



OUTRIGHT
INTERNATIONAL

POLICY BRIEF

Surrogacy and Assisted Reproductive Technologies

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- Surrogacy and assisted reproductive technologies should be regulated following human rights standards. Regulations should 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.
- Everyone has a **right to have their relationships recognized and to found a family**. States must ensure that LGBTIQ people can access all forms of family formation available to different-sex relationships or people who are not LGBTIQ.
- Restricting access to surrogacy based on sexual orientation, gender identity, sex characteristics, or marital status **is unlawful discrimination** under international law.
- Criminalizing or prohibiting surrogacy may **violate the right to bodily autonomy** and other rights. Surrogacy arrangements that conform with human rights standards should not be conflated with human trafficking and the sale of children.
- Children born through surrogacy have an **equal right to identity**, including their nationality, name, and family relations. Legal barriers to the recognition of diverse families and restrictions on surrogacy negatively impact the enjoyment of this right.
- Complex ethical, legal, and human rights issues animate debates on surrogacy, and are best addressed through **constructive dialogue** among feminist, queer, children's rights, and reproductive justice movements and other stakeholders.

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 presents Outright's perspectives on assisted reproductive technologies, with a focus on surrogacy. Recent reports on surrogacy by various stakeholders present an opportunity to engage with the subject from a human rights perspective.

The brief highlights key human rights issues impacting intended LGBTIQ parents, children, surrogates, and gamete (egg or sperm) donors. Finally, it provides recommendations for a human rights-based approach to surrogacy.

What is surrogacy?

Surrogacy is an arrangement wherein a surrogate carries and gives birth to a child for another person or couple (the intended parent or parents).

In **traditional surrogacy**, the surrogate's egg is used. In **gestational surrogacy**, the egg and sperm of donors are used to impregnate a gestational carrier, using assisted reproductive technologies.

Assisted reproductive technologies refer to "all treatments or procedures that include the in vitro handling of both human oocytes [female germ cells] 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

Some laws and policies distinguish between "commercial" and "altruistic" surrogacy.

"Commercial" surrogacy: Surrogates are compensated for their time, health risks, and lost opportunities.

"Altruistic" surrogacy: Surrogates are not compensated beyond medical and pregnancy-related costs.²

What does the right to found a family entail?

Everyone has the right to form a family and have their relationships recognized—without discrimination based on sexual orientation, gender identity, sex characteristics, or marital status.³

Forms of family formation that are available to non-LGBTIQ people or different-sex couples should be available to all. States must ensure 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

International law does not provide for an affirmative “right to a child.”⁶ However, human rights bodies have confirmed that the right to found a family and other rights include the “possibility to procreate” through assisted reproductive technologies.⁷

“The right of access to the highest and most effective scientific progress for the exercise of reproductive autonomy and the possibility of forming a family gives rise to the right to access the best health services in reproductive assistance techniques and, consequently, the prohibition of disproportionate and unnecessary restrictions, de jure or de facto, on the exercise of reproductive decisions that correspond to each person.”

- Inter-American Court of Human Rights, Case of Artavia Murillo y Otros (“Fecundación In Vitro”) vs. Costa Rica⁸

People who experience infertility may turn to assisted reproductive technologies to enable family formation, regardless of the circumstances behind the loss of fertility.⁹

Medical infertility is defined as the inability to conceive after at least one year of unprotected and regular different-sex sexual intercourse.

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.”¹⁰

People, whether LGBTIQ, asexual, single, or partnered, may experience medical or social infertility and may require or choose to use assisted reproductive technologies to form families.¹¹

When do restrictions on assisted reproductive technologies, including surrogacy, amount to discrimination?

In some countries, only married different-sex couples can access assisted reproductive technologies. This could amount to discrimination based on sexual orientation or marital status.¹²

Italian law criminalizes the provision of assisted reproduction services to same-sex couples, equating it with the 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. 40/2004¹³

In countries where surrogacy is legal, laws that limit access to surrogacy based on the protected characteristics of sexual orientation, gender identity, or marital status amount to unlawful discrimination.

Forms of discrimination against same-sex couples and LGBTIQ people. Many same-sex couples cannot access surrogacy because their relationships aren't recognized. India reserves access to surrogacy for married different-sex couples and divorced or widowed women. In Georgia, Russia, and Ukraine, where, like in India, same-sex relationships are not legally recognized, only married different-sex couples can access surrogacy.¹⁴ Russia even warned in 2020 that it would arrest people "of non-traditional sexual orientation" who had had children through surrogacy.¹⁵

Greece only allows access to surrogacy in cases involving medically infertile women, whether single or partnered. Same-sex marriages have been recognized in Greece since 2024, but male same-sex couples and single men are not allowed to access surrogacy.¹⁶ A Civil Code amendment passed in 2025 states that "the inability to conceive due to sex does not constitute a medical inability to conceive."¹⁷

In Mexico, the Supreme Court ruled in 2021, in *Acción de Inconstitucionalidad 16/2016*, 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."¹⁸

How can states protect children born through surrogacy?

In all surrogacy arrangements, the "best interests of the child" standard should be paramount.

All children have an equal right to identity. This includes their nationality, name, and family relations.¹⁹

Children born through surrogacy have the same right to identity, nationality, and family recognition as all other children. States must register these children and recognize their parents, regardless of how they were conceived.

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.²⁰

Some states require that a “mother” be listed on the birth certificate, which may be challenging for men, including same-sex male couples, who have children using surrogates. Surrogacy arrangements typically recognize the intended parents, not the surrogate, as the legal parents on a child’s birth certificate.

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.²¹

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.²² 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.

People who are unable to access surrogacy in their own countries, including LGBTIQ people who may be excluded from surrogacy as a result of discrimination, may pursue surrogacy in other countries. In these cases, issues may arise due to conflicting laws in the country of residence of the intended parents and the country where the surrogacy process is carried out. For example, Country A and Country B may have different laws

on same-sex marriage, surrogacy, adoption, and family relations. This may make it difficult for children born through surrogacy to obtain a legal identity.²³

Denying or delaying recognition can leave children stateless or without legal parents, severely impacting a range of human rights.²⁴

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.”²⁵

In 2021, the High Court ruled in favor of the couple, asserting that a “biological link” between parent and child is not required.²⁶

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.”²⁷

What are some other human rights issues surrounding surrogacy?

Surrogacy, whether compensated or altruistic, is not inherently exploitative. It can be carried out in a rights-based, dignified, and empowering manner. Surrogacy arrangements must uphold the “best interests of the child” standard and respect the rights of surrogates, intended parents, and gamete providers.

Bodily autonomy, criminalization, and consent.

The right to bodily autonomy entails the right to make decisions about one's own body or plan one's family.²⁸ When states ban or criminalize surrogacy, they deny surrogates the right to make autonomous decisions about their own bodies. Such restrictions limit women's and other people's ability to choose whether, when, and for whom to carry a pregnancy, undermining their sexual and reproductive rights.²⁹

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.”³⁰

Despite these recommendations, in 2024, Cambodia sentenced 13 pregnant Filipino surrogates to four years in prison for human trafficking, instead of targeting exploitative intermediaries.³¹

In surrogacy arrangements, consent is central to the right to bodily autonomy. Surrogates have a right to free, informed, and ongoing consent, “including the right to continue or terminate a pregnancy, and to withdraw consent for embryo transfer.”³² These arrangements must also respect the rights of gamete donors to informed and voluntary consent.³³

Moral panic and paternalism in the regulation of surrogacy.

Public discourse on surrogacy is frequently influenced by moral concern and paternalistic assumptions presented as measures to protect women. Such arguments often rely on gendered stereotypes that undermine the capacity of women and other people capable of pregnancy to make autonomous decisions regarding their bodies and reproductive lives. International human rights law affirms the principles of bodily autonomy, equality, and informed consent as integral to human dignity. The state's responsibility is not to prohibit surrogacy on moral grounds but to regulate it to ensure that consent is free, informed, and ongoing, and that participants are protected from coercion and exploitation. Paternalistic restrictions, even when framed as safeguards, risk limiting autonomy and perpetuating discrimination.

Compensated surrogacy. Some states accept altruistic surrogacy but not compensated surrogacy. This reflects a persistent discomfort with acknowledging reproductive arrangements as legitimate forms of choice and commitment, and a tendency to equate payment with commodification. Yet international human rights principles—particularly those on the right to freely chosen work and to just and favourable remuneration (ICESCR, articles 6–7)—establish that compensation consistent with dignity and consent is not exploitation. There is also nothing

inherently problematic about altruistic surrogacy; when freely chosen, it also reflects autonomy and personal commitment. However, prohibiting compensation on moral grounds undermines those same principles by denying surrogates the right to recognition for their time and effort. A human rights-based approach should therefore uphold both altruistic and compensated surrogacy, ensuring that all arrangements are entered into freely, transparently, and with adequate legal and health protections.³⁴

Exploitation. Surrogates can be exposed to exploitative practices that violate their human rights. In some situations, for-profit actors take advantage of surrogates' vulnerability and undermine consent. These actors may target persons who are in socioeconomic conditions that undermine their agency. This makes surrogates more vulnerable to coercive and exploitative practices.³⁵ For example, some contracts restrict their freedom of movement or bodily autonomy during the pregnancy, or prevent them from making free and informed choices to continue or terminate the pregnancy and decide on the legal parentage of the child.³⁶

Conflation with trafficking and the sale of children. Surrogacy in itself does not amount to the sale and trafficking of children.³⁷ Voluntary surrogacy agreements based on human rights safeguards do not involve coercion, deception, or exploitation.³⁸

Compensation for surrogates should not be equated with selling a child. Rather, compensated surrogacy recognizes surrogates' reproductive labor and reimburses pregnancy-related costs and lost economic opportunities.³⁹

Framing surrogacy as the sale of children may also suggest that human rights begin at conception, which contradicts established interpretations of human rights norms.⁴⁰

Lack of regulation. Without human rights-based regulation, surrogates face higher risks of abuse.⁴¹ In an unregulated context, they can also be left with little to no recourse to legal protection.⁴²

Unregulated surrogacy arrangements may also increase the risk of prenatal sex selection through forced abortions or child abandonment due to the child's disabilities.⁴³

How should states approach surrogacy from a human rights perspective?

- Guarantee the right to form a family for everyone, 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 recognition, including adoption and parental rights, access to assisted reproductive technologies, surrogacy, 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;

- Remove laws that criminalize or 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 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;
- Cooperate with other countries to address cross-border surrogacy issues 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 trafficking, child abandonment, and exploitative practices, 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 as well as divorced or widowed women between 35 and 45 years old. Article 2 defines couples as “legally married Indian man and woman above the age of 21 years and 18 years respectively.” Article 4.iii.c.i stipulates that intended couples must be “married” to be eligible to enter into surrogacy arrangements.⁴⁴
- **Georgia:** Since 1997, Georgian law has permitted surrogacy.⁴⁵ Only married or cohabiting different-sex couples who are medically infertile can access surrogacy in the country.⁴⁶ Since then, lawmakers have been trying to impose stricter restrictions on surrogacy, often invoking same-sex couples abroad as their justification.⁴⁷ 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.”⁴⁸ 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 to prohibit single men and male same-sex couples from accessing surrogacy, stipulating that “the inability to conceive due to sex does not constitute a medical inability to conceive.”⁴⁹
- **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.”⁵⁰
- **Ukraine:** National law only recognizes different-sex couples as intended parents.⁵¹
- **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.” This effectively excludes some same-sex couples, as well as some trans and intersex people.⁵²

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