



OUTRIGHT
INTERNATIONAL

POLICY BRIEF

Equal Access to Surrogacy and Assisted Reproductive Technologies

- Surrogacy and assisted reproductive technologies should be regulated following human rights standards that uphold the **best interests of the child**, recognize the **sexual and reproductive rights** of surrogates and gamete (egg or sperm) providers, and promote the **right to found a family** without discrimination.
- LGBTIQ people have an **equal right to found a family**. For some LGBTIQ persons and couples seeking to form families with children, their right to found a family and other rights are enabled by a range of practices, including surrogacy and ART.
- The non-recognition of children born through surrogacy and barriers to legal parentage have **negative implications on the rights of diverse families**.
- Criminalizing or prohibiting surrogacy may **violate the right to bodily autonomy** and other rights. Voluntary surrogacy arrangements grounded in human rights standards should not be conflated with the sale or trafficking of children.
- Outright is committed to engaging in **dialogue with feminist, queer, children's rights, and reproductive justice movements** and other stakeholders on this issue.

KEY POINTS

What is the purpose of this policy brief?

Outright International supports the diversity of family formations. We advocate for the legal recognition of diverse families and for equal protection of the human rights of all parents and children. Outright also promotes reproductive justice and bodily autonomy as part of a broader struggle for gender equality. This brief aims to articulate our organizational position on assisted reproductive technologies (ART), with a particular focus on gestational surrogacy.

This brief aims to present our organizational position on assisted reproductive technologies, with a particular focus on gestational surrogacy. The growing interest in this subject presents an opportunity to engage with it from a human rights perspective.

“Assisted reproductive technologies” refers to “all treatments or procedures that include the in vitro handling of both human oocytes and sperm or of embryos for the purpose of establishing a pregnancy. This includes, but is not limited to, in vitro fertilization and embryo transfer...and gestational surrogacy.”¹

Surrogacy is an arrangement wherein a surrogate carries and gives birth to a child for another person or couple. In **traditional surrogacy**, the egg of the surrogate is used. In **gestational surrogacy**, the egg and sperm of donors are used to impregnate a gestational carrier, using assisted reproductive technologies.

Some commentators distinguish between **“commercial”** or compensated surrogacy and **“altruistic”** surrogacy arrangements that do not compensate the surrogate beyond expenses incurred as part of the process.

This brief will not attempt to address the full complexity of ethical, legal, and human rights debates surrounding surrogacy. It will focus on selected human rights issues related to surrogacy, including those impacting intended LGBTIQ parents, their children, surrogates, and gamete (egg or sperm) donors, and will offer recommendations on a non-discriminatory human rights-based approach to regulating surrogacy.

Should LGBTIQ people be able to access surrogacy?

All persons have a right to relationship recognition and to found a family without³ discrimination. No one should be discriminated against on the basis of sexual orientation, gender identity, sex characteristics, or marital status. Forms of family formation that are available to heterosexual people or heterosexual couples should be available to all. The right to found a family entails, among other things, the equal recognition of same-sex relationships, equal adoption and parental rights, equal access to social and employment benefits, and cross-border family protections.⁴

“States must ensure access to all the legal institutions that exist in their domestic laws to guarantee the protection of all the rights of families composed of same-sex couples, without discrimination in relation to families constituted by heterosexual couples. To this end, States may need to amend existing institutions by taking administrative, judicial, or legislative measures in order to extend such mechanisms to same-sex couples.”
–Inter-American Court of Human Rights Advisory Opinion OC-24/17⁵

The right to found a family, in conjunction with the right to bodily and reproductive autonomy, has been interpreted to include the “possibility to procreate,” including through assisted reproductive technologies.⁶

For people who experience social infertility, including some LGBTIQ people, family formation is enabled by surrogacy and ART.⁷ Asexual people may also benefit from these interventions to address social infertility.⁸

“Social infertility” aims to capture “not only biological aspects of ability to conceive but also the social factors which restrict access to reproduction for some individuals and couples.”⁹

Some intersex people cannot biologically reproduce due to their innate sex characteristics, or because they have been sterilized due to non-consensual and medically unnecessary surgeries attempting to “normalize” their bodies.¹⁰ For some trans people, gender-affirming medical interventions, such as hormone therapy or surgeries, might limit fertility or render them sterile, while some trans people cannot biologically reproduce after being forcibly sterilized to gain a legal gender marker that matches who they are.¹¹ Regardless of the circumstances leading to the loss of fertility, all persons, including trans and intersex people, have a right to found a family.¹²

In some countries, access to ART is reserved for medically infertile different-sex couples, which could amount to discrimination based on sexual orientation and/or marital status.¹³

Italian law criminalizes the provision of assisted reproduction services to same-sex couples, equating it with provision of these services to minors and the deceased: “Anyone who, in violation of Article 5, applies medically assisted procreation techniques to couples whose members are not both living or one of whose members is a minor or who are composed of persons of the same sex or who are unmarried or not cohabiting shall be punished with a fine of between 200,000 and 400,000 euros.”

–Italy’s Law no. 40/2004¹⁴

Some experts believe that the right to found a family does not entail a positive “right to a child” in international law. However, where surrogacy is legal, restricting access on certain grounds may amount to discrimination. The principle of non-discrimination, in conjunction with the right to found a family, may also indicate that restricting access to surrogacy based on the sexual orientation, gender identity, or marital status of the intended parent or parents could constitute discrimination.

In 2021, the Plenary Court of the Supreme Court of Justice of the Nation of Mexico, in *Acción de Inconstitucionalidad 16/2016*, ruled that the requirement for surrogacy contracts to be signed by a “mother” and a “father” is discriminatory on the grounds of sexual orientation and marital status. “The above, because it circumscribes the access to this assisted reproduction technique only to ‘couples’ constituted by a man and a woman, thus discriminating against same-sex couples who wish to access a surrogacy procedure or, even, to any single person, whether a woman or a man.”

The Court also affirmed that “the right to be a mother or father, the right to form a family, corresponds to any person, regardless of their marital status or sexual orientation. The construction of a family through any technique of assisted human reproduction is not only for infertile couples, nor for heterosexual couples, but for anyone who has the will to procreate and who, for some reason, is unable or unwilling to conceive.”¹⁶

What are some human rights issues surrounding surrogacy?

Surrogacy is not inherently exploitative. It can be carried out in a rights-based, dignified, and empowering manner that upholds the “best interests of the child” standard and respects the rights of surrogates, intended parents, and gamete providers.

Bodily autonomy. The right to bodily autonomy entails the right to make decisions about one’s own body.¹⁷ States that ban or criminalize surrogacy risk undermining the rights of surrogates, intending parents, and gamete providers to make decisions about their bodies and plan their families.¹⁸

In 2019, in its concluding observations on the sixth periodic report of Cambodia, the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) called on the state to avoid the imposition of criminal liability or administrative sanctions on surrogates and to “end the practice of detaining women who act as surrogates and of making their release conditional upon the obligation to carry the pregnancy to term and raise the children as their own.”¹⁹

Prohibition and criminalization of surrogacy for same-sex couples.

Surrogacy is de facto prohibited for same-sex couples in states that do not recognize same-sex relationships and limit access based on marital status. In India, Georgia, Russia, and Ukraine, where same-sex relationships are not recognized, applicable legislation on surrogacy explicitly restricts it to different-sex couples.²⁰ In Greece, where same-sex marriages have been recognized since 2024, male same-sex couples, trans women, and some intersex people are not allowed to access surrogacy, with the law stating that “the inability to conceive due to sex does not constitute a medical inability to conceive.”²¹

Russia even warned in 2020 that it would arrest people “of non-traditional sexual orientation” who had had children through surrogacy.²²

Legal parentage and children’s legal identity. In all surrogacy arrangements, the “best interests of the child” standard should be paramount. In questions of legal parentage, nationality, and other facets of the legal identity of the child, it is in the best interests of the child for states not to discriminate, including on the basis of the sexual orientation, gender identity, gender expression, or sex characteristics of the intended parents. However, the prohibition of surrogacy and the non-recognition of same-sex relationships in their countries of residence push some LGBTIQ people to pursue cross-border surrogacy. This can contribute to challenges in obtaining legal parentage of their children.²³

In Peru, children born through surrogacy are not automatically registered by the National Registry, which states that the Peruvian Civil Code explicitly requires a mother to be listed on a birth certificate. For families like Ricardo Morán's, a single gay man whose children, Catalina and Emiliano, were born through surrogacy, this form of legal discrimination rendered his children stateless and excluded them from equal state protection and recognition. Registry, which states that the Peruvian Civil Code explicitly requires a mother to be listed on a birth certificate. For families like Ricardo Morán's, a single gay man whose children, Catalina and Emiliano, were born through surrogacy, this form of legal discrimination rendered his children stateless and excluded them from equal state protection and recognition.²⁴ In 2023, the Constitutional Court of Peru issued a landmark ruling in favor of the Morán family, ordering the National Registry to register Catalina and Emiliano with Morán's surname and recognize their Peruvian nationality.²⁵ The Court also directed Congress to adopt legislation recognizing children born through surrogacy, which it has not yet done so at the time of writing.

Phillip Luehl, a Namibian citizen, and Guillermo Delgado, his same-sex Mexican partner, sought to register their child, Yona, as a citizen of Namibia. Yona was born through surrogacy in South Africa in 2019. The Ministry of Home Affairs rejected their application after the couple denied a DNA test in order to establish a genetic link between Luehl, the Namibian, and Yona. Legal Assistance Centre argued that such strict criteria would not have been applied to heterosexual couples in a similar situation who have not encountered "any difficulties in bringing their children home to Namibia."²⁷ In 2021, the High Court ruled in favor of the couple, asserting that a "biological link" between parent and child is not required.²⁸ However, in March 2023, on appeal of the Minister, the Supreme Court overturned the decision based on other technical grounds, leaving Yona in "citizenship limbo."²⁹

In *D.B. and Others v. Switzerland* (2022), the European Court of Human Rights ruled that Switzerland's failure to legally recognize the parent-child relationship between a child born through surrogacy abroad and the same-sex spouse of the child's genetic father constituted a violation of the child's right to respect for private and family life. The Court, however, did not find a violation of the same-sex couple's right to respect for private and family life.³⁰

In international surrogacy arrangements, the intending parent or parents' country of residence and the country where the surrogacy process is carried out may have different legal frameworks on same-sex marriage, surrogacy, adoption, and filiation, which may create barriers for children born through surrogacy to obtain a legal identity or even render them stateless, severely impacting the exercise of their right to a nationality and a range of other rights.²⁶

Economic rights and exploitative practices.

Approaching surrogacy from an economic rights perspective recognizes an “individual's freedom to contract checked by the conviction that there are ‘baseline rules below which no worker, however disempowered, should fall.’”³¹ This approach provides protection from exploitation by clarifying the duty of states to respect, protect, and promote the human rights of surrogates.³² States must ensure that they are not unjustly deprived of work they “freely choose or accept” (CESCR, Art. 6) and that they can equally enjoy just and favourable conditions of work, including fair compensation and safe and healthy working conditions (CESCR, Art. 7).³³

Gestational carriers can be exposed to exploitative practices that may violate human rights. These include abusive contracts that restrict their freedom of movement or bodily autonomy during the pregnancy or agreements that prevent them from making freely informed choices regarding the legal parentage of the child.³⁵

In some situations, for-profit actors exploit vulnerability and undermine consent. Some actors may target persons who are in socioeconomic conditions that undermine their agency and make them vulnerable to coercion and exploitative practices.³⁶

Some prohibitionist states misdirect their attention to surrogates, choosing to criminalize them instead of cracking down on for-profit intermediaries engaging in exploitative practices.³⁷ As noted above, the criminalization of surrogates violates their right to bodily autonomy.

Conflation with the sale of children and child trafficking.

It is critical to stress that surrogacy in itself does not amount to the sale and trafficking of children.⁴³ Voluntary surrogacy agreements based on human rights safeguards do not involve coercion, deception, and exploitation.⁴⁴ Compensation for surrogates does not amount to the sale of a child as it only recognizes their reproductive labor and reimburses costs related to the pregnancy and lost economic opportunities.⁴⁵ Framing surrogacy as the sale of children may suggest that human rights begin before birth—which is against interpretational human rights norms—and disregard the bodily autonomy and reproductive labor of surrogates.⁴⁶

Lack of regulation. States that do not regulate surrogacy based on human rights standards fail in their obligation to ensure protection from violence.⁴⁸ In an unregulated context, surrogates are more vulnerable to exploitation and are left with little to no recourse to legal protection.⁴⁹ Unregulated surrogacy arrangements may also increase the risk of prenatal sex selection through forced abortions or abandonment due to the child’s disabilities.⁵⁰ As the UN Special Rapporteur on the sale and sexual exploitation of children highlights, “it is possible for States to strictly regulate and permit commercial surrogacy without involvement in the sale of children,” following clear regulations based on international human rights standards.⁵¹

How should states approach surrogacy from a human rights perspective?

- Protect and promote the right to found a family in national law without discrimination based on the sexual orientation, gender identity, gender expression, sex characteristics, or marital status of the parent(s), or the mode of the child's conception;
- Legally recognize same-sex relationships and guarantee equal access to the full range of rights that come with it, including adoption and parental rights, access to ART, surrogacy, and fertility preservation, and cross-border family protections;
- Remove discriminatory barriers to legal parentage in the context of surrogacy, including the requirement to record a "mother" and a "father,";
- Facilitate the registration of all children born through surrogacy to prevent statelessness;
- Repeal laws and policies that criminalize or discriminatorily restrict access to surrogacy based on the sexual orientation, gender identity, or marital status of the intended parent(s);
- Enact human rights-based legislation regulating gestational surrogacy, guided by the "best interests of the child" standard, recognizing the agency and bodily autonomy of surrogates and gamete providers, and providing for appropriate safeguards from abuse and exploitation;
- Work with other states to address human rights issues in cross-border surrogacy that may arise due to the patchwork of laws on surrogacy, diverse families, and sexual and gender diversity; and
- Address genuine violations of human rights that may occur as part of some surrogacy arrangements, including human trafficking, the sale of children, child abandonment, and exploitative practices against gestational carriers, while rejecting the conflation of surrogacy with human trafficking and exploitation.

ANNEX

Laws on surrogacy

- **India:** The Surrogacy (Regulation) Act 2021 limits surrogacy to married different-sex couples. Article 2 defines couples as “legally married Indian man and woman above the age of 21 years and 18 years respectively.” Article 4.c.i stipulate that only intending “couples” who are “married” are eligible to enter into surrogacy arrangements.⁴⁰
- **Georgia:** In 2014, the country prohibited gay couples abroad from accessing surrogacy, requiring that the couple be a man and a woman who are legally married or cohabiting.⁴¹ In June 2023, the government presented a bill seeking to restrict surrogacy to Georgian citizens. Speaking about the bill, Prime Minister Irakli Garibashvili claimed without evidence that, “There is information that same-sex couples may take the children born here, and there can be a lot of problems.”⁴² The bill remains pending in parliament.
- **Greece:** In April 2025, the justice minister announced an amendment to Article 1350 of the Civil Code on surrogacy, stipulating that “the inability to conceive due to sex does not constitute a medical inability to conceive.”⁴³ This effectively bars male same-sex couples, trans women, and some intersex people from surrogacy.
- **Russia:** In December 2022, the government passed Federal Law of 19.12.2022 No. 538-FZ, “On Amendments to Certain Legislative Acts of the Russian Federation.” It bans non-Russian citizens from entering into surrogacy arrangements in the country. Furthermore, it only allows single infertile women and couples composed of a “genetic mother and genetic father and who are married to each other.”⁴⁴
- **Ukraine:** National law only recognizes different-sex couples as intending parents. Article 123 of the Family Code states that, “If a human embryo conceived by a couple (man and woman) as a result of the use of assisted reproductive technologies is transferred into another woman’s body, the parents of the child are the spouses.”⁴⁵
- **United States of America**
 - **State of Louisiana:** House Bill 1102 (2016) limits surrogacy to married couples “who each exclusively contribute their own gametes to create their embryo and who enter into an enforceable gestational carrier contract.”⁴⁶ This effectively excludes some same-sex couples, as well as some trans and intersex people.

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⁴¹ Simon Bowers, "Georgia To Ban Overseas Couples From Hiring Women as Surrogates," Pulitzer Center, June 27, 2023, <https://pulitzercenter.org/stories/georgia-ban-overseas-couples-hiring-women-surrogates>; Nino Tarkhnishvili and Andy Heil, "Georgia Aims To Ban Booming Surrogacy Business For Foreigners," Radio Free Europe, June 18, 2023, <https://www.rferl.org/a/georgia-surrogacy-babies-foreigners-legislation/32464403.html>.

⁴² Ibid.

⁴³ Carl Deconinck, "Greece bans surrogacy for homosexual male couples and single men," Brussels Signal, April 3, 2025, <https://brusselssignal.eu/2025/04/greece-bans-surrogacy-for-homosexual-male-couples-and-single-men>.

⁴⁴ Russian Federation, Federal Law of 19.12.2022 No. 538-FZ "On Amendments to Certain Legislative Acts of the Russian Federation," <http://publication.pravo.gov.ru/Document/View/0001202212190052?index=6&rangeSize=1>.

⁴⁵ Ukraine, Family Code of Ukraine as amended by Law No. 3760-VI of September 20, 2011, [https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/61639/UKR-61639%20\(EN\).pdf](https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/61639/UKR-61639%20(EN).pdf).

⁴⁶ State of Louisiana, House Bill No. 1102, 2016, <https://www.legis.la.gov/legis/ViewDocument.aspx?d=1011810>.

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