

## Note for intending parents in Switzerland

Assisted reproductive technology (ART) brings new opportunities to have a family, especially for those where it may not have been possible for medical reasons. As parents want the very best for their children, this arguably includes ensuring that they are able to enjoy all their rights. However, lack of or poorly regulated frameworks in countries regarding ART can create obstacles for children to access all their rights, especially that of knowing one's origins.

This one pager has been developed at the request of Swiss medical professionals wishing to ensure that the rights of children are protected in these matters.

### Risks associated with the use of anonymous gamete donations/ international surrogacy arrangements, from the point of view of the rights of the child

Swiss nationals, or persons residing in Switzerland, who consider having recourse to **anonymous gamete donation abroad** are exposing their future child to the risk that he/she may never be able to know the identity of the donor, may not have access to his/her origins and, in the event of multiple donations being made, may not know whether he/she has any brothers or sisters. The consequences of violating a child's right to identity may be legal in nature and have an impact on his or her development both physical and psychosocial.

Swiss nationals or persons residing in Switzerland who intend to have recourse to **international surrogacy arrangements**, whether or not involving anonymous gamete donation, expose their child to the following risks:

1. Surrogacy is prohibited in some countries (notably Switzerland), tolerated in others and regulated in various ways in others. Surrogacy does not always ensure information about the surrogate mother and any donor will be recorded in a birth certificate or other document. The child runs the risk of not knowing the circumstances of his/her birth and his/her origins. He/she is also exposed to the risk of statelessness and non-recognition of his/her filiation especially when there is no genetic link with the intending parent(s).
2. International surrogacy especially commercial, as currently practised in most countries, may constitute the sale of a child under international law. There may be risk that a child born in these circumstances will feel "commercialised".

### We recommend the following documents and videos

- Report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material, 15 January 2018: <https://www.ohchr.org/en/documents/thematic-reports/ahrc3760-report-special-rapporteur-sale-and-sexual-exploitation-children>
- Briefing note, Key considerations: children's rights and surrogacy, February 2022, UNICEF and Child Identity Protection: <https://www.unicef.org/media/115331/file>
- Briefing note on priority issues for the protection of children's rights in 2023 and Legal Memorandum in response to the latest decision of the European Court of Human Rights on cross-border surrogacy arrangements, Child Identity Protection: <https://www.child-identity.org/en/resources/advocacy-and-policy/934-2023-childrens-rights-in-surrogacy.html>
- Testimonials: <https://www.child-identity.org/en/voices-chip-in/lived-experience.html>
- 13-14 September 2021: Symposium/webinar on the child's right to identity in the context of assisted reproduction techniques, Child Identity Protection: <https://www.child-identity.org/en/resources/advocacy-and-policy/214-13-14-september-2022-symposium-webinar-on-child-s-right-to-identity-in-assisted-reproductive-technology.html>

May 2023

For more information: Child Identity Protection: <https://www.child-identity.org/fr/>

### The child's right to identity and not to be sold

#### International law

Articles 7 and 8 of the Convention on the Rights of the Child (CRC), ratified by Switzerland in 1997, state that children have the right to an accurate, complete and accessible identity (name, nationality, knowledge of parents and family relationships).

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified by Switzerland in 2006, prohibits the sale of children: "*Sale of children means any act or transaction whereby a child is delivered by any person or group of persons to another person or group of persons for remuneration or any other consideration.*"

#### Swiss law

A child's right to know his or her origins is a fundamental constitutional right (art. 119 al. 2 let. g Swiss Federal Constitution): "*everyone has access to data relating to his or her ancestry.*"

On 18 December 1998, the Federal Law on Medically Assisted Procreation (LPMA) was adopted and came into force on 1 January 2001. Article 27 para. 1 of the LPMA stipulates that a child aged 18 "*may obtain from the Office data concerning the identity of the donor and his or her physical appearance.*"

Article 31 of the LPMA states that "*Anyone who applies a medically assisted procreation method to a surrogate mother shall be punished by a custodial sentence of up to three years or a fine. The same penalty shall apply to anyone who acts as an intermediary for a surrogate mother.*"