

## Call for Inputs: Violence against Mothers

6 February 2026

The Center for Reproductive Rights (CRR)<sup>1</sup>, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World)<sup>2</sup>, Just Futures Collaborative, Pregnancy Justice, Global Alliance against Traffic in Women (GAATW),<sup>3</sup> Gender Centre Geneva Graduate Institute, Woodhull Freedom Foundation<sup>4</sup>, and the Global Health Justice Partnership of Yale Law and Public Health Schools present this submission to inform the forthcoming report to the Human Rights Council to be presented by the Special Rapporteur on violence against women and girls (SRVAWG) at its 62nd session.

### **I. Introduction**

This submission is presented in a spirit of constructive engagement, aimed at supporting the progressive development of international human rights law and ensuring consistency with established standards.<sup>5</sup> It is grounded in a commitment to strengthening the human rights system so that it effectively protects all persons from violence and discrimination rooted in gender stereotypes and structural inequalities. Recognizing that underlying assumptions in the call for inputs can perpetuate harmful misconceptions, this analysis seeks to clarify applicable international human rights standards and identify where greater conceptual precision is needed to avoid such harmful assumptions, thereby advancing women's right to live free from violence and discrimination.

There is no definition of “motherhood” in international human rights law.<sup>6</sup> No treaty or authoritative interpretation treats biological capacity, gestation, or sex assigned at birth as prerequisites for motherhood.<sup>7</sup> While the International Covenant on Economic, Social and Cultural Rights (Article 10.2)<sup>8</sup> and the Universal Declaration of Human Rights (Article 25.2)<sup>9</sup> reference motherhood, neither provides a definition nor limits it to individuals who give birth. At the same time, ideas of motherhood, and the embodied, material, legal, and cultural experiences of being or *not* being a mother, are deeply implicated in patterns of stereotyping, discrimination, and violence against women, and therefore warrant careful scrutiny.

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<sup>1</sup> Center for Reproductive Rights, <https://reproductiverights.org/> accessed 4 February 2026.

<sup>2</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World), *About Us* <https://ilga.org/about-us/> accessed 4 February 2026.

<sup>3</sup> Global Alliance Against Traffic in Women (GAATW), *Who We Are* <https://gaatw.org/> accessed 4 February 2026.

<sup>4</sup> Woodhull Freedom Foundation, *About Us* <https://www.woodhullfoundation.org/> accessed 4 February 2026.

<sup>5</sup> This is in line with the non-retrogression principle, see for instance: CESCR Committee, General Comment No. 3 on the nature of states parties' obligations (art. 2, para. 1, of the Covenant), U.N. Doc. E/1991/23 (December 14, 1990), para. 9; CESCR Committee, Gen. Comment No. 14, paras. 21, 32, 48, 50. “If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources” CESCR Committee Gen. Comment No. 14 para 32 ; universality of human rights: /CONF.157/24 (Part I), chap. III, Para I and III (Vienna Declaration and Programme of Action); Commitment to the universality of women's human rights was reiterated in the Beijing Declaration and Platform for Action in 1995, in which it was asserted that “any harmful aspect of certain traditional, customary or modern practices that violates the rights of women should be prohibited and eliminated Report of the Fourth World Conference on Women Beijing, 4–15 September 1995 (United Nations publication, Sales No. E.96.IV.13), chap. I, resolution 1 (Beijing Declaration and Platform for Action), para. 224; Vienna Convention on the Law of Treaties, [https://legal.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf); CEDAW, Gen. Recommendation No. 25 para 3: ‘The Convention is a dynamic instrument.’

<sup>6</sup> Başak Çalı, ‘Who is a Mother under International Human Rights Law?’ (Oxford Human Rights Hub, 28 January 2026) <https://ohrh.law.ox.ac.uk/who-is-a-mother-under-international-human-rights-law/>.

<sup>7</sup> Ibid.

<sup>8</sup> Art. 10(2) states that “Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”, International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 10(2), see also Başak Çalı, ‘Who is a Mother under International Human Rights Law?’ (Oxford Human Rights Hub, 28 January 2026) <https://ohrh.law.ox.ac.uk/who-is-a-mother-under-international-human-rights-law/>.

<sup>9</sup> Art. 25(2) states that “Motherhood and childhood are entitled to special care and assistance”, Universal Declaration of Human Rights, GA Res 217(III) A, UN GAOR, 3rd Sess, 183rd Plen Mtg, UN Doc A/810 at 71 (10 December 1948) art 25(2).

This need is particularly acute in the current global context. As the UN Working Group on Discrimination against Women and Girls warned in 2025, “[w]ith aging populations and declining birth rates, many governments today promote pronatalist and ‘family-oriented’ policies”,<sup>10</sup> but “tasking women with ‘reproducing the nation’ threatens their hard-won rights, including in the areas of sexual and reproductive rights and efforts to combat gender-based violence.”<sup>11</sup>

Human rights bodies have clarified that prohibitions on sex-based discrimination encompass gender-based discrimination<sup>12</sup> and have emphasized that gender stereotyping heightens the risk of violence and discrimination, particularly against those perceived as failing to conform to culturally constructed norms of womanhood.<sup>13</sup> Persistent stereotypes construct women’s ‘natural role’ as that of mothers and self-sacrificing caregivers,<sup>14</sup> while portraying them as emotionally volatile and incapable of autonomous decision-making.<sup>15</sup> These narratives impede access to sexual and reproductive health services and reinforce broader power imbalances, compounded by intersecting forms of discrimination based on race, class, disability, immigration status, sexual orientation, and other factors.<sup>16</sup> Discrimination concerning whether, when, and how persons become mothers thus stems from gendered expectations of reproductive duty<sup>17</sup> and constitutes discrimination on the basis of gender and not motherhood in itself.

<sup>10</sup> Working Group on Discrimination against Women and Girls (WGDAWG), *Gendered Dimensions of Care and Support Systems* (20 May 2025) UN Doc A/HRC/59/45, para 9, citing Yakın Ertürk, ‘Care Crisis, Anti-Gender Authoritarianism and Feminist Possibilities’ *Feminist Dissent* (forthcoming).

<sup>11</sup> Ibid, citing ‘Turkey: Withdrawal from Istanbul Convention Is a Pushback against Women’s Rights, Say Human Rights Experts’ (OHCHR) <https://www.ohchr.org/>.

<sup>12</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women* (2010) UN Doc CEDAW/C/GC/28, para 5. For the interaction between gender-based violence and discrimination based on gender identity, expression, and sex characteristics, see also CEDAW Committee, *General Recommendation No 35 on Gender-Based Violence against Women, Updating General Recommendation No 19* (2017) UN Doc CEDAW/C/GC/35, para 20; [2025-08-28-joint-statement-reaffirming-the-centrality-of-gender.pdf](#); CEDAW Committee statement on the key international framework on gender-based violence against women: [cedaw-committee-stm-adopted-with-logo.docx](#) *Vicky Hernández et al v Honduras* (Judgment) Inter-American Court of Human Rights Series C No 422 (2021), para 128 (noting that “violence against persons based on gender identity or expression, and specifically against trans women, is also based on gender, as a social construct of the identities, attributes and roles that society assigns to women and men”).

<sup>13</sup> “Universality is a framework for inclusion, not exclusion”: UN. General Assembly, Universality, cultural diversity and cultural rights, Report of the Special Rapporteur in the field of cultural right, A/73/227 (2018), para.31; *Semenya v Switzerland* (Application No 10934/21) European Court of Human Rights, 10 July 2025, para 44.

<sup>14</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), *Background Paper on the Role of the Judiciary in Addressing the Harmful Gender Stereotypes Related to Sexual and Reproductive Health and Rights*, at 5-18, [https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/JudiciaryRoleCounterStereotypes\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/JudiciaryRoleCounterStereotypes_EN.pdf) accessed 5 February 2026 [hereinafter OHCHR Background Paper]; OHCHR, *Gender stereotyping*, <https://www.ohchr.org/en/women/gender-stereotyping> accessed 5 February 2026; *L C v Peru* (Communication No 22/2009) UN Doc CEDAW/C/50/D/22/2009 (25 November 2011), para 7.7; Liiri Oja and Alicia Ely Yamin, “‘Woman’ in the European Human Rights System: How Is the Reproductive Rights Jurisprudence of the European Court of Human Rights Constructing Narratives of Women’s Citizenship?” (2016) 32(1) *Columbia Journal of Gender and Law*, 73.

<sup>15</sup> See for instance *L.C. v. Peru*, Communication No. 22/2009, UN Doc. CEDAW/C/50/D/22/2009 (25 November 2011), para 7.7 (CEDAW) OHCHR Background Paper, supra note 15, at 3, 5; Rebecca J Cook, ‘Modern Day Inquisitions’ (2011) 65(3) *University of Miami Law Review*, 791, 792.

<sup>16</sup> OHCHR Background Paper, supra note 15, at 5, 15; OHCHR, *Gender stereotyping*, <https://www.ohchr.org/en/women/gender-stereotyping> accessed 5 February 2026; *Mellet v. Ireland*, Communication No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (2016), paras 7.11, 3.19, see also concurring opinion of Sarah Cleveland, Annex II, paras 14-15; *Whelan v. Ireland*, communication No. 2425/2014, UN Doc. CCPR/C/119/D/2425/2014 (2017), para 7.12. (Human Rights Committee); CEDAW Committee, *Summary of the inquiry concerning the Philippines under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/OP.8/PHL/1 (2014) para 42. See also Human Rights Committee, *Susana v Nicaragua* (Communication No 3626/2019) UN Doc CCPR/C/142/D/3626/2019 (2025), para 8.19; *Lucia v Nicaragua* (Communication No 3627/2019) UN Doc CCPR/C/142/D/3627/2019 (2025), para 8.19; and *Norma v Ecuador* (Communication No 3628/2019) UN Doc CCPR/C/142/D/3628/2019 (2025), para 11.22.

<sup>17</sup> *Mellet v. Ireland*, supra note 17, para 7.11 (noting the petitioner’s claim that “[Ireland]’s criminalization of abortion subjected [the petitioner] to a gender-based stereotype of the reproductive role of women primarily as mothers, and that stereotyping her as a reproductive instrument subjected her to discrimination.”), see also *ibid.* Annex II, paras 14-15; *L C v Peru*

Against this backdrop, the use of the term “mother” by rights advocates requires careful reflection on its globally stratified and stereotyped construction. This includes narratives about “good women” who get to be mothers (and often have lesser, or only complementary rights in patriarchal systems), and “bad women” who refuse or are deemed unfit to become mothers and are consequently excluded from cultural status.

## II. Context: Historical Constructions of Motherhood

We begin with a concern for the misstatements in the presented definition of “mother”<sup>18</sup> that the current mandate holder of the SRVAWG intends to present as the person who gestates and births a child: this definition has its origins in English common law, created for the purposes of recognizing “legitimate” (traditional, heterosexual) families and facilitating the inheritance of property.<sup>19</sup>

Globally, the term “mother” was historically used in both common parlance and encoded in legal frameworks in accordance with societal ideas around racism, indigenous dispossession, and property inheritance.<sup>20</sup> Becoming a mother has been and remains differentially accessible to people who have different statuses in society: during chattel slavery, giving birth to a child did not bestow an enslaved woman with any rights, and meant that the child would also be enslaved.<sup>21</sup> In Canada and the United States, efforts to dispossess Indigenous people of their land and culture separated children from their families and communities by the state.<sup>22</sup>

Contemporary understandings of “mother” continue to reproduce hierarchical and exclusionary models. Stereotypes of the “single mother,” or “welfare mother” are deployed against many of the same groups facing historic discrimination,<sup>23</sup> while simultaneously attacks on reproductive rights are supported by stereotypes about women as solely caregivers.<sup>24</sup> Additionally, this narrow definition erases diverse forms of family formation,<sup>25</sup> including families with two mothers, adoptive mothers, transgender parents,<sup>26</sup> and families where a child was conceived through surrogacy.<sup>27</sup>

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(Communication No 22/2009) UN Doc CEDAW/C/50/D/22/2009 (25 November 2011), para 7.7 (noting that such narratives “understand the exercise of a woman’s reproductive capacity as a duty rather than a right”).

<sup>18</sup> In the call for inputs, the Special Rapporteur defines a “mother” as a “female of childbearing ability, who gives birth to a child,” which, as noted above, is not reflected in international human rights law. See Başak Çalı, ‘Who is a Mother under International Human Rights Law?’ (Oxford Human Rights Hub, 28 January 2026) <https://ohrh.law.ox.ac.uk/who-is-a-mother-under-international-human-rights-law/>.

<sup>19</sup> Akshat Agarwal, ‘Constitutionalizing Parents’ Rights’ (2025) SSRN.

<sup>20</sup> Ibid; Khiara Bridges, *Reproducing race: an ethnography of pregnancy as a site of racialization* (University of California Press, 2011); Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (Vintage Books, 1997).

<sup>21</sup> Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (Vintage Books, 1997).

<sup>22</sup> Native American Rights Fund, ‘Brackeen Headed to the U.S. Supreme Court’ (*NARF*, June 28, 2022) <https://narf.org/icwa-brackeen/>.

<sup>23</sup> Abortion Care Network and others, ‘Systemic Racism and Reproductive Injustice in the United States: A Report for the UN Committee on the Elimination of Racial Discrimination’ (July, 2022); Dána-Ain Davis, ‘Obstetric Racism: The Racial Politics of Pregnancy, Labor, and Birthing’ (2019) *Medical Anthropology*.

<sup>24</sup> OHCHR Background Paper, *supra* note 15, at 5-18; OHCHR, *Gender stereotyping*, <https://www.ohchr.org/en/women/gender-stereotyping> accessed 5 February 2026; *Mellet v. Ireland*, Communication No. 2324/2013, UN Doc. CCPR/C/116/D/2324/2013 (2016), paras 7.11, 3.19 and concurring opinion of Sarah Cleveland, Annex II, paras 14-15; *Whelan v. Ireland*, communication No. 2425/2014, UN Doc. CCPR/C/119/D/2425/2014 (2017), para 7.12. (Human Rights Committee).

<sup>25</sup> As the WGDWG has pointed out, “International human rights law adopts an adaptive understanding of the family, rather than imposing a narrow, prescriptive or standard definition.”, Working Group on discrimination against women and girls, *The rights of women and girls in family life: guidance document of the Working Group on discrimination against women and girls* (13 August 2025), UN Doc A/HRC/WG.11/43/1, para 8, citing to Committee on the Elimination of Discrimination against Women, General Recommendation No. 29 (2013) and Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992). See also, for example, Human Rights Committee, *General Comment No 16: Article 17 (Right to Privacy)* (1988); Human Rights Committee, *General Comment No 19: Article 23 (The Family)* (1990); Committee on the Rights of the Child, *Report of the Committee on the Rights of the Child* (2016) UN Doc CRC/C/111, para 701.

<sup>26</sup> See section III. 4. below for further analysis on queer parenthood. See also UNICEF, Supporting Families for Gender Transformative Parenting, [Gender Transformative Parenting Resource Modules.pdf](#).

<sup>27</sup> See section III. 3. below for further analysis on human rights implications of surrogacy.

### III. Policing Reproduction: Gender Stereotypes and State Control

Violations of sexual and reproductive health and rights are linked to structural discrimination and take many forms, including forced sterilization, forced abortion or pregnancy, abortion criminalization, denial or delay of safe abortion and post-abortion care, and abuse and mistreatment of those seeking sexual and reproductive health information, goods, and services.<sup>28</sup> These violations reflect entrenched inequalities and power imbalances based on gender, race, age, disability, sexual orientation, gender identity, and other factors,<sup>29</sup> underscoring the need for an intersectional approach when addressing discrimination and violence related to reproduction. The following section presents four illustrative examples of how gender stereotypes embedded in discriminatory laws and policies harm women, girls, and gender-diverse people, while recognizing that experiences of human rights violations vary among people because of their social location. These examples are not exhaustive, and structural discrimination and violence regarding the reproductive rights of women with disabilities<sup>30</sup> remain widespread.

#### 1. Criminalization of Pregnancy

The criminalization of pregnancy constitutes a form of structural violence that targets individuals based on their reproductive capacity and choices. Human rights bodies have affirmed that the criminalization of, or failure to provide, services required only by women, such as abortion and emergency contraception, constitutes sex discrimination,<sup>31</sup> and undermines bodily and reproductive autonomy,

<sup>28</sup> See, for example, Working Group on Discrimination against Women and Girls, *Women's and girls' sexual and reproductive health rights in crisis* (2021) para 23. Such violations infringe multiple human rights, including the right to be free from torture or cruel, inhuman or degrading treatment; the rights to equality and non-discrimination and to privacy; the right to determine the number, timing, and spacing of children; the rights to life and health; the right to education and information; and the right to benefit from scientific progress, see Human Rights Committee, *General Comment No 36 (Right to Life)* UN Doc CCPR/C/GC/36 (2018) para 8; Committee against Torture, *Concluding Observations on Poland* UN Doc CAT/C/POL/CO/7 (2019) para 33(d); Committee against Torture, *Concluding Observations on the United Kingdom of Great Britain and Northern Ireland* UN Doc CAT/C/GBR/CO/6 (2019) para 46; CEDAW Committee, *General Recommendation No 24 (Women and Health)* UN Doc A/54/38/Rev.1 (1999) paras 24, 28.

<sup>29</sup> See Human Rights Council, Working Group on the Issue of Discrimination against Women in Law and Practice, *Report* UN Doc A/HRC/20/28 (2012) paras 9–10; Human Rights Council, WGDAWG, *Report* UN Doc A/HRC/38/46 (2018) paras 9–10; Human Rights Council, *Follow-up on the Application of the Technical Guidance on the Application of a Human Rights-Based Approach to the Implementation of Policies and Programmes to Reduce Preventable Maternal Mortality and Morbidity* UN Doc A/HRC/39/26 (2018) para 47; Human Rights Council, WGDAWG, *Women's and Girls' Sexual and Reproductive Health Rights in Crisis* UN Doc A/HRC/47/38 (2021) para 19; CEDAW Committee, *General Recommendation No 24 (Women and Health)* UN Doc A/54/38/Rev.1 (1999) para 11; CEDAW Committee, *General Recommendation No 28* UN Doc CEDAW/C/GC/28 (2010) para 18; Human Rights Council, *Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health (Tlaleng Mofokeng)* UN Doc A/HRC/47/28 (2021) paras 8, 25, 40, 89, 91; Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 20 (Non-discrimination in Economic, Social and Cultural Rights (art 2(2) ICESCR))* UN Doc E/C.12/GC/20 (2009) paras 2, 7. States are required to address compounded forms of discrimination in order to achieve substantive equality: see CESCR, *General Comment No 22 (Right to Sexual and Reproductive Health)* UN Doc E/C.12/GC/22 (2016) para 24; WGDAWG, *Women's and Girls' Sexual and Reproductive Health Rights in Crisis* UN Doc A/HRC/47/38 (2021) para 18; WGDAWG, *Guidance Document on Substantive Gender Equality*.

<sup>30</sup> One extreme violation is the forced abortion and forced sterilization of women with disabilities, see, e.g., CRPD Committee, *General Comment No 3 on women and girls with disabilities* (2016) UN Doc CRPD/C/GC/3, paras 10, 32; CRPD Committee, *General Comment No 6* UN Doc CRPD/C/GC/6, paras 7, 30. States also must review and repeal all laws that prevent people with disabilities from exercising their parental rights, including their right to adoption, see CRPD GC 3, para 30; CRPD Concluding Observations to Mongolia, CRPD/C/MNG/CO/1 (2015), para. 35; see also CEDAW GR 25 on violence against women (2017).

<sup>31</sup> CEDAW, *General Recommendation 35 on gender-based violence against Women, Updating General Recommendation 19*, UN Doc. CEDAW/C/GC/35, 2017. See also CEDAW Inquiry concerning Poland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Report of the Committee, UN Doc. CEDAW/C/POL/IR/1 (2024); CEDAW, GC 35, para. 29(c)(i); CESCR, *General Comment 22*, paras. 34, 40, 49(a), 57; Human Rights Committee, *General Comment No. 36*, para. 8; CEDAW Committee, *General Recommendation No. 24* (1999), para. 31(c); Committee on the Rights of the Child, *Camila v. Peru*, para. 8.4, U.N. Doc. CRC/C/93/D/136/2021 (2023); CERD, GC 37, paras. 34, 51(e); CERD Committee, *Concluding Observations: United States of America*, para. 36, UN Doc. CERD/C/USA/CO/10-12 (2022); CAT Committee, *Concluding Observations: El Salvador*, para. 31, UN Doc. CAT/C/SLV/CO/3 (2022). See also Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report to the United Nations General Assembly, paras. 92, 113(b), U.N. Doc. A/HRC/32/32 (2016); Working Group on discrimination against women and girls, Report to the Human Rights Council:

among other rights.<sup>32</sup> The state's assertion of authority over pregnant bodies suspends individual bodily autonomy, reframing health-related decisions as potential evidence of wrongdoing,<sup>33</sup> and collapsing the boundary between healthcare provision and law enforcement.<sup>34</sup> It operates through normative ideals of "good" motherhood that effectively exclude and punish "non-normative" pregnant persons—including trans or disabled people, those who use drugs, live with HIV, or experience poverty—constructing these individuals as inherently unfit for “motherhood” and therefore legitimate targets of state intervention, including arrests and prosecutions, forced medical intervention, and child welfare involvement.<sup>35</sup>

In many of the 60 plus countries where abortion is partially or fully criminalized, pregnant people are routinely investigated or prosecuted following miscarriage or stillbirth, despite the prevalence of pregnancy loss. Charges can include manslaughter or child endangerment, carrying serious penalties.<sup>36</sup> In the United States, since the 2022 *Dobbs v. Jackson Women's Health Organization* decision, at least 412 criminal cases have been linked to pregnancy, most involving allegations of child abuse or neglect based on prenatal conduct before any live birth.<sup>37</sup>

Pregnant individuals using drugs may face particularly severe criminalization. In Norway, pregnant people who use drugs may be detained under a purported fetal-protection rationale, while U.S. states such as Alabama and South Carolina explicitly prosecute drug use during pregnancy, a conviction that could result in decades in prison.<sup>38</sup> Similarly, criminalization of pregnant people living with HIV occurs

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<sup>32</sup> See, e.g., *K.L. v Peru*, Human Rights Committee, Comm. No. 1153/2003, UN Doc. CCPR/C/85/D/1153/2003 (2005); L.C. v. Peru, CEDAW Committee, Comm. No. 22/2009, para. 8.15, UN Doc. CEDAW/C/50/D/22/2009 (2011); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Harm reduction for sustainable peace and development* (Report to the General Assembly, 18 July 2024) UN Doc A/79/177, para 14.

<sup>33</sup> Lisa M Paltrow and Jeanne Flavin, ‘Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women’s Legal Status and Public Health’ (2013) 38(2) *Journal of Health Politics, Policy and Law* 299.

<sup>34</sup> See also Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Harm reduction for sustainable peace and development* (Report to the General Assembly, 18 July 2024) UN Doc A/79/177, paras 27 ff. (stating that “[l]aw and policy can themselves become a conduit to harm, by either enhancing or generating it. In particular, criminalization often disproportionately affects individuals who have historically been more vulnerable, as explored in the present report: in cases of drug use, HIV exposure, transmission and disclosure, abortion, same-sex relations and sex work.”).

<sup>35</sup> See, for example, Special Rapporteur on extreme poverty and human rights, Report of the Mission to the United States of America, para 56, U.N. Doc. A/HRC/38/33/Add.1, (May, 4, 2018) (stating that “[w]hen a child is born to a woman living in poverty, that woman is more likely to be investigated by the child welfare system and have her child taken away from her. Poverty is frequently treated as a form of “child neglect” and thus as cause to remove a child from the home, a risk exacerbated by the fact that some states do not provide legal aid in child welfare proceedings.”) and Working Group on Arbitrary Detention, Report of the Mission to the United States of America, para 72, U.N. Doc. A/HRC/3/6/37/Add.2 (Sept. 2017), para. 74 (recognizing the use of civil proceedings to confine pregnant women suspected of substance abuse as a form of gendered and discriminatory deprivation of liberty). See also Jennifer Flavin, *Our Bodies, Our Crimes: The Policing of Women’s Reproduction in America* (NYU Press 2009); Carolyn Sufryn, *Jailcare: Finding the Safety Net for Women Behind Bars* (University of California Press 2017).

<sup>36</sup> *Manuela v El Salvador* (Judgment) Inter-American Court of Human Rights, Series C No 461 (2023); UN Human Rights Office of the High Commissioner, ‘El Salvador must amend reproductive health care laws after top Americas court ruling’ (OHCHR, press release) <https://www.ohchr.org>; UN Working Group on Arbitrary Detention, *Opinion No 68/2019 concerning El Salvador* (A/HRC/WGAD/2019/68); UN Committee on the Elimination of Discrimination against Women, *Concluding observations on El Salvador* (CEDAW/C/SLV/CO/); Fiona de Londras, Aoife Cleeve, Michelle I Rodriguez, Abigail Farrell, Magdalena Furgalska and Anna Lavelanet, ‘The Impact of Criminalisation on Abortion-Related Outcomes: A Synthesis of Legal and Health Evidence’ (2022) 7(12) *BMJ Global Health* e010409.

<sup>37</sup> Pregnancy Justice, *Pregnancy Criminalization Two Years after Dobbs* (2024).

<sup>38</sup> International Network of People who Use Drugs (INPUD), *Illicit Drug Use in Pregnancy: An Appropriate Response* (2022); Amnesty International, *Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA* (2017).

in nations including Russia, Ukraine, and the United States,<sup>39</sup> allowing charges even without transmission.<sup>40</sup>

In these punitive contexts, pregnant persons face an impossible choice: disclose substance use, HIV exposure, or pregnancy complications to healthcare providers and risk arrest and prosecution, or forgo necessary medical care.<sup>41</sup> This coercive dynamic undermines trust in health systems, deters timely and necessary care, and exacerbates maternal and fetal health risks, contradicting public health objectives.<sup>42</sup>

Globally, pregnant people living in poverty and facing intersecting discrimination based on race, ethnicity, and immigration status are disproportionately targeted.<sup>43</sup> In the United States, enforcement patterns disproportionately target low-income persons, persons of color, and Indigenous persons.<sup>44</sup> Similarly, persons with disabilities and those living with HIV face targeted state intervention through forced sterilization laws and prosecution regardless of actual harm or transmission, violating their human rights.<sup>45</sup> These patterns demonstrate how legal systems weaponize reproductive capacity to

<sup>39</sup> Pascal M Eba, ‘HIV-Specific Legislation in Sub-Saharan Africa: A Comprehensive Human Rights Analysis’ (2015) 15 *African Human Rights Law Journal* 224; Eric J Bernard, ‘Humanising the Law: Harnessing Science and Community Voices to End HIV Criminalisation’ (2025) 37(12) *AIDS Care* 2017; Eric J Bernard, Chris Beyrer, Emily Cameron, Megan Clayton and Anastasia Volgina, ‘Ending Unjust HIV Criminalization: Leave No-One Behind’ (2021) 24(2) *Journal of the International AIDS Society* e25681.

<sup>40</sup> This is contrary to clear UNAIDS guidance, see UNAIDS, *Policy Brief: The Criminalization of HIV Transmission, Exposure and Non-Disclosure* (2020) [https://www.unaids.org/sites/default/files/media\\_asset/jc1601\\_policy\\_brief\\_criminalization\\_long\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/jc1601_policy_brief_criminalization_long_en.pdf), 6 (stating that criminalization of mother-to-child transmission is inappropriate because “everyone has the right to have children, including women living with HIV” and that it could deter women from HIV testing and treatment due to fear of stigma or violence, and may leave women without safer alternatives for breast feeding); UNAIDS, *HIV and Human Rights: Fact Sheet — Criminalisation* (2021) [https://www.unaids.org/sites/default/files/media\\_asset/01-hiv-human-rights-factsheet-criminalization\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/01-hiv-human-rights-factsheet-criminalization_en.pdf); UNAIDS, *Ending overly broad criminalisation of HIV non-disclosure, exposure and transmission: Critical scientific, medical and legal considerations* (2013) [https://www.unaids.org/sites/default/files/media\\_asset/20130530\\_Guidance\\_Ending\\_Criminalisation\\_0.pdf](https://www.unaids.org/sites/default/files/media_asset/20130530_Guidance_Ending_Criminalisation_0.pdf). International human rights bodies and UN experts consistently recommend the removal of HIV specific criminal laws, see A/HRC/14/20. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover. New York: United Nations General Assembly; 2010. 10. CEDAW/C/TJK/CO/7. Concluding observations on the seventh periodic report of Tajikistan. United Nations Committee on the Elimination of Discrimination against Women; 2024. 11. CEDAW/C/UZB/CO/6. Concluding observations on the sixth periodic report of Uzbekistan. United Nations Committee on the Elimination of Discrimination against Women; 2022. 12. E/C.12/GC/22. General comment no. 22 (2016) on the right to sexual and reproductive health (Article 12 of the International Covenant on Economic, Social and Cultural Rights). New York: United Nations Economic and Social Council; 2016). A/HRC/16/69.

<sup>41</sup> See, for example, *Shpagina v Russian Federation* (CEDAW/C/84/D/129/2018, 8 March 2023) (finding that the Russian Federation violated the rights of a woman by failing to provide evidence-based, gender-sensitive drug dependence treatment, while subjecting her to criminal sanctions for activities related to drug use); Amnesty International, *Criminalizing Pregnancy: Policing Pregnant Women Who Use Drugs in the USA* (2017); Rebecca Stone, ‘Pregnant Women and Substance Use: Fear, Stigma, and Barriers to Care’ (2015) 3(2) *Health & Justice*.

<sup>42</sup> For HIV, see, e.g., *Policy Brief: The Criminalization of HIV Transmission, Exposure and Non-Disclosure* (2020) [https://www.unaids.org/sites/default/files/media\\_asset/jc1601\\_policy\\_brief\\_criminalization\\_long\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/jc1601_policy_brief_criminalization_long_en.pdf); see also generally Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Harm reduction for sustainable peace and development* (Report to the General Assembly, 18 July 2024) UN Doc A/79/177.

<sup>43</sup> Fiona de Londras, Aoife Cleeve, Michelle I Rodriguez, Abigail Farrell, Magdalena Furgalska and Anna Lavelanet, ‘The Impact of Criminalisation on Abortion-Related Outcomes: A Synthesis of Legal and Health Evidence’ (2022) 7(12) *BMJ Global Health* e010409.

<sup>44</sup> Loretta Ross and Rickie Solinger, *Reproductive Justice: An Introduction* (University of California Press 2017); Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (Pantheon Books 1997).

<sup>45</sup> Committee on the Elimination of Racial Discrimination, *General Recommendation No 37: Racial discrimination in the enjoyment of the right to health* (August 2024) UN Doc CERD/C/GC/37, para 32; CRPD Committee, *General Comment No 3 on women and girls with disabilities* (2016) UN Doc CRPD/C/GC/3, paras 10, 32; CRPD Committee, *General Comment No 6* UN Doc CRPD/C/GC/6, paras 7, 30. See also CRPD Committee, *Concluding observations on Mauritius* UN Doc CRPD/C/MUS/CO/1, para 29, and *Concluding observations on New Zealand* UN Doc CRPD/C/NZL/CO/1, para 37; CEDAW Committee, *Concluding observations on the ninth periodic report of Iceland* (31 May 2023) UN Doc CEDAW/C/ISL/CO/9, paras 25–26; CEDAW Committee, *Concluding observations on the sixth periodic report of Georgia* (2 March 2023) UN Doc CEDAW/C/GEO/CO/6, para 25; CEDAW Committee, *General Recommendation No 35 on gender-based violence against women* (2017) UN Doc CEDAW/C/GC/35, para 18; CEDAW Committee, *Concluding observations on the ninth periodic report of China* (31 May 2023) UN Doc CEDAW/C/CHN/CO/9, para 43(d) (noting with concern allegations of torture in Uyghur-populated areas through, inter alia, forced sterilizations); Committee against Torture, *Concluding observations on the*

amplify existing inequalities. Together, they reveal pregnancy criminalization as a form of structural gender-based violence enforced through law and policy,<sup>46</sup> reinforcing hierarchies of maternal worthiness, determining which pregnant persons deserve protection and which deserve punishment.

## 2. Mothers who do sex work

Mothers who do sex work face extreme forms of discrimination and violence. This is due in part to legal frameworks in many countries that criminalize their labor and put mothers who do sex work at significant risk for labor exploitation, police violence, incarceration, and being separated from their children by the state.<sup>47</sup> UN human rights experts and agencies have repeatedly called for the full decriminalization of sex work, recognizing that criminalization violates multiple human rights, including freedom from violence, stigma, and discrimination; bodily autonomy and autonomy over one's sexuality; equality and non-discrimination; and access to health services.<sup>48</sup>

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*fourth periodic report of Slovakia* (7 June 2023) UN Doc CAT/C/SVK/CO/4, para 23; CESCR Committee, *Concluding observations on the third periodic report of China, including Hong Kong, China and Macao, China* (22 March 2023) UN Doc E/C.12/CHN/CO/3, para 70; CEDAW Committee, *Concluding observations on the eighth periodic report of Belgium* (1 November 2022) UN Doc CEDAW/C/BEL/CO/8, para 23; CEDAW Committee, *Concluding observations on the sixth periodic report of Switzerland* (1 November 2022) UN Doc CEDAW/C/CHE/CO/6, para 57. See also Human Rights Watch, *Sterilization of Women and Girls with Disabilities: A Briefing Paper* (2012); UNAIDS, *Confronting Discrimination: Overcoming HIV-Related Stigma and Discrimination in Health-Care Settings and Beyond* (2021); Mercy M Kavanagh and M Mhloyi, 'HIV Criminalization and Women's Access to Sexual and Reproductive Health Services in Zimbabwe' (2015) 14(1) *African Journal of AIDS Research*, 77.

<sup>46</sup> States must ensure that women are protected against discrimination by public authorities and the judiciary, including by the competent courts, other public institutions and by private actors. To do so, judicial institutions must apply the principle of substantive or de facto equality, to interpret laws, including national, religious and customary laws, in line with that obligation, CEDAW Committee, *Gen. Recommendation No. 28*, para. 17. See also OHCHR, *Gender Stereotyping and the Judiciary: A Workshop Guide*, 2020.

<sup>47</sup> OHCHR, *A Guide on the Human Rights of Sex Workers* (Special Rapporteur on the Right to Health, Independent Expert on Protection against Violence and Discrimination based on SOGI, and WGDAGW, March 2024) <https://www.ohchr.org/sites/default/files/2024-03/a-guide-on-the-human-rights-of-sex-workers-March2024.pdf> accessed 5 February 2026 (noting that in jurisdictions where sex work is criminalized, sex workers face arbitrary arrests, police abuses, discrimination, lack of access to healthcare, and criminalization of third-party activities, including their children); UNDP, UNFPA, UNAIDS, *Sex Work and the Law in Asia and the Pacific: Laws, HIV and Human Rights in the Context of Sex Work* (2012), <https://www.undp.org/sites/g/files/zskgke326/files/publications/HIV-2012-SexWorkAndLaw.pdf>; UNAIDS, *HIV and Human Rights: Factsheet – Sex Work* (2020), [https://www.unaids.org/sites/default/files/media\\_asset/05-hiv-human-rights-factsheet-sex-work\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/05-hiv-human-rights-factsheet-sex-work_en.pdf); Yale Global Health Justice Partnership & Sex Workers & Allies Network, *The Harmful Consequences of Sex Work Criminalization on Health and Rights* (June 2020), [https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences\\_of\\_criminalization\\_v2.pdf](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/consequences_of_criminalization_v2.pdf) (pointing out that the incarceration of sex workers also “disrupts their ability to fulfill parental and other familial duties and creates reunification challenges, making it more likely for their children to remain in foster care even after their release”).

<sup>48</sup> WGDAGW, *Eliminating discrimination against sex workers and securing their human rights: Guidance document of the Working Group on discrimination against women and girls* (7 December 2024) UN Doc A/HRC/WG.11/39/1, paras 18–28 and 31 (concluding that there is sufficient evidence of the harms of all forms of criminalisation of sex work and noting the growing consensus among international human rights bodies in favour of the full decriminalisation of adult voluntary sex work); WGDAGW, *Report on eliminating discrimination against women with regard to health and safety* (2016) UN Doc A/HRC/32/44, paras 76, 84, 85 and 106(e); WGDAGW, *Report on women deprived of liberty* (2019) UN Doc A/HRC/41/33, paras 36 and 80(c); WGDAGW and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Communication to South Africa* (2023) UN Doc ZAF 1/2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27841>; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Harm reduction for sustainable peace and development* (Report to the General Assembly, 18 July 2024) UN Doc A/79/177; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (2010) UN Doc A/HRC/14/20, paras 27, 36–46 and 76(b); Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Report to the Human Rights Council* (2022) UN Doc A/HRC/50/28, para 71; Special Rapporteur on trafficking in persons, especially women and children, *Report to the General Assembly* (2020) UN Doc A/75/169, paras 41 and 70; Secretary-General, *Report on trafficking in persons, especially women and children* (2016) UN Docs A/70/811 and A/70/811/Corr.1, paras 53 and 75(f); UNAIDS, *HIV and sex work: Human rights fact sheet series* (2024), *HIV and sex work — Human rights fact sheet series 2024*; World Health Organization, *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* (WHO, Geneva 2016) 86–87 <https://www.who.int/publications/i/item/9789241511124>.

Stigma and discrimination by state institutions have led some parents to refuse support intended for sex workers during the COVID-19 pandemic, fearing that child welfare authorities would learn of their work.<sup>49</sup> Sex workers were also explicitly denied pandemic assistance, including in the United States, where the federal government barred legal adult businesses from applying for relief loans. These policies make sex work more precarious, reinforce stigma, and create social, legal, and economic challenges. They also harm the children of sex workers, limiting access to healthcare and education and, in some cases, even leading to criminalization.<sup>50</sup> This is exemplified by the case of a school expelling a student because their mother earned income by posting adult content online.<sup>51</sup>

Discrimination has also forced workers to remain in exploitative situations. In Mexico, sex workers have reported that abusive employers have threatened to report workers to child welfare authorities if they try to leave, leading to workers remaining in abusive situations out of fear of losing their children.<sup>52</sup> Against this backdrop, UN experts, working groups, the WHO, and UNAIDS have called for the decriminalization of sex work as a critical first step to reduce stigma and protect families from state-sanctioned separation.<sup>53</sup>

### 3. Surrogacy and Reproductive Autonomy

Building on the preceding analysis of how patriarchal gender norms and structural inequalities underpin violence and discrimination, surrogacy illustrates another context where stereotyped constructions of motherhood are used to justify stigma and punitive legal responses. Persons acting as surrogates may be seen as challenging traditional norms of motherhood and family by separating pregnancy from parenthood and are framed as failing to conform to ideals of “good motherhood.” Calls to restrict surrogacy are often grounded in harmful gender stereotypes that deny reproductive agency and treat reproduction as a social duty rather than a right.

By denying surrogates’ capacity to make autonomous reproductive choices, these stereotypes reinforce State control over pregnant bodies and contribute to stigma, coercion, discrimination, and violence rather than protection. From a human rights perspective, access to surrogacy enables the realization of fundamental rights for all parties, including bodily and reproductive autonomy, health, equality and non-discrimination, and the right to decide whether and how to form a family.<sup>54</sup> Bodily and reproductive autonomy encompass the ability to decide whether and how to become pregnant, including whether to engage in surrogacy, to provide gametes, to terminate or avoid a pregnancy, and the right of all pregnant

<sup>49</sup> Magdalene Aggeler, ‘School Expels Kids Because of Their Mom’s OnlyFans Account’ (24 February 2021) *The Cut* <https://www.thecut.com/2021/02/school-expels-kids-because-of-their-moms-onlyfans-account.html>.

<sup>50</sup> See WGDWAG, *Eliminating discrimination against sex workers and securing their human rights: Guidance document of the Working Group on discrimination against women and girls* (7 December 2024) UN Doc A/HRC/WG.11/39/1, para 11 (pointing out that criminalization of third party activities may lead to the criminalization not only of the managers, organizers and facilitators of sex work, but also of the children and partners of sex workers); Marissa L Winter and S G Olivia, ‘Sex Work and Parenthood: The Experiences of Female Sex Workers Who Are Also Parents or Caregivers: A Scoping Review’ (2024) 21 *International Journal of Environmental Research and Public Health* 852 <https://doi.org/10.3390/ijerph21070852>; Julianne Michelle Stevenson, *Best Laid Birth Plans: A Relational Analysis of the Legal Rights of Birthing People in Canada* (LLM thesis, Osgoode Hall Law School, York University, 2024) <https://digitalcommons.osgoode.yorku.ca/llm/71/>.

<sup>51</sup> See L Harry and M Lindström-Newman, “‘Do You Have a Boyfriend Here?’: Exploring Official Decision-Makers’ Treatment of Migrant Women’ (Global Alliance Against Traffic in Women, Bangkok 2024), 23–24.

<sup>52</sup> Elvira Madrid Romero, Jaime Alberto Montejo Bohórquez and Rosa Icela Madrid Romero, *Indicadores de Violencia de Género en el Mundo Laboral de las Trabajadoras Sexuales en México* (Brigada Callejera 2019).

<sup>54</sup> For the right to form a family, see, e.g., WHO, *Infertility* (April 3, 2023), available at <https://www.who.int/news-room/fact-sheets/detail/infertility>. For other rights, including the right to equality and non-discrimination (e.g. Universal Declaration of Human Rights, art. 2; ICESCR art. 2; CEDAW art. 2; CRPD arts. 5 and 6); right to health (e.g., UDHR art. 25, ICESCR art. 12, CEDAW art. 12); right to privacy (e.g., UDHR art. 12; ICCPR art. 17); right to bodily autonomy (e.g., ICCPR arts. 7 and 17, CEDAW art. 12 and GR 24); right to reproductive autonomy (e.g., ICESCR GC 22, CEDAW art. 12 and GR 24); right to decide number and spacing of children (CEDAW art. 16); right to information (e.g. UDHR art. 19; ICCPR art. 19); right to benefit from scientific progress (e.g., UDHR art. 27, ICESCR art. 15(b)); rights of persons with disabilities (e.g., CRPD arts. 5, 6, 7, 12, 17, and 23) in Claudia Flores, Accounting for the Selfish State: Human Rights, Reproductive Equality, and Global Regulation of Gestational Surrogacy, 23 CHI. J. INT’L L. 391 (Winter 2023), p. 424.

persons, including surrogates, to access quality health care throughout pregnancy, childbirth, and postpartum, with full informed consent and independent decision-making at every stage.<sup>55</sup>

Engagement in surrogacy, like other forms of labor, is shaped by socioeconomic inequalities rooted in patriarchal norms, gendered labor markets, and unequal access to education, employment, and social protection. These structural constraints do not negate individual agency or capacity to consent, nor do they justify restrictions on bodily and reproductive autonomy. The CEDAW Committee has recommended that States refrain from imposing criminal or administrative sanctions on women who act as surrogates and instead adopt laws and policies that address unequal power relations to prevent exploitation and discrimination.<sup>56</sup> Punitive approaches fail to address these conditions and do not reduce demand,<sup>57</sup> but instead displace surrogacy into less regulated, transnational contexts, increasing risks for persons acting as surrogates and leaving them without legal protection.<sup>58</sup> Legal frameworks that conflate surrogacy with trafficking or the sale of children mischaracterize its consensual nature, undermine recognition of surrogates as autonomous rights-holders, and risk criminalizing them.<sup>59</sup> Where surrogacy arrangements are declared void or birth certificates are not recognized, children born of surrogacy can be rendered stateless, violating their rights to nationality, identity, and family.<sup>60</sup> In several countries, access to assisted reproductive technologies (ART) is further restricted for same-sex couples, unmarried

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<sup>55</sup> ESCR Committee, Gen. Comment No. 14, paras. 8, 14; CRPD Committee, Gen. Comment No. 3, paras. 40, 44; Human Rights Committee, *Mellet v. Ireland*, para. 7.8; Human Rights Committee, *Whelan v. Ireland*, supra note 13, para. 7.9. See also European Court of Human Rights (ECHR), *Pretty v. The United Kingdom*, App. No. 2346/02 (April 29, 2002), para. 61; Inter-American Court of Human Rights, *Artavia Murillo et al. v. Costa Rica*, Judgment of November 28, 2012 (Preliminary Objections, Merits, Reparations and Costs), paras. 222-253; Claudia Flores, Accounting for the Selfish State: Human Rights, Reproductive Equality, and Global Regulation of Gestational Surrogacy, 23 CHI. J. INT'L L. 391 (Winter 2023),

<sup>56</sup> CEDAW Committee, Concluding Observations on the sixth periodic report of Cambodia, U.N. Doc. CEDAW/C/KHM/CO/6 (November 12, 2019); see also CEDAW Committee, Concluding observations on the ninth periodic report of Ukraine, U.N. Doc. CEDAW/C/UKR/CO/9 (November 1, 2022)

<sup>57</sup> In the UK, where compensated surrogacy is criminalized, the number of children born through surrogacy in 2016 was eight times higher than in 2007, and more than half of surrogate births between 2016 and 2023 took place abroad, and in Italy, where surrogacy has been prohibited since 2004, an estimated 250 couples per year travel abroad to pursue surrogacy, see O Igiehon, 'Should the UK Law on Surrogacy be Reformed?' (New Law Journal, 18 January 2021); Cafcass, Response to FOI inquiry from Kirsty Horsey, ref Gov/CAF23-31530, 28 November 2023; Paterlini M. 'Italy bans citizens from seeking surrogacy abroad' BMJ 2024; 387:q2316 doi:10.1136/bmj.q2316.

<sup>58</sup> For instance, criminalization in Cambodia resulted in the arrest and prosecution of 32 surrogates in 2018 on human trafficking charges, forcing them to give birth in military compounds and raise the children. See, e.g., Gender and Development for Cambodia, Gender and Development Network, and Center for Reproductive Rights, *Supplementary Information on Cambodia's Surrogacy Situation and Surrogacy Draft Law for Consideration by the Committee during its 74th Session* (30 September 2019). See also 'They Were Surrogates. Now They Must Raise the Children' (26 November 2022) *New York Times* <https://www.nytimes.com/2022/11/26/world/asia/surrogacy-cambodia.html>. The practice continues to thrive underground in Cambodia, where estimates suggest that clients pay up to USD 100,000 for a surrogate; see, eg, 'Cambodia Jails 13 Pregnant Filipino Surrogates' (3 December 2024) *BBC News*.

<sup>59</sup> Claudia Flores, 'Accounting for the Selfish State: Human Rights, Reproductive Equality, and Global Regulation of Gestational Surrogacy' (2023) 23 *Chicago Journal of International Law* 391, 431. See also Center for Reproductive Rights, *Submission following the Call for Inputs by the Special Rapporteur on the Sale and Sexual Exploitation of Children on Safeguards for the Protection of the Rights of Children Born from Surrogacy Arrangements* (2019) <https://reproductiverights.org/wp-content/uploads/2020/12/Submission-Sale-Of-Children-Surrogacy.pdf>.

<sup>60</sup> See Convention on the Rights of the Child (1989), art 7. See also *Mennesson v France* (App no 65192/11) ECtHR, 26 June 2014, and *Labassee v France* (App no 65941/11) ECtHR, 26 June 2014 (concluding that the non-recognition by authorities of parentage between the intended parents and the child, born through a gestational surrogacy arrangement in California, violated an essential aspect of identity, namely the legal parent-child relationship); *Paradiso and Campanelli v Italy* (App no 25358/12) ECtHR, 24 January 2017 (illustrating the very real risk of separation of a surrogate-born child from their intended parents following a domestic judicial decision).

couples, and single persons,<sup>61</sup> reflecting discriminatory stereotypes about socially valued forms of parenting.<sup>62</sup>

Restrictive and punitive approaches to surrogacy thus reproduce the same patriarchal gender stereotypes that underpin other forms of violence and discrimination against women and pregnant persons, reinforcing State control over pregnant bodies and exacerbating stigma and vulnerability to discrimination and violence.

#### 4. Queer Parenthood

The right to found a family<sup>63</sup> obliges States to ensure that all individuals can freely and equally decide whether, when, and with whom to form a family, free from discrimination, coercion, or interference, with equal protection for all forms of families.<sup>64</sup> This includes recognizing diverse family structures, including those headed by transgender, lesbian, intersex, and queer parents, and ensuring legal and administrative frameworks reflect these realities.<sup>65</sup> Reliance on cisnormative and heteronormative assumptions, such as privileging sex assigned at birth over gender identity, undermines this right.

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<sup>61</sup> In India, surrogacy is limited to couples who are a “legally married Indian man and woman”, in addition to other restrictions; see India, *Surrogacy (Regulation) Act 2021*, ch I(2)(h). In Georgia, surrogacy has been prohibited for same-sex couples since at least 2014; see Simon Bowers, ‘Georgia to Ban Overseas Couples from Hiring Women as Surrogates’ (27 June 2023) *Pulitzer Center* <https://pulitzercenter.org/stories/georgia-ban-overseas-couples-hiring-women-surrogates>. In Russia, officials warned in 2020 that individuals “of non-traditional sexual orientation” who had children through surrogacy could face arrest; see Theo Merz, ‘Single Fathers with Children via Surrogates Flee Russia amid Crackdown’ (15 October 2020) *The Guardian* <https://www.theguardian.com/world/2020/oct/15/single-fathers-in-russia-with-surrogate-babies-become-official-target>. In Ukraine, see Family Code of Ukraine (2022), art 123(2). Most recently, Greece has announced restrictions barring single men and male same-sex couples from accessing surrogacy; see ‘Greece Will Ban Having Children via Surrogacy for Single Men and Male Same-Sex Couples’ (1 April 2025) *Associated Press* <https://apnews.com/article/greece-surrogacy-samesex-single-men-df992d4a44094e1f36cb40569fcb7b7d>. See also Emma Bubola, ‘Italy Criminalizes Surrogacy from Abroad, a Blow to Gay and Infertile Couples’ (16 October 2024) *New York Times* <https://www.nytimes.com/2024/10/16/world/europe/italy-surrogacy-law.html>.

<sup>62</sup> This undermines the fundamental human rights of the intended parents, including their rights to form a family, to benefit from scientific progress, and to equality and non-discrimination. Various international agreements recognize that diverse forms of the family exist; see, eg, International Conference on Population and Development, *Programme of Action* (1994), outcome 5.1; Beijing Declaration and Platform for Action (1995), para 29; Copenhagen Declaration and Programme of Action (1995), para 26(h). The WHO recognizes surrogacy as an ART procedure, used when an individual or couple cannot gestate an embryo to term themselves; see World Health Organization, *WHO–ICMART Revised Glossary on Assisted Reproductive Technology* [https://www.who.int/teams/sexual-and-reproductive-health-and-research-\(srh\)/areas-of-work/fertility-care/ART-revised-glossary](https://www.who.int/teams/sexual-and-reproductive-health-and-research-(srh)/areas-of-work/fertility-care/ART-revised-glossary) accessed 4 February 2026.

<sup>63</sup> See Universal Declaration of Human Rights 1948, arts 16(1)–(2), 2; International Covenant on Civil and Political Rights 1966, arts 23(1)–(2), 2(1); International Covenant on Economic, Social and Cultural Rights 1966, arts 10(1), 2(2); Convention on the Elimination of All Forms of Discrimination Against Women 1979, art 16(1)–(2); Convention on the Rights of the Child 1989, arts 7(1), 18(1), 2; Convention on the Rights of Persons with Disabilities 2006, art 23(1)(a)–(b), 5.

<sup>64</sup> Art.10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes that “the widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.” The principle of non-discrimination as defined in Article 2(2) requires that the scope and application of the rights enshrined in this Covenant do not make any distinction on the grounds of sexual orientation. On the State obligation to not discriminate against any form of family see also Human Rights Committee, GC 28, para. 27; Inter-American Court of Human Rights, *Artavia Murillo et al.* (“In vitro fertilization”) v. Costa Rica, Judgment of 28 November 2012.

<sup>65</sup> The CEDAW Committee has stated explicitly that art 16 applies to non-heterosexual relations and LGBTI women (CEDAW Committee, *Flamer-Caldera v Sri Lanka* (CEDAW/C/50/D/35/2012, 2011)); see also the Inter-American Court of Human Rights, *Artavia Murillo et al.* (“In vitro fertilization”) v. Costa Rica, Judgment of 28 November 2012 (recognizing that an absolute ban on IVF violated several human rights, including the right to found a family, American Convention on Human Rights art 17(2)); the Working Group on the issue of discrimination against women in law and in practice has explicitly recognized that the term “diverse families” encompasses families comprising lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons and that the “understanding and legal definition of the family in national legislation should be extended to recognize different forms of family” (UN Human Rights Council, *Report of the Working Group on the issue of discrimination against women in law and in practice*, A/HRC/29/40 (2015) paras 23, 25); see also UNICEF, *Supporting Families for Gender-Transformative Parenting: Resource Modules* (UNICEF Gender Equality Section, February 2023) [https://www.unicef.org/media/134431/file/Gender\\_Transformative\\_Parenting\\_Resource\\_Modules.pdf](https://www.unicef.org/media/134431/file/Gender_Transformative_Parenting_Resource_Modules.pdf).

The United Kingdom illustrates the harms of privileging sex assigned at birth over parental intent and caregiving. In *For Women Scotland v. The Scottish Ministers*,<sup>66</sup> the UK Supreme Court held that “sex” in the Equality Act refers to biological sex, directly affecting how transgender parents interact with schools, healthcare, sports, and public spaces.<sup>67</sup> Routine family activities, such as attending school events or using changing facilities, are impeded, undermining rights to family life, dignity, equality, and freedom from discrimination. Legal recognition of transgender birth parents also remains restricted. In *R (McConnell and YY) v Registrar General for England and Wales*,<sup>68</sup> a transgender man who gave birth was recorded as “mother,” creating a legal contradiction with his recognized gender.<sup>69</sup>

Relying on sex assigned at birth as the determinative criterion for parental status entrenches gender stereotypes and marginalizes families that do not conform to cisnormative reproductive models, placing transgender parents in a precarious legal position, undermining both their parental authority and their children’s legal security, contrary to the principle of the best interests of the child.<sup>70</sup>

Comparable patterns of exclusion appear in Latin America, particularly regarding lesbian mothers and the recognition of co-motherhood. States have invoked alleged “legal vacuums” to deny registration of both mothers on children’s identity documents, even where marriages and filiation were lawfully established abroad. The case *Tengo Dos Mamás* in Peru<sup>71</sup> exemplifies this: despite constitutional protections and conflict-of-laws principles recognising acts validly performed abroad, authorities refused to recognise both mothers, effectively rendering one parent legally invisible, affecting children’s rights to identity, family life, and legal certainty.

International human rights bodies have consistently rejected such reasoning. In *Atala Riffo and Daughters v. Chile*,<sup>72</sup> the Inter-American Court of Human Rights affirmed that sexual orientation cannot justify restricting parental rights and that the “best interests of the child” cannot legitimize discrimination. The Court held that any differential treatment of LGBTIQ+ individuals and non-traditional family structures are presumed incompatible with the American Convention on Human Rights.<sup>73</sup> Similarly, in *AB v. Finland*, the Committee on the Rights of the Child emphasised that the best interests of the child include the right to live with their parents in an environment free from discrimination. The Committee explicitly recognised the relevance of the parents’ sexual orientation and the family’s non-traditional structure in assessing risks of harm, including exposure to stigma, bullying, and persecution.<sup>74</sup>

Recognition of transgender and lesbian parents in accordance with their gender identity and without discrimination based on SOGIESC<sup>75</sup> is therefore a legal obligation of States grounded in the principles of equality, human dignity, and the protection of family life under constitutional and international

<sup>66</sup> *For Women Scotland (Ltd) v the Scottish Ministers* [2025] UKSC 16.

<sup>67</sup> Connaught Law, ‘Transgender Parental Rights UK 2025: Supreme Court Ruling Impact’ (Connaught Law, 2025) < <https://connaughtlaw.com/transgender-parental-rights-uk-court-ruling/>> Accessed 4 Feb 2026.

<sup>68</sup> *R (McConnell and YY) v Registrar General for England and Wales* [2020] EWCA Civ 559

<sup>69</sup> Similarly, in *FZ v MZ & FZ v Y Council*, a transgender father had to adopt his wife’s child to obtain full legal parenthood, *FZ v MZ & FZ v Y Council* [2025] EWHC 3338 (Fam), see the analysis by Smith, Caroline, ‘Parenthood lacuna revealed as trans man required to adopt own children’ (Law Society of Scotland, 30 Jan 2026) < <https://www.lawgazette.co.uk/legal-updates/modern-parents-who-fall-between-the-legal-gaps/5125741.article>> Accessed 4 Feb 2026

<sup>70</sup> See UNICEF, *Supporting Families for Gender-Transformative Parenting: Resource Modules* (2023) 9; Committee on the Rights of the Child, ‘General Comment No 14 (2013) on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration’ CRC/C/GC/14, paras 59–71.

<sup>71</sup> See Agency Presentes, *Peru: After five years of struggle, two lesbian mothers take their case to the IACHR* (Presentes Agency, 31 March 2022) <https://agenciapresentes.org/en/2022/03/31/peru-tras-cinco-anos-de-lucha-dos-madres-lesbianas-llevan-su-caso-ante-la-cidh/>.

<sup>72</sup> *Atala Riffo and Daughters v Chile* (Merits, Reparations and Costs) Inter-American Court of Human Rights Judgment of 24 February 2012, [https://corteidh.or.cr/docs/casos/articulos/seriec\\_239\\_esp.pdf](https://corteidh.or.cr/docs/casos/articulos/seriec_239_esp.pdf).

<sup>73</sup> Ibid.

<sup>74</sup> Committee on the Rights of the Child, *A B v Finland (Views adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, concerning Communication No 51/2018)* CRC/C/86/D/51/2018 (UN, 4 Feb 2021), <https://juris.ohchr.org/casedetails/2946/en-US>.

<sup>75</sup> Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics.

human rights law. Ensuring full legal recognition of queer parents is essential not only to protect individual rights, but also to safeguard the well-being, security, and dignity of the children in these families.<sup>76</sup>

#### IV. Conclusion and recommendations

Reproducing harmful stereotypes and misconceptions reflected in the framing of who is a mother in the call for inputs risks entrenching discriminatory practices that disproportionately harm individuals facing intersecting forms of discrimination. To prevent violence and discrimination, States must ensure that laws, policies, and institutional practices do not entrench gender stereotypes that underpin these harms. In line with existing human rights obligations, States should:

- Actively challenge gender stereotypes around reproduction and parental care.
- Address gender-based discrimination intersecting with race, class, disability, sexual orientation, gender identity and other grounds, ensuring that pregnancy or motherhood is not used to justify unequal treatment.
- End criminalization of pregnancy-related outcomes and reproductive choices, including abortion, miscarriage, stillbirth, substance use during pregnancy, and HIV status, and ensure that healthcare is accessible without surveillance, investigation, or punitive state intervention.
- Address stigma and discriminatory treatment of mothers who do sex work by fully decriminalizing sex work, passing legislation to ensure labor rights and anti-discrimination protections, and ensuring that mothers' employment does not result in loss of social services, child separation, or other punitive measures.
- Respect bodily and reproductive autonomy in the context of surrogacy, including legal recognition of surrogates and intended parents, protection from coercion or exploitation, and access to ART without discrimination based on marital status, sexual orientation, or gender identity.
- Recognize the parental rights of transgender, lesbian and queer parents, basing legal recognition on caregiving and intent rather than birth-assigned sex, and supporting all diverse family structures.
- Ensure accountability and remedies, including accessible avenues for redress for harms arising from discriminatory or coercive practices, and meaningful participation of rights-holders in policy design, monitoring, and implementation.

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<sup>76</sup> See Independent Expert on Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity, *Report on Legal Recognition of Gender Identity A/73/152* (2018) paras 70–75, 79 (emphasising that legal gender recognition must have full legal effects across all areas of life, including family relations and parenthood, and that partial recognition undermines dignity and equality); European Court of Human Rights, *X and Others v Austria* App No 19010/07, Judgment of 19 February 2013, paras 139–145 (finding that unjustified exclusion of same-sex couples from parental recognition violates the right to respect for family life in conjunction with the prohibition of discrimination); Committee on the Elimination of Discrimination Against Women, 'General Recommendation No 29 on the Economic Consequences of Marriage, Family Relations and Their Dissolution' CEDAW/C/GC/29, paras 16–17, 18 (calling on States to recognize various forms of family and to reform laws and practices that reinforce gender stereotypes in family and parental roles).