

ISSUE DESCRIPTION

COMMITTEE Human Rights Council
ISSUE Addressing Human Rights Implications of Cross-Border Surrogacy and Transnational Fertility Arrangements
SUBMITTED BY Alida Belányi-Sztraka, Deputy President of Human Rights Council
APPROVED BY Her Excellency Anna Takács, President of the General Assembly,
Nóra Török, Chair of the World Health Organization

Introduction

Cross-border surrogacy and transnational fertility arrangements have emerged as complex phenomena at the intersection of reproductive technology, globalization and human rights. Surrogacy, while helping intended parents overcome infertility, same-sex or single-parent barriers, carries practical and legal risks for all the parties involved. Problems may also arise related to the diversity of social and legal conditions in different countries, leading to the development of reproductive tourism in the form of cross-border surrogacy, spurred by the differences in national legal frameworks.

Empirical data also support the various motives of intended parents for using a surrogate abroad. “Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making” was a study conducted in the UK in 2018 by researchers from the University of Cambridge that confirmed that a common reason respondents gave for using cross-border surrogacy was the more favourable legislation abroad. Another study in Australia in 2023 showed that the most common reasons were the unavailability of surrogates in the home jurisdiction, the unenforceability of the surrogacy agreement, the disparities in national laws regarding surrogate compensation and the need for professional intermediary services.

Definition of Key Terms

Surrogacy - The practice whereby one woman (the surrogate) carries a child for somebody else (the intended parents), involving a pre-conception arrangement, usually declaring that after birth parental duties are transferred to the intended parents.

Cross-Border Surrogacy - When the intended parents cross national borders to access surrogacy, that is illegal, unavailable, or inaccessible in their home country.

Gestational Surrogacy - The surrogate is not genetically related to the baby, as the embryo comes from a donor's or the intended parents' gametes via IVF.

IVF - A medical procedure whereby an egg is fertilised by a sperm in a laboratory, or somewhere outside the body.

Traditional Surrogacy - The baby is genetically related to the surrogate as the surrogate's egg is used, fertilized by the sperm of the intended father, via IUI.

IUI - Intrauterine Insemination, is a treatment where a healthy sperm is placed into a woman's uterus around ovulation to fertilize the egg.

Altruistic Surrogacy - When the surrogate carries the baby without any additional payment beyond expense reimbursement, usually between family, friends.

Commercial Surrogacy - Includes additional payment for the surrogate's time and effort, structured via contracts, with financial gain as a factor.

CBRC - Cross-Border Reproductive Care is the action of leaving your home country in order to access Assisted Reproductive Technologies (ART).

Statelessness - Individuals who are not recognised as citizens of any country, preventing access to basic rights like education, healthcare and employment.

General Overview

EMERGENCE AND HISTORICAL BACKGROUND OF CROSS-BORDER SURROGACY

Cross-border surrogacy and transnational fertility arrangements appeared around the end of the 20th century, after the first successful use of in vitro fertilisation (IVF) happened in 1978. This marked a turning point in reproductive technology. In the beginning, cross-border surrogacy was left largely unregulated by most countries, as many states failed to adopt comprehensive legal frameworks on surrogacy. Consequently, many concerns arose regarding the rights of surrogate mothers and of the children born through these arrangements. By the early 2000s, more states started addressing these problems posed by the absence of clear legislation and developed administrative laws on surrogacy. Reproductive tourism appeared during this period due to divergences between each country's policies. Certain states, like India or Georgia, which

had more lenient laws, became destinations for cross-border surrogacy for intended parents coming from countries with stricter regulations.

Beginning around the middle of the 2010s, numerous legislative reforms were enacted all over the world regarding cross-border surrogacy. Many nations tightened their regulations on, or even banned commercial surrogacy and limited access for foreign intended parents. For instance, India's and Cambodia's legislation completely banned commercial surrogacy.

LEGAL BACKGROUND

Surrogacy has been a widely debated topic worldwide ever since its emergence. It raises serious ethical and legal concerns regarding the rights of surrogates, intended parents, and children born through such arrangements.

The complexities of cross-border surrogacy are reflected in the diverse legislative frameworks across all of Europe and beyond. In the absence of a universal legal framework, there are numerous differences between national legislations. In most of Europe, for instance, Spain, France, or Germany, both commercial and altruistic surrogacy are illegal for foreign intended parents, while in states like the Czech Republic or Poland, there is no specific legislation on surrogacy. The ambiguity of the legislation in certain cases causes surrogacy agreements to be unenforceable, making surrogacy indirectly illegal. Ukraine has one of the most permissive surrogacy laws in Europe, allowing commercial surrogacy for foreign citizens as well, although the ongoing conflict has disrupted the industry, jeopardising the rights of children, surrogates, and intended parents.

Differences regarding the legal recognition of intended parents and the situation of same-sex couples or individual parents also raise serious concerns. Some countries only recognise intended parents if they are genetically related to the child, even if the birth certificate lists both parents. Surrogacy, in many countries, is not available for same-sex couples, who are also not recognised as lawful parents, which might lead to a breach of the child's right to a private life and identity.

CROSS-BORDER SURROGACY HUBS

Repro-tourism hotspots developed all over the world after surrogacy appeared, due to the divergences between national legislation, price ranges, availability of surrogate mothers and the quality of professional medical care. Some of the most important destinations for transnational

fertility arrangements include Ukraine, Georgia and Greece in Europe and Colombia and Argentina in Latin America. In these countries the legal frameworks, which are in effect, provide professional medical care at lower costs than the average. Ukraine and Georgia have the most favourable legislations by allowing both altruistic and commercial surrogacy for heterosexual intended parents, while in Greece, only altruistic is accepted.

Colombia and Argentina have become popular because of their low prices and the lack of regulation of the topic. They are so-called “grey areas”, where there is no clear legislation regarding surrogacy.

Before 2015, India had been one of the biggest hubs for international surrogacy, given its readily available surrogates, low prices and extremely favourable legislation, which also allowed surrogacy for same-sex and single-parents. However, after the numerous reforms that took place, its popularity decreased significantly.

RIGHTS OF SURROGATE MOTHERS

The rights and well-being of surrogate mothers are one of the most important human rights concerns associated with surrogacy, especially in cases of commercial surrogacy. Surrogate mothers can face significant risks like economic exploitation, coercion, inadequate medical/psychological care, and lack of legal protection, which can lead to potential human rights violations and health risks.

Surrogates usually come from economically disadvantaged backgrounds and are motivated by financial necessity, which raises concerns about exploitation. The health of surrogates is also a critical concern, given that surrogacy carries many medical risks, including higher rates of severe hypertension, preeclampsia, gestational diabetes, post-partum haemorrhage, placenta previa, and caesarean deliveries. In the absence of strong emotional support or professional counselling, mental risks, such as depression, can also arise. In areas where surrogacy is largely unregulated, surrogates coming from poverty cannot afford specialised medical advice, health insurance, nor can they access post-natal care.

International bodies increasingly call for stronger regulation and monitoring, focusing on surrogates, in order to properly safeguard their rights.

IMPACT ON CHILDREN BORN VIA SUCH ARRANGEMENTS

Children are the most vulnerable party involved in cross-border surrogacy; therefore, their rights are the primary concern, recognised by the UN Convention on the Rights of the Child (CRC).

One of the most pressing issues is legal parentage. Due to the divergences between the legal frameworks of countries, in some states, children born through surrogacy abroad might not be recognised as the legal offspring of the intended parents. As a result, this can lead to disputes over parentage and, in extreme cases, leave the child in legal limbo.

Another right of the child is the entitlement to nationality. In cases where neither the country of birth nor the home country of the intended parents grants nationality automatically, this right can be violated, leading to legal limbo, and statelessness, which would limit the infant's access to healthcare and education.

A third right listed in the CRC is the right to identity. The anonymity of surrogacy agreements can restrict the child from knowing their genetic and gestational origins, violating this core principle.

The CRC emphasises that the most important consideration ought to be the best interest of the child. However, without a clear universal legislation, children born through these arrangements remain vulnerable to legal uncertainty.

Major Parties Involved

The United States of America: The CBRC industry of the USA is growing due to its generally favourable state laws, many of which legalise both altruistic and commercial surrogacy. The USA is one of the largest hubs for international surrogacy in the world. The US attracts international intended parents from nearly 150 countries due to its well-developed clinics and legal framework on surrogacy. The USA is also a popular destination because its laws allow surrogacy for not only heterosexual couples but same-sex couples and single parents as well.

India: India has been a repro-tourism hotspot for many years owing to the absence of any legal framework on surrogacy and its lower costs. This phenomenon brought many legal and ethical concerns. The Indian Government after recognising these issues, enforced new

regulations in 2021 such as the “ART act” and the “Surrogacy Act”. The Surrogacy Act criminalized commercial surrogacy to protect the rights and interests of surrogate mothers. After the implementation of these laws fertility tourism in India decreased significantly.

Georgia: Georgia stands out as one of the key countries offering legal and regulated surrogacy programs for foreign citizens. Georgia has established itself as one of the few countries where surrogacy is not only permitted but also has a clear legislative framework in place since 1997. The key aspects of Georgian surrogacy legislation include that the intended parents, whose genetic materials were used will automatically be recognised as the legal parents of the child and the child’s birth certificate will only list the biological parents, not even mentioning the surrogate. The legislation only allows surrogacy for married heterosexual couples, who have proof of cohabitation and medical indication that surrogacy is required. Furthermore, all foreign documents must be apostilled as Georgia has been a part of the Hague Convention since 2007.

Ukraine: Before the Russian invasion Ukraine was the world’s second largest surrogacy destination. For nearly a decade, the country built a strong reputation in reproductive medicine, thanks to highly skilled professionals, advanced medical facilities, and a legal framework that provided clarity and security for all involved. Surrogacy in Ukraine is governed by a legal framework established in Article 123 of the Family Code of Ukraine, which provides clear guidelines for the practice. The laws on surrogacy include that the intended parents are recognised as the legal parents from the moment the child is born, and a surrogacy-born child in Ukraine is granted the nationality of their parents.

Timeline of Events

1961 – The Apostille Convention treaty is signed.

1989 - Convention on the Rights of the Child (CRC) adopted by the UN General Assembly.

Late 20th century - IVF and related technologies become widespread, enabling gestational surrogacy.

2010s - European Court of Human Rights (ECHR) and national courts begin addressing the challenges of cross-border surrogacy.

2015-2021 - Several countries reform their domestic surrogacy laws.

Previous Attempts to Solve the Issue

Over the past decades there have been many initiatives combating the issue of cross-border surrogacy and transnational fertility arrangements. Acts and conventions regarding the topic have been introduced throughout the years by the UN and many countries as well.

The CRC, while it does not exclusively mention surrogacy, its principles are applied to address the complex legal and human rights challenges that arise from the practice, particularly regarding children's rights to identity, nationality, and protection from trafficking. Articles 7 and 8 focus on the Right to Identity, Name and Nationality declaring that children have the right to be registered immediately after birth, acquire a nationality and have a name. These articles combat the problem of statelessness in cases of cross-border surrogacy.

The European Court of Human Rights has considered cross-border surrogacy cases under the European Convention on Human Rights (ECHR). Article 8 of the ECHR requires member states to recognize parent-child relationships from lawful cross-border surrogacy to protect the child's right to a private life and identity, preventing "limping" legal situations, especially where genetic links exist.

Numerous national legislative reforms have also taken effect in the previous years. Several states that were previously major destinations for commercial surrogacy have enacted legal reforms to curb exploitation and protect vulnerable women. One example is India's transition from a largely unregulated commercial surrogacy market to an altruistic-only model. These reforms aimed to reduce exploitation, prevent trafficking, and improve health protections for surrogate mothers.

Possible Solutions and Approaches

The first step towards solving this issue could be the adoption of an International Legal Framework, which would include access to healthcare, and protection from exploitation for surrogate mothers, and the protection of children born from these arrangements. This framework would also provide international guidelines regarding cross-border surrogacy and

transnational fertility arrangements. These common principles could help reduce legal uncertainty and human rights violations across borders.

States should also be urged to coordinate domestic laws on parentage and nationality, ensuring that children born through cross-border surrogacy are promptly granted legal identity and citizenship in accordance with the best interests of the child. Clear procedures for recognizing parent-child relationships would prevent statelessness and prolonged legal disputes.

Finally, increased international cooperation and data collection are essential. States, in collaboration with UN bodies and civil society, should monitor cross-border fertility arrangements to identify patterns of abuse and improve transparency.

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