

NOTE FOR PRACTITIONERS

Children's human rights in relation to donor conception or surrogacy



The aim of this document

To improve understanding and implementation of children's human rights within the context of donor conception or surrogacy throughout the life stages. Placing children's human rights at the core of policy and practice carries significant implications for practitioners to ensure those rights are respected. This includes situations where informal arrangements are made.

Who is it for?

Professionals across the disciplines and those responsible for providing services from pre-conception, family support through to information release, contact and beyond. This includes **all** in any setting who work with intending parents, donors or surrogates; parents whilst raising their children; adult donor-conceived and surrogate-born people and their families; past donors, genetic surrogates, gestational surrogates with or without the use of donor/s and their families.

Why do we need this document?

All adults (parents, donors and surrogates) involved in the creation and/or parenting of donor-conceived and surrogate-born children may need help to understand their associated rights-based responsibilities to them (and the adults they will become) in the short, medium and longer term.





What are some key human rights for donor-conceived and surrogate-born children?

Knowledge of the 1989 UN Convention on the Rights of the Child (UNCRC) and its optional protocol is vital, in particular:

ARTICLE 7

Right to a name, nationality and to know their parents;

1. The child shall be registered immediately after birth and shall have the right, from birth, to a name, the right to acquire a nationality and, as far as possible, *the right to know and be cared for by his or her parents.* (our italics)

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

The 'right to know...' carries significance in this setting, regardless of whether children are being raised by their legal parents alone.

ARTICLE 3(1)

States uphold the child's best interests

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

It is paramount and in the best interests of the child to respect **all** of their rights. It is crucial to note that the 'best interests' is a legal term, should not be confused with the colloquial use of the term and should therefore not be used outside of a legal context. It is also important to note that there is no legal right in international law for adults to have a child.

ARTICLE 8

States must respect the child's right to preserve their identity

The right to have their identity preserved by the State, combined with Article 7, can be taken to include preservation of the identity of **all** their 'parents': not only of their legal parents. The identity of family relations also includes extended family as well genetic, biological and social relationships.

ARTICLE 2(A) OPSC

States should prevent the sale of children

Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

States should ensure that transfer of children including physical and/or legal is not based on payment or any other consideration, with a particular focus on intermediaries.



What are the some of the challenges that professionals and services at all stages face in respecting children's rights in this context?

- › Lack of training in children's rights and/or access to updating courses, events and initiatives, and involvement in law reform consultations.
- › Lack of understanding on what constitutes sale of children according to international standards
- › Lack of understanding and implementation of the rights and needs of a child in this context, including in (but not limited to) adult-focussed medical settings or gamete donor banks or where informal arrangements or fertility fraud is uncovered. This includes where the use of overt or covert verbal, written or attitudinal messages sidelines children's rights and fails to recognise the importance of genetic and gestational information for their identity.
- › Limited multi-disciplinary awareness or inclusion in service protocols that some adults may need time and professional help to process their own emotional needs in order to be sufficiently at ease to acknowledge children's rights, including to openness.
- › Limited availability of professionals at all stages with sufficient time, counselling skill, knowledge and/or funding to enable parents, donors and surrogates to understand the child's rights to know their origins and the identity of all their genetic and gestational parents. Psycho-educational reflexive approaches that pay attention to the adults' emotional state when choosing when and how to provide relevant information from research, peer accounts, child development theory and family systems theory maximise the chances of it being 'heard'.
- › The potential for professionals to feel conflicted in their duty of care – to the adults; to the child/ren; to their employer (if they have one); or to a service provider – and thereby fail to keep children's rights paramount.
- › The lack of robust systems for collecting, storing and releasing accurate information, including biographical information about each child's genetic and gestational parents, including where this is a family member or friend and where informal arrangements are involved.
- › Awareness of the need to discuss the implications for all of the fact that the concept of the rights of the child may not sit within legislative and/or policy guidance in all countries.





How can services be delivered in a way that they respect children's rights at all stages of professional interventions?

At the pre-conception stage specifically

Professionals should offer all intending parents, donors and surrogate mothers (and partners) information on openness strategies and the opportunity for contact with peer groups. As turning intention into action can be challenging, all should be made aware of any availability for further professional and peer support.

Professionals will need to discuss:

- › the lifelong social, psychological, emotional health and relational effect of donor conception or surrogacy arrangements on any child born;
- › information about any systems for storing and accessing information about the child's origins, and how it can be updated;
- › the impact of donor conception or surrogacy arrangements on existing or future families and children.

Professionals must adhere to ethical guidance in relation to confidentiality.

This means, for example, services having clear boundaries between psychosocial counselling provision and any assessments of the adults' suitability to become a parent/donor/surrogate.

Professionals should be alert to the fact that barriers for some adults to engage with children's rights can be complex at all stages.

A specific barrier for some intending parents is if the fear that they fail to become pregnant – not 'daring to dream' - inhibits their capacity to look ahead.





At each stage all services should be aware of the need for:

- › Consistent signposting to, or provision of professional and peer support and information, in particular on managing openness, understanding of identity, genetic and gestational heritage, and the relational aspects arising from the use of donor conception and/or surrogacy.
- › Attention to the lifelong implications of the rights of the child (including for the adults they will become) while remaining alert to the variable and sometimes complex receptiveness of parents, donors, surrogate mothers and others to this.
- › Professional skills in recognising and lowering any limited receptiveness to being able to recognise children's rights, including:

FOR PARENTS

- any grief associated with turning to the use of a donor and/or surrogate mother ;
- fears around potential or actual bonding with the child;
- fantasies/fears about the influence of the donor and/or surrogate mother on their parental role and identity, and in relation to their child (i) physically, intellectually, in personality traits through genetic or gestational transmission and (ii) in any direct contact now or in the future ;
- stigma of being (in)fertile and LGBTQI limiting their feelings of entitlement to parent.

FOR DONORS AND SURROGATE MOTHERS

- seeing their involvement [only] as a gift to the receiving adults rather than as enabling the creation of a person to whom they will have some long-term responsibilities;
- seeing their involvement in transactional terms to do with financial gain or coercion to be involved.

FOR ALL

- limited understanding of child development or genetic/gestational transmission influencing decisions about openness;
- religious or cultural beliefs;
- societal or community or extended family disapproval;
- (for couples) disagreements, spoken or unspoken, between partners.

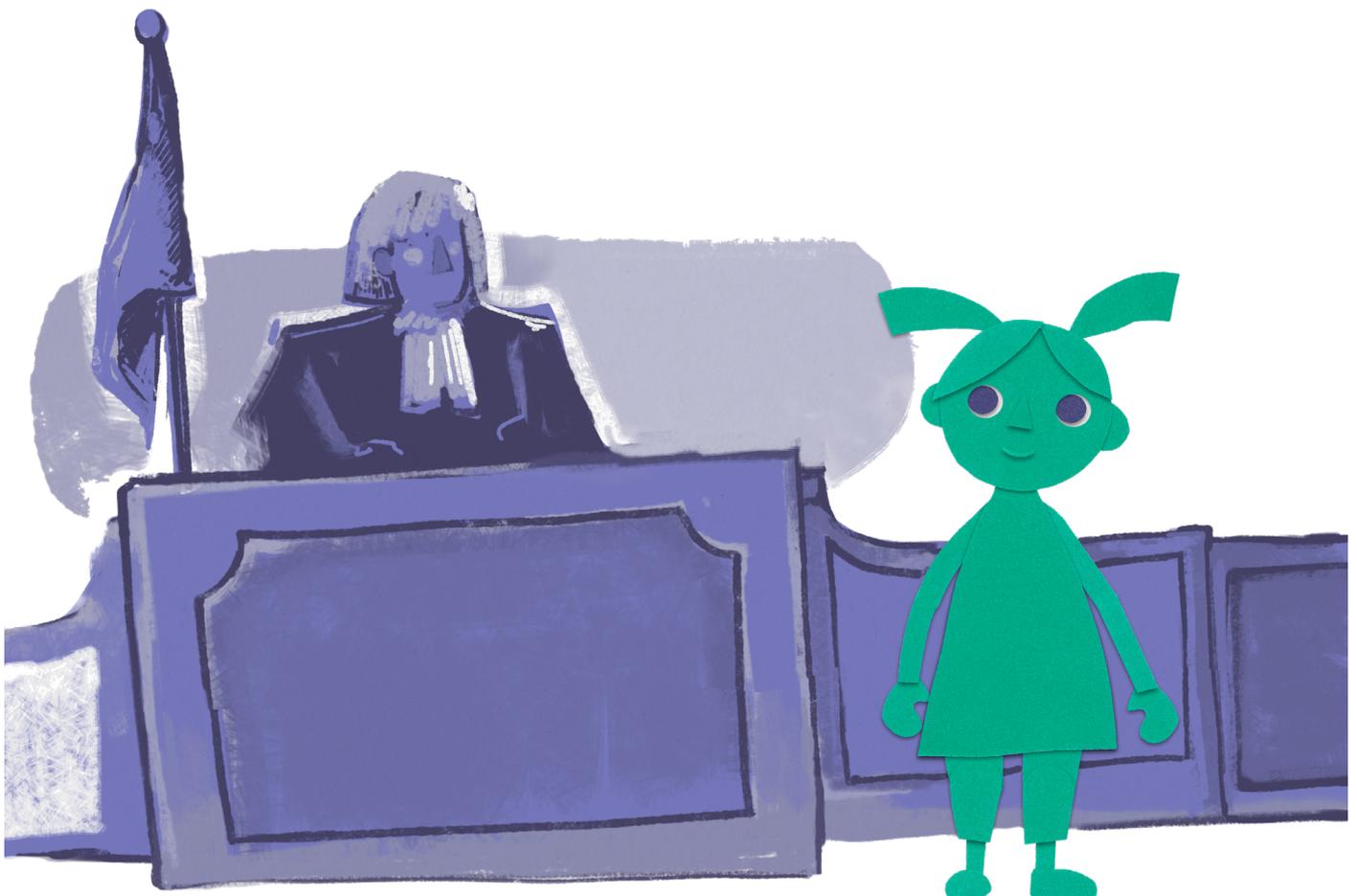
In particular arrangements professionals at all stages should be aware of the specific legal, psychological and social risks that can arise in the particular situations set out below and that can impair the right of the child to know the identity of their genetic parent or gestational mother and their right to request access to their genetic or gestational relatives. The child's right to human dignity and/or to not be sold may also be at greater risk of being not respected. The lack of oversight and unregulated nature of many of these arrangements adds further barriers for children to enjoying all their rights.

International arrangements

additional complexities arise in cross-border situations including as a result of the import or export of gametes, receiving treatment away from one's country of residence, high numbers of genetically related siblings, and use of commercial surrogacy.

Informal arrangements & fertility fraud

additional complexities are also associated with the growth in both informal arrangements for donor conception (sometimes with 'serial' donors) and surrogacy and the uncovering of fertility fraud where sperm has been used in treatment without its source being known to the recipient.



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