Women Deliver

Surrogacy

A Human Rights-Based Approach

- **Surrogacy is a vital pathway to family formation and is essential to the realization of human rights**, including the right to found a family, to bodily autonomy, to equality, and to non-discrimination.
- **International human rights law affirms States' obligations to respect, protect, and fulfill these rights**, ensuring that people acting as surrogates, intended parents, and children are safeguarded.
- When robustly and ethically regulated, **surrogacy provides opportunities for reproductive autonomy** and family life without causing inherent harm to those involved.
- By contrast, **criminalization and restrictive laws drive the practice underground**, heighten risks of exploitation, and leave parents and children in legal limbo.
- **Rights-based regulation is essential** — not only to meet international legal obligations but also to ensure dignity, safety, and justice for everyone involved.

Beyond being a reproductive choice, surrogacy is central to the realization of fundamental human rights.

A Human Rights Framework for Surrogacy

A human rights-based approach to surrogacy requires recognizing the rights of all parties. This includes:

1. **Right to Health**

   Access to comprehensive sexual and reproductive health (SRH) care for people acting as surrogates before, during, and after the process.

2. **Right to Bodily Autonomy**

   Protecting both people acting as surrogates and gamete donors requires ensuring that their choices are informed, voluntary, and free from coercion. People acting as surrogates have the right to make decisions about their bodies throughout pregnancy, including the right to continue or terminate it.

3. **Best Interests of the Child**

   The child's rights to identity, nationality, care, and protection must be central to all laws and policies. Laws that deny nationality to children born of surrogacy are a violation of their fundamental rights.

4. **Right to Found a Family**

   Everyone, regardless of gender, sexual orientation, marital status, or disability, should have the right to found a family. This is a cornerstone of international law and must be protected for all individuals. Regulations that discriminate by restricting access to surrogacy on these bases need to be reformed.

5. **Right to Benefit from Scientific Progress**

   Individuals seeking to form a family through assisted reproductive technologies (ART) have the right to access these advancements without discrimination.

6. **Freedom from Harmful Stereotypes**

   It is essential to combat stereotypes that diminish the legal capacity or autonomy of people acting as surrogates, such as assumptions about their financial desperation or their role as a mother.

7. **Addressing Economic Exploitation and the Right to Work**

   Surrogacy is a form of reproductive labor. Therefore, it should be understood within the broader context of women’s labor and economic rights.

Why Surrogacy Should Not Be Criminalized

Criminalizing Assisted Reproductive Technologies (ART) or surrogacy does not diminish demand. Instead, it drives practices underground, fostering stigma, risk of abuse, and legal uncertainty. Evidence from India, Cambodia, and Thailand shows that bans mask actual exploitation, make genuine trafficking harder to detect, and lead to human rights violations. **Criminalization entrenches discrimination, disproportionately targets marginalized groups, and undermines fundamental rights to privacy, family life, health, and bodily autonomy.** Importantly, there is no evidence of inherent harm to people acting as surrogates or children. Root causes of exploitation must be addressed within the broader context of systemic labor exploitation, not by criminalizing surrogacy.

The Right to Bodily Autonomy of People Acting as Surrogates and Gamete Donors

Surrogacy is grounded in the fundamental right to bodily autonomy, and people acting as surrogates have the right to informed, voluntary, and ongoing decision-making — including the right to continue or terminate a pregnancy, and to withdraw consent for embryo transfer. Gamete donors similarly retain the rights to informed consent, withdrawal, and information about the use of their gametes. States are obligated to respect, protect, and fulfill these rights, ensuring access to comprehensive reproductive health care and protection from discrimination, coercion, and harmful stereotypes.

Best Interests of the Child

The best interests of the child must be a guiding principle in matters relating to surrogacy. Laws that deny nationality or parental recognition to children born through surrogacy put them at risk of statelessness and legal limbo. International human rights bodies, including the Committee on the Rights of the Child (CRC) and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), affirm that children have the right to an identity, nationality, and to information about their origins. National courts consistently prioritize legal recognition of parentage, underscoring that children should not suffer harm from restrictive legal regimes.

The Right to Found a Family

The right to found a family includes diverse family forms and extends to individuals facing social or medical infertility. Discriminatory restrictions based on sexual orientation, marital status, gender identity, or disability violate equality and non-discrimination guarantees. Surrogacy is a critical pathway for family formation, and States must ensure equitable access, protections against harmful stereotypes, and recognition of all families in law and policy.

Addressing Economic Exploitation and the Right to Work

Surrogacy, along with all forms of pregnancy, is reproductive labor within the framework of economic and labor rights. Rather than presuming inherent exploitation, surrogacy must be regulated in line with international labor standards to ensure fair compensation, safe working conditions, and dignity at work. Both compensated and "altruistic" surrogacy can involve coercion; the key distinction is whether arrangements respect autonomy and provide protections. Recognizing surrogacy as work challenges gendered stereotypes that devalue reproductive labor and affirms economic agency and equality.

The Right to Benefit from Scientific Progress

ARTs and surrogacy are included within the right to benefit from scientific progress. States must ensure that ART and surrogacy are available, accessible, acceptable, and of good quality, while preventing stigma and discrimination. This includes ensuring equitable access to these technologies and acknowledging that surrogacy may also proceed without ART. Legal and policy frameworks must reflect scientific advancements and safeguard human rights in diverse pathways to parentage.

Distinction from Human Trafficking and Sale of Children

Consensual surrogacy is fundamentally distinct from human trafficking and the sale of children. Trafficking requires coercion, deception, and exploitation — all of which are absent in voluntary surrogacy agreements. Compensation in surrogacy reflects payment for reproductive labor and related costs, not the sale of a child. Conflating surrogacy with trafficking misapplies international law, diverts resources from combating actual exploitation, and results in human rights violations for people acting as surrogates, intended parents, and children.

Recommendations for Rights-Based Regulation

A. Decriminalize surrogacy and establish robust, transparent regulatory frameworks. Criminalization creates legal ambiguity, leaving intended parents without assurance of legal recognition of their filiation, people acting as surrogates without protection for their reproductive rights, and children vulnerable to having their best interests overlooked. Effective regulation must address underlying structural factors and power imbalances that can lead to exploitation, rather than driving the practice underground.

B. Safeguarding the rights and well-being of people acting as surrogates. This includes comprehensive protection from exploitation, coercion, violence, and trafficking. People acting as surrogates should be provided with voluntary, comprehensive medical and psychological evaluations. Their medical decisions must be fully respected, and they must have access to accurate, unbiased, and evidence-based information and services, with the unequivocal right to consent to or refuse any treatment, including their right to keep or terminate a pregnancy. Access to medical care and mental health counseling, clear written agreements outlining distinguished rights and responsibilities, life and medical insurance coverage, and access to legal aid and independent legal advice are all essential. All documentation and communication must occur in a language understood by the person acting as a surrogate, and any compensation must be guaranteed.

C. Protecting children's rights. Children born from surrogacy arrangements must never be denied a nationality, regardless of the circumstances of their birth. Laws and policies concerning parental recognition, guardianship, and adoption must guarantee the rights of children born of surrogacy arrangements and prioritize their best interests. Furthermore, children must have access to information about their origins, supported by appropriate counseling and data management.

D. Ensuring intending parents' rights. Intending parents must be afforded legal safeguards in ensuring their parenthood, and also against discrimination in accessing surrogacy services. This includes ensuring clear written agreements are in place and removing legal and administrative barriers to the registration of their children and the establishment of legal parentage.

E. Rights of gamete donors. Gamete donors should have the right to informed choice, including clear information about the process, risks, and intended use of their gametes, as well as the ability to withdraw or change consent before use in treatment. They should also be assured they are not legal parents and hold no parental rights or financial obligations toward any child born.

F. Regulating surrogacy providers. To ensure ethical and safe practices, all professionals involved in surrogacy arrangements — including clinicians, agencies, lawyers, and other service providers — must be licensed and regulated. Matching programs should be required to register and obtain licenses. Strict adherence to record-keeping obligations and the application of safe and ethical medical protocols are essential to maintain high standards of care and accountability, including mechanisms for redress.

G. Maintaining clear distinctions. It is critical that surrogacy is treated distinctly from, and not conflated with, human trafficking or the sale of children. Specific instances of abuse or exploitation must be addressed rigorously within the framework of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and other relevant laws and policies, ensuring that resources are directed towards combating genuine trafficking while safely regulating consensual surrogacy arrangements.

H. Promoting safe working environments. Recognizing surrogacy as work necessitates promoting safe and healthy working environments for people acting as surrogates. This includes ensuring fair and equal compensation, access to comprehensive healthcare and insurance, and the development of progressive regulations that actively promote and protect their interests and well-being.

I. Upholding the equal right to found a family. Regulatory frameworks must uphold the equal right of all individuals to form a family without discrimination based on inter alia, gender, gender identity, sex, marital or relationship status, or disability. Laws and policies that premise an individual's access to surrogacy on their marital, relationship or disability status are inherently discriminatory and must be reformed to ensure equitable access for all who wish to parent.