



What is surrogacy?

Surrogacy is a process by which one woman becomes pregnant in order to give the child to someone else at birth. In **traditional surrogacy**, the woman is both the biological mother and the gestational mother. In **gestational surrogacy**, the surrogate is impregnated with an embryo to which she is unrelated. The embryo may be biologically related to both, one, or neither of the intended parents. Surrogacy can also be **commercial**, in which surrogates are paid a fee, or **altruistic**, where compensation is limited to expenses, such as health care and travel.

What is the law related to surrogacy?

- **International law:** Although many use surrogacy out of a desire to have a child, there is no right to have a child in any treaty or customary law. States can therefore regulate or prohibit surrogacy without violating human rights.
- **National laws:** States have adopted different approaches to regulating surrogacy. Some allow by law or lack of prohibition surrogacy in any form, including commercial. Many States only permit altruistic surrogacy. A few States ban surrogacy entirely.
- **Surrogacy tourism** implicates both national and international laws as (typically) wealthy people who want to become parents enter surrogacy agreements with women in developing countries, often those with lax surrogacy regulations.

Surrogacy agreements implicate children's rights under international law.

- Children have a right to "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.*" Convention on the Rights of the Child, art. 7 (emphasis added).
- Under the Convention on the Rights of the Child, States must take measures to prevent "*the sale of or traffic in children for any purpose or in any form.*" Art. 35 (emphasis added).

Surrogacy does not fit existing areas of law.

- **Contract law:** Surrogacy agreements resemble typical contracts, but may be unenforceable as *contra bonos mores*, or against public policy, because the objects of the contract are human beings. Consider:
 - *What if one of the parties to the contract changes their mind?* **Example: Baby Gammy** was diagnosed with Down syndrome in utero. When his Thai surrogate mother refused to abort him, the contracting parents took his twin home to Australia but left him behind.¹
 - Poor women may be exploited through lax surrogacy laws due to their financial need. **Example: 86% of surrogate mothers in Anand, India**, said poverty was an decisive factor in becoming surrogates.²
- **Adoption law** is also not appropriate for surrogacy, because international law prohibits the surrender of the child before birth (Convention on Protection of Children & Cooperation in Respect of Intercountry Adoption, art. 4) and surrogacy agreements lack the legal protections for children's rights found in adoption laws.
- Surrogacy also undermines the legal maxim *mater semper certa est*, "the mother is always certain," because in surrogacy the woman giving birth will not be the child's legal parent and may not be related.

Surrogacy violates human dignity.

- In surrogacy agreements, women are valued only for their reproductive systems, and poor women may be vulnerable to exploitation.
- Surrogacy treats children like commodities to be acquired rather than persons with rights.
- Surrogacy may violate children's rights under anti-trafficking laws and implicates children's rights to know their parent(s) and have legal identity and, in cases of international surrogacy, nationality.

Couples struggling with infertility deserve compassion and help, but solutions must respect the human dignity of all. Surrogacy treats children and women like objects and commodities, rather than people with dignity and rights. Therefore, all forms of surrogacy should be prohibited.

For more information, see the World Youth Alliance's Surrogacy White Paper (November 2015), available at www.wya.net/research.

¹ *Calls for clearer surrogacy rules after Thai Down's case*, BBC News (Aug. 3, 2014), available at <http://www.bbc.com/news/world-asia-28627374>.

² CENTER FOR SOCIAL RESEARCH, SURROGATE MOTHERHOOD—ETHICAL OR COMMERCIAL 38 (2014), available at https://drive.google.com/file/d/0B-f1Xldg1JC_Ui04RmiYUkNsTFE/view?usp=sharing.