMedicine Online* 2011/23 (2011).

66. B. Stark “Transnational Surrogacy and International Human Rights Law” *ILSA Journal of International and Comparative Law* 369/2011 (2011).

67. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI) (1966).

68. International Labor Organization, Maternity Protection Convention, No. 183 (2000).

69. Ibid.
70. N. Aboueldahab, *Social Protection, Not Just Legal Protection: Migrant Laborers in the Gulf* (Doha: Brookings Doha Center, 2021).
71. United Nations General Assembly, Report of Special Rapporteur on the Sale and Exploitation of Children, including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material, UN Doc. A/74/162 (2019); Y. Luo, S. Marshall, and D. Cuthbert, “The Human Rights Implications of Not for Profit Surrogacy Organizations in Cross-Border Commercial Surrogacy: An Australian Case Study,” *Business and Human Rights Journal* 7/1 (2022).
72. D. L. Spar, *The Baby Business* (Boston: Harvard Business School, 2006), p. 80.
73. Men Having Babies, “Home: Unbiased Surrogacy Parenting Advice and Support for Gay Men Worldwide!,” <https://menhavingbabies.org/>.
74. Z. Luna, *Reproductive Rights as Human Rights* (New York: New York University Press, 2020); E. Bubola, “They Are Not Happy with How We Love Each Other: Gay Parents Fear a Meloni Victory,” *New York Times* (September 25, 2022), <https://www.nytimes.com/2022/09/25/world/europe/lgbt-adoption-giorgia-meloni.html>.
75. Center for Genetics and Society, “Surrogacy360: Who We Are,” <https://surrogacy360.org/about/who-we-are/>.
76. S. Markens, *Surrogate Motherhood and the Politics of Reproduction* (Berkeley: University of California Press, 2007), p. 141.
77. Cooper and Waldby (see note 8).
78. A. Whittaker, T. Gerrits, and C. Weis, “Emerging ‘Repronubs’ and ‘Repreneurs’: Transnational Surrogacy in Ghana, Kazakhstan, and Laos,” *International Journal of Comparative Sociology* 63/5–6 (2022).