



CHILD
IDENTITY
PROTECTION
Knowing origins is a right

ORIGINES



Note for high-level policy makers : Ensuring respect for children's human rights in third-party reproduction including surrogacy¹

The developments in third-party reproduction (TPR), particularly gamete and embryo donation, have facilitated becoming a parent. These developments have equally resulted in a multi-billion dollar fertility industry² raising particular child rights concerns. This note encourages policy makers to ensure that, whenever TPR and surrogacy practices occur, human rights standards are respected. It does this by firstly examining children's rights for all TPR practices, followed by specific considerations for surrogacy. The policy note concludes with recommendations, including for access to justice and effective remedies whenever these rights have not been complied with.

1. What are the key children's rights for third-party reproduction including surrogacy?

1.1 Child's right to human dignity

The Universal Declaration of Human Rights stipulates that "all human beings are born free and equal in dignity and rights."³ The availability of TPR, including surrogacy, can fuel the notion that adults somehow have a right to a child, and even to a child with particular characteristics.⁴ No such right exists, and it is vital that this be known and understood, especially in relation to surrogacy and TPR more generally.

Questions connected to human dignity may arise in specific contexts such as anonymous donation and fertility fraud, which should be prohibited. These questions also arise in other contexts such as the trade in or sale of gametes and embryos, artificially created gametes and the use of gametes from donors who have since died. Such practices should be prevented and/or regulated, to ensure that from birth, children can enjoy all their rights, and their human dignity is safeguarded.

1.2 Child's right to identity and to know one's origins

The UN Convention on the Rights of the Child (CRC) provides that 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.*"⁵ Additionally, States should respect "*the right of the child to preserve his or her identity, including nationality, name and family relations.*"⁶ This right to identity, without discrimination, is also enshrined in the Council of Europe's Oviedo Convention on Human Rights and Biomedicine which states that the interests and welfare of the human being shall prevail over the sole interest of society or science.⁷ The jurisprudence of the European Court of Human Rights (ECtHR) underlines the importance of this right to identity, balanced with the privacy rights of others in limited circumstances.⁸

Despite these obligations, children risk not being registered immediately after birth and/or becoming stateless in TPR.⁹ Most States do not preserve comprehensive information about the child's family relations including gestational, genetic, social and legal information. Donor conceived people have been intentionally deprived of information about their origins for decades.¹⁰ Even if information is preserved, it is not systematically available to children born through this practice. In most States, there is no maximum time limit on the storage and use of gametes, which can lead to entire generations being without any information. Such realities, coupled with the existence of serial donors, also increases the risk of sexual relations between donor siblings and ensuing pregnancies.¹¹ Such situations may be further complicated in informal and/or cross-border contexts.

1.3 Child's right not to be sold

The use of paid gamete donations can lead to children being commodified, especially in unregulated and for-profit markets.¹² The emergence of "serial donors", "sperm banks" and "egg banks" distributing gametes worldwide leading to large sibling groups can lead to risks of consanguine relationships developing. Doctors have also used their own gametes or those of other patients without informing those concerned.¹³ Further research is required on the psychological and social consequences of "mass production" related to identity and the impact of sense of self and well-being. Commodification of children that does not literally constitute sale of children under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) may nonetheless violate the human dignity of children and the possibility to know the extent of their identity in family relations.

2. What specific children's rights considerations arise in cases of surrogacy?

Specific human rights issues may arise for children born through surrogacy in addition to those noted above dependent on the State's approach to surrogacy, where some have combined positions.¹⁴ Where States lack a formal position, surrogacy practices may nevertheless operate in an environment without specific regulations to ensure children's rights are protected.

2.1 Child rights in prohibitionist States

Some States prohibit all surrogacy, whether commercial or altruistic. The Casablanca Declaration provides a rationale, stating that surrogacy "violates human dignity and contributes to the commodification of women and children."¹⁵ From this perspective, attempting to regulate surrogacy arrangements to achieve public policy goals or improve practices would be counter-productive, since surrogacy is inherently harmful. The UN Special Rapporteur on violence against women and girls, its causes and consequences presented a 2025 report calling for a prohibition of all surrogacy.¹⁶

Prohibition alone will only be effective if additional, preventative measures are taken by States, such as sanctioning of intermediaries, as well as awareness raising activities.¹⁷ States are required to ensure that whenever children nevertheless are born from surrogacy, those children enjoy all their rights and are not discriminated against.

2.2 Child rights in permissive States

Where States permit altruistic surrogacy, surrogate mothers receive only reimbursement for itemised reasonable expenses. Another indicator of altruistic surrogacy may be a pre-existing relationship between intending parent(s) and the surrogate mother, which provides a non-financial motivation, and may facilitate continued relationships safeguarding the child's right to identity. Ambiguities about the definition of "reasonable", and questions about whether limitations on expenses are actually enforced, can blur the line between altruistic and commercial surrogacy.

Some States permit commercial surrogacy, in which payments to surrogate mothers are not legally limited, and for-profit intermediaries play central roles. Some States have served as international commercial surrogacy hubs generally facilitated through such intermediaries. Public policy and rights-based arguments for allowing commercial surrogacy include a claimed "right" to procreate in the context of TPR and surrogacy; women's personal autonomy rights; and the claim that the OPSC does not apply to surrogacy.

States that permit surrogacy often prioritise the child's right to legal parentage. However, States have an obligation to ensure that all children's rights are equally protected including human dignity, right to a full identity and right to not be sold.¹⁸

2.3 Child rights in the context of cross-border surrogacy

Given the practice of cross-border surrogacy, often between prohibitionist and permissive States, private international law (PIL) approaches to legal parentage have often been prioritised, including

by the HCCH, ECtHR, EU, etc. To date, the emphasis has been on creating certainty in legal parentage and achieving recognition of a status established abroad, even when the recognition or the establishment of legal parentage occurs without a comprehensive analysis of all the individual child's rights. Uniform PIL rules should not be drafted in a way that compromises children's rights as ensured by national constitutions, national and international law. Any uniform rules on legal parentage, such as the conditions for the recognition of foreign judicial decisions related to parental orders, should respect all children's rights.

3. What recommendations should policy-makers raise with national stakeholders?

3.1 Right to identity including preservation and access to information

- 3.1.1 Only open donors identifiable by the child should be accepted and use of any anonymous gametes should be prohibited.
- 3.1.2 Donor conceived people should have easy and free access to identifying and non-identifying information about the donor(s) and surrogate mother, as applicable.
- 3.1.3 From birth, parents should have a minimum of non-identifying information about the donor to ensure the child's right to health is respected.
- 3.1.4 Pre- and post-conception services should be developed to support all relevant parties. Such services should prioritise supporting parents to share information about the child's conception at an early stage. This could also include peer support groups for any affected children.
- 3.1.5 Genealogical DNA tests should be permitted.

3.2 Right to birth registration and nationality

- 3.2.1 Children born through TPR and surrogacy should be registered immediately after birth and should be enabled to acquire a nationality without discrimination.
- 3.2.2 As registrars operating within the civil registration and vital statistic systems (CRVS) rely on birth notifications and declarations to attest to the truth of what they register after birth, these documents should be supported by a court order and a court validated contract that include all relevant identity information such as donor(s), surrogate mother and intending parent(s) contributing to the child's birth.
- 3.2.3 CRVS systems should be inter-operable with the health sector including medical facilities carrying out TPR. Having an interoperable system allows medical facilities to inform registrars about the outcome of the event, when gametes/surrogacy have been used and who is the surrogate mother. Medical clinics can cross-check information collected through CRVS to implement any necessary restrictions on use of future donations and the number of surrogacy arrangements (section 3.3).

3.3 Restrictions on donations and the number of surrogacy arrangements

- 3.3.1 Restriction on the number of children that can be born from one donor and/or one surrogate mother should be imposed.¹⁹ National registers to monitor this maximum number and prevent abuse. Medical clinics and intermediaries should adopt clearance procedures from such registers, including from other countries, before using donations.
- 3.3.2 Maximum limit of 10 years should be imposed on the storage and use of gametes and embryos. Systematic verification that the donor is alive and not more than 50 years old should be carried out before any use of gametes or embryos.
- 3.3.3 Practice of matching blood groups between the donor and the intending parent, designed to keep the child in ignorance of his or her mode of conception, should be abolished.

3.4 Child's right to not be sold

- 3.4.1 Commercial surrogacy as currently practised usually constitutes sale of children as defined under international human rights law and therefore should be prohibited.²⁰

3.5 Best interest determination

- 3.5.1 Best interest assessments should include consideration of all children's rights and should not be reduced to prioritising certainty of legal parentage in favour of intending parents.

3.5.2 All rights of donor conceived and/or surrogate-born children should be comprehensively protected.

3.6 Regulation of intermediaries²¹

3.6.1 Regulation of intermediaries in all TPR is necessary to ensure that they operate in a way that respects all children's rights

3.6.2 Prohibitionist States should enact and enforce laws that ban intermediaries offering or providing services in their State such as by implementing safeguards against facilitating, providing, or advertising surrogacy-related services (e.g. through online/social media platforms or "market" fairs), as well as by identifying such intermediaries and ensuring they cease operations immediately, publishing a list of all intermediaries acting unlawfully.

3.6.3 Permissive States should ensure that intermediaries fully respect all children's rights when facilitating surrogacy arrangements, including through robust regulations.

3.6.4 Permissive States should have a national regulator for surrogacy and regulated non-profit surrogacy organisations.

3.7 Cross border situations

3.7.1 States that permit surrogacy should reserve access to surrogacy for intending parents from States which also permit surrogacy.²²

3.7.2 PIL approaches should not have an overriding emphasis on certainty of legal parentage without consideration and an assessment of broader rights such as right to information about origins, right to not be sold and right to non-discrimination.

3.7.3 National CRVS systems should be able to communicate with each other, including through ratification of the relevant Conventions of the International Commission on Civil Status.

3.7.4 Cross-border register of donors, surrogate mothers and donor conceived persons could provide people born of cross-border practices access to information about their origins.

3.8 Child's right to access to justice and effective remedies

3.8.1 States should implement their obligations, "*where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.*"²³ It is one of few instances when the CRC adds the notion of swiftness to a State responsibility.

3.8.2 States should set up mechanisms such as truth seeking commissions to shed light on past and ongoing practices.

3.8.3 States should review procedural frameworks in place in light of the need to ensure access to justice for anyone born through TPR and surrogacy, whether or not still a child. Claims for reparations can equally find their justification purely on moral grounds.²⁴

3.8.4 States should consider substantive outcomes including official recognition of the suffering of these people by way of a public apology, initiatives to prevent ongoing violations, compensation and access to recovery of their identity.

If and when there is recourse to TPR and surrogacy, they should be practised in full compliance with all human rights of children and of the adults they will become.

¹ This paper was prepared by Audrey Kermalvezen and Mia Dambach as part of online expert meetings that culminated in three-day discussions at the [Brocher Foundation representing multi-disciplinary groups](#). This paper benefits from the collective thinking of world leading experts working in third party reproduction and/or surrogacy from a children's rights perspective, including those with lived experience. It however does not necessarily reflect the views of all the experts and/or their organisations. Explicit inputs on the final version include those from Christina Baglietto, Laurence Bordier, Maud Buquicchio, Nigel Cantwell, Marilyn Crawshaw, Ilaria Pretelli and David Smolin.

² <https://www.economist.com/technology-quarterly/2023/07/17/the-fertility-sector-is-booming>, [17 July 2023].

³ Art. 1

⁴ UN Special Rapporteur 2018 Study on Surrogacy as the Sale of Children A/HRC/37/60, para. 64.

⁵ Art. 7(1)

⁶ Art. 8(1)

⁷ Arts. 1^(er)f and 2

⁸ CEDH Art. 8: Everyone has the right to respect for his private and family life. *Gaskin v. the United Kingdom* of 7 July 1989: access to personal origins constitutes an element of the right to respect for private life guaranteed by Article 8; *Mikulic v. Croatia* of 7 February 2002: individuals have a "vital interest, protected by the Convention, in obtaining information necessary to discover the truth concerning an important aspect of their personal identity"; *Odièvre v. France* of 13 February 2003: right to obtain information about an important aspect of one's personal identity "of which the identity of one's progenitors forms part"; *Jäggi v. Switzerland* of 13 July 2006; *Ebru and Tayfun Engin Colak v. Turkey* of 30 August 2006; *Krušković v. Croatia* of 21 June 2011: "the identity of one's biological parents"; *Pascaud v. France* of 16 June 2011; *Çapın v. Turkey* of 15 October 2019; *Boljevic v. Serbia* of 16 June 2020.

⁹ For example, see United Nations Children's Fund, Organization of American States, the Latin American and Caribbean Council for Civil Registration, Identity and Vital Statistics and Child Identity Protection, Registration of Births of Children Born through Surrogacy Arrangements in Latin America and the Caribbean, United Nations Children's Fund (UNICEF), Panama City, Panama, 2026.

¹⁰ For example, at the first international symposium on human artificial insemination and sperm conservation, with nearly 500 medical practitioners from 28 countries in Paris April 1979, the "obligation of secrecy" was presented as an indispensable requirement.

¹¹ https://www.liberation.fr/lifestyle/linceste-fortuit-rarissime-mais-aussi-problematique-20240113_ATOAZC4DURALNFHR4FRN3NUYWY/

¹² See principles by Donor Conceived persons <https://www.donorconceived.org/> (e.g. Prohibitions on commercialisation of eggs, sperm, embryos, children and surrogacy)

¹³ For example, in the Netherlands, Jonathan Jacob Meijer is suspected of having fathered between 500 and 1,000 children worldwide. In 2023, a Dutch court prohibited him from continuing to donate and ordered the destruction of his sperm samples, due to the high risk of inbreeding (https://www.lemonde.fr/international/article/2023/04/28/aux-pays-bas-la-justice-condamne-le-super-donneur-a-ne-plus-donner-son-sperme_6171395_3210.html). Ed Houben, another private donor, admits that he was able to father 120 children (https://www.lemonde.fr/international/article/2023/04/28/aux-pays-bas-la-justice-condamne-le-super-donneur-a-ne-plus-donner-son-sperme_6171395_3210.html).

¹⁴ For example, Australia, New Zealand, South Africa and UK allow for altruistic surrogacy while prohibiting commercial arrangements

¹⁵ [Declaration of Casablanca for the universal abolition of surrogacy - Home / Accueil](#)

¹⁶ <https://docs.un.org/en/A/80/158>

¹⁷ See examples of other preventative measures – [Child Identity Protection \(2025\) Submission to the UN SR on Violence against Women and Girls](#)

¹⁸ Dambach, M; Smolin, D; and Trimmings, K (2025) European Court Of Human Rights Cross-Border Surrogacy Decisions Unintentionally Undermine The Child's Right To Identity, The Prohibition Of Child Sale, And The Best Interests Principle, International Children of Children's Rights.

¹⁹ To avoid cases such as a wealthy Japanese man employing 11 surrogate mothers, leading to the births of 16 infants in Thailand and India and [a couple in California employing multiple surrogate mothers with custody of 22 children, the vast majority 3 years or younger, with birth certificates indicating the couple as the parents suggest the need for numeric](#).

²⁰ The UNSR 2018 report (para 41). See also 2019 report and 2021 Verona Principles provide detailed child rights analyses with similar conclusions.

²¹ Smolin, D. and Buquicchio, M.(2024) Surrogacy, Intermediaries, and the Sale of Children Research Handbook on Surrogacy (eds. Katarina Trimmings, Sharon Shakargy & Claire Achmad; Edward Elgar Publishing Ltd)

²² Verona Principles § 18.3. This is necessary given the grave difficulties of protecting all rights of children in cross-border surrogacy arrangements between permissible and prohibitionist States.

²³ Art.8(2) CRC.

²⁴ Shelton, D. (2015) Remedies in International Human Rights Law Third Edition, Oxford University Press at 275.